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NATIVE AMERICAN SACRED PLACES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

JUNE 18, 2003
WASHINGTON, DC

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CONTENTS

Page

Statements:

Bear, Joyce, historic preservation officer and manager, Cultural Preservation Office, Muscogee [Creek] Nation, Ocmulgee, OK 11

Bettenberg, William D., director, Office of Policy Analysis, Department of the Interior, Washington, DC 3

Brady, Sr., Steve, headsman, Northern Cheyenne Crazy Dogs Society, member, Medicine Wheel Coalition for Sacred Sites of Native American, Lame Deer, MT 17

Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, chairman, Committee on Indian Affairs 1

Harjo, Suzan Shown, president, The Morning Star Institute, Washington, DC 8

Johnson, Hon. Tim, U.S. Senator from South Dakota 1

Preston, Gene C., chairman, Pit River Tribal Council, Burney, CA 13

Thomas, Hon. Craig, U.S. Senator from Wyoming 7

White Face, Charmaine, director, Defenders of The Black Hills, Rapid City, SD 9

APPENDIX

Prepared statements:

Bear, Joyce (with attachment) 33

Bettenberg, William D. (with responses to questions) 39

Brady, Sr., Steve 48

Harjo, Suzan Shown (with attachment) 54

Johnson, Hon. Tim, U.S. Senator from South Dakota 29

Kile, Nancy 31

Preston, Gene C. 65

Smith, Hon. Gordon H., U.S. Senator from Oregon 30

Thomas, Hon. Craig, U.S. Senator from Wyoming 30

Weahkee, Laurie, executive director, SAGE council, Albuquerque, NM (with attachment) 70

White Face, Charmaine (with attachment) 74

NATIVE AMERICAN SACRED PLACES

WEDNESDAY, JUNE 18, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Johnson, Thomas, and Smith.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The Committee on Indian Affairs will be in session.

Welcome to the fourth hearing in this committee's series of hearings on legal protections of Indian sacred places. As we have done in hearings past, today we will hear from the Department of the Interior and tribal representatives to discuss specific and active cases where Indian sacred places are or may be threatened. We'll hear from the Department of the Interior; from Suzan Harjo, my dear friend for so many years; from Charmaine White Face of the Defenders of the Black Hills; from Joyce Bear of the Muscogee Creek Nation; from Gene Preston, the chairman of the Pit River Tribe of California; and from my Northern Cheyenne brother, Steve Brady, from Lame Deer, MT.

Senator Johnson.

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Chairman Campbell. I'll just be very brief, and I have a full statement to submit for the record.

Let me say that I appreciate the timeliness of this hearing. I hope that it leads to a strengthened approach to sacred site protection.

In my home State of South Dakota in the past year or so we have had five instances that come immediately to mind where we've had very troubling circumstances arise relative to sacred sites. One is relative to the Bear Butte Region in the Northern Black Hills, where Federal money through a community development block grant fund, which, of course, does go through the State government and through the State decision to utilize those Federal dollars, resulted in the beginning of a development of a rifle range

near Bear Butte, one of our most sacred sites in South Dakota. That is now caught up in litigation, but it is one more instance where I think a lack of consultation and lack of sensitivity was apparent.

We also have circumstances along the Missouri River where the Corps of Engineers' management to the river has caused the impoundments behind the large earthen dams to rise and to fall, and in some instances that has led to the uncovering of remains of Native people, bones literally sticking out of the ground and into the river, complicated most recently in the north point area where the Corps of Engineers in the State of South Dakota have struck a joint arrangement with the State to improve campgrounds and picnic areas and so on, but it has resulted in literally the bulldozing of Native remains. That, too, is now caught up in litigation, and a special master has been appointed, but it is a sad commentary that it has reached that point.

Recently, in the Sioux Falls region and in the Mitchell area of South Dakota, earth work for the development of commercial and residential areas has again turned up Native remains. There seems to be a great deal of confusion about what to do once that has occurred and what the rights of the property owners are, what the jurisdiction of the State and local jurisdictions is, what the Federal role is.

So it is my hope that this hearing today will help shed some light on what the existing legislation does, where we need to better enforce the existing legislation, and to promote better communication, and where the existing legislation is simply inadequate and where it needs strengthening.

I'm looking forward to testimony that we will receive today and further analysis relative to Representative Rahall's legislation on the House side, H.R. 2419, the Native American Sacred Lands Act. There is no similar legislation pending in the Senate. Representative Rahall's bill is a codification of President Clinton's Sacred Sites Initiative, and I look forward to insights shared with us from the panel relative to that particular piece of legislation.

So thank you, Mr. Chairman, for your leadership on this issue. I look forward to working with you. But this really does involve a profoundly consequential matter, as Native people find over and over again their most sacred sites, sacred remains being treated in a way that would be considered utterly intolerable in any other community, and it should be intolerable for them, as well. I hope that we can find ways that we can get out of the courtroom and resolve these issues in a more expeditious, more thoughtful, and more sensitive way than has been the case in the past.

The CHAIRMAN. Thank you for that very fine opening comment.

[Prepared statement of Senator Johnson appears in appendix.]

The CHAIRMAN. I think in the case of South Dakota you probably represent as many or more Indian people than anybody in the United States Senate, and I know that South Dakota is caught in somewhat of a difficult position because you have a huge influx of people in South Dakota. It's a big State for tourism, as an example, which creates jobs, and so many important things that Indian people need as well as anybody else, and at the same time many of the people that come into the States are not very well educated or

versed on taking care of the traditional things that are of such importance to Indian people.

Senator JOHNSON. And if I may, Mr. Chairman, as is so often the case, I have multiple conflicting hearing obligations, including a markup going on today, and I'm not going to be able to stay as long as I would like. I won't be able to stay for all of the panel testimony, and so I apologize for that. But I will be reviewing all of the testimony and I do have staff here, because this is a very, very important matter to me.

Again, I thank you for organizing this hearing today.

The CHAIRMAN. Thanks for being here as long as you could.

We'll start with the first witness, and that will be William Bettenberg, director of the Office of Policy Analyst, Department of the Interior.

Mr. Bettenberg, if you would like to abbreviate your comments, your complete written testimony will be included in the record. Go ahead and proceed.

STATEMENT OF WILLIAM D. BETTENBERG, DIRECTOR, OFFICE OF POLICY ANALYSIS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. BETTENBERG. Thank you very much.

My name is William Bettenberg. I'm director of the Office of Policy Analysis in the Department of the Interior. Unfortunately for this process, I am a substitute witness. Chris Kearney testified last year and was expected to be here today. His father died just the day before yesterday.

The CHAIRMAN. I'm sorry.

Mr. BETTENBERG. And so he had to go to Connecticut.

The person who has been primarily working on this, as well, is in the hospital this morning. Jim Pace's father is undergoing some sort of an operation this morning. So I learned that we needed a substitute witness just yesterday afternoon.

I have reviewed some of the documentation regarding this matter. We have an executive order in place. We have departmental guidance in place in the departmental manual. I'm advised that each of our five land managing bureaus have their more specific guidance in place as required by the departmental manual. As I understand was discussed at last year's hearing on this subject, there are some very practical problems in implementing the policies and, as a result of that, the Department of Interior reactivated its Sacred Sites Working Group. They have interacted with interested parties, including those in the Native American community, over the past year.

There are three key issues. The first one is confidentiality of sites. That has to do with how do you administer Interior's land management responsibilities and still maintain the confidentiality of a site. If you go to a public hearing, for instance, and you want to discuss the issues regarding a site but you can't describe the site, you don't want people to know about the site because of fear of looting, you have fairly obvious practical difficulties. You also want to run the remainder of your process in such a manner that you don't reveal the site.

The second is discreet delineation that's called for in the Executive order of President Clinton. It describes it as "discreet, narrowly delineated location on Federal lands." Ultimately, substantial judgment must be exercised in these cases.

The final issue is how do you assure appropriate consultation, given these other two issues. The working group is working to provide clarity to the procedures that the Department follows as opposed to changing policies. My understanding is that the working group is expected to complete its deliberations and have further guidance on procedures out yet this summer, but it is not available at this point for this particular hearing.

The only other remark that I could make is probably just a personal observation in reviewing the material for this. The Department may at some point need some legislation to allow it to protect confidentiality because of issues that arise in the context of the Freedom of Information Act and other acts that are intended to bring sunshine to the Government.

As a former director of the Minerals Management Service at the Department of the Interior, I was protected by legislation that allowed the Minerals Management Service to receive and maintain the confidentiality of proprietary data. This is data that was typically coming from oil companies; in some other cases information coming from people paying money for mineral leases where there were issues in dispute. That I think served us well, and at some point I think that something like that probably ought to be considered.

That concludes my brief remarks, and I will attempt as best as I can to answer any questions.

[Prepared statement of Mr. Bettenberg appears in appendix.]

The CHAIRMAN. Well, since you just came on, we'll ask you a few questions and then we'll put some in writing for you, too, if you would get back to the committee.

Mr. BETTENBERG. That would be fine.

The CHAIRMAN. Senator Thomas of Wyoming has arrived. Did you have an opening statement, Senator, before we ask some questions?

Senator THOMAS. Why don't you go ahead, sir.

The CHAIRMAN. Okay. Well, let me maybe start with a couple of things that I've had concerns about for a number of years. There's a place in South Dakota that Senator Johnson is very familiar with called Bear Butte, which is a sacred site to the Cheyennes, but also to many other tribes that use it, too. And part of that mountain, that butte, is owned by the tribe and part of it is owned by the State of South Dakota. The part that the tribes use, in order for Indian people to use that, which they have done for eons, I guess, maybe hundreds of years, they have to go through some private land to be able to get to the sites that they need.

For a while—I don't know if this has changed. Maybe Senator Johnson knows—but for a while the State of South Dakota had an overlook by—they have a visitors center up there and there was sort of an overlook and you could have rented binoculars where you could watch the Indians pray, like some form of recreation or something. I don't know if they have done away with those or changed those. I talked to a State Senator up there a couple of times about

getting a bill through the South Dakota legislature to see if the tribes couldn't get an easement through the State park so they could go to the land that they need without going through private land and upsetting private ranchers.

I guess the question I would have for you is: In your Office of Policy Analysis, do you or do you know anybody in Interior that has what might be called an "arbitrator" between States and tribes to try and resolve issues like that one?

Mr. BETTENBERG. We don't in the Office of Policy Analysis, but in a matter like that I think that it would certainly be appropriate for the Bureau of Indian Affairs [BIA] to attempt to arbitrate a case like that.

The CHAIRMAN. Well, I mentioned that because I've often thought if you were a Catholic it would be akin to being in communion and have somebody come in and watch and take pictures or something. It's a brutal kind of a thing.

Mr. BETTENBERG. It would seem to be very inappropriate.

The CHAIRMAN. Really inappropriate. But I think that's one of the things that we face a lot of times in Indian country is a lot of the people that come out to Indian country, they don't know the difference, and so part of it has to be education and part of it has to be through tighter restrictions in the law.

In implementing—you spoke of President Clinton's order 13007. In implementing that order, as I understand from your testimony, because of the ongoing reorganization at the Bureau, implementation of the order will be done by the Office of Environmental Safety and Cultural Resource Management rather than the Office of American Indian Trust. Will the Office of American Indian Trust be dissolved or folded in, or what will be the——

Mr. BETTENBERG. Its responsibilities are being divided between the office that you just described and the Office of the Special Trustee.

The CHAIRMAN. Yes.

Mr. BETTENBERG. There's some element of nostalgia with me with regard to that, since I was the one who originally conceived of and sought funding for the Office of American Indian Trust back in 1990, but I guess it has served its time, I think in a distinguished manner, and the Department is moving its trust functions to the Office of Special Trustee, which is undoubtedly appropriate.

The CHAIRMAN. You mentioned the difficulty of identifying sacred places because many times they shouldn't be revealed. There's an inherent danger of letting people know where they are in the first place for Indian people to admit where they are or tell you where they are. You talked about that a little bit. But, given those beliefs, how do you try to protect them?

Mr. BETTENBERG. My understanding is that there are a variety of things that you can do. What you're dealing with is some sort of a public land action. For instance, you have a road. The contractor that is building that road doesn't necessarily have to understand why the road might be somewhat strangely routed, for instance.

The CHAIRMAN. Yes.

Mr. BETTENBERG. Just simply to avoid a site. The larger the site, the more difficult the problems in terms of discreet delineation.

The CHAIRMAN. Bottomline is if you don't know where they are you can't do much to protect them unless you sort of stumble into them.

Mr. BETTENBERG. Well, we have to accomplish that through consultation with the tribes.

The CHAIRMAN. I understand that.

Mr. BETTENBERG. Because otherwise you could definitely create a problem there. But even when you do know where it is, there is a difficult problem maintaining the confidentiality of it, but there are practical solutions in many cases to this.

The CHAIRMAN. Yes; well, given that answer, then how do you determine which tribes to consult with? Is it based on cultural criteria or geographic criteria or historic criteria or what?

Mr. BETTENBERG. Well, it would need to be probably all three of those. A lot of tribes are not in the general location where they were historically.

The CHAIRMAN. And have tribes generally been helpful guiding you or helping you?

Mr. BETTENBERG. I can't answer that accurately. I would assume so.

The CHAIRMAN. Well, I realize you just came on board. Is that process of consulting done through the Federal Register notice process?

Mr. BETTENBERG. I don't know that.

The CHAIRMAN. Could you find that out?

Mr. BETTENBERG. I surely can.

The CHAIRMAN. And report that back to the committee, because I, frankly, think there is an inherent danger in that, too.

Maybe the last question I have is a bill I introduced recently. It's S. 288—if you would write that down and look at that. It will encouraged the Department to contract with tribes to provide culturally appropriate services for archaeology, surveying, mapping, and site management, too. I'd appreciate your response and what you think of that.

Mr. BETTENBERG. Okay.

The CHAIRMAN. I see Senator Smith is here from Oregon. Did you have an opening statement?

Senator SMITH. I'll submit it

The CHAIRMAN. Okay.

[Prepared statement of Senator Smith appears in appendix.]

The CHAIRMAN. Senator Johnson, did you have any questions? We'll just go in order of appearance here.

Senator JOHNSON. We will submit some questions to Mr. Bettenberg and allow him and his colleagues to respond to those.

Let me just say one question that I do have to ask you directly, and I suspect that you're not prepared to respond at this point, but I would be interested in the Administration's evaluation of H.R. 2419, the House bill currently pending on that side, because we may be thinking about some variation or some counterpart here on the Senate side, and I would be interested to know whether the White House views this as a beginning point for Senate action or whether the Administration has strong objections to some components of it. I think it would be very helpful to us to get your perspective on that legislation.

Mr. BETTENBERG. My understanding is that the Administration has not taken any position on it yet. No hearings have been scheduled, I believe, on that. So I don't know what the ultimate disposition will be.

Senator JOHNSON. Well, the Administration sometimes goes a long time without taking a formal position, and I can understand that when it's not on the verge of consideration, but I would be interested, even if the Administration hasn't taken a formal position, in any critique that your Agency might have, even if it falls short of being a formal position of the Administration. It would be very helpful to us.

That's the only question I have at this point.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. I have no questions.

The CHAIRMAN. Senator Smith, any questions?

Senator SMITH. Not at this time.

The CHAIRMAN. Okay. Well, we thank you. If you will get back in writing those several things that I mentioned and Senator Johnson mentioned, I'd appreciate it.

Mr. BETTENBERG. I will.

The CHAIRMAN. And, by the way, I wish you will also thank the Secretary. She is next week going to attend the unveiling of the Indian Memorial at the former Custer—now Little Big Horn—Battlefield in Montana, which is going to be this Wednesday on the 127th anniversary. That's something some of us have been working on for the last 16 or 18 years to get that, and she just yesterday notified us that she will be going up, as will Aurene Martin, the acting assistant secretary, too. So we are very, very pleased with that, if you would pass that on.

We'll now go to our second panel: Suzan Harjo, the president of Morning Star Institute—welcome, Suzan; Charmaine White Face, director of the Defenders of the Black Hills, Rapid City; Joyce Bear, the historic preservation officer and manager of the Cultural Preservation Office for the Muscogee Creek Tribe; Gene Preston, chairman of the Pit River Tribe; and Steve Brady, headsman for the Northern Cheyenne Crazy Dogs Society and member of the Medicine Wheel Coalition.

We'll start in that order.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Mr. Chairman, I am going to have to leave. I have another appointment. I wanted to mention that we will have, among other things discussed, is the Medicine Wheel area in Wyoming, an area that has been talked about now for at least 10 years and trying to find a solution. We certainly look forward to working to have that done. The question there is really what you put in the categories, the different categories that are available, and the size that goes into it.

We certainly have a national historic landmark. That's very clear. But when you get on in then to the surrounding area, then that becomes more difficult.

We do need to be able to define these areas a little better and to have a way of doing that. We need to recognize also that these

are multiple use lands. And so I am glad that you are into this, and I'm sorry I can't stay, but we do have health care on the floor and I have to be over for that. But I do want to say we need to continue to work to do that, but a national historic landmark is not a land management tool particularly, and so we need to be able to come to conclusions on it and we want to work with the tribes to do that.

[Prepared statement of Senator Thomas appears in appendix.]

The CHAIRMAN. Yes; and for those of you on the panels, Senator Thomas is also the chairman of the Parks and Public Lands Subcommittee of Energy, too. We appreciate your input.

Why don't we go ahead. We'll just do it in the order I called. If you would also like to diverge from your written testimony, it will be all in the record.

Welcome.

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT, THE MORNING STAR INSTITUTE, WASHINGTON, DC

Ms. HARJO. Thank you, Senator, Mr. Chairman. We're just so happy that the committee is taking the approach it is taking through oversight hearings and taking testimony from Native people who are the most directly affected by these troubles at sacred places and the people who are the most knowledgeable about them, and holding on development of legislation until we really conclude these oversight hearings.

I don't think any of us has a problem in going forward with the development of legislation, if it is meaningful, if it is serious stuff. The House bill has been mentioned a number of times, and I would like to address that briefly.

The Sacred Places Coalition gathered in November of last year and came up with something that is very simple, just bare bones: Essential elements for legislation to protect sacred places and objectionable elements. The House bill, unfortunately, has almost none of the essential elements that we identified and has too many of the objectionable ones.

The two most important are the first in each category. The first one that we identified as an essential ingredient, an essential element, is a cause of action. We need a way to get into court, if only to avoid going there. Without a cause of action to protect sacred places, we have no way of getting around a negotiating table. For the most part, we don't have any leverage, because people just take the attitude, "So sue me" because they know we can't, or that we cannot sustain a defense in court. So we need a door like the rest of America has to get into the courtroom, and perhaps we need several doors, but we certainly need a specific cause of action for the protection of sacred places.

The number one objectionable element in legislation would be definition of the sacred. And, as you know so well, Mr. Chairman, we've resisted in the repatriation laws all the pressures to define sacred objects. We said, "It's sacred because people believe it to be sacred." But, no one else in America, no other religion, has to prove the sacredness of anything—of an object, of a place, of a church. It is sacred because the practitioners of that religion believe it to be sacred, and that's the answer. We would like that same treatment.

We would like equal treatment when it comes to definition of the sacred. We don't want one.

We have heard about "discreet delineation" here, which is a very limiting term that is in the sacred sites Executive order and has caused a lot of problems. We don't want that term in. So, in my written statement, I've outlined all of our essential elements and objectionable elements, and have listed those sacred places that were identified by the gathering in November of the coalition and by the cognizant committees of the National Congress of American Indians, also in November in California last year.

I would like to make one remark about the confidentiality point. Within the Interior Department, the Bureau of Land Management had a practice in the California Desert Plan called "areas of sensitivity." They would take, in fact, ink blots and have a 100-mile or 200-mile area, 5 miles, whatever the area was, and a sacred place would be identified through consultation with the traditional leadership as being somewhere within that ink blot. It could be on the edge, it could be right in the middle, but somewhere in there. And that entire area was an area of sensitivity. That worked for a long time, the cooperation. There was trust there. It was something that worked with the Bureau of Land Management's operations. I think that kind of creativity carried through to the Bureau of Land Management's operation of Tent Rocks National Monument. I mention that specifically because the Bureau of Land Management is doing a good job, and the Cochiti Pueblo, whose sacred place that is, feels they are doing a good job. They're co-managing through a cooperative agreement that allows for confidentiality, allows for closures at ceremonial times, allows for flexibility and review and updating in consultation, in the particulars of the management plan. So we know that the Federal agencies can do this and can do it well and can do it to the satisfaction of the Native peoples who are the most directly involved.

We hope to see more of these best practices highlighted and to have the other agencies and sometimes just other field offices within the same agencies take a lesson from things that are already in place and that have already been proven and that work.

But, if you have to pick out one thing to do, it is to create a cause of action, because without that the rest is just entertainment.

The CHAIRMAN. Thank you.

[Prepared statement of Ms. Harjo appears in appendix.]

The CHAIRMAN. We'll now just proceed in order to Ms. White Face.

STATEMENT OF CHARMAINE WHITE FACE, COORDINATOR, DEFENDERS OF THE BLACK HILLS, RAPID CITY, SD

Ms. WHITE FACE. Thank you, Chairman Campbell and Senators. Thank you for giving me this opportunity to speak on behalf of Bear Butte.

My name is Charmaine White Face. I am Oglala Lakota from the greater Tetuwan Oceti Sakowin, commonly known as the Great Sioux Nation.

Bear Butte is a small mountain on the northeast corner of the Black Hills, although separated from the hills by about 8 miles of prairie. It rises on the plains about 1,300 feet. It looks like a bear

lying down with its head pointed toward the northeast. It is one of the most sacred places to more than 30 Native American nations from throughout the United States and Canada.

Today, people from all over the world come to Bear Butte to pray, from Australia, Europe, all over. It is at Bear Butte that we receive spiritual messages and gifts. Moses did the same thing on Mount Sinai. More than 4,000 years ago, Sweet Medicine received guidance and gifts for the Cheyenne people at Bear Butte. To put this in perspective, Christianity has only been around for 2,000 years. The Cheyenne continue to pray at Bear Butte today, traveling thousands of miles from Oklahoma, Montana, since they were separated in the late 1800's by the United States.

Geologists, on the other hand, call Bear Butte a laccolith, or a bubble of magma that did not become a complete volcano. They say this happened millions of years ago, yet the Oglala Lakota people, my people, call this place "Groaning Bear." How did my people, the Oglalas, know that this mountain groaned? It is estimated by archaeologists that we have been present in the Black Hills for 11,000 years.

We also go to Bear Butte for guidance, messages, and gifts. Bear Butte, the mountain proper, currently a National Historic Landmark, is managed by the South Dakota Department of Game, Fish, and Parks. Although a few parcels of adjacent land has been purchased by some Native American nations, the rest of the surrounding area is ranch land or is being sold to developers. Two drag racing strips, a biker bar, a convenience store, campgrounds, and housing developments are all located within a few miles of this sacred place.

Most recently, the nearby town of Sturgis and a group of private businessmen, some of whom own gun ammunition manufacturing companies and ammunition manufacturing companies, received $825,000 in HUD CDBG money to build a rifle shooting range within a few miles of Bear Butte. It is a private shooting range and requires in the hundreds of dollars to have membership. It is supposedly a nonprofit shooting range, and recently the State of South Dakota passed a law that if you were a nonprofit shooting range within 15 miles of a municipality, you could have certain tax breaks for visitors that come to use your establishment.

As Federal money was involved and as it is so near to this National Historic Landmark, Bear Butte, the businessmen were told over and over by the State South Dakota Historic Preservation officer that they needed to consult with the Native American nations who use Bear Butte to pray. They did not. Instead, they said that all of the environmental and all of the legal qualifications to receive HUD CDBG money was completed; that there were no adverse impacts.

A lawsuit has been filed citing violations of four Federal laws—National Historic Preservation Act, National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act of 2000, and the Religious Freedom Restoration Act. A second lawsuit has been filed regarding the misuse of CDBG funds which are meant for low-income people. This lawsuit has been filed as a class action lawsuit on behalf of the low income people of the city of Sturgis.

I also happened to bring petitions with 659 signatures asking for protection of this sacred place. I know there are more signatures out there. These are just the ones that I was able to gather; that I have in my own personal possession. Now, to a lot of people 659 signatures are not very many. In South Dakota, though, it was less than 659 signatures that caused Senator Johnson to be able to be a Senator in this term. We are a very sparsely populated State. It also was the 400-some signatures from Pine Ridge Reservation, my reservation, that elected Senator Johnson. So 659 signatures in our State is very important. And 659 signatures from Native people who use Bear Butte to pray is very significant.

We strongly recommend that Bear Butte come under Federal protection, including a land buffer zone of 5 miles around this holy mountain. A lot of this development is occurring right very, very closely near and within this 5-mile limitation of Bear Butte.

The recommendation I give is given on behalf of Bear Butte and all our relatives: The bald eagles, the golden eagles, the buffalo, the deer, the coyotes, all of the sacred plants that grow. There are over 30 kinds of sage that grow on Bear Butte, itself. I give this on behalf of all our relatives Mitakuye Oyasin.

Do you have any questions?

The CHAIRMAN. Yes; I'll have some, but I prefer to finish with everybody first and then I'll come back.

Ms. WHITE FACE. Thank you.

The CHAIRMAN. I have been jotting down as you have been speaking. Thank you.

[Prepared statement of Ms. White Face appears in appendix.]

The CHAIRMAN. Now we will go to Ms. Bear, Joyce.

STATEMENT OF JOYCE BEAR, HISTORIC PRESERVATION OFFICE AND MANAGER, CULTURAL PRESERVATION OFFICE, MUSCOGEE [CREEK] NATION, OCMULGEE, OK

Ms. BEAR. Thank you, Chairman Campbell. I appreciate the opportunity to come before you and speak today. Also, I appreciate your including the Ocmulgee Old Fields in this hearing.

The Ocmulgee Old Fields is located around Macon, Georgia. It's in the Ocmulgee River Valley in the south-central part of Georgia. This is where the Piedmont and the coastal plains come together. No other area in our Muscogean ancestral homelands match the Ocmulgee Old Fields, as recorded in depth or scope of our settlement in the southeast.

You probably wonder why I'm speaking about it, since my tribe is now from Oklahoma, but we were one of the tribes that were forced to remove from the southeastern part of the United States in the early 1800's.

Oral history tells us that the Ocmulgee Old Fields is our place of origin. This is the cradle of the Muscogee Creek Confederacy. The Muscogee Creek Nation is the remnants of that Muscogee Creek Confederacy.

Numerous treaties were passed and signed by our Muscogee Creek ancestors, and they ceded a lot of the land that was in the southeastern part of the United States, and especially along the Ocmulgee River. In 1805 the treaty with the Muscogee Creek Nation, when they ceded this land, they left out a section of this land,

a tract of land in this section along the Ocmulgee River, and this is what contained the Ocmulgee Old Fields.

In 1821 a Lower Creek chief named William McIntosh then ceded that tract of land, along with some other lands that went all the way to the Flint River.

When our people were removed from the southeastern part of the United States, the Ocmulgee Old Fields became lost in myth and in legend, so in 1903 the United States Congress authorized a portion of the Ocmulgee Old Fields to be set aside for the Ocmulgee National Monument. It is now under the National Park Service. They preserved some Indian mounds of great historical importance in and around this town of Macon. In the recent years, the Ocmulgee Old Fields were determined eligible for the National Registry of Historic Places as a traditional cultural property. These are the first lands east of the Mississippi River to be determined eligible to receive that classification. Even as more of our people recognize the significance of this area, the Ocmulgee Old Fields are still threatened by a road project proposed by the State of Georgia.

The Ocmulgee Old Fields are a sacred place to the Muscogean people and it contains numerous unidentified and identified settlements and cultures that were used in the area, established during a 12,000-year occupation. The most prominent features are an extraordinary and distinct mound complex that includes a mound rising 50 feet high above the Macon plateau, the only known spirally-ascended mound in North America. There is also an earth lodge which was used for ceremonial, and in the original floor of it has an effigy of a large bird. It is dated back to 1,000 years.

In addition to these unique features, the area has a significant number of funeral mounds. Back in the 1930's WPA worked with the railroad and they excavated some of those and removed some of those remains. My tribe is still looking for where those have been stored. We have found some and we are in the process of repatriating 11 of those, but there were over 100 that were excavated.

While some of the mounds and the settlements have been damaged and destroyed in the town of Macon as it was being developed, much of this area still needs to be protected.

In the 1980's the Georgia Department of Transportation developed a plan to construct a major highway, the Fall Line Freeway, across the State of Georgia from Columbus to Augustus. The road proponents identified the Old Fields as a prime location for the road corridor through Macon, and for the past 5 years the Department of Transportation and the Federal Highway Department, the agency charged with overseeing this project, have been studying possible alignments. Despite the request from the Muscogee Creek Nation and others, they have failed to identify a route that avoids this sacred area and have not adequately explored alternative alignments.

The Muscogee Creek Nation has passed resolutions calling for the preservation of the Ocmulgee Old Fields and opposed the construction of the freeway through the area. We have been joined by numerous other tribes with and without ancestral ties to this land. The Intertribal Council of the Five Civilized Tribes represents more than 450,000 people across the United States. They passed a reso-

lution supporting us in our efforts to protect this cultural identity of the Ocmulgee Old Fields.

In addition, the United South and Eastern Tribes, comprised of 24 federally recognized tribes, passed a resolution strenuously opposing the construction of the road and requesting the Federal Highway Administration to enter into a good faith consultation with all tribes affiliated with this land.

The National Congress of American Indians also recognized that this sacred area is being threatened, and passed a resolution calling for the protection of the Ocmulgee Old Fields.

In addition to tribal opposition to the highway, both the National Park Conservation Association and the National Trust for Historic Preservation have listed the Ocmulgee Old Fields on their Most Endangered Places List.

Chairman we urge this committee to support us by requesting the Federal Highway Administration engage in meaningful consultation with the Affiliated Tribes and to develop an alternative route that would avoid encroachment into our traditional cultural properties, the cradle of the Muscogee Creek Nation.

I thank you.

The CHAIRMAN. Thank you.

[Prepared statement of Ms. Bear appears in appendix.]

The CHAIRMAN. We'll go to Chairman Preston. By the way, Mr. Preston, are you related to Lucky Preston?

Mr. PRESTON. Yes; Lucky is my brother.

The CHAIRMAN. Lucky is your brother?

Mr. PRESTON. Yes.

The CHAIRMAN. And so my namesake, Ben Nighthorse Preston, is your nephew? He's your nephew?

Mr. PRESTON. Yes; and he is doing in good order.

The CHAIRMAN. He's about 13 now?

Mr. PRESTON. Yes; he is.

The CHAIRMAN. When you go home, give him my best wishes and tell him some day I want him here in this chair.

Mr. PRESTON. I'll work on it.

The CHAIRMAN. Thank you.

Mr. PRESTON. I'll help you with that.

The CHAIRMAN. Thank you. Go ahead, proceed.

STATEMENT OF GENE C. PRESTON, CHAIRMAN, PIT RIVER TRIBAL COUNCIL, BURNEY, CA

Mr. PRESTON. Thank you very much, Mr. Chairman. It is an honor to be here with you and the other honorable tribal leaders to participate in this committee hearing on sacred sites. I come to you from the Pit River Nation, lower eastern California, to speak to you about an area of great interest and sacred value to our people. The sacred area I speak of is Medicine Lake Highlands. It is located on the continent's largest shielded volcano in the remote, pristine, Modoc National Forest.

The Medicine Lake Highlands are an area of utmost spiritual significance and critical to the cultural survival of the Pit River Nation, the Klamath Modoc Tribes, and other surrounding tribes. The sacred Medicine Lake with the shining lake has been designated as a 32-square-mile traditional cultural district by the Na-

tional Register of Historical Places. The highlands are located adjacent to Mount Shasta, and these two most sacred landscapes are closely related in North American creation stories with many physical and mystical links between them.

Medicine Lake Highlands are a place where the full magnitude of the creator's presence can be experienced, a place where the creator has left messages for the people on how to live, and a place of refuge. Activities have included ceremonies, vision quests, cleansing, healing, prayer, medicinal plant gathering, hunting, and obsidian trading. This is what the Medicine Lake Highlands has been to the Native people for the last 10,000 years and continue today.

The Medicine Lake Highlands has always been respected as a sanctuary where the many tribes from the area put down their weapons and share the common cleansing sanctity of the land.

Unbeknownst to my people, in the 1970's and 1980's plans were made and leases sold giving away 66 square miles of the Medicine Lake Highlands with no consultations held with the tribes. Only in 1996, when the first two projects were being reviewed, was the Pit River Tribe consulted, long after the leases had already been sold promising full rights to development and commercial production.

One of these projects, Telephone Flats, is proposed to be located in the heart of the Medicine Lake Caldera and would encompass eight square miles, a full fourth of the designated tribal traditional cultural district.

Another project, Four Mile Hill, will be located on six square miles just outside the caldera in an area not yet evaluated for the National Register. Both projects are associated with geothermal power generation and the Calpine Corporation.

Since 1996, we followed the process of environmental review and after-the-fact consultation with the Government agencies. The environmental impact studies documents recognize these projects would cause severe significant impact to Native American culture that could not be mitigated, as no mitigation measures are capable of alleviating the impact of these developments in a way that would preserve the cultural values of the tribes.

In the case of the Medicine Lake Highlands, the agencies have made a mockery of the section 106 process by issuing geothermal leases without consulting with the affected tribes and traditional cultural representatives, in spite of knowing the significant of the area.

A significant additional threat is assessed, the high risk of contaminating the State's largest fresh water spring system that is beginning in the Medicine Lake Highlands. The contamination is assessed to be from arsenic, mercury, and other effluents which will flow from the development to downstream rivers, lakes, and drinking water wells. It is clear the cumulative effects of these developments would result in the total destruction of the qualities needed to continue the spiritual and cultural use of Medicine Lake.

Over 90 percent of the general public's comments were in favor of stopping the development. In 1998, after environmental impact studies were shown, the leases were again renewed, again without consultation with the tribes. Without the tribes' input in the consultation, the agencies build their own decisions on their own per-

ceived assumptions regarding traditional and historical tribal values. Without consultation, the tribal assessed environmental impacts go unaddressed. As a matter of fact, the tribal issues and concerns are not often addressed at all, or, if addressed, many times result in indefinitely being tabled.

In a May 2000, compromise decision under the Clinton administration Four Mile Hill was approved. Within the same compromise decision, the Telephone Flat project was denied as a statement of the value to the culture was recognized by the Government at that point, thus the compromise decision. At the time of the May compromise decision there was also a companion moratorium against additional development in the Medicine Lake Highlands for a multi-year period. Then, after only one year had passed, Calpines Corporation sued the Government for denying Telephone Flat, and under the Bush administration obtained a settlement agreement that reopened the decision.

The outcome of the reconsideration as a result of the settlement agreement was that the original denial of the Telephone Flat was reversed and that project, too, was approved in November 2002.

This is an issue not only regarding the value equation of the sacredness of the Highlands, but it is also an issue of the integrity of the relationship with the Federal Government toward its first people of the lands. The meaninglessness of the Federal promises to tribes has become proverbial, and the latest decision has only deepened that wound. In approving this project, the Government has made an assessment of the value of the tribal culture without the tribe's consultation, leading to several very challenging questions.

The first is: How do agencies put a price on the impact of their decisions as they have on culture and religion of the Native American governments? Additionally, assuming that question could be answered, how can agencies assess the price of the culture and religion of Native American governments with no consultation regarding consideration or compensation to the affected governments. And then, third, where is the value equation that says trading our culture is worth the perceived gain?

It is our belief that the result of the practice is that the price is only calculated in terms of bottom line profit that is privatization to companies, while the impacts, cost, and sacrifices become the ongoing burdens of the Native American people, nature's creatures, society, and future generations.

The calculation again presents the all-too-familiar privatization of profits through the socialization of cost. This concept is not an isolated one. It is being carried throughout Indian country in a seemingly systematic fashion.

In addition to the privatization of profits in Medicine Lakes Highland threat, the developer or leaseholder in this case, Calpine Corporation, in our opinion seems to have no limits to its ambition.

The Highlands' cultural significance is widely recognized, and the development of these projects is vehemently opposed by the Pit River Tribe, the Native Coalition of Medicine Lake Highlands Defense, and the National Congress for American Indians, International Indian Treaty Council, and many other legal groups. Legal steps have been taken to appeal these decisions.

Specifically for the Pit River Tribe the Medicine Lake Highlands maintain a sacred sense of place, the sacred places that are used for prayer, vision, healing, and renewal. The specific relationship of meaning and kinship with the Pit River Tribe as to this specific landscape and its creatures is unique to indigenous culture. It expresses Native people's particular genesis and the gift that Native people have to the world. When the sacred relationship with the land is made inaccessible through destruction or alteration of an important sacred area, Native people lose their identity and the definition as this identity and definition is, at its core, the basis for transmitting and translating their cultural uniqueness.

Considering current events in the world, it is our belief that it is truer now than ever that the project impact outweighs any possible public benefit that this or other proposed power plants in the Medicine Lake Highlands could create. For these reasons and numerous others stated countless times by the Pit River Tribe in its comments, resolutions, and consultations, I respectfully ask, one, that you take the strongest possible position of protection of the Medicine Lake Highlands by issuing a directive from the Government to deny these damaging projects and buy back the leases that were illegally granted, and, secondly, support the upgrade to existing regulations to require that the tribes must be included in the most basic land use steps of land management process.

Thank you very much for the opportunity to come before your committee and for listening to my testimony on behalf of my people and allowing me to fulfill my responsibility to the creator by speaking on behalf of the Medicine Lake Highlands, who must be represented but has no voice of its own.

The CHAIRMAN. Thank you.

[Prepared statement of Mr. Preston appears in appendix.]

Senator SMITH. Mr. Chairman?

The CHAIRMAN. Yes, Senator Smith?

Senator SMITH. Is there a piece of legislation under consideration to do what our witnesses are asking?

The CHAIRMAN. Not a complete piece of legislation. Some things are already in the law, but they are not implemented very well or evenhandedly, and in some cases, in my view, tribes are not informed well enough ahead of time to be involved in the discussion process.

Senator SMITH. It seems to me that we are dealing with a problem as old as the story of mankind, and that is how to make fairness out of an inherently unfair situation where you have an ancient culture and a newer culture and how the newer culture can stop development where there's some objective evidence of the earlier culture that they can be bound to respect and to uphold.

The CHAIRMAN. Yes.

Senator SMITH. And I've listened with great interest to the testimony, and I will tell you it is unfair that we say, "Well, you've got to make objective what it is you want to protect," but the more that can be done, the more we're apt to be able to help and to stop development where it does intrude on sacred places.

Most of the modern sacred sites of Christianity or Judaism or Islam, they have a providence that you can trace, and we just simply need to quantify those things as best as we can from the cul-

tures of the Native American people so that we can provide greater protection.

The CHAIRMAN. I understand.

Senator SMITH. I'm just saying that we need your help. We need your help.

The CHAIRMAN. So that's why this panel is here, because they have much more experience and better speakers about it than we are.

Senator SMITH. Yes; thank you.

The CHAIRMAN. Let me maybe start with a couple questions of my friend, Suzan.

Oh, I apologize. I forgot Steve. Go ahead, Steve.

STATEMENT OF STEVE BRADY, SR., HEADSMAN, NORTHERN CHEYENNE CRAZY DOGS SOCIETY, MEMBER, MEDICINE WHEEL COALITION FOR SACRED SITES OF NATIVE AMERICAN, LAME DEER, MT

Mr. BRADY. [Native words.] My Cheyenne name is Night Wolf. I'm talking as a headsman of the Crazy Dog Society today on some very profoundly sensitive and meaningful issues of our people.

First of all, I guess, in terms of my testimony, I would like to have it made a matter of record what was submitted.

The CHAIRMAN. It will be included in the record.

Mr. BRADY. And we may also submit something here at a later date to include with my testimony.

I have made some recommendations at the beginning of my testimony, so I request that the committee carefully review our recommendations, and to also please include the Sand Creek National Historic Site Act of 2000 and the Little Big Horn Battlefield name change legislation and those procedures that have been in place for some time to be carefully reviewed.

Even though we have had existing legislation in place and administrative procedures, Federal agencies often take off on a tangent and do things on their own, and sometimes that has happened even with Sand Creek, as comprehensive as legislation as it is. So, in any case, Federal agencies do need some controls and to carefully consider consulting with tribes on a regular basis.

We have been working on the Medicine Wheel Medicine Mountain for very close to a decade and a half. Many spiritual leaders have been involved with that from different tribes, Plains tribes, as well as State and Federal agencies and the County Commissioners of Wyoming. We have come to a historic agreement there with regard to the historic preservation plan and the consultation process, but even then there still needs to be protective measures for the cultural resources that are there on the Medicine Mountain.

We have also requested that the FAA, Federal Aviation Administration, remove the radar tower, radome, that sits there. That was done without the consultation of tribes. So FAA is looking into the eventuality of removing the radome at some point in time.

One of the other things is that Wyoming Saw Mills and the Mountain States Legal Foundation is in litigation against the U.S. Forest Service, and the Medicine Wheel Coalition has joined the U.S. Forest Service, and that's currently pending in the 10th Circuit Court of Appeals, so the Mountain States Legal Foundation

and Wyoming Saw Mills are purporting that we're interfering into their timber harvesting and that the HPP is interfering into their timber harvesting.

With regard to Bear Butte, our people have gone there for centuries upon centuries. Our traditional government comes from there, which I represent here today, the Counsel of 44 Chiefs, of which I am also a member, Senator Campbell, and the military societies and our sacred covenant, the Sacred Arrows, which we still have today, and the prophecies of Sweet Medicine and the gifts that were brought to our people.

But also the special emphasis should be made that we are landowners, as tribes there, as the Northern Cheyenne Tribe and as other tribes. Our people have gone there to pray, especially during difficult times when our veterans or our military is engaged in conflicts around the world. My grandfather, Alec Brady, went there to pray with the Sacred Arrow Keeper in 1971 during the Vietnam Conflict and they fasted there for several days and prayed for the end of Vietnam. And even as I joined the military in 1975, my grandfather took me there for offerings and prayers. And when my son joined the military, when he joined the Marine Corps, I took him there for offerings and prayers and I also took him to the Medicine Wheel.

These are the things that we do that are directly connected with what's going on around the world, and my son has come back home in a good way, and he is now with the law enforcement locally. These prayers are very meaningful in many ways.

The Housing and Urban Development has done this without consultation with the Northern Cheyenne Tribe, and they seem to have weaseled out of it, but we're not going to let them go. We're not going to let them forget about it. We're not going to let them go that easy. The United States Government still has a Federal trust responsibility to tribes that is derived from treaties.

We've also been engaged for quite some time with Bear's Lodge with what is now referred to as Devil's Tower. That was engaged in litigation for some time, as well, and ended up in the 10th Circuit Court of Appeals with the rock climbers and the tribes and Devil's Tower, and it ended up to be that June was the month that tribes wanted set aside, and it ended up to be that June is a voluntary ban, not a mandatory ban on rock climbing.

If I was to go downtown here to start climbing the steeple of one of our churches here in the community here, I'd probably end up in jail.

The other thing is that we are faced with energy development on the Northern Cheyenne Reservation, on and around the Northern Cheyenne Reservation within the Powder River Basin. We are probably sitting on the best coal in the United States and everybody wants that. And, in addition to that, coal bed methane is going on and is contaminating, depleting our very precious resource, a sacred resource, our water supply.

Railroads, power lines, pipelines, et cetera, powerplants are going into the Powder River Basin. We're right in the middle of that. And so we need to have that addressed and have our reservation preserved.

The Cheyenne battle sites and massacre sites need to be preserved. We have a very extensive history of resistance to the encroachment of the United States. We have many, many battle sites in an eight-State area, and many of these battle sites have hastily buried human remains, and we need to have these battle sites protected. Sand Creek massacre site legislation, the Little Big Horn Battlefield legislation are just the beginning.

Finally, the Native American Church, they need to have access for the acquisition of the holy sacrament peyote. It is getting very, very difficult and very costly to go in and acquire the sacrament peyote down in Texas.

I dedicate my testimony to all of those that have worked on sacred sites—and they are listed in my testimony—and certainly to those generations that we work for that are not here yet.

Thank you, committee.

The CHAIRMAN. Thank you.

[Prepared statement of Mr. Brady appears in appendix.]

The CHAIRMAN. I've jotted a couple of notes here. Let me start with Suzan.

As you were speaking, Suzan, I was writing myself here about sacred sites. What do you—you know, to me there's a question of why a site is sacred, where a site can be sacred, who considers it sacred, and if sites that are of other people should be universally sacred. For instance, Indian people have a certain way of believing, a religious way of believing. Other people have different ways, maybe a Catholic or a Protestant or Jewish or somebody else. Do you see a big umbrella for their religions to be also included as sacred sites?

Ms. HARJO. They already are. Their religions and their sacred places, their churches, their places where things happened that are important to their religions are already protected, and even on Federal lands there are Christian churches. There are other Christian denominations and other religions that have edifices right on Federal lands and those are protected, and they have a way of going into court if those protections fall through or if something happens in violation of those promises.

The CHAIRMAN. I guess maybe I didn't articulate it very well. I was just thinking of myself of a church in Colorado. It was there for years and years. It is in Durango, CO. It was there for years and years, and they built a new church and sold that church, and that church became a funeral home and then later became a restaurant and some other things. Indians don't believe that way, I know, but I was wondering what—well, never mind. That's probably for another day. But there are certainly some differences of how people believe what might be called sacred.

You talked about a cause of action. Who do you think would be qualified to bring the cause of action? Would it be just any Indian person or a tribe as a spokesman or who?

Ms. HARJO. I think the leadership of the traditional Native religions should have standing, the practitioners of certain ceremonies, if they are individual or if they are not necessarily the tribe as a whole, the nation as a whole. With the Cheyennes, for example, you have certain ceremonies that are set aside for the different societies, so those societies, those components of the nation should

have standing. And in certain instances the Indian nation, itself, should have standing. It all depends on what the violation is and whose authority the sacred place falls under; whose responsibility is it to keep it up, to maintain it, or to conduct ceremonies there.

The CHAIRMAN. Okay. In some cases it would be the tribal council and in some cases maybe the traditional people or——

Ms. HARJO. That's right.

The CHAIRMAN. If we talk about trying to protect an area, it is very complicated. Tribal land is easy, but State land, county land is much more difficult, I think, than either tribal or Federal land. There's an awful lot of interaction that needs to take place that doesn't now, in my view, and not nearly enough consultation. But you spoke of a coalition that's preparing legislation for this committee to consider in the weeks to come. When do you think that's going to be available?

Ms. HARJO. The only thing that we have prepared at this point are the essential elements and the objectionable elements that are detailed in my written testimony.

The CHAIRMAN. Is that the Rahall bill you were talking about?

Ms. HARJO. That's the Rahall bill that doesn't meet that criteria. And so our legislation that we would propose would be along those lines, would include all of those ingredients and would not include the things that we find so objectionable, like definition of the sacred. That's intrusive and limiting.

The CHAIRMAN. Yes; well, if you would, I'd like you to work with our staff and maybe we can frame up something that I can introduce as a Senate bill. There is no Senate counterpart, I don't believe, to the Rahall bill if I'm not mistaken, so there might be something we can do.

Ms. HARJO. It would be wonderful to do something that truly had some teeth to it and fulfilled, after 25 years, the promise of the American Indian Religious Freedom Act.

The CHAIRMAN. Let me try and do that with your help. It leads to another thing, and I will go on to Ms. White Face. I remember some years ago when Senator Bill Bradley was here—and the reason I mentioned this is because you mentioned the number of votes that your current Senator won by, who is a very, very good friend of mine. Both of them are, in fact. Just a few hundred votes, very close, and that speaks to the positive activism with Indian tribes, and I'm delighted to see they are active, very frankly. But I remember when Bill Bradley was here he introduced a bill that would have returned a good portion of the Black Hills, as you remember. I thought that bill really had some merits.

I was up in South Dakota and attended an Indian function about it, and I found that the Indian people were very, very supportive of that, but at that time nobody from the South Dakota delegation would support it, and I think the reason was the South Dakota delegation historically, the ones I've known, have I think done a very fine job for Indian people, but the political reality is you can't do anything for them if you get thrown out of office. So there are some things there they want to do because it is the right thing to do, but you know that if you do you may not be around to help them at all the next time, so you end up with one of these, "Is a half a loaf better than no loaf," and that is in the eyes of the beholder.

But I remember very clearly, it was a bill I did support, and we just couldn't get any support from South Dakota at the time. The ranchers, the white community saw, and a lot of people are so against that that there just wasn't enough movement, so I guess we have to get more Indians registered or something in South Dakota because it's still a long way away from seeing that happen. Maybe it never will because the State would probably oppose it, too.

You mentioned Bear Butte and the shooting range, too, and you note that the South Dakota State Preservation Office informed the city of Sturgis and the developer about the need to consult with the tribes. How, in that case, since it was done partly through HUD money, as I understand it, did you know of anybody or did you oppose the grant before it went, that CDBG grant?

Ms. WHITE FACE. No; we didn't even hear about it.

The CHAIRMAN. You didn't know about it beforehand, so now you are going to go to court; is that correct?

Ms. WHITE FACE. Yes.

The CHAIRMAN. In a lawsuit. What is the city of Sturgis or the State of South Dakota—are they in an adversarial position in this lawsuit?

Ms. WHITE FACE. No; the plaintiffs in it are Secretary Mel Martinez, Housing and Urban Development, the State of—not the State of South Dakota, but the Black Hills Council of Local Governments.

The CHAIRMAN. Yes.

Ms. WHITE FACE. They were the agency that drafted the HUD application, and it was signed by former Governor Bill Janklow, who is now Congressman Bill Janklow. The lawsuit is also against the city of Sturgis and then the Sturgis Industrial Expansion Corporation, which is the group of the developers, and then the Black Hills Sportsman Complex, which is the actual shooting range, itself.

The CHAIRMAN. Yes.

Ms. WHITE FACE. So they are all named together as defendants. The United States tried to be excluded as a defendant, stating because of HUD regulations on CDBG, that they handed over their responsibility to the State of South Dakota. It was the State Historic Preservation Officer in letters who wrote and kept saying they needed to consult with the tribes and it never happened, and then all of the sudden——

The CHAIRMAN. Do you have copies of those letters or any other notices?

Ms. WHITE FACE. We have.

The CHAIRMAN. Would you turn copies of those in to the committee?

Ms. WHITE FACE. Yes; I will.

The CHAIRMAN. Okay. Good. By the way, we did invite HUD to appear here today. We thought we might ask them some of these questions or you might give us some to ask them, but they declined to appear because of the pending litigation.

You spoke of a buffer zone. If we had a buffer zone, 5-mile buffer zone, for instance, around Bear Butte—you spoke at length about Bear Butte, as Steve Brady did—where would you see the funds coming from to buy that buffer zone, since a lot of that is private

land? And who would we get the State of South Dakota to declare their part of that land a buffer zone. Not so easy, huh?

Ms. WHITE FACE. No; not so easy, but something has to be done. Something definitely has to be done. I have not had time to research it, but I also know that there was some HUD CDBG money used to fund a wastewater treatment facility adjacent to Bear Butte.

The CHAIRMAN. Yes.

Ms. WHITE FACE. I have not had time at all to research——

The CHAIRMAN. It raises some very complicated questions.

Ms. WHITE FACE. Yes.

The CHAIRMAN. For instance, what would take place within the buffer zone and who would decide who could do what within that buffer zone.

Ms. WHITE FACE. If it was—my Cheyenne ally sitting here—if it was up to us——

The CHAIRMAN. Kick him under the table. Maybe he's got some answers.

Ms. WHITE FACE. From my opinion, and I'm sure that the rest of the defenders would agree with me, is that we would rather see this buffer zone and all of Bear Butte be created to be restored as a complete total wilderness area with no development at all. There are, you know, the South Dakota Game, Fish, and Parks currently has a small buffalo herd right there at the base of Bear Butte.

The CHAIRMAN. Yes.

Ms. WHITE FACE. I know I hear the local stories about the local private—I'll call them "owners," because, you know, we still stay this is our treaty land.

The CHAIRMAN. Yes.

Ms. WHITE FACE. About the local people who stop the Cheyenne people from going on the north side of the mountain. All of the development has been—not all the development, I will say the development on the mountain by the State has been on the south side.

The CHAIRMAN. That's the part the State owns.

Ms. WHITE FACE. And the State now has what they call the Bear Butte Forum, where we meet or I've met this year with the Forum and we give recommendations to the State Game, Fish, and Parks Commission. They recommended that the road going up the side of the mountain and the parking lot up on the side be removed. Senator Johnson earlier remarked about how people drive up there, tourists. They drive up there and then they watch as people are praying. This happened to me way back in 1980.

The CHAIRMAN. Yes.

Ms. WHITE FACE. It is so appalling. It is so disrupting. It is so disrespectful.

The CHAIRMAN. Years ago I saw stationary field glasses up there, you know. You put the quarter in and watch the Indians pray.

Ms. WHITE FACE. The quarter. Right.

The CHAIRMAN. Are those still there? I haven't been up there for a number of years.

Ms. WHITE FACE. No; they took those out.

The CHAIRMAN. Those are gone.

Ms. WHITE FACE. And they are going to be taking out that upper parking lot and the upper road.

The CHAIRMAN. Good.

Ms. WHITE FACE. They will be taking that out this fall. People are still allowed to hike up there. The development—I mean, if you are up on top of that mountain you can hear things from miles and miles away.

The CHAIRMAN. Yes.

Ms. WHITE FACE. Now, there is a new, recent drag strip that was built. This just started in operation just a couple of weeks ago. There are two drag strips. If you have ever been around a car racing drag strip——

The CHAIRMAN. Yes; I have.

Ms. WHITE FACE [continuing]. You can hear that miles and miles away. And in August, when a lot of our Ham bleciya, our vision quests are supposed to be happening, that's when the motorcycle rally happens there.

The CHAIRMAN. I started the drag races at Mile High Drag Strip in Colorado last year and I couldn't hear for 4 days afterwards.

Ms. WHITE FACE. Right.

The CHAIRMAN. I know they are noisy.

Ms. WHITE FACE. Right.

The CHAIRMAN. On the other hand, you have additional problems in South Dakota because it relies heavily on tourism.

Ms. WHITE FACE. Yes; tourism.

The CHAIRMAN. Not only the Black Hills, but Mount Rushmore and Crazy Horse, these other places get huge numbers of people that help the economy and the Indian economy. Indian people have jobs in those places and booths and so on. It is a tough thing to balance.

Ms. WHITE FACE. You know, for us the whole Black Hills are sacred.

The CHAIRMAN. Yes; I know.

Ms. WHITE FACE. Bear Butte, itself—if you can imagine Bear Butte as a small mountain, that is sacred.

The CHAIRMAN. I've been there.

Ms. WHITE FACE. The whole Black Hills for us are sacred. It has been mentioned about the lack of consultation. There are many things going on in the Black Hills where we are not consulted at all. The Forest Service doesn't consult us. Most Federal agencies do not consult us about what is going on. Anything in the Black Hills, and now the environmental destruction is so tremendous. I know Home State Gold Mine, which caused everything that happened within our treaty territory to happen, is trying to make it into an underground science laboratory because they have taken out all the gold now. It is no longer economically feasible for them to dig out any more gold on that mine. They just cut off the pumps last week so that all the water is starting now to drain into that mine, but what nobody is thinking about is what is that going to do to the aquifers, underground aquifers. How many toxins are going to be leaching down into the underground aquifers? Has anybody consulted the tribes about another way to handle it?

You know, there's cause and effect. We have been around for a long time, 11,000 years in the Black Hills is a whole lot longer than a little over 100 for the non-Indian people.

The CHAIRMAN. This committee has always stressed the importance of consultation with all the Federal agencies that we have some jurisdiction over. Sometimes you have to ask how much consultation is enough.

I note with interest that Department of the Interior Joint Tribal Task Force on Trust Reform met in one form or another 45 times in 11 months, 45 times, and yet some tribes are saying, "You didn't consult with us enough." And we mentioned that the unveiling of the monument at the battlefield will be next week. That bill we passed 14 years ago, I think, or 16 years ago, and tribes were totally in support of that. Everyone of them endorsed it of the northern plains. Yet I understand that there is at least one group trying to seek an injunction right now to prevent the unveiling. The thing is already built. So all Indian people don't think exactly with the same mind when you talk about consultation or how much we need to do. Somewhere along the line I guess you've got to say, "Well, we've got to move ahead or nothing happens." But I certainly support consultation with tribes.

Let me go to Mr. Preston. First let me ask you, I'm trying to get a fix on where the Highlands—what is it near? Let's say from—you mentioned the Medicine Lake Caldera. Is that in the same area where the very famous Modoc Lava Beds where Captain Jack made his last——

Mr. PRESTON. Yes, Yes; as a matter of fact it is the same general area.

The CHAIRMAN. Okay.

Mr. PRESTON. If you're familiar with northern California——

The CHAIRMAN. Yes.

Mr. PRESTON. It is kind of placed between Shasta and Last Mountains.

The CHAIRMAN. Yes.

Mr. PRESTON. It is way up in the northeastern portion of the State.

The CHAIRMAN. The leases that you opposed were renewed by the Clinton administration after the issuance of the 1996 Executive order on sacred sites protection. This is 7 years later. If I understand you correctly, you don't have any legal options left. Is that—did I hear your statement correctly?

Mr. PRESTON. We are pursuing other legal options in terms of litigation against the rulings that we have yet to go, but I want to comment on your consultation question because that is kind of at the heart of our quandary. We have had some consultations recently, but meaningful consultations with an outcome are different than the many checkoffs that you might have described. Those happen, you know, frequently.

The CHAIRMAN. Yes.

Mr. PRESTON. It's a telephone call, it's a meeting that is ill-prepared or ill-announced.

The CHAIRMAN. It's tomorrow morning and you already can't be there because you have some other plan.

Mr. PRESTON. In our case, I was granted what I feel was an honor. I was able to meet with Kathleen Clark and Dale Bosworth one on one over these issues, and we did. Unfortunately, at the end of the meeting, after we presented all of our compelling evidence

and all of our support, the Advisory Council on Historic Preservation ruled in our favor, all the State historical people ruled in our favor. Every step that according to the current regulations outlined we took, and it came out in our favor, but after that consultation Kathleen described it as a clash of cultures, whereas the Native American culture is that of the land. When you described other religions, you know, ours is associated with the land, not necessarily a building. And the clash of cultures she described was that the other culture is a capitalistic culture, and that is "rake as much cash as you can out of any opportunity."

The CHAIRMAN. Yes.

Mr. PRESTON. And that's where the two collide, you know. When we think today of what next step in the litigation that we are proposing, I think that position is exactly the same position, you know, how do we get into a court of law so that these issues can be discussed so that this decision to reverse the previous well-supported, well-documented position that the Native American culture was [native word.] How could that be reversed? What value equation did they come across that said now it is different and now it can be set aside? What value did they put on our culture?

You know, you can talk all day long and you can mitigate all day long, but some of these questions have to be answered.

The CHAIRMAN. Right.

Mr. PRESTON. They are at the root of the inability to——

The CHAIRMAN. In your view, is dual use of what might be called a sacred site possible? I'm thinking out in your part of the country, at least up around Sacramento, a little further up in the foothills, there's a place called Grinding Rocks.

Mr. PRESTON. Yes.

The CHAIRMAN. It was the ancestral home of the Miwoks, the Foothill Miwoks. There's a State park there now. Now, I don't know for sure, because I've never asked the Miwoks, but I would assume that, since there's a ceremonial ground there and so on, that it was considered at least quasi-sacred if not really sacred, but it is also dual use because it is obvious as a State park. Is that possible in your belief?

Mr. PRESTON. Yes; and I think that we exercise that today, that the dual use in terms of recreation or access by the public has been something that we have begrudgingly embraced over the years. There are park sites along the Medicine Lake, itself. There are some surface roads that are maintained by the BLM and the Forest Service. But what we're talking about here is full-fledged geothermal power development.

The CHAIRMAN. Sure. That's not compatible.

Mr. PRESTON. It's going to impact the aquifer, the water, the trees, you know, the—everything you can think. This place is so gorgeous and it has been our sacred site forever, you know, and then you come in and you start plowing, digging it up, and it is going to contaminate it forever.

The CHAIRMAN. I understand.

Mr. PRESTON. That's the situation. It's not really a dual use issue. It is a destruction issue.

The CHAIRMAN. Yes; preservation may have some dual use, but not if it is totally changed.

Mr. PRESTON. Right.

The CHAIRMAN. Steve, thank you for coming all the way down from Lame Deer. You noted two cases, first, the Sand Creek Massacre site, and second, the Little Big Horn, changing the name of it, and the memorial at the Little Big Horn. I was very happy to be involved in both of those, as you know. Some of them are not so easy. That Sand Creek site, which is not completely done yet, as you know, took 20 years of my life to get that thing changed. I just tell you that so that you know that when you have a large body, 100 Senators and 435 Congressmen, or so on, nothing gets done without an awful lot of input, but it does if you have enough perseverance, if you want to stick to it long enough, it does get done. Both of those cases were difficult, but I think one of the reasons that took long, too, was because we wanted to make sure that tribes were involved as much as they wanted to be in the consultation process.

Along that effort, you mentioned the use of peyote. There are now in Native American ceremonies—it doesn't happen with the Cheyenne much because they are very strict, I know, but it does with some tribes. I happen to live with the Southern Utes, and I know it does there. Some tribes, non-Indians can participate in Native American ceremonies, in Native American Church, as an example. I've even seen non-Indians involved in sun dance with some tribes, which rather surprised me. It's rather phenomenal. I guess you have to balance this thing about religious freedom. If I want to be a Catholic or a Protestant or something else, I guess I can be. Anybody can be. But some Indian people take offensive to that. What is your feeling about that?

Mr. BRADY. Well, needless to say, it is very controversial. There are some very specific distinct procedures and practices. And, again, like with the Native American Church, it goes from tribe to tribe. I think, you know, the tribe that allows it I think it's probably up to them and how they do things, and when it comes to ceremonies like sun dance and things like that, that in and of itself is very controversial in Indian country.

With the Cheyenne, there are certain things that we think we have to do. Some of it is language specific, depending upon the part of the ceremony and things like that, where there is a need to know and speak, be fluent in Cheyenne language. Things like that are essential. Again, it depends on the part of the ceremony.

Although I haven't seen white people in Cheyenne sun dance, I think it happens with other tribes.

The CHAIRMAN. It does. Well, I appreciate that. I really have no further questions. I usually jot so many notes down to myself when I'm listening to testimony, sometimes I've got to go back through them a little bit. But if I have more, I will submit them in writing for you.

This is an oversight hearing, as you know, to try to give us a little more information if we do try to move some legislation, but I know several of you have come a long way and I certainly do appreciate your being here.

With that, thank you. We'll keep the record open, in fact, for 1 month in this case. If you have additional comments or something you want to be included in the record, please submit that.

Thank you. The committee is adjourned.

[Whereupon, at 11:22 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Thank you, Mr. Chairman, for holding this important oversight hearing on Native American sacred places. I would also like to thank Charmaine White Face, the Coordinator of the Defenders of the Black Hills organization, for being here today. Thank you for your work in protecting Bear Butte, South Dakota.

Bear Butte is a place of deep religious significance to the Lakota people, in addition to dozens of other tribes. With the help of Federal dollars, the Black Hills Sportsman's Complex, a shooting range, has been proposed at a site 4½ miles north of Bear Butte. While tribes understand the need for economic development in this area, tribes feel that they were not consulted in the process as mandated by existing federal law. As such, along with seven tribes, the Defenders of the Black Hills, in February 2003, filed suit in U.S. District Court to halt construction on the Sportsman's Complex. The court issued an injunction halting construction pending the outcome of the litigation. Although Judge Schrier has postponed the start of the trial, my office is anxiously awaiting the outcome of this case. Because the litigation is ongoing, I think it would be premature to offer detailed remarks on the case. I will say, however, that I understand the concerns of the many different tribes here today. The many people coming to Bear Butte to pray should be able to do so peacefully and without being disturbed.

Bear Butte reflects other situations in which tribes are working to protect sacred places. In May 2002, a construction crew uncovered human remains near the Missouri River at North Point Recreation Area, near the location where nearly 300 Yankton Sioux grave sights had been discovered in December 1999. Therefore, it was reasonable to expect that the remains discovered in May 2002 were also those of the Yankton Sioux. Even though Federal agencies must consult with tribal officials, some remains were removed without the knowledge or permission of the Yankton Sioux. At the Senate Committee on Indian Affairs hearing last July, I urged Federal agencies to be sensitive in protecting sacred Native American sites by following existing laws such as the Native American Graves Protection and Repatriation Act.

Perhaps, as lawmakers, we need to do more than just urge the agencies to follow the law. I would welcome comments on Representative Rahall's bill, H.R. 2419, the Native American Sacred Lands Act. At this juncture, no similar bill has been introduced in the Senate. I am hopeful this hearing will give this committee guidance on how to proceed.

In closing, I would like to thank Charmaine and the others here today for the work that they are doing to protect sacred sites. This is an extremely important issue and we must work hard to assure that cultural protection laws are adhered to by everyone.

PREPARED STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Mr. Chairman, thank you for holding today's hearing on the protection of Native American sacred places. I believe we would all agree that there exists a need to do everything possible to preserve the cultural and spiritual landmarks of our Nation's first Americans. For too many years, sacred Native sites have been seized without due process and without consultation of the indigenous peoples who cherish them.

I have supported and will continue to support efforts to protect Native American sacred sites. In my home State of Oregon we have a unique opportunity to provide such protection. Over one-half the land in my State is managed by the Federal Government. As such, many sacred sites are located on land that will perpetually remain in public ownership as forests and grasslands. Federal agencies in Oregon have made great strides in working with the tribes to identify cultural sites and to recognize them in the land management process. The Willamette National Forest has an excellent working relationship with the Grand Ronde Tribe, as does the Umpqua National Forest with the Cow Creek Tribe. These National Forests and tribes are working together to find the optimal balance of protecting sacred sites with the need to generate revenue for rural economics and schools.

In one case, I have found that the best way to achieve that balance is to return a portion of a National Forest to a tribe. The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw is the only tribe in Oregon that has not been granted any substantial land base by the Federal Government. In legislation that I recently introduced, the tribes have identified an area of the Siuslaw National Forest with a high concentration of cultural sites, as well as a great potential for generating revenue from forest health and management activities. The legislation, which will be reviewed by this committee, allows the tribes to manage the land for those purposes—rather than for the complex and often contradictory purposes of Federal forest regulations.

Federal agencies also need to be talking to each other. In southern Oregon, the BLM and Forest Service are not working off the same page with regard to a proposed withdrawal of a cultural site—known as Huckleberry Patch—from mining development. Each agency has different responsibilities and as a result, misunderstanding has triumphed over good intentions.

I should also mention that logging and mining are not always the primary threats to tribal cultural sites. Many tribes in Oregon have subsistence treaty rights—covering salmon harvest and berry gathering. Ironically, the lack of harvest on some of Oregon's Federal forests is preventing sunlight from reaching the forest floor. As a result, huckleberry plants are not growing and producing fruit—thereby inhibiting tribes from gathering berries for traditional uses.

Last, I would like to say that the effective management of cultural sites for Native Americans will ultimately require a thorough mutual understanding of native and non-native communities. Last summer, I visited Crater Lake National Park to participate in its Centennial Celebration. While the park has been enjoyed by tourists for 100 years, the Klamath and Umpqua Tribes have revered the lake as a place of spiritual power for thousands of years. The celebration incorporated both traditions—to the great benefit of all in attendance. But in a twist of irony, smoke from a nearby wildfire on Forest Service land filled the caldera of the lake—making its waters almost invisible to visitors.

I'm not sure what the message from the heavens was, but it had something to do with having a balanced approach to Federal land management. I hope that the Department of the Interior, as well as the Forest Service, continue to work with tribes and local communities toward this end—since those are the people who know that land the best.

PREPARED STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Thank you for holding this hearing to discuss Native American sacred sites. As you know, the Federal Government owns roughly 50 percent of the land in the State of Wyoming. These Federal land management agencies—the U.S. Forest Service, the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service—all have a tremendous responsibility of consulting with various groups, including tribes, in land management decisions. Many of these areas contain sites that have a spiritual meaning for tribes throughout the West.

Throughout my time in Congress, I have always advocated for public involvement in land management decision processes. Further, I have always supported the right of Native American people to practice their religions. Tribal consultation and the consideration of sacred sites is an important component in this process.

Federal land management agencies are required to consult with tribes on a government-to-government basis whenever plans, activities, decisions or proposed actions affect the integrity or access to such sites. Further, the agencies must accommodate access to and ceremonial use of Native American sacred sites to the extent that is practicable, permitted by law, and consistent with essential agency functions. Maintaining access and multiple use is a purpose of our public lands. While I certainly understand the need to protect sacred and ceremonial areas, this must be done in a reasonable and responsible manner that is consistent with the purpose of our public lands.

Federal agencies have a responsibility to provide for the protection of sacred sites while allowing reasonable and responsible multiple use activities. These two goals should be inclusive of each other and I support efforts that will allow us to achieve both objectives. Including all interested parties is necessary for this to occur.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

PREPARED STATEMENT OF NANCY KILE

I am Nancy Kile, my grandmother and grandfather met on a ranch near Pine Ridge, SD. My grandfather a ranch hand, an Irishman from Omaha, NE, my grandmother a cook on that ranch, an Oglala Lakota Woman. My mother went to boarding school at Holy Rosary Mission, on the Pine Ridge Indian Reservation. Her family later moved to live in Crawford, NE, 3 miles from Fort Robinson.

I and my husband with our two children moved to Sturgis 16 years ago. Our oldest son graduated from Sturgis Brown High School, our daughter will graduate from Sturgis Brown High School. Meade School district offered my children a respectful, educational block in 7th grade, Lakota studies. Unfortunately adults in Meade county hold children to standards we are unwilling to keep ourselves.

Eight years ago I entered a treatment program to address my chemical dependence, my reliance on alcohol and street drugs was seriously damaging my relationships and life choices. Part of my program of recovery was to seek a spiritual understanding of God as I understood it to be. Within recovery I met a Native American Elder, an enrolled member of the Oglala Sioux Tribe who had been sober many years and was willing to share her spiritual teachings. Inipi, Lakota ceremonial songs and hearing the language of my grandmother spoken in prayer cleansed and renewed my faith in self which helped me understand how truly simple and beautiful life is when you accept the gift of it, in the moment. Four years later I completed a spiritual commitment in hanbleciya at Bear Butte in Meade County, South Dakota. These personal experiences are why I was first shocked, then outraged by my local government and business people's total disregard for so sacred a shrine as Bear Butte. A rifle range only 4 miles north of the Mount Sinai of Indigenous cultures throughout the United States and Canada.

Barely 25 years ago my mother's Lakota people could not legally practice their ancient ceremonies. Genocide, assimilation and fear acted out upon them, did not stop my Lakota people from loving, learning, laughing, living, or praying in the way our ancestors did. History is still happening, we are proof of it. Our brilliance as human beings, and Indigenous peoples to these lands brought us through holocaust. Concentration camps, boarding schools, forced marches, relocation, and termination, in fact genocidal tactics have not exterminated us. Today we better understand and remain learning about what has happened to us, we no longer need the numbness of shock to survive. Furthermore, as a Native American I will not apologize for using the United States laws and her constitution to further the healing and restorative justice that is due to my people.

As I become more involved in my local, State, and Federal Government I became aware of what little regard there is for the spiritual inter-dependence we humans share with our environment. Tourism, expansion corporations and developers are marketing destruction of wilderness by using language like "Black Hill’s newest wonder", "Hell canyon bridge to be a tourist attraction in itself". Bressler billboards are involved in litigation within South Dakota for surreptitiously using railroad easements to place huge signs that mar the landscape in Meade County. 210 limestone mine permits were granted in the southern Black Hills, limestone is used in concrete, 15–17 feet of limestone scraped off the top of the earth.

City governments lend their names to gap financing and community development block grants that shuffle moneys to business interests that don’t have attention for the balanced overall community perspective. Forest Service wants to "interface" with forests so they can, enable development at the expense of taxpayer dollars. My awareness of these issues prompted me to take a seat on the newly formed Meade County Natural Resource Committee, who's purpose is to be an advisory

board to Meade County Commissioners. As we are in beginning stages, our goal is to write a land use plan. Meade County's history, culture and traditions are to be taken into consideration so that we can use this committee and land use plan as a basis to sustain economic viability within the boundaries of Meade County.

This seat requires my informal education on land use, I am given recommended reading on land use terms and recent history regarding land within the 1851 and 1868 Fort Laramie Treaty boundary. While I am doing this, the misconception in Meade County's popular belief with reference to how Native Americans value land becomes clear. Historically and contemporarily this stereotyping has allowed paternalistic government and it’s entities who took stewardship of Indigenous lands a highbrowed rational for the continued destruction of tribal holdings under the guise of management. Key components to my study of cultural resources and land use differ on two basic, yet complicated perspectives:

(1) The dominant culture appears to separate currency, monetary value from the land. Indigenous people value the land, we are the land. Our culture, language and lifestyles are and never were separate from it, so the idea of one person, or a few people selling the land is disrespectful to our children, their future, our ancestors and our past.

(2) Historical exclusion; it is unacceptable to leave our history out of how the dominant society and culture views land use and sustainable development. Consultation at inception with Tribal Governments is lawfully mandatory, consultation with Spiritual Leaders with regard to land use that effects Sacred Sites is lawfully mandatory. As Native Americans we are asking that government entities clarify consultation with Tribes, because it appears to mean, "we invite you to come to a low level meeting, we tell you what we are going to do, we suffer to listen to your opinions, expect accolades because we tolerated your perspective by the invitation alone, then, we do what we want".

In conclusion, I think many of my neighbors sitting on the Meade County Natural Resource Committee can find common ground with the Native American perspective. I think we have more in common than we are different, I also grew up on a ranch/farm in western Nebraska. Native Americans and ranching/farming interests want to be heard.

I contend that people are the most important natural resource of Meade County. We are sustainable, we are renewable but we must be willing to change. Change is also what history taught my Lakota people. We’we accepted the best of what has been forced upon us, will the dominant culture accept the best of what we have to offer? Our ancient contracts within relationship, kinship and balance with our Grandmother Earth. Senator Campbell please help us protect our sacred sites.

Testimony of Joyce Bear
Tribal Historic Preservation Officer
Muscogee (Creek) Nation

Before the
Senate Committee on Indian Affairs
June 18, 2003

Regarding the
Historical Significance and Current Status of the "Ocmulgee Old Fields" Region

Chairman Campbell, Vice Chairman Inouye, and members of the Committee, thank you for the opportunity to speak before you today and for including the Ocmulgee Old Fields in this hearing.

The "Ocmulgee Old Fields" describes an area of the Ocmulgee River Valley in south-central Georgia. It is situated on the Fall Line where the piedmont and coastal plain regions come together. No other area in the Muscogean ancestral homeland comes close to matching the Ocmulgee Old Fields region in recording the depth and significance of our settlement in the Southeast.

In the 1930s the United States Congress authorized a portion of the Old Fields be set aside in Ocmulgee National Monument to preserve "Indian mounds of great historical importance...in and around the town of Macon." In recent years, the Ocmulgee Old Fields was determined eligible for the National Register of Historic Places as a "traditional cultural property." These are the first lands east of the Mississippi to be determined eligible to receive this classification. Even as more people recognize the significance of the area, the Old Fields are threatened by a road project proposed by the state of Georgia.

The Old Fields, a sacred place for the Muscogean people, contains a number of identified and unidentified settlements and cultural use areas established during 12,000 years of occupation. The most prominent features are extraordinary, distinct mound complexes that include a mound rising (50) feet above the Macon Plateau and the only known spirally ascended mound in North America. There is also an Earthlodge, a ceremonial building with its original floor dating back 1,000 years. In addition to these unique features, the area also has a significant number of burial mounds. While some mounds and settlements have been damaged or destroyed as the town of Macon developed, much remains and should be protected.

In addition, oral history tells us that the Ocmulgee Old Fields is our place of origin. We refer to this area as the "cradle" of the Muscogee (Creek) Confederacy. The Muscogee Creek Nation is the remnants of the Confederacy. Clearly, this area was of great importance to our ancestors. In 1805, the Muscogee Government ceded almost all of its land holdings east of the Ocmulgee River to the United States, but it reserved a tract of

land referred to as the "old Ocmulgee fields" or "Ocmulgee old fields." However, in the Treaty of 1821, Lower Creek Chief William McIntosh ceded these lands - including the reserve tract – for which he was subsequently executed under tribal law.

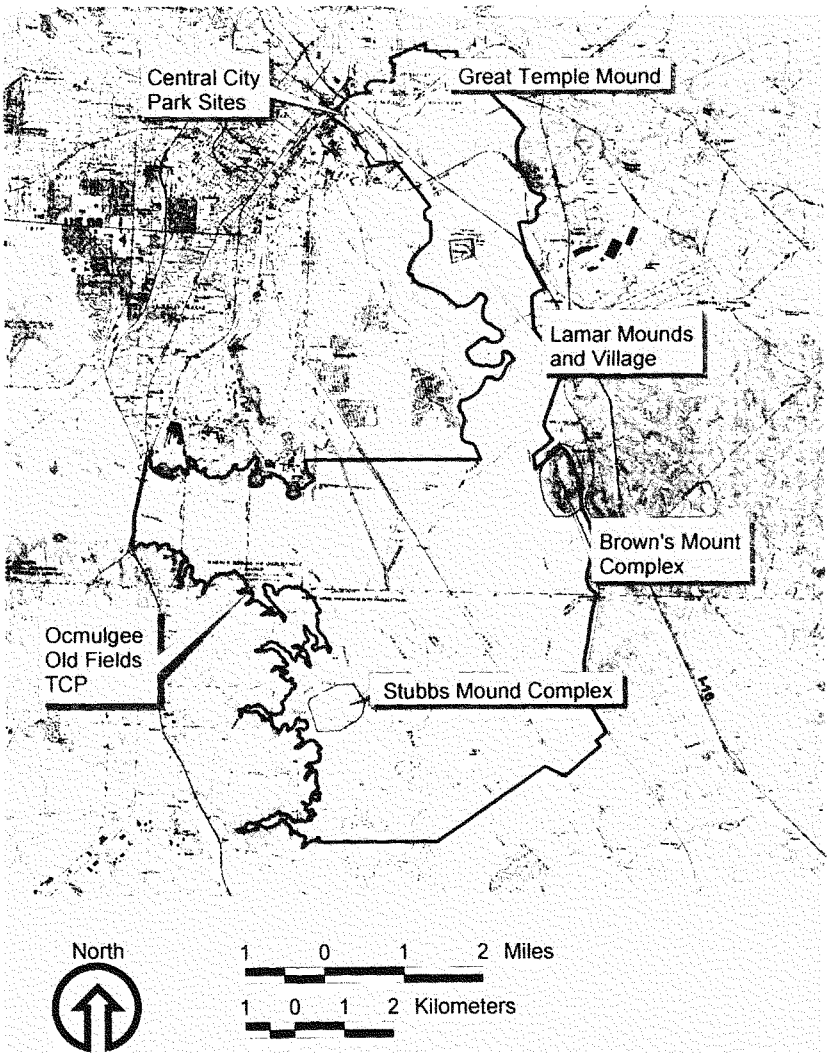
In the 1980's, the Georgia Department of Transportation developed a plan to construct a major highway, the Fall Line Freeway, across the state from Columbus to Augusta. Road proponents identified the Old Fields as the prime location for the road corridor through Macon. For the past five years, the Georgia Department of Transportation and the Federal Highway Administration, the agency charged with overseeing this project, have been studying possible alignments. Despite requests from the Muscogee (Creek) Nation and others, they have failed to identify a route that avoids this sacred area and have not adequately explored alternative alignments.

The Muscogee (Creek) Nation has passed resolutions calling for the preservation of the Old Fields and opposing the construction of the freeway through the area. We have been joined by a number of tribes with and without ancestral ties to the land. The Intertribal Council of Five Civilized Tribes representing more than 450,000 people across the United States passed a resolution supporting us in our efforts to "protect the cultural integrity" of the Old Fields. In addition, the United South and Eastern Tribes comprised of 24 federally recognized tribes passed a resolution "strenuously opposing" construction of the road and requesting that the Federal Highway Administration enter into "good faith" consultation with all tribes affiliated with this land. The National Congress of American Indians also recognized that this sacred area was being threatened and passed a resolution calling for the protection of the Ocmulgee Old Fields. In addition to tribal opposition to the highway, both the National Parks Conservation Association and the National Trust for Historic Preservation have listed Ocmulgee Old Fields on their Most Endangered Places lists.

We urge this Committee to support us by requesting the Federal Highway Administration engage in meaningful consult with affiliated tribes, to develop an alternative that would avoid encroaching upon our traditional cultural property.

Thank you.

Joyce Bear, Historic Preservation Officer
Muscogee (Creek) Nation


Central City
Park Sites
Great Temple Mound
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and Village
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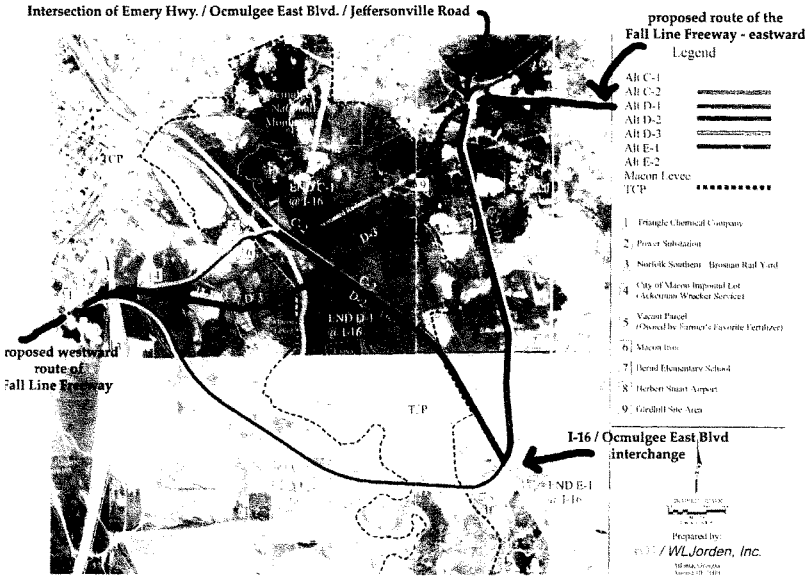
Intersection of Emery Hwy. / Ocmulgee East Blvd. / Jeffersonville Road
proposed route of
Fall Line Freeway - eastward
Legend
Alt C-1
Alt C-2
Alt D-1
Alt D-2
Alt D-3
Alt E-1
Alt E-2
Macon Levee
TCP
1 Triangle Chemical Company
2 Power Substation
3 Norfolk Southern - Brosnan Rail Yard
4 City of Macon Impound Lot
(Ackerman Wrecker Service)
5 Vacant Parcel
(Owned by Farmer's Favorite Fertilizer)
6 Macon Iron
7 Bernd Elementary School
8 Herbert Smart Airport
9 Gordon Site Area
proposed westward
route of
Fall Line Freeway
I-16 / Ocmulgee East Blvd
interchange
Prepared by:
/ WLJorden, Inc.

July 28, 2003

Senator Ben Nighthorse Campbell
United States Senate
Committee on Indian Affairs
Washington, DC 20510-6550

Dear Senator Campbell,

Thank you on behalf of the Muscogee (Creek) Nation and allowing me the opportunity to participate in the June 18, 2003, hearing on Native American Sacred Places.

In answer to your questions,

Q. Did the FHA conduct an EIS or other environmental Review? If so, did the Muscogee (Creek) Nation participate or contribute to the review?

The Georgia Department of Transportation is responsible for conducting the EIS and they are in the process of doing so. We have been waiting for the report for over a year. Included within the EIS is the 4 (f) and also Section 106 for administrative convenience. The main problem is, that the 4 (f) requires an objective evaluation of alternatives to routes that would harm the Traditional Cultural Properties and instead, the Georgia Department of Transportation has attempted to justify a previously selected route. These routes were selected by the GDOT. (It is more like these are the routes GDOT chooses, and the tribes approve of them.) The Muscogee (Creek) Nation's participation has been almost nonexistence to any selected route determination.

The Federal Highway Administration has been quite clear with Georgia Department of Transportation about its opposition to this approach of selecting alterative routes. What is needed most is to support the Federal Highway Administration and their attempts to enforce GDOT to comply with the existing laws.

Q. Did the Georgia State Historic Preservation Office comment or review the project? If so, what was the result of that comment or review?

A former Georgia State Historic Preservation Officer, Mark Edwards, expressed opposition to the project, was fired in part because of the opposition. The Director of Department of Natural Resources then appointed himself to remove all opposition then took over the office on an interim basis. Even in other Federal agencies that has affiliation to the "Ocmulgee Old Fields" and were vocal in their opposition have also been removed to other project or other offices. One in particular was the former Superintendent, of the Ocmulgee National Monument. A local County Commissioner was bragging that the Superintendent was reassigned to Alaska because he voiced opposition to the project.

Q. Are there any viable routes through which the highway project could be built without disturbing the Ocmulgee Old Fields?

Yes, there are several routes that could be constructed with either or no disturbance or only minor disturbance. Two of these routes are the "Wilson Route and the Holliday Route" Neither of these routes have been adequately studied.

If, as is true, people accept that the no build alternative is both feasible and prudent given the original purposes to be served by the Fall Line Freeway, there are three such routes. And, if, as should be done, the area of study is expanded to what would be reasonable given the original purposes of the Fall Line Freeway, there are many other routes.

Again thank you for the opportunity to tell about our sacred lands the "Ocmulgee Old Fields", the Cradle of the Muscogee (Creek) Nation.

If there are further questions, I can be reached at my office (918) 756-8700 ext. 604, by email: cultural@ocevnet.org or Fax: (918) 758-1459.

Sincerely,

Joyce A. Bear
Historic Preservation Officer
Muscogee (Creek) Nation

Testimony of William D. Bettenberg
Director, Office of Policy Analysis
Department of the Interior
At the Oversight Hearing Before the
Senate Committee on Indian Affairs
on
The Protection of Native American Sacred Places
June 18, 2003

Mr. Chairman and Members of the Committee, I am pleased to be here today to testify before this Committee on the important issue of Sacred Sites and lands protection. My name is William Bettenberg and I am the Director of the Office of Policy Analysis in the Department of the Interior.

Background

Executive Order No. 13007, 61 Fed. Reg. 26,711, Indian Sacred Sites, was issued in 1996. The Order requires federal land management agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. The Order required each respective branch agency to implement procedures, where practicable and appropriate, to ensure reasonable notice is provided of proposed actions or policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of these sites. The Order also requires federal agencies to consult with tribes on a government-to-government basis whenever plans, activities, decisions, or proposed actions affect the integrity of, or access to, the sites. Each relevant Cabinet agency was required to send an implementation report to the President within one year of the Order's issuance.

The Office of American Indian Trust (OAIT) coordinated the Department of the Interior's implementation plan. The OAIT is responsible for ensuring department-wide compliance and overall consistency of the Sacred Sites Executive Order. Under the Bureau of Indian Affairs reorganization, the functions of the OAIT will be transferred to the Office of Environmental, Safety and Cultural Resource Management, including this responsibility.

An interagency Working Group on the implementation of the Sacred Sites Executive Order was created at the Department, comprising representatives of each departmental bureau, appropriate departmental offices and the Office of the Solicitor. The Working Group has actively sought input from Tribal representatives on all aspects of the department's implementation process. The Department asked for Tribal input on the structure, location and content for consultations and hosted three formal discussion meetings between tribal and federal representatives focusing on implementation from both a procedural and substantive perspective. The meetings were held in Portland, Oregon; Denver, Colorado; Reston, Virginia in March and early April of 1997. Topics at

the meetings included: how to conduct meaningful consultation; how and when consultation processes are triggered; how to protect the physical integrity of sacred sites; how to protect the confidentiality of culturally sensitive information; how to accommodate access and use; and dispute resolution.

Departmental Manual Chapter (512 DM 3) was created as a result of that consultation. The Chapter serves as a permanent means to integrate protection, preservation, accommodation of access and use practices and policies into departmental processes. It requires bureaus and offices to ensure that planning and decision documents contain: 1) a rationale for the recommended decision; 2) an explanation of how the decision is consistent with the Departmental Manual Chapter; and 3) when there is a determination that compliance with the general requirements of the Executive Order would be clearly inconsistent with essential agency function, the agency's rationale must be fully explained.

To facilitate the development of working relationships, the Departmental Manual Chapter directs bureaus, where appropriate, to establish formal procedures for interaction with tribes on matters concerning Indian sacred sites. The OAIT serves as coordinator for the Department but all bureaus and offices are responsible for identifying senior level staff members as designated points of contact. Bureau representatives are responsible for contacting tribes to address the terms and conditions for interaction and to enter into formal arrangements as appropriate. These formal arrangements should include provisions: 1) to ensure the protection, accommodation, access and use of Indian sacred sites; 2) to ensure the confidentiality of Indian sacred sites; 3) to develop mutually acceptable notification process; and 4) to develop specific dispute resolution procedures.

Current Status

In October, 2001, the representatives of the Department attended the Sacred Lands Forum in Boulder, Colorado. Through considerable internal review and dialogue with interested participants at the forum, it became clear that we needed to clarify procedures for addressing protection of sacred sites. At the "Overcoming the Challenges" symposium held on March 20, 2002, which was held as part of the D.C. Sacred Lands Forum, we announced our intent to reconvene the Department's Sacred Sites Working Group.

In June 2002, each Interior office and bureau involved with sacred sites issues was asked to assign a representative to the Working Group. The first meeting occurred on July 2, 2002, in the office of the Assistant Secretary for Indian Affairs. The group has met five more times (October 2002, January 2003, March 2003, and April 2003) and will be meeting for the sixth time tomorrow, June 19, 2003. The Group has been in the process of identifying the status of sacred site management across the bureaus and is working on developing management guidance to ensure full compliance with the Executive Order.

On August 14, 2002, the Interior Working Group and the Advisory Counsel on Historic Preservation sponsored an interagency meeting on sacred lands and cultural resources. This meeting was conducted under the auspices of the Interagency Working Group on

Environmental Justice with the idea that broader collaboration was needed to bring awareness of sacred site issues to other agencies. Several important issues were discussed at that meeting including the issue of confidentiality.

The Department is exploring ways to address the desire of tribes to keep information about the nature and location of Indian sacred sites confidential, while still ensuring that appropriate public processes and input are maintained. In fact, the Working Group is focusing on three areas of practical concern for land managing agencies: the confidentiality and protection of the location of sacred sites; the discrete delineation of sacred sites; and consultation with Indian tribes and is drafting policies and guidance for the agencies on these three issues. The Working Group expects to complete the final draft shortly. The Working Group's guidance will assist land managers in their daily activities implementing the Executive Order.

Summary

The Department plans to continue working closely with American Indians and Alaska Natives, through the government-to-government process, in ensuring access to and protection of sacred sites. A substantial amount of effort has already gone into consultation with the Tribes to establish a sacred sites protection policy that works for Native Americans and for all parties. This concludes my statement. I would be pleased to answer any questions the Committee may have.

Supplemental Questions from the hearing on
Native American Sacred Places

June 18, 2003

With regard to Executive Order 13007 issued in 1996, your testimony indicates that because of the ongoing BIA Reorganization, implementation of the Order will be undertaken by the Office of Environmental Safety and Cultural Resources Management rather than the Office of American Indian Trust.

QUESTION (1) Will the Office of American Indian Trust be completely dissolved and, if so, please explain how the functions of that Office will be apportioned to the other offices within the Department.

ANSWER: Yes, the Office of American Indian Trust (OAIT) will be dissolved as a result of the Reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians. The OAIT functions that will be transferred include: annual trust evaluations; international affairs; and oversight of the Department's sacred sites policy.

The trust evaluation function will be transferred to the Office of the Special Trustee, Office of Trust Review and Audit. The international affairs function will be transferred to the Deputy Assistant Secretary - Policy and Economic Development under the Assistant Secretary - Indian Affairs. The sacred sites function will be transferred to the Bureau of Indian Affairs, Office of Environmental, Safety, and Cultural Resources Management.

Your testimony is that the Department's Manual now has a new chapter dedicated to a formal procedure for interaction with tribes on matters concerning Indian sacred sites.

QUESTION (2) Please describe the process and criteria by which the Department determines which tribes to consult with and the manner in which it begins such consultation.

ANSWER: To facilitate communications, we have adopted an approach favoring federal-tribal consultations on a tribe-by-tribe basis with regard to specific matters and national and regional discussions on general matters. Such a consultation plan seeks to ensure meaningful tribal participation, gathers specific information as needed, and produces constructive and effective recommendations.

Consultation is initiated as early in the Department's decision making process as possible. Consultation begins when the Department knows enough about a proposed action to present a coherent proposal and a suggested initial list of issues.

QUESTION: To what degree have the tribes been helpful in guiding the Department on the appropriate tribes to engage and the manner to which they should be engaged?

ANSWER: The tribes have been very helpful in guiding the Department in the development of Interior's sacred site policy. Knowing the high level of tribal interest in this matter as well as its sensitive nature, one of the first decisions of the Department's Sacred Sites Working Group was to seek input from tribal representatives on all aspects of the Department's implementation process. In November 1996, the Department sent a letter to all tribal leaders requesting their input on the implementation. The letter also solicited recommendations on the structure, location and content of the consultation sessions.

Three national consultation sessions were held in Portland, Oregon; Denver, Colorado; and Reston, Virginia from March through early April of 1997. These meetings were designed to maximize the opportunity for each tribal and/or intertribal representative to participate in the discussions directly.

The Department created Manual 512 Chapter 3, *Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites* as a direct result of the consultation meetings with tribes. The Manual reflects the issues raised during the tribal consultations. The Chapter serves as a guide for Departmental agencies on how to integrate, protect, preserve, accommodate and access Indian sacred sites.

You correctly point out the key issue of confidentiality is that Indian ways and beliefs often prevent the specific identification of the location of Sacred Places.

QUESTION (3): Given these beliefs, how does the Department propose that Sacred Places be protected?

ANSWER: Land managers are only able to consider sacred sites that they are made aware of. We understand tribes have concerns over divulging the location of a site; however an agency must have a meaningful understanding of where the site is located in order to be able to address it.

Sensitive or confidential information concerning sacred sites is sometimes acquired during consultations and other Departmental activities. Under certain circumstances, and to the extent permitted by law, the Department will withhold information about the specific location, character, nature, ownership, or acquisition of sacred sites from public disclosure. Provisions of the National Historic Preservation Act (NHPA), 16 U.S.C. 470w-3, prevent disclosure of information concerning an historic resource if the disclosure poses a risk of harm to the resource or if disclosure may impede practitioners' use of a traditional religious site. The Archaeological Resources Protection Act (ARPA), 16 U.S.C. 470hh, prevents disclosure of the nature and location of any archaeological resource protected under the Act. The Department will direct bureaus and agencies to look to these statutes to protect confidential information concerning sacred sites. Agencies may have specific legislation that allows them to protect confidential

information in addition to the above statutes, *e.g.*, National Parks Omnibus Management Act, 16 U.S.C. 5937.

In some instances, however, the Department may be required by law to disclose confidential information concerning sacred sites acquired during consultations, public meetings, and other Departmental activities. Before any confidential information is exchanged, bureaus and agencies should make every effort to inform affected parties that, while the information they provide will not be shared voluntarily, confidentiality cannot be guaranteed. To the extent permitted by law, the Department will withhold from public disclosure information concerning the location and nature of sacred sites provided by individuals who wish that information to remain confidential.

QUESTION: Is it possible to strike the proper balance between Place protection and other activities like recreation and extractive industries?

ANSWER: Yes. On a case-by-case basis and after extensive consultation, the Department and the tribe may even agree that the activity permitted or contemplated by federal action may have no impact upon the cultural integrity of the sacred site or sufficient mitigation where a sacred place is at risk of being damaged or destroyed may achieve the same result. Two examples of where this has been successfully achieved would include Devils Tower and the Rainbow Bridge National Monument within Glen Canyon. In the Rainbow Bridge example, the National Park Service (NPS) has erected a sign requesting visitors to refrain from approaching or climbing on the Rainbow Bridge out of respect for Native American Religious beliefs. The sign was developed in consultation with traditional Navajo religious practitioners. The NPS has also re-planted what used to be a trail to the base of the Bridge in order to discourage climbing upon or defacing the Bridge which is sacred to the Navajo and to other Indian tribes. Tourists can view the Bridge from a respectful distance.

A Climbing Management Plan was developed for Devils Tower that calls for a voluntary closure from climbing during the month of June which is the period around the summer solstice when most American Indian tribal ceremonies occur. This voluntary restriction protects American Indian religious practitioners from the noise and distractions caused by climbers during the period when most religious ceremonies take place. Climbers can use the tower without voluntary restriction at any other time during the year.

Though the June 18 hearing was dedicated to oversight issues, earlier this year I introduced a bill (S. 288) to encourage the Department to contract with tribes and tribal consortia to provide culturally-appropriate services like archeology, surveying, mapping, and some site management.

QUESTION: Can you review that bill and provide the Committee your analysis of it?

ANSWER: The amendments to Section 7 of the Indian Self-Determination and Education Assistance Act, which would allow Indian tribes to provide contractual services that the Secretary of the Interior might otherwise procure from the private sector, would provide tribes with contracting opportunities not otherwise available under either the Self-Determination or the Buy Indian Acts. This should enable Indian people to compete more effectively with the private sector for employment and income.

S. 288 would amend section 403 of the Indian Self-Determination and Education Assistance Act by establishing an Indian and Federal Land Management Demonstration Project. As written, the amendment would make it mandatory for the Secretary of the Interior to select 12 tribes per year for two years (a total of 24 tribes) to participate in the project. Given the rather elaborate requirements to participate, such as some connection with the land for which activities are requested and completion of a planning phase, the Secretary may not be able to obtain requests to participate from the required number of tribes within the required two years. This would be especially difficult if funds for the grants authorized for tribal planning phases were not appropriated. We are concerned that it might not be possible to secure the mandatory number of 12 participants per year; and suggest that it might be better to permit the Secretary to select *up to* 12 tribes per year to participate.

The bill does not specify that archeologists, anthropologists, etc., who would perform surveys under the demonstration project meet any sort of professional standards. If it is intended that they do, the bill language should be clarified to reflect this. That would again raise the issue of finding 24 tribes to participate in the demonstration project, as few would have the necessary expertise on staff and meet the other requirements. A likely result is that non-Indian professionals sub-contracted by tribes would benefit more from the project than tribes would.

Lands in the National Forest system, where there are many cultural and religious sites and a number of issues involving such sites, are not included in the demonstration project. If they were included, it might be easier to reach 24 participants in the demonstration project. It would also make a truer representation of the federal land where there are cultural sites and issues of concern to tribes available to them for demonstration activities. The Secretary of Agriculture should, therefore, also be authorized to select tribes for the demonstration project.

QUESTION: Is it the Department's general belief that S. 288 is an appropriate and effective starting point to assist the Federal government in its efforts to protect Indian Sacred Places?

ANSWER: The amendments to Section 7 of the Self-Determination Act do not specifically address Indian sacred places, but may incidentally aid in their protection.

The intergovernmental memorandum of agreement between the Bureau of Land Management and the Pueblo de Cochiti is deemed a success by all parties.

QUESTION (5): From the Department's point of view, what contributed most to that success, and what lessons can be learned for similar situations across the nation?

ANSWER: Several factors contributed to the successful negotiation and implementation of the Intergovernmental Cooperative Agreement between the Bureau of Land Management (BLM) and the Pueblo de Cochiti for the joint management of federal and tribal lands at Kasha-Katuwe Tent Rocks, New Mexico.

Perhaps the most significant factor was that the people closest to the issue worked together to come up with solutions for managing the multiple resources at Tent Rocks. The encouragement for this level of collaboration was set by the language in the Proclamation itself. "The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities and in close cooperation with the Pueblo de Cochiti, to implement the purposes of this proclamation." The BLM's New Mexico State Office was able to negotiate directly with the Governor and leadership of the Pueblo de Cochiti in an atmosphere of mutual respect and trust.

The partnership agreement recognized each party's vested interest in maintaining and preserving natural resources at Tent Rocks and regulating visitor access to Pueblo land, as well as their mutual need for services the other could supply. Under this partnership management, the Pueblo contributes on-the-ground stewardship activities and the BLM contributes funds and materials the Pueblo needs to do its part, with the end result benefiting the public. For example, the BLM and the Pueblo worked together in partnership to create an overlook of the area dedicated to our nation's veterans. On May 15, 2003, Rebecca Watson, Assistant Secretary of Land and Minerals Management, joined the BLM's New Mexico State Office and the Pueblo de Cochiti at a dedication of this overlook.

Our experience to date supports the expectations of the BLM and of the Pueblo de Cochiti that joint management under the partnership agreement will enhance their efforts to protect and maintain the natural and cultural values of the land while they strive to increase visitors' enjoyment of the area.

Questions from Senator Gordon Smith (R-OR)

The Huckleberry Patch in southern Oregon is recognized as one of the most significant archaeological sites in the Pacific Northwest, and is one of the Cow Creek Tribe's few traditional use areas which remains after a long history of encroachment by non-Indian settlers. The Cow Creek Tribe has gathered in this area for centuries to hunt, to collect huckleberries and other plants and roots, and to conduct ceremonies.

QUESTION (1): Can you advise the Committee of the current status of the mineral withdrawal of the Huckleberry Patch?

ANSWER: The segregative effect of the withdrawal application expired on October 4, 2002.

QUESTION: When does BLM anticipate that additional information requested of the Forest Service for the development of recommendations for final consideration by the Secretary of the Interior will be provided?

ANSWER: BLM returned the withdrawal application with a request for additional information and justification in July 2002. Rogue River National Forest staff estimated, at the time, that it would take 200 work hours to gather the additional information and put the application in a form acceptable for review and concurrence by the BLM. To the best of our knowledge, the Rogue River National Forest is still working on revisions to its withdrawal application in order to meet the legal standards for an acceptable application.

QUESTION: What is the status of a proposed plan of operations, submitted in December, 2002, for mineral sampling on Quartz Mountain, which is part of the Huckleberry Patch area in the Rogue River National Forest?

ANSWER: The resolution of issues related to the proposed plan of operations for mineral sampling on Quartz Mountain is under the control of the U.S. Forest Service and the U.S. Attorney's Office assigned to the case; the BLM must therefore defer to the Forest Service to answer questions regarding this issue.

STATEMENT

STATEMENT PROVIDED BY STEVE BRADY, SR., HEADSMAN OF THE NORTHERN CHEYENNE CRAZY DOG SOCIETY, BOARD MEMBER OF THE MEDICINE WHEEL COALITION FOR SACRED SITES OF NORTH AMERICA, CO-CHAIR OF NORTHERN CHEYENNE SAND CREEK MASSACRE SITE COMMITTEE, MEMBER OF NATIVE AMERICAN CHURCH, AND BOARD MEMBER OF NORTHERN CHEYENNE CULTURAL COMMISSSION BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS ON JUNE 18TH, 2003, REGARDING NATIVE AMERICAN SACRED PLACES, SPECIFICALLY ON THE ISSUE OF CONSULTATION ON USE AND MAINTENANCE OF NATIVE AMERICAN SACRED PLACES.

First of all I would like to thank the Senate Committee on Indian Affairs for allowing me to provide testimony this morning on the issue of consultation on use and maintenance of Native American sacred places.

I have been directly involved in the protection of several sacred sites for the purpose of perpetual ceremonial access and use by traditional Native American practitioner and spiritual leaders and they include the Medicine Wheel and Medicine Mountain in the Bighorn National Forest in north central Wyoming, the Bear Lodge (commonly referred to as Devils Tower), a National Monument under the National Park Service in northeastern Wyoming, and Noah vose' (commonly referred to as Bear Butte) in western South Dakota, among others.

CONSULTATION

Based upon experience, the following recommendations are submitted for consideration and implementation by the Senate Committee on Indian Affairs: Without having to reinvent the wheel, the federal government should comply with existing laws, regulations and executive order such as the National Historic Preservation Act (section 106 and Bulletin 38 on traditional cultural properties), the Native American Graves Protection and Repatriation Act, Executive Order 13,007 and planning laws governing their agencies such as National Forest Management Act and Federal Land Management and Policy Act.

Additionally, federal agencies should know the ground rules and applicable laws, negotiate in good faith to reach consensus, engage in person to person negotiations (don't send letter and expect that to be consultation), don't be evasive when it comes to controversial issues (continue to negotiate), consult with traditional leaders (in addition to tribal governments), follow federal regulations that require agencies to talk with people who know about these issues, build ongoing relationships with tribes (not just when a problem arises), make consultation routine (an expected and integral part of the way the agency does business), know who to contact and how. S.288 by Senator Campbell should be considered for further review.

Some the sites discussed herein are examples of minimal accommodations requiring a lot of time and effort. Some good things have happened, but these are the exceptions to the rule. How do we make them the rule, rather than the exception?

MEDICINE WHEEL/MEDICINE MOUNTAIN

High in the alpines in the Bighorn Mountains at the Medicine Wheel and Medicine Mountain, only accessible several months out of the year, tribes come to worship the creator as they have for centuries upon centuries. In the past decade and a half, many traditional spiritual leaders have been involved in a continuing struggle for the protection of Medicine Wheel and Medicine Mountain for the continued access for religious ceremonial use.

It took a decade to come to an agreement through a series of Memorandum of Agreements (MOA's) and Programmatic Agreements (PA's) by the Medicine Wheel Coalition, Medicine Wheel Alliance, Bighorn County Commissioners of Wyoming, State Historic Preservation Office (SHPO) of Wyoming, the Advisory Council on Historic Preservation (ACHP), Federal Aviation Administration (FAA) and the Bighorn National Forest, US Forest Service (BNF/USFS) for the finalization of the Historic Preservation Plan (HPP) for ongoing consultation and the protection of Medicine Wheel and Medicine Mountain, inclusive in this is traditional ceremonial access and use. The area of consultation encompasses approximately 22,000 acres around the Medicine Wheel and Medicine Mountain.

FAA is included because of a radar tower that is located on Medicine Mountain that monitors air traffic in a several state area. It should be noted that tribes have requested that the FAA radar tower be removed, because it is visually and physically intrusive. FAA is working on this possibility, however, for technical reasons it may be awhile before this comes about.

While the HPP is encouraging because of the ongoing consultation proceedings, there have been a number of setbacks and extensive delays such as the litigation initiated by the Wyoming Sawmills and the Mountain States Legal Foundation against the BNF/USFS (with the Medicine Wheel Coalition intervening), contesting the validity of the HPP and purporting that the HPP interferes with their timber harvesting. The case is currently pending in the US 10th Circuit Court of Appeals.

The Medicine Wheel was designated as a National Historic Landmark (NHL), an administrative federal designation, in the early 1960's for its archaeological significance, the area of designation encompasses approximately 110 acres with ambiguous

boundaries. Among one of the many objectives of the parties to the HPP was to ascertain whether or not the NHL designation needed to be expanded or to file for a new nomination for an NHL designation and/or file under the National Register of Historic Places to protect the many archaeological and cultural features that were not included in the earlier designation.

Since the 1990's, the BNF/USFS and the Medicine Wheel Coalition with the support of the Association on American Indian Affairs (AAIA) have conducted extensive and comprehensive ethnographic studies with traditional spiritual leaders, tribal elders and the local community in the surrounding area of the Medicine Wheel/Medicine Mountain to justify or substantiate this proposed nomination undertaking.

Although the ethnographic study has been complete for quite sometime, the BNF/USFS the lead federal agency that should submit this nomination for the NHL or the National Register because the current Medicine Wheel NHL is within the Bighorn National Forest and therefore is within its purview has found virtually every excuse under the sun not to submit this nomination. While Bighorn National Forest is a federally designated area and the nomination to the National Register is a federal designation procedure and therefore if approved would be a federal designation within an already federally designated area, the BNF/USFS appears to be absolutely fearful of political retribution from the local community. In any case, it is imperative that the existing cultural resources based upon the ethnographic studies must be protected as soon as possible, to not protect these precious cultural resources would be criminally negligent.

NOAH VOSE'

From Noah vose' (Bear Butte) the holiest of holy shrines, the Cheyenne received a sacred way of life from the Holy Prophet Sweet Medicine, which included a Sacred Covenant, a governing body comprised of the Council of 44 Chiefs and the Military Societies, including: the Crazy Dog, the Elkhorn Scraper, the Bow String, the Kit Fox, and the Dog Soldier Societies, all of which we still have today.

During the time of the dogs, a time when the Cheyenne people roamed this continent with the dogs as the beasts of burden, before the time of the horse, Sweet Medicine prophesized many things of which the Cheyenne people should expect, much of which has indeed come to pass.

The Cheyenne, since time immemorial have gone to worship and leave offerings at Noah vose', more recently Noah vose' has been threaten with increasing various forms of development seriously impacting the serenity of the mountain. The various forms of

development include, new businesses, auto racetracks, motorcycle rallies and proposed rifle range, all centered toward drawing tourists during the summer months, during the same time Cheyenne and other tribes worship at Noah vose'.

All these forms of development are all within the noise and view shed of the Sacred Mountain, Noah vose', all done without consultation with the Northern or Southern Cheyenne or any other affected tribe. Based upon Cheyenne spiritual connection with the Sacred Mountain, Noah vose' is designated a National Historic Landmark. Moreover, the Northern Cheyenne along with other tribes are landowners all around the mountain, in addition to it being a state park of South Dakota.

Currently, the Sacred Mountain, Noah vose' is the subject and center of litigation due to the proposed gun range just immediately north of the mountain. The Northern Cheyenne are the lead plaintiff, along with other tribes and the Defenders of the Black Hills against Housing Urban Development (HUD) and other parties, including the city of Sturgis, South Dakota. HUD is providing the funding via a Community Development Block Grant (CDBG) amounting close to one million dollars. This was done without consultation to any of the affected tribes. The case is pending in the US District Court of South Dakota, Western District, Rapid City.

BEAR'S LODGE

Bear's Lodge is the traditional Cheyenne translation of what is now referred to as Devils Tower. Along with traditional Cheyenne creation stories through oral history, it was here that the Holy Prophet Sweet Medicine left the Cheyenne people. Again, Cheyenne people have gone here to worship and leave offerings at Bear's Lodge.

Bear's Lodge is a federally designated National Monument, under the National Park Service (NPS). There were efforts by NPS to consult with tribes with regard to spiritual use and access to Bear's Lodge, with the tribes requesting that month of June be set aside for the tribes to worship. However, this proposal was met with litigation, by the Bear Lodge Multiple Users Association (primarily rock climbing guides) and the Mountain States Legal Foundation against the National Park Service, the case ended up in the US 10th Circuit Court of Appeals. While the tribes would rather not have any rock climbing at all (because it is a desecration of a sacred site), the month of June has been set aside as a voluntary ban on rock climbing.

ENERGY DEVELOPMENT – NORTHERN CHEYENNE RESERVATION

The **Northern Cheyenne Reservation** was established by Executive Order in 1884 and extended in 1900 in the same manner and along with the Northern Cheyenne Allotment

Act of 1926, remains approximately 97% tribally owned, including the minerals. The Northern Cheyenne, a people, a sovereign nation, with their own distinct culture, history, language and land base, the very existence of our people is threatened today. The threat comes from numerous forms of energy development in the **Powder River Basin** situated in the southeastern Montana and northeastern Wyoming, e.g. coalbed methane, coal development, railroads, power lines, pipelines, power plants, including the depletion and contamination of our surface and underground water supplies beginning from the Bighorn Mountains downstream through the **Northern Cheyenne Reservation**. There is indeed a question of whether or not our reservation will exist after everything is all said and done. I believe the term used for this is "genocide," a systematic extermination of distinct group of people and their land base.

CHEYENNE BATTLE SITES & MASSACRE SITES

The Cheyenne resisted the encroachment of the United States into their traditional homelands that resulted in many battles and massacres. These battle sites and massacre sites have not been protected and encompass at least an 8 state area east of the Rocky Mountains. Many of these sites have ended up in private ownership, or state or federal ownership. Often times our people left these areas with hastily buried human remains and often have ended up being subjected to grave robbers.

The federal government along with the consultation of the Northern Cheyenne and the Southern Cheyenne must begin the painstaking process of recording and protecting these sites somehow, before everything is lost due to the effects of time. The Little Bighorn Battlefield name change and the Indian Memorial and the Sand Creek Massacre National Historic Site Act of 2000 is only the beginning. The memory of these very difficult times of the Cheyenne people remains fresh – Repression is over!

Despite the overwhelming military power of the United States of America, many sacred sites of worship and antiquities were preserved for the Iraqi people for their culture and religion during the recent "Operation Iraqi Freedom," the reverse appears to hold true on this soil, in this country for the indigenous peoples referred to as Indians or Native Americans. Many foreign countries and nations have been rebuilt because of "War Recovery Efforts," the reverse appears to hold true for the indigenous peoples referred to as Indians or Native Americans.

NATIVE AMERICAN CHURCH – ACCESS AND ACQUISITION OF PEYOTE

Many of the Northern Cheyenne people, as well as other tribes practice the medicinal and ceremonial use of the holy sacrament peyote. While traditional ceremonial use of peyote by Native Americans is recognized, it has become increasingly difficult to acquire this

holy sacrament peyote. Our tribal members often travel from the Northern Cheyenne Reservation in Montana to southern Texas for acquisition of the holy sacrament peyote and visit the sacred ground of "Peyote Gardens." In older times, our people used to go to the "Peyote Gardens" to pick the medicine and worship while they were there at the site. However, it is no longer the case, the acquisition of the holy sacrament peyote for traditional ceremonial use has become increasingly commercialized and very costly taking away the sanctity and purpose of the sacramental use of peyote.

* * * * *

Sad to say that so many of the venerable traditional spiritual leaders that I have had the unique and wonderful privilege of working with at various levels and on different occasions and who provided a profound inspiration on the protection of our sacred sites and for the perpetuation of our traditional sacred way of life from the Northern Cheyenne: Alex Brady, Charles Brady, Luke Brady, John Paul Flying, Sr., Harold Fisher, Sr., James Kills Night, Sr., and James Black Wolf Sr., Keeper of Esevone'; the Cheyenne & Arapaho of Oklahoma: Willie Fletcher, Virgil Franklin and William Wayne Red Hat, Keeper of Maahotse', Edward Red Hat, Keeper of Maahotse'; the Northern Arapaho: Anthony Sitting Eagle, Hiram Armejo and Vince Red Man; the Lakota: Pete Catches, and Phillip Under Baggage, among many others, who have dedicated their lives and even to the very end remained vigilant, have journeyed on realizing that our sacred sites of worship remain unprotected – I dedicate this testimony to them and then, especially, for the generations who are on the sacred journey and have yet to arrive.

I would like to thank the Committee on Indian Affairs of the United States Senate for allowing me to provide testimony on issues that are profoundly meaningful to the Cheyenne people and other tribes.

****NOTE:** Please carefully review the recommendations at the beginning of this statement and I would like submit additional comments at a later date – Again, Thank you!

* * * END * * * *

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT, THE MORNING STAR INSTITUTE, FOR THE OVERSIGHT HEARING ON NATIVE AMERICAN SACRED PLACES BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, WASHINGTON, D.C., JUNE 18, 2003

Mr. Chairman, Mr. Vice Chairman and Members of the Committee on Indian Affairs, thank you for holding another in the series of oversight hearings on Native American sacred places.

The national Sacred Places Protection Coalition is most appreciative of the opportunity to develop a record on the status of Native American sacred places, how they are faring under existing laws and policies and what new law needs to be enacted for their protection. It is our hope that the Committee will continue its series of oversight hearings and, in this 25th anniversary year of enactment of the American Indian Religious Freedom Act, will begin to develop legislation that treats the subject with the seriousness it deserves.

Since the Committee's last oversight hearing, the Sacred Places Protection Coalition conducted a gathering of Native American traditional religious leaders and practitioners, as well as tribal representatives, cultural specialists and attorneys. The gathering, which was held in San Diego, California, on November 8 and 9, 2002, produced a major policy statement regarding legislation to protect Native sacred places: "Gathering to Protect Native Sacred Places: Consensus Position on Essential Elements of Public Policy to Protect Native Sacred Places."

Participants at the gathering considered strategies for protecting Native sacred places and arrived at a consensus on the essential elements and the objectionable elements of any public policy to protect Native sacred places. A bill that includes these essential elements and excludes these objectionable elements would indeed be serious legislation.

The very first of the essential elements is a *sacred places cause of action*. As the Committee knows, deletion of the cause of action for protecting sacred places was the price of House passage in 1978 of the American Indian Religious Freedom Act.

Without a specific cause of action, Native Americans have not been able to adequately defend sacred places in court. This has exposed Native sacred places to risk and left Native Americans at a disadvantage in negotiations, when and where federal agencies and developers have entered into talks at all. For the most part, the attitude of agencies and developers has been, "So, sue me," knowing full well that we lack the legal tools to do that. Federal laws protect non-Native churches, sacred ground and religious practices.

All the other religions have several doors to the courthouse. We do not have even one door. Native Americans need protection for our places of worship and for our exercise of religious liberties, too. It is grossly unfair that we do not have them.

Federal actions and inactions caused or allowed most of the damage and destruction of Native sacred places when the U.S. policy was to eradicate our traditional religions and keep us from the places where we pray. Now that the U.S. policy is to preserve and protect our traditional religions, the federal government has an affirmative obligation to do that and to take remedial action on our behalf, including returning and restoring those places that still have life.

The 2002 gathering identified the following as essential elements in any legislation on Native American sacred places:

- Cause of action for protection of sacred places.
- Zero tolerance for desecration, damage or destruction of sacred places.
- Recognition that sacred places are to be defined only as places that are sacred to practitioners of Native traditional religions and that sacred places include land (surface and

subsurface), water and air; burial grounds, massacre sites and battlefields; and spiritual commemoration, ceremonial, gathering and worship areas.

- Early, meaningful consultation with traditional religious leaders and tribal leaders.
- Recognition of and reliance on traditional religious leaders, tribal science and oral history as the authorities on Native sacred places.
- Respect for traditional religious tenets and tribal law regarding non-disclosure of confidential and private information about sacred places.
- Notice requirements, with burdens of proof on the developers, for proposed development within the aboriginal territory of Native nations, in accordance with mapping to be developed by Native nations.
- Application to undertakings and actions on federal land, water and airspace and to all other land, water and airspace with a federal nexus.
- Provisions for protection of sacred places by transferring or conveying ownership title to the affected Native nations.
- Provisions for protecting the integrity of sacred places through agreements for management or co-management of or access to sacred places.
- Severe federal penalties for violations of sacred places.
- Recognition and application of tribal laws regarding arrests, penalties and imprisonment for violations of sacred places.
- Appropriations and allocations of land acquisition fund and other monies for acquisitions of sacred places and maintenance of the integrity of sacred places.

The 2002 gathering identified the elements below as objectionable in any legislation on Native American sacred places.

The first of these objectionable elements is *definition of the sacred*. As the Chairman and Vice Chairman will recall, there was considerable pressure for Native Americans to define the term "sacred object" in the historic repatriation provision in the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act in 1990. Ultimately, Congress agreed with Native Americans that no other religions had to define the sacred in American laws or legal proceedings and that it would be discriminatory and unduly burdensome for Native Americans and only Native Americans to define the sacred.

- Definition of the sacred.
- Prioritizing sacred places.
- Centrality or degree of significance requirements.
- Discrimination against non-federally-recognized tribes with traditional sacred places to protect.
- So-called "mitigation" of impacts to sacred places.
- Reliance on previously published or recorded coerced or incomplete information regarding sacred places.
- "Discrete delineation" requirements.

Participants in the 2002 gathering unanimously agreed to carry this position to the National Congress of American Indians and to urge that NCAI support public policy to protect Native sacred places only if it includes these essential elements and to oppose any such policy that includes these objectionable elements.

Participants also agreed to urge the NCAI to utilize these same criteria to support or oppose state-based legislative efforts to protect sacred places; to support non-comprehensive congressional measures that will advance protection of sacred places and are consistent with this criteria; to oppose legislation with the potential to harm sacred places; and to assure that its lobbying process is inclusive and reflects all segments of Native nations.

These elements were adopted unanimously by the NCAI Subcommittee on Human, Religious & Cultural Concerns on November 11, 2002, and by the participants in the NCAI Convention Session on Sacred Lands: Protecting Our Most Precious Resources on November 13, 2002; The NCAI Convention unanimously adopted conforming resolution #SD-02-027 on November 14, 2002.

The policy elements position was developed by some of the most knowledgeable people nationwide on the subject of protection of sacred places. We trust that the Committee will continue to work with traditional Native people and our cultural and legal representatives when it comes time to prepare legislation for movement through Congress.

A bill that would do little to protect sacred places has been reintroduced in the House. It does not have a cause of action or other essential elements we have identified, and it has too many of the objectionable elements. Native people who were not boosters of last year's bill were not permitted to testify in the sole legislative hearing on it.

Oddly, the House bill purports to codify the 1996 Executive Order on Indian Sacred Sites. That Order is a bare restatement (and a limitation, in part) of a portion of the American Indian Religious Freedom Act, which has been codified since 1978. We already have a good policy statement. Now, we need a law to give that good policy statement the teeth the House defanged 25 years ago.

This makes the Committee's process more important than ever – to hear about the threatened sacred places from the people who are the most directly affected, then to craft legislation that is based on and will meet real needs.

The Committee has heard testimony about the Comanche and multi-tribal burial ground in Texas, Coso Hot Springs, Hickory Grounds, Hopi Black Mesa and Lower Moencopi, Kaho'olawe Island in Hawaii, Missouri River sacred sites, Mount Shasta, Quechan Indian Pass and Zuni Salt Lake. Situations at these sacred places have not improved over the past year and the federal agencies still have not responded to the questions the Committee asked them during the prior two oversight hearings on June 4, 2002 and July 17, 2002.

Today, the Committee will hear about three Native American sacred places, all of which have in common various forms of a federal/state/private nexus:

1) Bear Butte in the Bear Butte State Park in South Dakota – a holy mountain to the Cheyenne, Lakota, Arapaho and other Native Peoples – which is under attack from a proposed state and private gunnery range, funded with federal seed money from the Department of Housing and Urban Development, that would destroy the peace and sanctity required for ceremonies, vision quests and prayer.
2) The Ocmulgee Old Fields in Georgia – which contain the former capitol of the Muscogee Nation, ceremonial grounds and burial mounds – are threatened by a proposed multi-lane state highway. The National Trust on Historic Preservation recently named this Traditional Cultural Property to its 2003 list of the 11 Most Endangered Historic Places.
3) Medicine Lake in California, a Pitt River Nation ceremonial and healing place, is threatened by the Bureau of Land Management and Forest Service decision to permit the state-funded Calpine Corporation to build a network of geothermal power plant facilities to produce electricity to export to Bonneville Power Administration for consumers in Idaho, Oregon and Washington.

The Committee also will hear from one of our Cheyenne ceremonial leaders -- who will speak in part from his experience with the Medicine Wheel in Wyoming -- about the federal agencies' ongoing requirement in the American Indian Religious Freedom Act to consult with Native American traditional religious leaders, as well as the consultation requirements in several other laws.

Despite these requirements, no one consulted with the traditional leaders or with those Indian nations that own Bear Butte property – not HUD, not the state, not the city and not the private developers. As a result of this failure to consult, they are being sued in federal court. In the case of the Ocmulgee Old Fields, the state did not consult with the Muscogee Nation and has ignored its numerous requests to move the

planned highway. With Medicine Lake, consultation did not occur initially; when it did, the substance was disregarded and plans proceeded as if consultation had not taken place.

Federal agencies do know how to protect sacred places and do know how to build in meaningful consultation and review of agreements. The co-management of fisheries in the Northwest and Great Lakes, including ceremonial fishing and sites, are working examples of ongoing cooperative agreements that have spanned three decades.

The Bureau of Land Management has entered into a cooperative agreement with the Pueblo de Cochiti for joint management of the Kasha-Katuwe Tent Rocks Monument in New Mexico, a sacred place to all the Pueblos. The Bureau's excellent record in this instance makes its record of permitting desecration and destruction of sacred places elsewhere, most prominently the proposed gold mining at Quechan Indian Pass, all the more inexplicable.

The Sacred Places Protection Coalition will be examining the fisheries and Tent Rocks agreements and other co-management accords as it develops guidelines for the Tribal/Federal Summit on Sacred Places Consultation Protocols, which will take place on November 15 and 16, 2003, in Santa Fe, New Mexico.

We invite the Committee to send representatives to the Summit. We request the Committee to encourage the federal agencies to send high-level policy representatives to this Summit and to work with us to develop guidelines and elements for consultation and management.

There are many sacred places around the country that are not being damaged at this time. A few are known to be sacred places, but many are not known. Some Native Americans have strict prohibitions against revealing the identity or location of a sacred place or any information about why it is sacred or what is done there. Others maintain silence in an effort to keep from attracting the attention of people who are looking for recreation or vacation spots or of developers who would flood out, pave over, dig up or suck the life out of these precious places.

Both the 2002 gathering and NCAI Convention identified numerous Native American sacred places that are under attack now.

Among the endangered sacred places identified in California, in addition to Medicine Lake and Quechan Indian Pass, are the following: Coastal Chumash lands in the Gaviota Coastal southern region; Yurok Nation's salmon fisheries in the Klamath River affected by the Interior Department's waterflow decreases; Berry Creek, Moore Town and Enterprise Rancherias' lands impacted by the California Water Project's fluctuation zone at the Oroville Dam Reservoir; the sacred Puvungna of the Tongva and Acjachemen Peoples; and the sacred Katuktu (Morro Hill) of the San Luis Rey Band of Mission Indians.

The groups called for the protection and recovery of these identified sacred places in the Southwest: 1) in Arizona, Apache holy land, Mount Graham, from the Forest Service and the University of Arizona's massive telescope project; Hualapai Nation landforms in Truxton and Crozier Canyons from private extraction of boulders for decorative landscaping; Hopi and Navajo lands and the Navajo aquifer from slurry coal mining by Peabody Coal Company; the San Francisco Peaks from Forest Service and private expansion of the Arizona Snow Bowl; and the Boboquivari Mountain of the Tohono O'Odham Nation; 2) in New Mexico, in addition to Zuni Salt Lake, the micaceous clay-gathering place of the Picuris Pueblo from mica mining by Oglebay Norton Specialty Minerals; and 3) in Texas, Carrizo/Comecrudo lands flooded by Amistad Lake and Falcon Dam.

Other sacred places identified as under attack now, in addition to Hickory Ground, Missouri River and Ocmulgee Old Fields, include the following: the Badlands, Black Hills and Medicine Wheel in the Plains; Semiahmah Village burial ground and Snoqualmie Falls in Washington; Pipestone National Monument and Cold Water Springs in Minnesota; Taino Caguana ceremonial site in Puerto Rico and Yaqui Zona Indigena in Sonora, Mexico.

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JUNE 20 SET FOR NATIONAL DAY OF PRAYER TO PROTECT SACRED PLACES

News Statement For Immediate Release

Washington, DC (6/10/03)—Leaders of a nationwide coalition have set June 20 as the **National Day of Prayer to Protect Native American Sacred Places**. Observances will be held on the grounds of the U.S. Capitol and in several locations throughout the United States.

"Native and non-Native people across the country will greet the sun on June 20 with prayers, songs, talks and moments of silence dedicated to the health and well being of our sacred places," said Suzan Shown Harjo (Cheyenne & Hodulgee Muscogee), President of The Morning Star Institute.

The Morning Star Institute, a leading national organization in the protection of Native American cultural property rights and religious freedom, is coordinating the Day of Prayer events for the Sacred Places Protection Coalition. The national Coalition was formed to address the growing number of Native American holy places that are facing serious assaults.

Native Americans have been trying since the 1960s to gain protections for sacred lands and waters. While numerous Native American sacred places have been returned or otherwise protected by federal law, there is no specific cause of action that will allow Native Peoples to defend sacred places in court. The national Coalition has identified a cause of action to protect sacred places as a top legislative priority.

"We deserve the legal tools that are available to all non-Native Americans to protect their churches," said Ms. Harjo. "Without these, many federal and state representatives do not take us seriously and are increasingly comfortable in making unilateral decisions that impede our religious freedom and damage or destroy our sacred places. We hope to change that."

Prayer Day on the U.S. Capitol Grounds

In Washington, D.C., the National Day of Prayer to Protect Native American Sacred Places will be observed on the West Lawn of the U.S. Capitol Grounds, starting at Sunrise and continuing until approximately 11:30 a.m. For more information, contact The Morning Star Institute at (202) 547-5531.

Gathering at the U.S. Capitol will be representatives of organizations that form the Sacred Places Protection Coalition. Among these are the Association on American Indian Affairs (AAIA), the Indigenous Nations Network, the Medicine Wheel Coalition on Sacred Sites of North America, The Morning Star Institute, the National Congress of American Indians, the Native American Rights Fund and the National Trust for Historic Preservation (NTHP). Other tribal and organizational members of the Sacred Places Protection Coalition will be represented at Prayer Day activities in other parts of the country.

Representing the Medicine Wheel Coalition at the Capitol Grounds will be President Francis Brown, a Traditional Elder of the Northern Arapaho Tribe; Steve Brady, Sr., a Headsman of the Northern Cheyenne Crazy Dogs Society; and Vice President George Sutton, a Traditional Southern Cheyenne Chief. The Medicine Wheel Coalition, represented by the AAIA, has intervened on the federal side of a case to defend the Historic Preservation Plan designed to protect the sacred Bighorn Medicine Wheel and Medicine Mountain in Wyoming.

Also joining the circle on the Capitol Grounds will be representatives from Capitol Hill, from the National Museum of the American Indian and from the InterFaith Conference of Metropolitan Washington, the River Road Unitarian Church, the United Methodist Church Global Board for Church and Society and other churches and religious organizations in the Washington area.

Observances Across the United States

Observances that are open to the general public will take place in various cities, including those listed below. Other observances and ceremonies will be conducted privately at various sacred places, including some of the most endangered ones.

In **Albuquerque, New Mexico**, an observance will take place at the Morning Star House, 6001 Marble Avenue, NE. For details, contact Gwendolyn Dale Packard (Yankton Sioux), Director of the Morning Star House, at (505) 232-8299 or by e-mail (morningstarwomen@qwest.net).

In **Boulder, Colorado**, the Prayer Day will be observed at the headquarters of the Native American Rights Fund, 1506 Broadway. John Emhoolah, Kiowa & Arapaho Elder and member of the Native American Church, will begin the event with a Prayer Ceremony. Songs will be offered by Walter R. Echo-Hawk, Sr, (Pawnee), NARF Staff Attorney. For more information, contact Rose Brave Cuny (Oglala Lakota), NARF Office Manager, at (303) 447-8760.

In **Ganondagan, New York**, there will be a Gahnonyoh (Thanksgiving) at Noon under the Tree of Peace on Boughton Hill. Ganondagan is the site of the seventeenth century capitol of the Seneca Nation. Today, it is the only historic site in New York dedicated to a Native American theme. Ganondagan is sacred to the Seneca People because nearby are the remains of Jikonhsaseh (Mother of Nations), who worked with the Peacemaker to unite the original five nations of the Haudenosaunee (Iroquois Confederacy) under the message of Peace. The contact person for this observance is G. Peter Jemison (Seneca) by e-mail (pjemison@frontiernet.net).

In **Green Bay, Wisconsin**, there will be an observance of Prayer Day at the Native American Journalists Association Annual Convention at the Radisson Hotel. For additional information, contact Montoya A. Whiteman (Cheyenne), Development & Public Relations Administrator for the Native American Rights Fund, at (303) 447-8760. Native and non-Native journalists wishing to join the circle should contact Ms. Whiteman or should meet in the hotel lobby before Sunrise.

In **Lawrence, Kansas**, an observance will take place at Haskell-Baker Wetlands Boardwalk (enter at 31st Street), starting at Sunrise and continuing until approximately 9:00 a.m., to call attention to the wetlands and ceremonial site and burial ground there that are being threatened by a highway development project. For additional information, contact Karen Gayton Swisher, President of Haskell Indian Nations University, at (785) 749-8404 or (785) 749-8497, or Michael Caron (785-842-6293) and Dayna Carlton (785-865-2861), with Save the Wetlands.

Activities will take place at threatened sites along the **Missouri River**, including the Yankton Sioux Tribe's annual Walking in Memory of the Ancestors. Runners from the White Swan/West direction will gather at the North Point/East **White Swan Burial/Sacred Site** and offer prayers for protection of the ancestors and all sacred places. Francis Bernie is the contact for the Camp for the Ancestors, Ihanktonwan Ocet, Defenders of All Sacred Things. For additional information regarding the Yankton activities, contact Faith Spotted Eagle (Ihanktonwan Dakota/Nakota) of the Tribal White Swan/North Point Negotiating Team and The Braveheart Society, Yankton Sioux Tribe, Lake Andes, South Dakota, at (605) 840-2700 or by e-mail (eagletrax@hotmail.com); and Sharon Drapeau (605-487-7871 or 605-491-0233) and Kenny Honomichle (605-384-3621).

Observances at other sacred places on the **Missouri River** are being coordinated by Pemina Yellow Bird (Mandan, Hidatsa and Arikara), who is a Cultural Rights Specialist for the Mandan, Hidatsa and Arikara Nation in North Dakota. Ms. Yellow Bird can be reached at (701) 477-9412 or by e-mail (Pemina@hotmail.com). In 2002, the National Trust for Historic Preservation (NTHP) listed the Missouri River as one of America's 11 Most Endangered Historic Places. For information about that listing and the Native American historic and sacred sites, contact Scott Jones (Lower Brule Sioux), Public Relations Director for the Lower Brule Sioux Tribe, Lower Brule, South Dakota, at (605) 730-0515 or by e-mail (socky@wcenet.com).

For further information about Missouri River sites – and about **Bear Butte in South Dakota** which is threatened by a gunnery range proposed for location within earshot of the holy mountain -- contact Jamie R. Ducheneaux (Cheyenne River Lakota), Tribal Historic Preservation Office of the Cheyenne River Sioux Tribe, at (605) 964-7554, (605) 964-7553 or by e-mail (crpreserv@sat.net).

In **New York City**, the American Indian Community House is sponsoring an observance at the Noon hour at the American Indian Community House, 708 Broadway. For more information, contact Rosemary Richmond (Mohawk), AICH Executive Director, at (212) 598-0100 or by e-mail (akwesasne@aol.com).

In **Omaha, Nebraska**, the observance will be conducted from 5:30 a.m. to 6:30 a.m. in Columbus Park, 1515 South 24th Street. The speaker will be Gerard Baker and the organizer is Theresa Foley, who can be reached at (402) 934-2053 or by e-mail (theresaafoley@yahoo.com).

The gathering in **Phoenix, Arizona**, will take place from Sunrise to Sunset and will coincide with the traditional Nahui Ollin ceremonies at the Nahaucalli, an Indigenous Peoples Embassy. For more detail, contact Tupac Enrique Acosta with Nahaucalli at (602) 430-7683 or by e-mail (Chantlaca@aol.com), or Cal Seciwa (Zuni), Director of the American Indian Institute at Arizona State University, Tempe, Arizona, at (480) 965-8044 or by e-mail (Calbert.Seciwa@asu.edu). Also on June 20 in Phoenix, the Heard Museum will show the Sacred Lands Film Project's "In the Light of Reverence" at 10:00 a.m.

In **Sacramento, California**, Indian people will gather at the south side of the State Capitol Building for a Sunrise Ceremony and morning address of words and wisdom on protecting American Indian sacred places and cultures in California from further threats and destruction. The gathering will begin at 5:15 a.m. and conclude at 11:30 a.m.

For information about the Prayer Day activities in Sacramento and about endangered sacred places in California, contact Mark LeBeau (916-929-9761 or mark.lebeau@mail.his.gov), Mickey Gemmill (530-242-4510) and Radley Davis (530-275-1650 or radleyad@aol.com) of the Pitt River Nation; and Phillip Hunter (Yokuts), Vice Chairperson of the Tule River Tribal Government (559-781-4271).

In **Tulsa, Oklahoma**, the Prayer Day Blessing and Offering will be at the Tulsa Creek Indian Community Field Arbor Community Garden Site, 8601 S. Union Ave. For additional information, contact TICAR49@MSN.COM and Hopayi@aol.com. The Tulsa Indian Coalition Against Racism (TICAR) and the Redstick Vision Keepers have planned their observance to last for one hour after Sunrise and to include a Sacred Sites Fire Blessing and Offering and a Tobacco and Water Blessing for Sacred Mother Earth. Everyone is advised to bring a small container for water to take home. The Redstick Vision Keepers will remain to watch the fire until 8:00 a.m., so that others can offer their prayers.

The focus in Tulsa will be on sacred places nationwide, especially those that are sacred to the nearly 40 Indian nations in Oklahoma that were removed from their homelands to Indian Territory in the 1800s. One such place in the traditional homeland of the Muscogee (Creek) Nation is the **Ocmulgee Old Fields in Georgia**, a ceremonial and burial ground, which is threatened by a state highway project. The Ocmulgee Old Fields is listed on the NTHP's 2003 list of America's 11 Most Endangered Historic Places and is listed on the National Register of Historic Places as a traditional cultural property.

Examples of Native American Sacred Places Under Attack

The following endangered sacred places were identified in San Diego, California, at a Nov. 8-9, 2002 gathering to protect sacred places and at the National Congress of American Indians Nov. 10-15, 2002 annual convention.

Among the endangered sacred places identified in California are the following:

- Medicine Lake, a Pitt River Nation ceremonial and healing place in the Modoc National Forest in northeastern California, is threatened by the Bureau of Land Management and Forest Service decision to permit the state-funded Calpine Corporation to build a network of geothermal power plant facilities to produce electricity to export to Bonneville Power Administration for consumers in Idaho, Oregon and Washington.

- Indian Pass, which was named on the 2002 list of America's 11 Most Endangered Historic Places, is a sacred place in the California Desert area that is threatened by the BLM's decision permitting Glamis Gold, Ltd., to undertake what the Quechan Indian Tribe calls a "massive, open-pit cyanide heap-leach gold mine on 1,600 acres."

- Coastal Chumash lands in the Gaviota Coastal region in southern California.

- Yurok Nation's salmon fisheries in the Klamath River affected by the Interior Department's waterflow decreases.

- Berry Creek, Moore Town and Enterprise Rancherias' lands impacted by the California Water Project's fluctuation zone at the Oroville Dam Reservoir.

- the sacred Puvungna of the Tongva and Acjachemen Peoples.

- the sacred Katuktu (Morro Hill) of the San Luis Rey Band of Mission Indians.

The groups called for the protection and recovery of these identified sacred places in the Southwest:

- in Arizona – Apache holy land, Mount Graham, from the FS and the University of Arizona's development of a massive telescope project; Hualapai Nation landforms in Truxton and Crozier Canyons from private extraction of boulders for decorative landscaping; Hopi and Navajo lands and the Navajo aquifer from slurry coal mining by Peabody Coal Company; the San Francisco Peaks from FS and private expansion of the Arizona Snow Bowl; and the Boboquivari Mountain of the Tohono O'Odham Nation.

- in New Mexico -- the micaceous clay-gathering place of the Picuris Pueblo from mica mining by Oglebay Norton Specialty Minerals; and Zuni Salt Lake, also on the 2003 list of America's 11 Most Endangered Historic Places, from coal strip mining by the Salt River Project.

- in Texas -- Carrizo/Comecrudo lands flooded by Amistad Lake and Falcon Dam.

Other sacred places identified as under attack now, include the following:

- Badlands, Black Hills, Medicine Wheel and Missouri River in the Plains.

- Semiahmah Village burial ground and Snoqualmie Falls in Washington.

- Pipestone National Monument and Cold Water Springs in Minnesota.

- Hickory Ground ceremonial and burial ground in Alabama.

- Ocmulgee National Monument and Ocmulgee Old Fields in Georgia.

- Taino Caguana ceremonial site in Puerto Rico.

- Yaqui Zona Indigena in Sonora, Mexico.

RESPONSES FROM SUZAN SHOWN HARJO, PRESIDENT, THE MORNING STAR INSTITUTE, TO FOLLOW-UP QUESTIONS FROM SENATOR BEN NIGHTHORSE CAMPBELL, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, FOR THE RECORD OF THE JUNE 18 OVERSIGHT HEARING ON NATIVE AMERICAN SACRED PLACES

Thank you on behalf of The Morning Star Institute for conducting the Committee's series of oversight hearings on Native American Sacred Places. Here are our responses to your questions for the record of the third hearing in the series on June 18, 2003.

1. Q: *Your testimony is very straightforward in that, more than any other element, it urges that Federal legislation be crafted to include a cause of action to assist in the protection of Sacred Places. In the absence of such a provision, please describe the history of efforts to work collaboratively with agencies, states, and local communities to protect Sacred Places.*

In the first years after the American Indian Religious Freedom Act of 1978 was approved, there were successful negotiations with federal agencies for land returns, for access and use agreements and for other administrative protections of Native American sacred places.

For example, in 1979, the Secretary of the Interior saved a 120-acre parcel of Bear Butte land in South Dakota from development by purchasing it from a private owner (who gave the Cheyennes the right of first refusal), taking it into trust and conveying it to the Cheyenne & Arapaho Tribes of Oklahoma for all those Indian nations who use Bear Butte for traditional cultural purposes. Between 1978 and 1980, Native Americans achieved numerous access and use agreements regarding sacred places on federal lands. Some of these involved difficult national security and safety issues, most notably Coso Hot Springs in California and Kaho'olawe in Hawaii, both in Navy firing, testing and munitions storage areas.

During the remainder of the 1980s, there was little administrative activity to protect Native American sacred places. In 1989, the Supreme Court ruled in a case that pitted a Forest Service logging road against a Native American sacred place in California that AIRFA did not provide a cause of action to protect Indian sacred sites, citing a 1978 House floor statement by AIRFA sponsor Rep. Morris K. Udall that it had "no teeth." That statement had been forced by Rep. Thomas S. Foley on behalf of the Forest Service as a condition of House passage precisely so that Native Americans would not be able to sustain litigation in defense of sacred places.

In the years since the Supreme Court's decision, most Native American efforts to achieve protections for sacred places have not been successful because the federal agencies know that Congress has not backed up the policy promise of AIRFA and that the agencies cannot be taken to court under that law for failing to protect sacred places.

This was only reinforced by the 1995 Executive Order on Indian Sacred Sites, which did not provide a cause of action and even undercut AIRFA by excluding the traditional religious leaders of federally-recognized tribes and by excluding non-federally-recognized tribes and Native Hawaiians altogether. The federal agencies then knew that the President had not put any teeth into the AIRFA policy and, in fact, had further defanged it.

With rare exceptions, successive administrations since the 1980s have been increasingly uncooperative in administrative efforts to protect Native American sacred places. Today, we see dozens of known sacred places that are facing damage and destruction, mostly from the federal government itself. Until Congress amends AIRFA to create a cause of action to protect sacred places, the policy promise of the United States to preserve and protect Native American religious freedom will remain unfulfilled.

2. Q: *With regard to the issue of Sacred Places and confidentiality, if a discrete area cannot or will not be identified, what methodologies can the Federal government employ that will provide the kind of Sacred Place protection that you desire without rendering large swaths of acreage unusable in terms of other activities such as recreation and the various extractive industries?*

The federal government has vast territory to use for its own purposes and to dedicate for recreation and commercial development. Native American sacred places involve only a miniscule portion of that territory.

For the most part, the sacred places were put in the public domain because they were sacred, at a time when the policy of the United States was to ban Indian traditional religions, to confiscate sacred objects and to keep Indians from going to traditional and customary places of worship. As a result of that policy, most of the traditional Indian religions are extinct now and more sacred places have been destroyed than preserved. Under current United States policy to preserve and protect traditional religious sites, the remaining Native sacred places should be returned to or jointly managed by Native Americans or otherwise protected against damage.

The federal government already isolates areas for Christian religious purposes solely, by disallowing any recreation or development on or near churches on federal lands. The Christian religious leaders and practitioners do not have to detail their ceremonies or open them to the public; do not have to allow recreators to climb up the walls of their churches or developers to mine inside them; and do not have to disclose any private or confidential religious information in order to gain protections for religious use of their sacred places.

The administration, in the hearing of June 18, agreed to new law for federal agencies to protect Native American confidential religious information. The AIRFA should be amended for this purpose.

Pending congressional action, there are myriad ways that the agencies can protect Native American confidential religious information. They can use their scientific exemptions under FOIA to protect this information from disclosure. They can use their own administrative rules, procedures and processes to protect this information. For example, the Federal Energy Regulatory Commission has protected religious information from public disclosure by holding all materials under seal in perpetuity.

For another example, in mapping the California Desert Plan in the 1970s, the Bureau of Land Management worked with Indian traditional religious leaders and practitioners to isolate areas of sensitivity. Within these ink-blotted areas of sensitivity were sacred places. By using this method, the BLM could plan around these areas and could use the remainder of its vast territory for other purposes. At the same time, Native Americans did not reveal exact locations of sacred places or violate other religious tenets regarding confidentiality and non-disclosure.

The problem with leaving this matter to the discretion of federal agencies is that private religious information is at the mercy of the agency personnel who happen to be involved, and this shifts over time. When they want to cooperate, they can find all sorts of policies and authorities for doing so. When they do not want to cooperate, they can find any number of excuses for that.

3. Q: *There is often disagreement between and within tribes regarding which tribe has rights to certain sacred places, and what ceremonies can be performed there. Certainly, the Federal government is not in a position to be the arbiter of such disagreements. Can you provide the Committee with some ideas on workable solutions to who will determine who can exercise rights to sacred places under any legislation Congress may adopt?*

In order to avoid intruding into private religious matters and in order to avoid Establishment Clause entanglement problems, Congress should not try to resolve inter or intra tribal religious disputes.

Congress did create a dispute resolution mechanism in the Native American Graves Protection and Repatriation Act. Under the NAGPRA mechanism, if Native parties have competing claims over human remains, sacred objects or cultural patrimony, the museum or repository that has possession of the claimed objects or remains keeps them until the Native parties arrive at a solution. This puts the onus on the Native parties and provides a strong incentive for them to resolve their conflict, instead of having outsiders decide.

The experience under the NAGPRA mechanism may have proven so burdensome or unworkable for Native Americans that other types of mechanisms should be considered, but it is one that can be examined against a backdrop of more than a dozen years of experience.

This concern about in-fighting should not be used to deter or delay legislation. I do not know of a single instance where traditional religious leaders or practitioners have been at an impasse with each other over the protection or recovery of a sacred place. Each Native traditional religion has its own dispute resolution mechanism for dealing with internal and external conflicts.

For example, traditional religious practitioners of some 30 Native nations use Bear Butte for religious purposes and have managed to do so peacefully for millennia. There is no history of Indian versus Indian conflict at Bear Butte, even though two or more Indian nations have been at war or in conflict otherwise. It has long been understood that weapons and harsh words are to be left on the ground before entering the sanctuary of that holy mountain. On the other hand, there is a history of 150 years of conflict between Indians and non-Indians who have tried to damage Bear Butte, which with the Committee is familiar.

Disputes have arisen between traditional religious practitioners and the secular tribal governments when tribal leaders have wanted to develop sacred places for non-religious purposes. Only a very few tribes today are theocracies, and they would not act against their own religious interest. Tribal governments for the other 99 percent are secular entities. Any new law should make clear that tribal governments, like any other government, should not be allowed to damage or destroy Native American sacred places.

There are simple ways to avoid these conflicts in sacred places legislation.

First, the legislation must make clear that those with standing are: 1) the Native American tribal citizens who practice the traditional religions that hold the places to be sacred and 2) the Native nations, clans, societies, towns, kivas or moieties when they are acting on behalf of their traditional religious practitioners.

Second, the legislation must include conditions on the use of a sacred place that is to be returned, co-managed or otherwise protected, to assure that the area will be used solely for traditional and customary purposes and will not be used for recreational or resource development or commercial purposes.

Thank you and the Committee for providing an opportunity to respond to these questions.

GENE PRESTON
TRIBAL CHAIRMAN

JESSICA JIM
VICE CHAIR

JUNE AVELAR
TRIBAL SECRETARY

PIT RIVER TRIBE
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ELEVEN AUTONOMOUS BANDS

ATWAMSINI HEWISEDAWI MADESI ILLMAWI ASTARAWI ITSATAWI APORIGE KOSEALEKTE AJUMAWI HAMMAWI

June 16, 2003

Mr. Ben Nighthorse Campbell, Chairman
U.S. Senate Committee on Indian Affairs
Washington, DC 20510-6450

RE: STATEMENT BY GENE PRESTON, CHAIRMAN, PIT RIVER TRIBE
ON THE SACRED MEDICINE LAKE HIGHLANDS
FOR THE HEARING ON NATIVE AMERICAN SACRED PLACES, JUNE 18, 2003

Chairman Campbell and distinguished Members of the Senate Committee:

It is an honor to participate in these Senate Committee hearings on Sacred Lands. I've come from Northeastern California to speak to you of a very sacred area: the Medicine Lake Highlands, on the continent's largest shield volcano in the remote Modoc National Forest. The Medicine Lake Highlands are an area of utmost spiritual significance and critical to the cultural survival of the Pit River Nation, the Klamath-Modoc Tribes, and other surrounding Tribes. The sacred Medicine Lake Caldera with its shining lake has been designated as a 32-square-mile Traditional Cultural District by the National Register of Historic Places. The Highlands are located adjacent to Mount Shasta, and these two most sacred landscapes are closely related in Native American creation stories, with many physical and mystical links between them.[1]

The Medicine Lake Highlands are a place where the full magnitude of the Creator's presence can be experienced, a place where the Creator left messages for the people on how to live, a place of refuge. Activities have included ceremony, vision questing, healing, prayer, medicinal plant gathering, hunting and obsidian trading. This is what the Medicine Lake Highlands have been to the Native Peoples for at least ten thousand years and these uses continue to the present time. The Medicine Lake Highlands area has always been respected as a sanctuary where Tribes put weapons down and shared in the calming cleansing sanctity of the land.

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[1] In the creation stories of local Tribes, the Creator made the world from Mount Shasta, and left vital instructions on how to live in it in the Medicine Lake Highlands.

Unbeknownst to my people, in the 1970s and 1980s plans were made and leases sold, giving away sixty six square miles of the Medicine Lake Highlands with no consultations held. Only in 1996, when the first two projects were being reviewed, was the Pit River Tribe consulted, long after the leases had been sold promising full rights to development and commercial production. One of these projects, Telephone Flat, is proposed to be located in the heart of the Medicine Lake Caldera and would encompass eight square miles, a full fourth of the designated Traditional Cultural District. Another project, Fourmile Hill, would be located on six square miles just outside the Caldera, in an area not yet evaluated for the National Register.

Since 1996, we have engaged in the process of environmental review and after-the-fact consultations with the Federal Government. The Environmental Impact Statement (EIS) documents recognize that these projects would cause severe significant impacts on Native American culture that could not be mitigated. As we and many others have stated numerous times and in numerous forms, no mitigation measures are capable of alleviating the impacts and nor preserving our cultural values. The agencies have made a mockery of the Section 106 Process by issuing geothermal leases without consulting with affected Tribes and traditional cultural representatives in spite of knowing the significance of the area. It is clear that he cumulative effects of these developments would result in total destruction of the qualities needed for continued spiritual and cultural use of the Medicine Lake Highlands. Among the general public, over ninety percent of public comment letters were against these projects.

In 1998, even after EIS' showed beyond any doubt that Native American traditional uses would suffer unmitigable adverse effects, the leases were renewed, again with absolutely no consultations with the Tribes. The process needs to start back with the leases, since Tribes were left out of this decisive basic step. Without this, the process doesn't work for the Tribes. Agencies built on their own assumptions regarding impacts to Tribal culture and the environment, and the Tribal issues and concerns were tabled.

In a May 2000 compromise decision under the Clinton administration, Fourmile Hill was approved while the Telephone Flat project was denied, as a statement that the value of Native culture was recognized by the government. Calpine Corporation then sued the government for denying Telephone Flat, and under the Bush administration, obtained a Settlement Agreement that reopened the decision. The outcome was that the original denial of Telephone Flat was reversed and that project too was approved in November 2002. This is an issue not only of the sacredness of the Highlands. It is also an issue of the integrity of the relationship the federal government has towards the First People of this land. The meaninglessness of federal promises to Tribes has become proverbial, and this decision has created a deeper wound. Where is the equation that says trading our culture is worth the gain? The profit is privatized while the impacts become the burden of Native Americans, society, animals and future generations.

In addition, there is no limit on Calpine's ambitions. The Corporation has publicly announced ambitions of developing up to 1000 megawatts in the Medicine Lake Highlands,[2] ten times the combined wattage of the two proposed developments. The Telephone Flat and Fourmile Hill geothermal developments alone would transform the Medicine Lake Highlands into an industrial zone, but the cumulative impacts of full buildout would be fully devastating.

Twenty-four hour drilling, night lighting and other geothermal impacts in a landscape where there are no freeways, no factories, and no power lines would drastically change the remote, pristine character of the area. Each development could involve drilling on six to eight square miles, and fragment the area with miles of new roads, above ground pipelines and transmission lines. The land would become pockmarked with toxic sumps, noisy drilling platforms, power plant and 10-story high cooling towers spewing emissions laced with heavy metals and toxic gases, health threatening levels of hydrogen sulfide (shown to have chronic health impacts even at low levels), as well as high risks[3] of contaminating the state's largest fresh water spring system by arsenic, mercury and other effluents. Steam plumes, night lighting and chemical odors would permeate the star-studded pure night sky, the air, the water, and the beauty and serenity of the area.

The Tribes continue to vehemently oppose these damaging projects. The Pit River Tribe, Native Coalition for Medicine Lake Highlands Defense (composed of local Tribes and traditional cultural people), and many environmental groups have appealed these decisions. The issue has been taken on by Earthjustice Legal Defense Fund for legal action on behalf of the Pit River Tribe and Native Coalition, with a lawsuit filed in June 2002 on the Fourmile Hill decision, and one soon to be filed against the Telephone Flat approval.

In approving these projects, the government has made an assessment of the value of the Tribe's culture without the Tribe's consultation. Yet knowledge of the land is a gift Native cultures have to give, the sense of sacredness, of sacred places that are to be used for prayer, vision, healing and renewal, fulfilling the responsibility as Native People, given by the Creator, to be the caretakers of the earth. This must be listened to in the Medicine Lake Highlands.

The special relationship of meaning and kinship that the Pit River Tribe have to this specific landscape and its creatures is unique to indigenous culture. It expresses Native peoples' particular genius and the gift they have to give the world. The stories that are related to the land have historically and prehistorically formed

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[2] This statement was made by Calpine to the House Resources Committee in 2001.

[3] Bonneville Power Administration has documented the high threat to fresh water resources that geothermal development poses.

an important cognitive link in humanity's orientation to the natural world, and expresses the human impulse to give meaning, significance and come into relationship to it.

When that relationship is made inaccessible through destruction or alteration of an important sacred area, a people loses its identity and definition, and its basis for transmitting its cultural uniqueness. This would be a loss to all of humanity, and particularly to the people who call this region their home. Native culture represents an ancient link to this land, and to hear Elders express this link establishes a deeper psychological relationship to the land for the "newcomers" as well. In our view, this is an important factor in healing the disjointed relationship to nature that much of industrialized society has developed, and which is responsible for large-scale destruction of life-sustaining natural systems.

The Highlands' cultural significance is recognized not only by local Tribes, but also by Tribes near and far. Resolutions have been passed by the National Congress of American Indians, as well as regional Tribal groups encompassing much of California.[4] In addition, numerous individual Native Americans have signed petitions expressing their opposition.

There are many reasons why we should not entrust the precious and sensitive natural and cultural values of the Medicine Lake Highlands to Calpine's commercial ambitions. There is no evidence that the power from this area is needed in California. In fact, it would be sold out of state to the Bonneville Power Administration, in spite of being heavily funded by California ratepayer subsidies. The energy crisis that drove earlier decisions has now been shown up for the market manipulation that it was.[5] Furthermore, so many plants were built that companies like Calpine find themselves overextended in heavy debt. Excess supply has driven prices down, and Calpine's stock has been plummeting, downgraded to junk-bond status. It is more true than ever that the project's impacts outweigh any possible public benefit from this and other proposed power plants in the Medicine Lake Highlands.

For these reasons, and numerous others stated countless times by the Pit River Tribe and others in comments, resolutions and consultations, I respectfully ask that you take the strongest possible position for the protection of the Medicine Lake Highlands by issuing a directive for the government to deny these damaging projects and buy back the leases it illegally awarded.

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[4] The California Council of Tribal Governments (14 Tribes) and the InterTribal Council of California (24 Tribes) have each passed resolutions opposing geothermal development in the Medicine Lake Highlands.

[5] Recent findings by the California State Attorney General admit this.

Thank you for listening to my words on behalf of my people and these sacred lands. The Tribe asks to submit additional materials at a later date.

Respectfully submitted,

Gene C. Preston
Tribal Chairman

SAGE COUNCIL ◆ SACRED ALLIANCES FOR GRASSROOTS EQUALITY
510 3RD STREET, SW ♦ ALBUQUERQUE, NM 87102 ♦ TEL: 505/260-4696 ♦ FAX: 505/260-1689
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July 2003

Committee on Indian Affairs
US Senate
838 Hart Senate Office Building
Washington DC 20510

To Whom It May Concern:

We would like to submit to the Hearing Record on Protection of Sacred Places of June 18th 2003 our testimony to protect the Petroglyph National Monument, a Native American sacred place of Prayer, from being destroyed by two commuter freeways.

The Petroglyph National Monument is one the westernmost part of the City of Albuquerque. The creation of the National Park was, in part, to alleviate the growing vandalism and the encroaching development and protect the cultural resources that existed in the area. However, through a late hour Congressional Act, 8.5 acres of land was taken out of Federal status by-passing any federal review processes. This move has striped Tribes from effectively voicing their opposition to these roads. Today the area continues to be threatened by the construction of two six-lane freeways through the park. Proponents of these roads say they are needed to resolve traffic congestion though bad planning is never cited as the real problem. However, in reality these roads ensure private developers have a publicly paid driveway to their property.

We need to include Sacred Site protection in the Environmental Justice movement via Environmental Policy. Our observation is that sacred site battles eventually fall back onto the environmental justice arena, but they are not fully able to protect sacred sites that will be destroyed by impending development. There are no laws that specifically protect or prohibit the desecration of a Native American sacred sites. As we have fought this battle we have looked to all of the laws available to us in order to protect this sacred site. We have attempted to use the American Indian Religious Freedom Act, the Native American Graves Protection Repatriation Act (NAGPRA), and the Executive Order on Sacred sites. We have researched Title VI, NEPA, National Historical Preservation Act and the Clean Air Act. While many environmental laws are available most statutes are procedural and do not prohibit the desecration of a sacred site. For us, this means if you take enough time and jump through the appropriate hoops people can still desecrate a Native American sacred site.

Recommendation:

1) Create a law that prohibits the desecration of a Native American Sacred site.

2) Include sacred site language in environmental policy, (i.e. California Sacred site legislation passed both House and Senate in 2002).

3) While many legal sentiments exist regarding sacred site protection, most do not have the "legal triggers" necessary for the full protection of sacred places. Even with NAGPRA, the emphasis is not on the prevention or protection of Sacred places but rather on repatriation, which insinuates the desecration has already taken place.

4) While it may seem the US Constitution gives Native Americans religious protections, it is not protecting our sacred sites which in an inherent part of our religious ceremonies. Since many Native American religious beliefs are Place-based, we do not receive the same religious protections given to other religions. Also, where there are Federal protections, they are constitutionally challenged so that those protections are not extended to the states and political sub-divisions, like the City of Albuquerque or to the private property owners.

   Provide injunctive powers to protect Native American sacred sites. We need relief to combat the reckless efforts of private developers and political sub-divisions from desecrating a sacred place. This should include a waiting term of six months to a year. This new vehicle would provide us with the time to considered remedies that both Native People and private Developers could achieve.

5) Investigation or analysis of how do we build stronger religious protection for place-based religions.

SAGE Council – Sacred Alliances for Grassroots Equality - 2003

Bruce, Marilyn (Indian Affairs)

From: bineshi@sagecouncil.org
Sent: Thursday, July 03, 2003 3:47 PM
To: law@sagecouncil.org;
Subject: ABQjournal story from a friend

this is all three letters to the editor

Here's a story recommended by bineshi@sagecouncil.org

Wednesday, June 25, 2003

Letters to the Editor

Downtown a Downer

DOWNTOWN HAS BECOME a nightmare with one-way streets now becoming two-way — some only for short stretches — like Tijeras and Gold.

The worst decision was made by that person who decided to take away all street parking at the main library in favor of bus lanes — on Copper and Sixth.

Now, it is impossible to find a place to park with only that tiny lot in the rear of the building.

What was (the planner) thinking?

POLLY KITTS

Albuquerque

Native Concerns Trampled by Paseo Extension

RE: "Paseo Road Extension Isn't About Race or Religion" by columnist Alan Reed: As chairman of the All Indian Pueblo Council, ... I must respond and correct the public record. ...

Many leaders of the Native American community have consistently and publicly opposed the extension of Paseo del Norte through the Petroglyph National Monument, both collectively and individually.

The National Congress of American Indians, the All Indian Pueblo Council, the Southern Pueblos Governors Council, the Five Sandoval Indian Pueblos, the Pueblo of Sandia, the Pueblo of Isleta, the Navajo Nation, the Hopi Tribe, among other tribes and interested groups, have officially adopted and issued joint resolutions and letters of opposition.

These efforts date back more than 10 years, and have continued throughout the period since. In light of such documentary evidence, how could anyone fairly ask: "Who knows what current responsible Pueblo officials think?" ...

Sacred areas such as the Petroglyphs are as important to some as churches, temples, and synagogues are to others. Members of our native communities share the same basic rights to religious liberty, personal privacy, and cultural respect as any other citizen. ...

The June 20 opinion piece made a number of demands based on dubious claims, cultural insensitivity, and a shallow interpretation of public debate. First, no one has the right to define the "appropriate rituals" for a so-called "major religion," as the writer asserts. Who among us would have the wisdom, knowledge, and range of insights necessary to do so for someone else's faith?

Additionally, in our free society, our individual spiritual beliefs and diverse cultural traditions are not subject to majority rule. It is unfair and arrogant to claim that "obstruction of the road at this point is simply incompatible with a belief in the democratic process."

After years of participation in the democratic process, reasonable alternatives and

accommodations that might have fairly addressed religious and cultural concerns have been repeatedly ignored.

Finally, the area in dispute is publicly owned. ... All community members and taxpaying citizens retain the right to express their personal positions regarding ... the use of our public resources. ...

After years of difficult dialogue and debate about an issue so crucial to our whole community's heritage and future, we must not lose sight of the basic values we all share. These values include mutual respect for all of our religious liberties and all of our political freedoms.

AMADEO SHIJE, chairman
All Indian Pueblo Council

Excellent Officers Asset to City

BEING A POLICE OFFICER is a tough job that often is made even more difficult by the media blitz when a cop goes bad. ...

However, the vast majority of our police officers are not only honest and competent protectors of our city, they are courteous servants of the public who will go beyond the simple call of duty when the need arises.

Such a model police officer is the young man who came to my aid on June 18. As I waited to turn left at the southeast corner of Louisiana and Lomas, the electrical system in my car dropped dead, and I could not move. There was a police car behind me followed by a city bus — and a growing line of cars beginning to blow their horns.

It was made more difficult by the fact that I am a wheelchair user and could not fix the problem myself. The police officer came to my car window and, as soon as he became aware of the situation, tried to help me restart the engine.

When that was not possible, he single-handedly pushed the car across Lomas to a parking lot where I was able to take control of my problem.

The officer never expressed any impatience or irritation, and my only disappointment was that no one offered to help him push the car across the street. His ability to address my problem so directly and effectively and also to minimize the disruption of traffic deserves commendation.

We do have first-class police officers in our town and they deserve our support and respect.

ERNEST T. CHAVEZ
Albuquerque

Date: June 15, 2003

To: The United States Senate Committee on Indian Affairs
Washington, DC 20510-6450

From: Charmaine White Face, Coordinator,
Defenders of the Black Hills
PO Box 2003
Rapid City, SD 57709

Re: Testimony regarding the protection of Bear Butte, a sacred place

Just off the Northeast corner of the Black Hills in western South Dakota lies a small mountain rising 1300 feet above the surrounding plains. It is separated from the rest of the mountains called the Black Hills by approximately 8 miles of prairie. Called Bear Butte by non-Lakota people, and Paha Mahto by Lakota speakers, this sacred place has been used for thousands of years by many tribes from the United States and Canada as a place to receive spiritual guidance. Rather than a flat topped butte with vertical sides, the formation looks like a bear laying on its side with its head to the northeast, thus, the name Bear. The Lakota word, paha, meaning hill or mountain, was evidently misinterpreted as butte.

Today, Bear Butte is known throughout the world as one of the most sacred places on the Earth. The spiritual effects of this place can be felt by almost everyone. Visitors from as far away as Europe and Australia fly into the airport at nearby Rapid City, SD, rent cars if friends don't pick them up, and drive the 40 miles to Bear Butte. They hike, sometimes only part way up the small mountain, and sit or stand to experience a unique, special connection with the Earth and the sky in this special place. Some hike all the way to the top which can be reached in less than an hour depending on how fast a person is walking. The view is tremendous, but something else also touches their spirit. It is unexplainable in human language.

For thousands of years, Lakota, Cheyenne, Arapaho, and people from more than thirty other nations traveled to Bear Butte to pray. Mount Sinai was the place to which Moses went and received the ten commandments that are used by Christians, Moslems, and Jews. At the time Moses did this, his people were living in tents. Is it so inconceivable that American Indians, who also on the Plains lived in tents, did not have a sacred place to go to in which to receive guidance? Their sacred place was Bear Butte, a tiny mountain on the northeast corner of the larger, sacred Black Hills.

The Cheyenne's' story of their connection to Bear Butte is much more known to the public as it has been written in books. They had been going to Bear Butte to pray long before their spiritual leader, Sweet Medicine, received special messages and special gifts at that holy place. Since that time, more than 4,000 years ago, the Cheyenne have passed down, through generation after generation, the messages and gifts that were given to their ancestor. To put this in a better perspective, Christianity has only been around 2,000 years, half the time since the Cheyenne received their messages through Sweet Medicine. Another perspective, the United States has only been around a little over 200 years.

The Cheyenne, who continue to keep their sacred messages, need to be commended for their diligence, their patience, their perseverance. They have endured the splitting of their nation by the United States over a hundred years ago with half of their sacred gifts being taken care of in Montana and the other half being kept in Oklahoma. Yet, these people have continued to come to Bear Butte every year to pray. Isn't it time that the United States, who claims to stand for religious freedom, try to rectify this situation? Protecting Bear Butte could be a beginning.

The City of Sturgis, which is about ten miles from Bear Butte, has also become known worldwide for its motorcycle rally. Senator Campbell, the Chairman of this Committee, has been known to attend that auspicious occasion once or twice. Hundreds of thousands of motorcycle enthusiasts travel from throughout the world to ride their motorcycles through the streets of the tiny town of Sturgis and through the Black Hills. Of course, there are not enough motel rooms in western South Dakota for such an influx of people, so campgrounds with innumerable tents can be seen around the entire area. Needless to say, the presence of hundreds of thousands of people also attracts vendors of all sorts.

Establishments selling alcoholic beverages, locally called "biker bars", made of rough cut lumber, have sprouted up in the Sturgis area similar to what occurred in the boom towns following the miners in the late 1800s. They open in June, July, and August, and have reputations that most American small towns would not want. However, they bring seasonal jobs and millions of dollars to the local economy, nevermind what they do to the local environment. As soon as the Bike Rally is over, the bars close and Sturgis, once a small market town for ranchers, again begins preparing for the bikers that will come the next year. But does anyone ever consider that this is all done within a few miles of one of the most sacred places on the Earth?

Geologists call Bear Butte a laccolith, or a bubble of magma that forced itself up between cracks in the overlying crust of the Earth, but did not complete its eruption as a volcano. They say this activity took place millions of years ago. Yet, it is called Groaning Bear by the Oglala band of the Lakota people. Why would the Oglalas call it Groaning Bear? It appears as a small, quiet mountain in the shape of a sleeping bear. Did the Oglalas hear the intrusive activity taking place within the Earth? Is that the reason they call it Groaning Bear? If so, the Oglala Lakota people have known this place as a sacred place for a long, long time. Could it be for millions of years instead of the 11,000 that anthropologists say? Even so, 11,000 years is also a very long time.

Every year, in all seasons, Lakota people go to Bear Butte to pray. Many famous Lakota leaders such as Sitting Bull and Crazy Horse also went to Bear Butte to pray. There are certain common ceremonial characteristics among tribal people when someone is in prayer. To disrupt someone in prayer, to look at them, or try to talk to them, would never be considered. Prayer is a private conversation between a person and the Creator. Who would be so disrespectful as to disrupt that kind of conversation?

The usual prayer ceremony of Lakota people is called the vision quest. It requires fasting, solitude, and quiet, and can last for several days and nights. It is not an easy task. When

Moses climbed Mount Sinai, that was not an easy task either. Yet, tourists come in the thousands, and because of trails, a road and parking lot, they are able to gawk at those deep in prayer. They pull out their cameras and start snapping shots, talking in loud voices, and pointing to the person praying. If the person praying happens to see this kind of behavior, disrupting their deep meditation, the person may turn away, or sit down to hide behind tall grass or bushes. It is very distressing. I know this from personal experience.

The tourists are able to be so disrespectful because the entire mountain is under the control of SD Game, Fish and Parks Department. In 1983, five years after the passage of the Indian Religious Freedom Act in 1978, a class action lawsuit was filed to stop additional construction of roads, walkways, a parking lot, and other structures. The Indians lost the lawsuit and the construction proceeded. These activities further increased the accessibility by tourists to disrupt people in prayer. Now, the SDGF&P tries to work with American Indian people, and plans are to remove the upper parking lot and road. These taxpayer dollars would not have to be wasted had the SDGF&P listened and been respectful to Lakota people in the first place. How many people in prayer were disturbed by tourists in the past twenty years?

In the mid- to late-1800s, Bear Butte was used as a landmark for prospectors who were illegally entering this area, and by George A. Custer and the US Army who followed them to verify that gold was, indeed, in the Black Hills. These actions, in violation of Treaties, caused the eventual demise of Custer at the Little Big Horn. However, the United States continued its incursion into this Treaty protected territory, and by Presidential Executive Order created Prisoner of War camps which were called reservations, and destroyed the entire life ways of all the American Indian people who came to pray at Bear Butte.

Fort Meade, an Army outpost, was built five miles away from Bear Butte because of the unique landmark which could be seen from the North and East across the plains, guiding prospectors, settlers, and the military. Today, Fort Meade houses a Veterans Administration hospital. Because of its unique shape and historic use by Americans, Bear Butte has been designated a National Historic Landmark.

In May, 2002, the City of Sturgis, and a group of private businessmen called the Sturgis Industrial Expansion Corporation, submitted an application to former Gov. William Janklow (now US Congressman Janklow) for Community Development Block Grant funds to build a sports/complex shooting range about 4 miles north of Bear Butte. Governor Janklow signed the application and they received $825,000 of Housing and Urban Development (HUD) money stating in their application that all federal requirements had been met. This amount, 20% of the entire 2002 state allocation, was given to this single applicant.

Although the City of Sturgis and the businessmen knew Bear Butte was sacred to many Plains tribes, no tribes were consulted about the plans for the shooting range as required under federal law. The State Historic Preservation Officer told them a number of times in writing that they needed to consult with the Tribes. As this was a violation of a number of federal laws, including the National Historic Preservation Act since Bear Butte is a National Historic Landmark, a law suit has been filed in federal district court in Rapid City, SD. The National Environmental Policy Act is also listed as a cause of action as the only effects to the environment

that were considered was the sound of gunfire, and that by mathematical calculations only. The calculations estimated that the sound of gunfire could be heard on Bear Butte as the sound of a rubber band snapping...every three seconds. Would such a sound disrupt the quiet of a church ceremony?

A few of the effects of the shooting range will be:

-the sound of an estimated 10,000 rounds per day fired from rifles and handguns which will disrupt the silence and serenity of Bear Butte;

-increased air pollution from vehicles and lead dust caused by the firing of weapons which will be carried on the northwesterly winds which converge on Bear Butte;

-increased pollution to both above ground and underground water from spent bullets;

-adverse impacts to the national bird populations as western South Dakota is an overlap of bird migrations from both East and West coasts;

-increased traffic noise and air pollution to the shooting range by patrons and employees, as a clubhouse, motel, and restaurant are planned;

-adverse impacts to wildlife by the increase sounds and human activities, especially to eagles which nest in the crags of the mountain and are important in Native American spirituality and ceremonies; and

-possible impacts on patients with Post Traumatic Stress Syndrome from the sounds of distant gunfire who are hospitalized at nearby Fort Meade VA Hospital.

A second lawsuit on behalf of the low-income people of Sturgis has been initiated. The HUD funds used to finance the shooting range are designated by federal law to be used for low- and middle-income people. The shooting range is to be non-profit with paid membership. A state law was passed this past winter session which gives tax breaks to private, non-profit shooting ranges within 15 miles of a municipality. The Bear Butte shooting range is 13 miles from Sturgis. Although two other sites were considered, when the local ranchers living near those sites objected, the businessmen found the current site. Although Native American people and many other supporters are strongly objecting, Sturgis and its businessmen are fighting in court rather than moving the complex to a new location. The first lawsuit is asking for a permanent injunction. The second lawsuit is questioning the legality of using HUD-CDBG funds meant for low-income people.

The major portion of the mountain is managed by the South Dakota Game Fish and Parks Department as a state park even though it has National Landmark status. Some of the land immediately adjacent to Bear Butte is owned by the Cheyenne, Arapaho, and the Rosebud Sioux Tribes. The rest is owned by a few ranchers. Housing developments, drag strips, campgrounds, a "biker bar", and other development are also located within a five mile radius of Bear Butte.

The legality of the land ownership of Bear Butte has been questioned for more than a hundred years. This sacred place, which is located in western South Dakota, belongs to the Great Sioux Nation as it constitutes the Great Sioux Reservation according to the peace treaties that were sought by the United States at Fort Laramie in 1851 and 1868. Article VI of the Constitution of the United States says that "treaties are the supreme law of the land." The Fort Laramie Treaties were ratified by Congress and were never legally abrogated. A federal law created on March 3, 1871, further protected the legality of the Treaties. This was three years

after the final treaty, the Fort Laramie Treaty of 1868 was concluded. In 1980, the Supreme Court of the United States reaffirmed what the Sioux people had been saying for over 100 years and declared: "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history..." 207 Ct. Cl., at 241, 518 F. 2d, at 1302.

Recommendations:

Until the legal land ownership of the area is resolved, which means until the issue of the Fort Laramie Treaties of 1851 and 1868 are resolved by an impartial, international body, then the United States must provide protection for Bear Butte. A five-mile buffer zone around the base of Bear Butte including this sacred mountain needs to be put in place with the entire area under federal protection. This will require negotiations with the state of South Dakota who currently manages the park area, and monetary reparation to the American citizens currently living or doing business in this area.

Is this too much to ask, the protection of a small mountain which has been used for millennia by people who are praying? It is impossible to offer a comparison in the three major religions understood by Americans, namely Christianity, Judaism, or Islam, all of whom follow the sacred guidance known as the Ten Commandments which were given to Moses on Mount Sinai.

The United States has taken so much away from American Indian people. It is time to start giving something back. The protection of a small sacred place in which American Indian people may come to pray is not asking too much. I sincerely hope this Committee will consider federal protection for Bear Butte and the creation of a buffer zone around this unique area.

Respectfully submitted on behalf of Paha Mahto, Bear Butte,

Charmaine White Face, Coordinator
Defenders of the Black Hills
PO Box 2003
Rapid City, SD 57709

Defenders of the Black Hills are volunteers, without racial or tribal boundaries, who work together for the purpose of restoring and protecting the environment of the 1851 and 1868 Fort Laramie Treaty areas. All activities are funded through donations or private grants.

Marilyn

Defenders of the Black Hills
PO Box 2003, Rapid City, SD 57709

July 9, 2003

Senator Ben Nighthorse Campbell, Chairman
Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator Campbell:

The following is in response to the questions that were sent to me on June 27, 2003, regarding my testimony to the Committee at the June 18, 2003, Hearing on Native American Sacred Places. My testimony was specifically about Bear Butte which is located in western South Dakota near the Black Hills.

1. You note that the South Dakota State Preservation Office informed the City of Sturgis and the Developer about the need to consult with the tribe.

Q. Would you provide copies of those notices to the Committee?

Q. Was HUD similarly informed by the State preservation Officer?

Attached to this response are eleven (11) pieces of correspondence that answer the above questions. To clarify the position of the person to whom most of the correspondence is addressed: Van A. Lindquist is the Executive Director of Black Hills Council of Local Governments. He prepared the application for the use of HUD CDBG funds, certified the shooting range project as the environmental certifying officer, and contracted with the City of Sturgis to administer the project.

The correspondence is as follows:

(1.) Aug. 7, 2002, Letter from Paige Hoskinson, Review and Compliance Coordinator, South Dakota State Historical Society to Van A. Lindquist: "Consulting parties shall include tribes that attach religious and cultural significance to Bear Butte National Historic Landmark, please visit the National Consultation Database."

(2.) Oct. 4, 2002, Letter from Paige Hoskinson, Review and Compliance Coordinator, South Dakota Historical Society to Van A. Lindquist: "Because of the potential for an adverse effect, the SHPO requests written comments from the consulting parties regarding the various noise levels established in the predictive model and the effect on cultural and religious ceremonies held at Bear Butte NHL."

(3) Oct. 17, 2002, Letter from William W. Schenk, Regional Director, US Dept. of the Interior, National Park Service to Van A. Lindquist: "This NHL is nationally significant for its spiritual association with several Plains Indian tribes, and continues to serve a spiritual role for many visitors to the site.....To resolve these questions, the NPS suggests that the Black Hills

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Council of Local Governments conduct a gunfire test, and invite the interested parties involved in the section 106 process to experience the sound levels from Bear Butte."

(4.) Oct. 30, 2002, Letter from Van Lindquist, Black Hills Council of Local Governments to Jay D. Vogt, State Historic Preservation Officer, Attn: Paige Hoskinson, Review and Compliance Coordinator: "...after, consultation with the HUD Regional Environmental Officer, we consider that the requirements outlined have been satisfied..." (The HUD Regional Environmental Officer is Mr. Howard Kutzer, HUD Colorado State Office, First Interstate Tower North, 633-17th Street, Denver, CO 80202-3607.)

In addition, the Addendum attached to the Oct. 30, 2002, Lindquist Letter stated: "It was agreed that the Tribal Government Relations Office for South Dakota would fulfill the tribal consultation requirement." (The Commissioner of the Tribal Government Relations Office is appointed by the Governor and is a state paid position, not a tribal position, and does not represent the tribes in South Dakota. There are also more than the South Dakota tribes that have cultural and religious ties to Bear Butte. Governor Bill Janklow signed the award letter for the CDBG funds on May 9, 2002.)

(5.) Oct. 1, 2002, Letter from Webster Two Hawk, Commissioner, Tribal Government Relations to Van Lindquist which was included with the Oct. 30, 2002, Lindquist letter: "concur with the project."

(6.) Nov. 4, 2002, Letter from Paige Hoskinson, Review and Compliance Coordinator, South Dakota State Historical Society, to Van Lindquist: "The SHPO recommends that your organization on behalf of Housing and Urban Development (HUD) consult with any Tribe that attaches religious and cultural significance to Bear Butte National Historic Landmark..." and "The SHPO does not advocate the sole use of the South Dakota Office of Tribal Government Relations to represent all tribes concerned in this matter."

(7.) Nov. 7, 2002, Letter from Mary Wilson, NEPA Coordinator, Tribal Historic Preservation Office, Standing Rock Sioux Tribe, to Paige Hoskinson, Review and Compliance Coordinator, S D State Historical Society: "The Standing Rock Sioux Tribe is requesting inclusion and consultation in the section 106 review of the proposed Black Hills Sportsman's Complex and access road."

(8.) Nov. 13, 2002, Letter from Paige Hoskinson, SD State Historical Society to Van Lindquist, Black Hills Council of Local Governments: "...no historic sites or features...that the noise levels effecting Bear Butte National Historic Landmark will be minimal, the SHPO concurs with the determination NO ADVERSE EFFECT..." and "Concurrence of the State Historic Preservation Office does not relieve the federal agency official from consulting with other appropriate parties, as described in 36CFR Part 800.2(c)."

(9.) Nov. 13, 2002, Letter from Mary Wilson, NEPA Coordinator, Tribal Historic Preservation Office, Standing Rock Sioux Tribe, to Van Lindquist, Black Hills Council of Local Governments: "As provided in Section 101(d)(6)(b) of the National Historic Preservation Act, the Standing Rock Sioux Tribe attaches religious and cultural significance to Bear Butte and we can

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and do request consultation on a government-to-government level. The Tribal Government Relations Office for South Dakota alone cannot fulfill tribal consultation for this project." [Note: the Standing Rock Sioux Tribe resides in both North and South Dakota.]

(10.) Nov. 22, 2002, Letter from Don L. Klima, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation to Vern Linquist, Environmental Certifying Officer, Executive Director, Black Hills Council of Local Governments: "Bear Butte is significant as a sacred and historically important site for Lakota and other Indian people, and is the location of continued religious practices by Indian tribes and their members...It appears that the Black Hills Council's determination of No Adverse Effect did not include consultation with Indian tribes who may attach religious and cultural significance to Bear Butte...Consultation with Indian tribes directly is necessary. The Black Hills Council needs to ensure that its Determination of Effect and supporting project documentation reflect appropriate consultation with Indian tribes that attach religious and cultural significance to Bear Butte National Historic Landmark."

(11.) Dec. 3, 2002, Letter from Van Lindquist, Black Hills Council of Local Governments to Don L. Klima, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation with copies to Mr. Howard Kutzer, HUD Environmental Officer, and Mr. Steven Harding, Coordinator, CDBG Special Projects, Governor's Office of Economic Development: "Some thirteen days after the comment period had elapsed for the Environmental Assessment a third comment letter (August 7, 2002) was received from the State Historic Preservation Office requesting additional consultation be undertaken on the project to complete the Section 106 determination."

(However, in the notice that Mr. Lindquist sent to the City of Sturgis on July 30, 2002, for publication in their legal newspaper, it stated: "Such written comments will be received at the above address on or before August 19, 2002." The Aug. 7, 2002, letter from the SHPO was clearly within the comment period.)

Dec. 3, 2002, Lindquist Letter to Kilma continues: "On September 11, 2002, a meeting between SHPO staff, CDBG staff and Black Hills Council took place in Pierre...It was agreed that the Tribal Government Relations Office for South Dakota would fulfill the tribal consultation requirement." (However, Mr. Lindquist failed to also cite the Nov. 4, SHPO letter which specifically stated: "The SHPO does not advocate the sole use of the South Dakota Office of Tribal Government Relations to represent all tribes concerned in this matter.")

Finally the Dec. 3, 2002, Lindquist Letter to Kilma presumptively states: "...and the fact that Bear Butte itself will be a noise barrier from the actual location of the area used for religious ceremonies." (The entire mountain is used for ceremonies, not just the southern side which contains the visitor center, the roads, and the camping area for ceremonial participants and their supporters.)

The Dec. 3, 2002, Lindquist Letter was also sent verbatim and as an individual letter to: Mary Wilson, NEPA Coordinator, Tribal Historic Preservation Office, Standing Rock Sioux Tribe; Mr. Jamie Ducheneax, Cheyenne River Sioux Tribe; Mr. Shannon Brown, Rosebud Sioux Tribe Land Office; and Mr. Webster Two Hawk, Commissioner, Tribal Government Relations.

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The Dec. 3, 2002, Lindquist Letter did not show who all the recipients were in the cc section. Steve Harding from the Governor's office was the only one, other than Lindquist, who knew which recipients received the Dec. 3, 2002, letter.

2. Do I understand your testimony to be that the proper remedy for Bear Butte is a 5-mile buffer zone around the base of the Butte?

A 5-mile buffer zone around the base of the Butte would help provide protection and preservation of the historic and current use. As our Native populations increase in growth, and since the enactment of the Indian Religious Freedom Act of 1978 under which more Native people began to feel free to practice our old ceremonies, the use of the Butte is also increasing. A 5-mile buffer zone around the base would help protect the actual ceremonial area of the Butte from over use by human populations. Native people feel secure in the current ceremonial camping area, although even in this place, they are continually harassed by tourists taking pictures of the "Indians." Therefore, the rude curiosity that would be encountered at the camping site near Bear Butte Lake precludes many from camping in that place.

However, if a buffer zone was created with additional ceremonial camping areas, Native people would be more likely to camp further away, allowing those who are fasting and praying, the silence and solitude so necessary for completing their prayers.

Q. What, if any, activities would be allowed within that buffer zone?

Although the mountain is used year around for prayers, the primary months for most ceremonies are May through August. Again, special ceremonial camping areas for the families, supporters, or spiritual leaders should be established and include the capacity for the setting up and use of sweat lodges.

Camping, hiking, fishing in certain areas at certain times of the year could be available to the general public. The Bear Butte Forum this past year requested no hunting in the current Park area. This would also include the 5-mile buffer zone. The entire area could be designated as a Native American Sacred Place under the management of a coalition of the Tribes who historically used Bear Butte. The current buffalo pastures could be expanded.

Q. Do you have any proposals on how resources can be raised to purchase or set aside that buffer zone?

Bear Butte, although a National Historic Landmark, is currently a state park, managed by the South Dakota Game, Fish and Parks Department. Because of its unique geological character, and long historic and prehistoric use, it should be considered for designation as a Native American Sacred Place managed by a Coalition of the Tribes who historically used Bear Butte.

Four tribes currently hold some of the land around the base of Bear Butte: the Rosebud Sioux Tribe, the Northern Cheyenne, the Southern Cheyenne and Arapaho of Oklahoma. They should be allowed to continue holding their land unless they decide to join it with the Coalition. They have always been generous to those of us who are not members of their tribes.

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The land that was purchased using HUD Community Development Block Grant Funds for the rifle shooting range should be transferred to the Tribal Coalition. The remaining portion of the CDBG funds could be used to purchase other lands in this buffer zone as large numbers of tribal people visit, and contribute to the economic development of the Sturgis area. The establishment of this buffer zone will require a great deal of physical rehabilitation of the area which means jobs for local people. Such jobs could also be funded by federal dollars through programs such as HUD's Community Development Block Grants.

A Bear Butte Tribal Coalition Land Trust fund could be established to leverage private and tribal funds through a large media campaign. Many people throughout the world would consider the designation of Bear Butte as a Native American Sacred Place by the US government as a first step in trying to heal the tremendous wound of prohibiting religious freedom to Native American people until 1978. This could help generate financial assistance to purchase and rehabilitate the area within the 5-mile buffer zone.

As far as long-term management, the state currently charges a visitors fee and has a visitors center at which educational materials are sold. This process could be maintained, but the Visitors Center should be moved off of the mountain. A Tribal Coalition would be able to provide more educational material, series of speakers, and methods of educating the public to Native American culture that could generate income for the upkeep. Also each member of the Tribal Coalition could be required to contribute a portion. There are many ways that the Coalition could use to fund the upkeep of Bear Butte.

Finally, I would be remiss as a Lakota person if I did not mention the Fort Laramie Treaty of 1868. Bear Butte lies within the confines of the Great Sioux Reservation as established by the 1868 Fort Laramie Treaty, ratified by Congress and under the protection of the United States Constitution which states in Article VI that "treaties are the supreme law of the land." Unfortunately, for too long, that protection has been pushed to the back in favor of special interests. Historically, it was the acquisition of gold. Does an unconscionable action, the violation of the Treaty, no matter how old, relieve any member of the United States government, or any American citizen, from their responsibility of upholding the Constitution? No. The erosion of the Constitution must not be allowed to continue as it ultimately erodes the entire fabric of the United States.

Actions by unscrupulous people must be corrected whenever possible. This was the case and the cause of the American Civil War when the immoral actions of slavery could no longer be condoned in a nation that claimed equality for all people. The same is true now for the upholding of Treaties that were made with the First Nations of people who resided on this continent prior to the invasion by Europeans.

In trying to abide by the laws of the United States, the Great Sioux Nation went to the Justice system of the United States through the courts. In 1980, the US Supreme Court labeled the theft of the lands set aside for the Great Sioux nation, particularly the Black Hills which includes Bear Butte, as criminal, "a more ripe and rank case of dishonorable dealings will never, in all probability be found in our history,..."(448 U.S. 371, 100 S. Ct. 2716). Yet, when given a

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solution to resolve this particular situation, such as offered by former Senator Bill Bradley in the 1980s, the US government again refused to deal with the situation, and continues this criminal course of action today.

The US government is again being offered an opportunity to begin to correct an egregious wrong perpetrated on a nation of people, the Great Sioux Nation. This Senate Indian Affairs Committee is being given an opportunity to start a process whereby the erosion of the US Constitution can be lessened. This opportunity presents itself in the form of one of the most sacred places to tribal people from throughout the United States and Canada,...a small mountain called Bear Butte.

The return of Bear Butte, including a five-mile geographic buffer zone around the mountain, to the Great Sioux Nation could be the first tiny step toward upholding the Treaty, and the beginning of the mending of the fabric that is the Constitution of the United States.

Today, the Great Sioux Nation has been divided into individual tribes "recognized by the federal government" yet when it comes to issues of the 1868 Fort Laramie Treaty, the majority of the people stand together. We have all endured the forced assimilation of the American lifeways, yet there are still many of us who recognize ourselves first as Lakota. Our right as a nation of people to determine our own form of government is inalienable.

There are also many other tribes, most noteworthy the allies of the Great Sioux Nation, the Cheyenne, who also prayed at Bear Butte and in the Black Hills. The other First Nations who prayed at Bear Butte, along with the Great Sioux Nation, did so for millennia without mediation by any outside referee. All of our cultures dictate proper and appropriate behavior when sacredness, ceremonies, and prayers are involved. We are more than capable of developing our own ways of managing such a sacred place.

I know this is more than was asked for in your letter, Senator Campbell. I greatly appreciate this opportunity to speak on behalf of some of the people who pray at Bear Butte. I hope that I have not disappointed them. I am more humbled that I must try to speak for the protection of such a sacred place that was used by my and your ancestors. It is sad that this is necessary.

Sincerely,

Charmaine White Face

Charmaine White Face (Zumila Wobaga)
Coordinator
Defenders of the Black Hills
(605) 343-5387

SOUTH DAKOTA STATE HISTORICAL SOCIETY
Department of Education and Cultural Affairs

Cultural Heritage Center
900 Governors Drive
Pierre, SD 57501-2217
(605)773-3458 fax (605)773-6041
www.sdhistory.org

August 7, 2002

VAN A LINDQUIST
BLACK HILLS COUNCIL OF
LOCAL GOVERNMENTS
1602 MOUNTAIN VIEW ROAD SUITE 104
PO BOX 9686
RAPID CITY SD 57709-9868

SECTION 106 PROJECT CONSULTATION – IDENTIFICATION/EVALUATION
Project: 020627003F – Black Hills Sportsman's Complex and Access Road
Location: Meade County
(RD/COS)

Dear Mr. Lindquist:

Thank you for the opportunity to comment on the above referenced project pursuant to Section 106 of the National Historic Preservation Act of 1966 (as amended). The South Dakota State Historic Preservation Office (SHPO) is currently unable to make a determination concerning the effect of your proposed undertaking on the non-renewable cultural resources of South Dakota.

The State Historic Preservation Officer is in receipt of your faxed letter received on July 26, 2002. Please note that completion of the HUD environmental process does not necessarily fulfill the requirements of Section 106 of the National Historic Preservation Act of 1966 (as amended). Pursuant to 36 CFR Part 800.8 (2)(c), an agency official may use the NEPA process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of procedures set forth in 800.3 through 800.6, if the agency official has notified in advance the SHPO and the Advisory Council on Historic Preservation that it intends to do so. The SHPO has not received correspondence indicating the agency's intent to satisfy the consultation requirements of Section 106 using the NEPA process.

800.10 (a) requires that special consideration be given to the protection of National Historic Landmarks. Section 110 (f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. 800.10 (c) requires the agency official to notify the Secretary of the Interior of any consultation involving a National Historic Landmark and invite the Secretary of Interior to participate in the consultation where there may be an adverse effect. Please contact Dena Sanford at the National Park Service, (402) 514-9354.

Because of the potential for an adverse effect, the SHPO requests more information regarding the type of study used to determine the various noise levels and there potential effect on Bear Butte National Historic Landmark.

Also, In accordance with 36CFR Part 800.2, the State Historic Preservation Office has a responsibility to advise and assist the agency in identifying consulting parties including federal, state and local governments and organizations. Consulting parties shall include tribes that attach religious and cultural significance to Bear Butte National Historic Landmark, please visit the National Consultation Database. In addition, since Bear Butte is also a state park, I recommend contacting Doug Hofer (605) 773-3391, with the Department of Game, Fish and Parks.

Should you require any additional information, please do not hesitate contact to Paige Hoskinson, Review & Compliance Coordinator at (605) 773-6004. Your concern for the non-renewable cultural heritage of our state is appreciated.

Sincerely,

Jay D. Vogt
State Historic Preservation Officer

Paige Hoskinson
Review & Compliance Coordinator

Cc: Steve Harding
Doug Hofer
Dena Sanford

SOUTH DAKOTA STATE HISTORICAL SOCIETY
Department of Education and Cultural Affairs

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October 4, 2002

VAN A LINDQUIST
BLACK HILLS COUNCIL OF
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1602 MOUNTAIN VIEW ROAD SUITE 104
PO BOX 9686
RAPID CITY SD 57709-9868

SECTION 106 PROJECT CONSULTATION – IDENTIFICATION/EVALUATION
Project: 020627003F – Black Hills Sportsman's Complex and Access Road
Location: Meade County
(RD/COS)

Dear Mr. Lindquist:

Thank you for the opportunity to comment on the above referenced project pursuant to Section 106 of the National Historic Preservation Act of 1966 (as amended). The South Dakota State Historic Preservation Office (SHPO) is currently unable to make a determination concerning the effect of your proposed undertaking on the non-renewable cultural resources of South Dakota.

The State Historic Preservation Officer is in receipt of the predictive model estimating the expected audible effects to Bear Butte National Historic Landmark. Because of the potential for an adverse effect, the SHPO requests written comments from the consulting parties regarding the various noise levels established in the predictive model and the effect on cultural and religious ceremonies held at Bear Butte NHL.

In accordance with 36CFR Part 800.2, the State Historic Preservation Office has a responsibility to advise and assist the agency in identifying consulting parties including federal, state and local governments and organizations. Consulting parties shall include tribes that attach religious and cultural significance to Bear Butte National Historic Landmark, please visit the National Consultation Database. In addition, since Bear Butte is also a state park, I recommend contacting Doug Hofer (605) 773-3391, with the Department of Game, Fish and Parks. I have also received a letter dated September 11, 2002 from William W. Schenk, Regional Director for the National Park Service requesting inclusion in the consultation process. Please provide a copy of the predictive model to each consulting party with an explanation of the study.

Should you require any additional information, please do not hesitate contact to Paige Hoskinson, Review & Compliance Coordinator at (605) 773-6004. Your concern for the non-renewable cultural heritage of our state is appreciated.

Sincerely,

Jay D. Vogt
State Historic Preservation Officer

Paige Hoskinson
Review & Compliance Coordinator

Cc: Steve Harding – Governors Office on Economic Development
Doug Hofer – Game, Fish and Parks
William W. Schenk – National Park Service
Marjorie Nowick – Advisory Council for Historic Preservation

United States Department of the Interior

NATIONAL PARK SERVICE

MIDWEST REGION
1709 JACKSON STREET
OMAHA, NEBRASKA 68102-2571

OCT 21 2002

IN REPLY REFER TO:
October 17, 2002

H3415 (CRSP-CR)

Van A. Lindquist
Environmental Certifying Officer
Executive Director
Black Hills Council of Local Governments
1602 Mountain View Road, Suite 104
P.O. Box 9686
Rapid City, South Dakota 57709-9686

Dear Mr. Lindquist:

Thank you for submitting material related to the proposed Black Hills Sportsman's Complex (shooting range) in Meade County, South Dakota, pursuant to section 106 of the National Historic Preservation Act of 1966 (as amended). Of primary concern to the Midwest Region, National Park Service (NPS), is the possible effect of repetitive percussive noise on the neighboring Bear Butte National Historic Landmark (NHL). This NHL is nationally significant for its spiritual association with several Plains Indian tribes, and continues to serve a spiritual role for many visitors to the site.

Upon reviewing the submitted information, including the July 2002 "Intensive Cultural Resources Inventory of the Black Hills Sportsman's Complex and Access Road" report, and the estimates of the expected acoustical impact, the NPS has the following concerns:

The proposed shooting facility will include the opportunity to serve as a testing facility for the area's expanding fire arms industry, in addition to offering three rifle ranges, four trap/skeet ranges, a sporting clay range, and two pistol ranges. The calculations provided in your section 106 package provide estimates of sound levels at 35 to 38.35 decibels for between 5,000 to 10,000 rounds per day, based upon a sample model using the military weapons of M16s and .45 caliber pistols. From a distance of 4 miles (the distance between the NHL and the proposed facility) these decibel levels are described in your informational material as "faint," or comparable to the sound of an average residence without stereo playing, to the sound of soft radio music in an apartment. Are these calculations the same for the other types of firearms to be accommodated at the proposed sportsman's complex? What is the difference between a steady, soft sound, versus a repetitive percussive soft sound, and what is the affect on the quality of experience at the Bear Butte NHL?

To resolve these questions, the NPS suggests that the Black Hills Council of Local Governments conduct a gunfire test, and invite the interested parties involved in the section 106 process to experience the sound levels from Bear Butte.

If you have additional questions, please call Ms. Dena Sanford at 402-514-9354.

Sincerely,

William W. Schenk
Regional Director

cc:

Mr. Jay Vogt
State Historic Preservation Office
South Dakota State Historical Society
Cultural Heritage Center
900 Governors Drive
Pierre, South Dakota 57501-2217

Ms. Cornelia (Lee) Keatinge
Advisory Council on Historic Preservation, Southern Region
12136 West Bayaud Avenue, Suite 330
Lakewood, Colorado, 80228

Mr. John Sprinkle
National Register, History and Education
National Historic Landmarks Survey (2280)
National Park Service
1201 Eye Street, NW.
Washington, D.C. 20005

Black Hills Council of Local Governments
1602 Mt. View Road, Suite 104 · P.O. Box 9686 · Rapid City, South Dakota 57709-9686

October 30, 2002

Jay D. Vogt
State Historic Preservation Officer
Cultural Heritage Center
900 Governors Drive
Pierre, SD 57501-2217

Attention: Paige Hoskinson
Review & Compliance Coordinator

Reference: Section 106 Project Consultation
Project: 020627003F - Black Hills Sportsman's Complex and Access Road

Dear Mr. Vogt:

This letter is to inform you that we have completed the necessary steps and have meet the concerns outlined and expressed by your office in the September 11, 2002 meeting. Attached is an addendum to the original Environmental Review completed in September. Based upon the comments received from the participating parties identified and after, consultation with the HUD Regional Environmental Officer, we consider that the requirements outlined have been satisfied and a release of funds has been requested from the Governor's Office of Economic Development, Community Development Block Grant Program for the project.

Sincerely,

Van A. Lindquist
Executive Director
Environmental Certifying Officer

Enclosure: Addendum
Comment letters

cc: Steve Harding, CDBG Program
Governor's Office of Economic Development

Mark Zeigler, Mayor
City of Sturgis

Dale R. Hansen, Co-Chairman
Sturgis Industrial Expansion Corporation

Phone (605) 394-2681 · Fax (605) 394-2684
SERVING LOCAL GOVERNMENTS IN THE BLACK HILLS AREA

Addendum to Environmental Review Dated September 11, 2002
Sturgis - Black Hills Sportsman Complex

Addendum Number One: October 29, 2002

This addendum addresses additional comments and consultation requested by the South Dakota State Historic Preservation Office (SHPO). It should be noted for the record that the following items and sequence of events occurred after the comment period had expired by some 13 days. In their August 7th letter, they noted that completion of the HUD environmental process, in their opinion, did not necessarily fulfill the requirements of the Section 106 of the National Historic Preservation Act of 1966. *"The SHPO has not received correspondence indicating the agency's intent to satisfy the consultation requirements of Section 106 using the NEPA process."* This is a position not shared by the HUD Regional Environmental Office from whom guidance regarding the August 7th letter was sought.

A key point in the August 7th letter was the type of study used to determine the various noise levels and their potential effect on the Bear Butte National Historic Landmark and a suggestion that additional consultation be secured from the National Park Service, the South Dakota Game, Fish and Parks and tribal consultation.

On September 11, 2002, a meeting between SHPO staff, CDBG staff and Black Hills Council took place in Pierre to discuss the noise issue and the August 7th letter. At that meeting, the noise calculations were discussed. The calculations revealed that using the highest level of rounds per day (10,000 shots) resulted in a dB level of 38.35062 at three miles, and according to the HUD Noise Guideline - Figure 1, this level of sound at three miles falls into the *"faint"* category. It was noted that the northern boundary of Bear Butte State Park was approximately four plus miles away – so the decibel level would be even lower. Further mitigating any noise impact is the fact that the model employed to calculate the noise level estimates does not factor in any topographic features to be incorporated into the project design including berms, baffling, landscape screening and natural topographic features which will further dampen the predicted *"faint"* noise level. SHPO stated that they would require the consultation requirements outlined in their August 7th letter. It was agreed that the Tribal Government Relations Office for South Dakota would fulfill the tribal consultation requirement. It was noted for the meeting participants that a sign-off letter had already been received from S.D. Department of Game, Fish and Parks, but SHPO requested an additional letter.

On October 4, 2002, an additional letter was received from SHPO which acknowledged the noise predictive model but requested written comments from the previously noted consulting parties. That letter stated *"Please provide a copy of the predictive model to each consulting party with an explanation of the study."* This had already been done with the letters requesting an expeditious review and concurrence on the proposed project originating on September 23, 2002. Those letters contained:

- The original project description and accompanying maps.
- The cultural resources inventory report titled, "***Intensive Cultural Resources Inventory of the Black Hills Sportsman's Complex & Access Road,***" which concluded that there would be no adverse impact on Bear Butte National Historic Landmark and that a determination of *"no adverse effect"* be recommended for the project as planned.
- Specific noise calculation estimates were made for the project by Drs. Michael Madden and Charles Vanderziel according to "A Simple Model" from the Outdoor Range Handbook.

The complete package that was forwarded to each of the identified consulting parties by SHPO is attached for reference purposes. This same material was previously provided to the SHPO Office.

The following summaries the response received:

- October 1, 2002 - **Office of Tribal Government Relations**: After reviewing the reports and documents and consulting with the Bear Butte Park Ranger concurs with the project.
- October 9, 2002 - **South Dakota Department of Game, Fish and Parks**: Based on the studies and assessments does not feel that the project will be a negative impact.
- October 17, 2002 - **U.S. Department of the Interior, National Parks Service**: After reviewing the information submitted, the NPS still expressed concern regarding the noise level and specifically the type of noise from the firearms that would be involved compared to the military firearms on which the model is based. While their letter did not state a negative comment towards the project, they suggested that actual gunfire tests be conducted to let the interested parties experience the sound levels from Bear Butte. This is not practical because to conduct such a test the facility would have to be constructed and have the planned topographic features that will be incorporated into the project design including berms, baffling and landscape screening which would further dampen the predicted noise level.

Each of the comment letters received are attached for reference.

Addendum Conclusions:

After further review of the "***Intensive Cultural Resources Inventory of the Black Hills Sportsman's Complex & Access Road,***" noise calculations and the comments received per the request of SHPO, it is determined that the **FINDING OF NO SIGNIFICANT IMPACT** on September 11, 2002, was the correct determination for the project and that a release of funds for the project has been made.

Van A. Lindquist, Executive Director
Black Hills Council of Local Governments
Environmental Certifying Officer

SOUTH DAKOTA

OCT - 2 2002

Tribal Government Relations
Capitol Lake Plaza, Suite 250
711 E. Wells Ave.
Pierre, S.D. 57501-3369
(605) 773-3415

October 1, 2002

Van Lindquist
Black Hills Council of Local Governments
PO Box 9686
Rapid City, SD 57709-9686

Dear Mr. Lindquist:

I have received your letter of September 23, 2002 and I apologize for the delayed response.

I have reviewed the reports and documents regarding the Black Hills Sportsman Complex (shooting range). I consulted with James Jandreau, Bear Butte Park Ranger, and concur with the project.

Sincerely,

Webster Two Hawk
Commissioner

"Hečel lena oyate kin nipi kte"
(That These People May Live)

SOUTH DAKOTA STATE HISTORICAL SOCIETY
Department of Education and Cultural Affairs

Cultural Heritage Center
900 Governors Drive
Pierre, SD 57501-2217
(605)773-3458 fax (605)773-6041
www.sdhistory.org

November 4, 2002

VAN A LINDQUIST
BLACK HILLS COUNCIL OF
LOCAL GOVERNMENTS
1602 MOUNTAIN VIEW ROAD SUITE 104
PO BOX 9686
RAPID CITY SD 57709-9099

SECTION 106 PROJECT CONSULTATION – IDENTIFICATION/EVALUATION
Project: 020627003F – Black Hills Sportsman's Complex and Access Road
Location: Meade County
(HUD)

Dear Mr. Lindquist:

The South Dakota State Historic Preservation Office (SHPO) received your letter on October 31, 2002. The SHPO recommends that your organization on behalf of Housing and Urban Development (HUD) consult with any Tribe that attaches religious and cultural significance to Bear Butte National Historic Landmark pursuant to Section800.2 (c)(2)(B)(ii). "Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian Tribe or Native Hawaiian organization shall be a consulting party." The SHPO does not advocate the sole use of the South Dakota Office of Tribal Government Relations to represent all tribes concerned in this matter.

In addition the SHPO can not concur with your determination of "finding of no significant impact". Please note that this specific determination does not exist within the National Historic Preservation Act of 1966 (as amended). I have enclosed "Protecting Historic Properties, A Citizens Guide to Section 106 Review" to help you make an appropriate determination.

Should you require any additional information, please do not hesitate contact to Paige Hoskinson, Review & Compliance Coordinator at (605) 773-6004. Your concern for the non-renewable cultural heritage of our state is appreciated.

Sincerely,

Jay D. Vogt
State Historic Preservation Officer

Paige Hoskinson
Review & Compliance Coordinator

Cc: Steve Harding – Governors Office on Economic Development
William W. Schenk – National Park Service
Marjorie Nowick – Advisory Council for Historic Preservation

TRIBAL HISTORIC PRESERVATION OFFICE
STANDING ROCK SIOUX TRIBE
P.O. Box D
Fort Yates, N. D. 58538
Tel: (701) 854-2120
(701) 854-7265
(701) 854-3476
Fax: (701) 854-2138

NOV 2002
Dakota
SHPO

November 7, 2002

Paige Hoskinson
900 Governors Drive
Pierre, SD 57501-2217

SUBJECT: 106 Consultation regarding Black Hills Sportsman's Complex

On October 18th the THPO received correspondence you sent regarding potential impacts the proposed Sportsman's Complex would have on Bear Butte. The Standing Rock Sioux Tribe is requesting inclusion and consultation in the section 106 review of the proposed Black Hills Sportsman's Complex and access road.

The people of Standing Rock have cultural and spiritual ties to Bear Butte National Historic Landmark and believe the noise levels generated by the Sportsman's Complex would adversely affect the integrity and of Bear Butte and consequently interfere with ceremonial activities.

Thank you for contacting us and please keep us informed as this issue progresses. For consultation please contact 701-854-2120.

Sincerely,

Mary Wilson
NEPA Coordinator

Tim Mentz, Sr. ◆ Tribal Historic Preservation Officer ◆ e-mail: tmentz@westriv.com
Ione Gayton ◆ Tribal Historian ◆ e-mail: tokawin@westriv.com
William Kurtz ◆ Tribal Archaeologist ◆ e-mail: wkurtz.srst.thpo@westriv.com

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November 13, 2002

VAN A LINDQUIST
BLACK HILLS COUNCIL OF
LOCAL GOVERNMENTS
1602 MOUNTAIN VIEW ROAD SUITE 104
PO BOX 9686
RAPID CITY SD 57709-9868

SECTION 106 PROJECT CONSULTATION – IDENTIFICATION/EVALUATION
Project: 020627003F – Black Hills Sportsman's Complex and Access Road
Location: Meade County
(HUD)

Dear Mr. Lindquist:

Thank you for the opportunity to comment on the above referenced project pursuant to Section 106 of the National Historic Preservation Act of 1966 (as amended). The South Dakota State Historic Preservation Office (SHPO) has made the following determination regarding the potential effects of the above-proposed undertaking on historic properties.

Based on the information provided in the report, "Intensive Cultural Resources Inventory of the Black Hills Sportsman's Complex and Access Road, Meade County, South Dakota," by Natalie Sudman, received on July 8, 2002, and the predictive model for noise levels, received on September 11, 2002, the SHPO has made the following consensus determination. Given that no historic sites or features were located during the survey of the project area and because the Black Hills Council of Local Governments has determined that the noise levels effecting Bear Butte National Historic Landmark will be minimal, the SHPO concurs with the determination NO ADVERSE EFFECT for this undertaking. Should this project change substantially (i.e., new locations of impacts) from that presented in your request, our office would like the opportunity to review these changes.

If during the course of any ground disturbance related to this project, any bones, artifacts, foundations, or other indications of past human occupation of the area are uncovered, the project should be temporarily stopped until the State Historic Preservation Officer has been notified and had chance to comment.

Concurrence of the State Historic Preservation Office does not relieve the federal agency official from consulting with other appropriate parties, as described in 36CFR Part 800.2(c).

Should you require any additional information, please do not hesitate to contact Paige Hoskinson, Review & Compliance Coordinator, at 773-6004. Your concern for the non-renewable cultural heritage of our state is appreciated.

Sincerely,

Jay D. Vogt
State Historic Preservation Officer

Paige Hoskinson
Review and Compliance Coordinator

Cc: William W. Schenk – National Park Service
Marjorie Nowick – Advisory Council for Historic Preservation
Steve Harding – Governors Office on Economic Development

Slipe Consp

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NOV 2002

November 13, 2002

Van A. Lindquist
Black Hills Council of Local Governments
1602 Mt. View Road, Suite 104
P.O. Box 9686
Rapid City, SD 57709 - 9686

SUBJECT: Black Hills Sportsman's Complex and Access Road

It has come to our attention that the city of Sturgis proposes to build a shooting facility and that the southern project boundaries are approximately 4 miles away from Bear Butte.

Materials regarding the projected decibel level generated by the complex have been reviewed by this office. Although the predicted noise level is described as faint, we still have concerns that the gunfire would adversely affect the integrity of Bear Butte and disrupt ceremonial activities.

In a letter dated October 17th, the National Park Service suggests that the Black Hills Council of Local Governments conduct a gunfire test so that interested parties could experience sound levels from Bear Butte. Although construction planned to buffer sound would not be in place at the time of the test, we still believe such a test would help those concerned gage their response to the proposed project.

As provided in Section 101(d)(6)(b) of the National Historic Preservation Act, the Standing Rock Sioux Tribe attaches religious and cultural significance to Bear Butte and we can and do request consultation on a government-to-government level. The Tribal Government Relations Office for South Dakota alone cannot fulfill tribal consultation for this project.

Please keep us informed as this issue progresses.

Tim Mentz, Sr. ◆ Tribal Historic Preservation Officer ◆ e-mail: tmentz@westriv.com
Ione Gayton ◆ Tribal Historian ◆ e-mail: tokawin@westriv.com
William Kurtz ◆ Tribal Archaeologist ◆ e-mail: wkurtz.srst.thpo@westriv.com

Sincerely,

Mary Wilson

Mary Wilson
NEPA Coordinator

Cc: Webster Two Hawk, Tribal Government Relations
Steve Harding, Governor's Office of Economic Development CDBG Program
Paige Hoskinson, South Dakota State Historical Society
William W. Schenk, National Park Service
Marjorie Nowick, Advisory Council for Historic Preservation

DEC - 2 2002

November 22, 2002

Mr. Vern Linquist
Environmental Certifying Officer
Executive Director
Black Hills Council of Local Governments
1602 Mountain View Road, Suite 014
P.O. Box 9686
Rapid City, SD 57709-9686

REF: Project 020627003F, Black Hills Sportsman's Complex, Meade County, South Dakota

Dear Mr. Linquist:

The ACHP is concerned with how the Black Hills Council of Local Government (Black Hills Council) is complying with Sections 106 and 101(d)(6)(b) of the National Historic Preservation Act (NHPA) for the referenced project. This project is being assisted by Community Development Block Grant (CDBG) funds from the Department of Housing and Urban Development. By Federal law, the Black Hills Council is delegated the role of the Federal agency official with responsibility for compliance with Section 106 of the NHPA.

We understand that the proposed Black Hills Sportsman's Complex, which will include a commercial shooting range and access road, will be located about four miles from Bear Butte, a National Historic Landmark. Bear Butte is significant as a sacred and historically important site for Lakota and other Indian people, and is the location of continued religious practices by Indian tribes and their members. The National Park Service and the Standing Rock Sioux Indian Tribe have written to you with concerns that noise from the proposed Black Hills Sportsman's Complex may disrupt the continued use of Bear Butte for religious and cultural practices. Additionally, the Tribal Historic Preservation Officer (THPO) of the Cheyenne River Sioux Tribe have expressed the same concerns to us in a telephone conversation this morning.

It appears that the Black Hills Council's determination of No Adverse Effect did not include consultation with Indian tribes who may attach religious and cultural significance to Bear Butte. We have received a copy of a letter to you from the Standing Rock Sioux Tribe dated November 13, 2002 and had a recent telephone conversation with both the Standing Rock THPO and Cheyenne River THPO in this regard. Neither tribe has been appropriately contacted by the

Cheyenne River THPO in this regard. Neither tribe has been appropriately contacted by the Black Hills Council to consult on the determination of the Area of Potential Effects or the determination of Effect, including application of the Criteria of Adverse Effect of this project on Bear Butte. Consultation with Indian tribes directly is necessary. The Black Hills Council needs to ensure that its Determination of Effect and supporting project documentation reflect appropriate consultation with Indian tribes that attach religious and cultural significance to Bear Butte National Historic Landmark.

Please inform us of what actions the Black Hills Council is taking to ensure appropriate compliance with Section 106 of the National Historic Preservation Act at your very earliest convenience. We look forward to your response.

If you have questions or wish to discuss this further, please contact Ms. Marjorie Nowick at 303-969-5110 or via email at mnowick@achp.gov

Sincerely,

Lee Keatinge

for Don L. Klima
Director
Office of Federal Agency Programs

cc:
South Dakota SHPO
Standing Rock Sioux THPO
Cheyenne River Sioux THPO
HUD Regional Director
Steve Harding, State of SD
HUD, DC
National Park Service

Black Hills Council of Local Governments
1602 Mt. View Road, Suite 104 · P.O. Box 9686 · Rapid City, South Dakota 57709-9686

December 3, 2002

Mr. Don L. Klima, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, Colorado 80228

RE: Black Hills Sportsman Complex (Shooting Range) Environmental Assessment

Dear Mr. Kilma:

Thank you for your letter regarding the above-referenced Environmental Assessment (EA). The Black Hills Council of Local Governments conducted the environmental assessment on the above-referenced project on behalf of the City of Sturgis and the Sturgis Industrial Expansion Corporation according to procedures established by HUD for the Small Cities Community Development Block Grant (CDBG) program, which is administered by the State of South Dakota. From HUD's perspective the EA conducted met all of the regulations required of a project.

I would like to review for you the steps that were taken regarding the assessment. With each assessment, comment letters including a project description and accompanying maps are sent to twelve different federal or state agencies for their response or comments. Since noise was an issued raised at the public hearing on submission of the application, guidance was requested and received from the Community Development Block Grant Program at both the state and regional levels. As part of the EA, an independent cultural resources inventory report titled *Intensive Cultural Resources Inventory of the Black Hills Sportsman's Complex & Access Road* was conducted, and concluded that "No cultural resources were found during inventory of the proposed Black Hills Sportsman's Shooting Range Complex and Access Road. There will be no adverse effect on Bear Butte National Historic Landmark from the project as planned. A determination of "no adverse effect" is recommended for the project as planned." After soliciting and reviewing responses from the appropriate federal and state agencies and receiving the cultural resource inventory report it was determined that a preliminary finding of No Significant Impact could be made for the CDBG Environmental Assessment.

Even with this determination the EA noted: "Noise and Safety: There were no adverse comments received during the Environmental Assessment process. These issues and the only response directly related to either of these issues was by the Community Development Block Grant Program, Governor's Office of Economic Development. Because these items were stressed in the application hearing, it is imperative that the Sturgis Industrial Expansion Corporation (as the Sub-recipient) live up to its public comments made at that hearing. Mitigation measures should, to the greatest extent possible, be incorporated into design standards including but not limited to earthen berms, baffling and landscape screening to minimize the potential of adverse impacts from these two items."

Some thirteen days after the comment period had elapsed for the Environmental Assessment a third comment letter (August 7, 2002) was received from the State Historic Preservation Office requesting additional consultation be undertaken on the project to complete the Section 106

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SERVING LOCAL GOVERNMENTS IN THE BLACK HILLS AREA

determination. The specific issue they identified was the potential impact of noise on the Bear Butte National Historic Landmark.

Part of the process undertaken was to have specific noise calculation estimates made for the project. The calculations were done by Drs.Michael Madden and Charles Vanderziel according to "A Simple Model" from the Outdoor Range Source Handbook. The citation reference to this model is: J. McBryan, ***Predicting Noise Impact in the Vicinity of Small-arms Ranges,*** Civil Engineering Research Laboratory, Interim Report N-61, October 1978. Their calculations as well as the model and working papers are attached for your reference.. For comparative reference the "Common Sounds - Basic Theory: Common Sounds in Decibels (dB)" from ***The Noise Guidebook, A Reference Document for Implementing the Department of Housing and Urban Development's Noise Policy,*** is also attached.

The calculations reveal that using the highest level of rounds per day (10,000 rounds) resulted in a dB level of 38.35062 at three miles. Based on the HUD Noise Guidebook Figure 1, this level of sound at the three mile distance falls into the "faint" range, which is referenced as an "average residence without stereo playing." Also noted was that the northern boundary of Bear Butte is greater than four miles away, so the decibel level would be even less than the 38+ figure shown at three miles. Finally, further mitigating any impact from the project is the fact that the model employed to calculate the noise level estimates does not include any topographical features of a particular site that can further dampen sound impacts. Topographical features to be incorporated into the project design, including berms, baffling, and natural topographical features, will act to encapsulate the sound and to further dampen the predicted "faint" noise level for the project relative to the distance from Bear Butte.

On September 11, 2002, a meeting between SHPO staff, CDBG staff and Black Hills Council took place in Pierre to discuss the noise issue and the August 7th SHPO letter requesting additional consultation be secured from the National Park Service, the South Dakota Department of Game, Fish and Parks and tribal consultation on the noise issue. It was agreed that the Tribal Government Relations Office for South Dakota would fulfill the tribal consultation requirement. It was noted for the meeting participants that a sign-off letter had already been received from S.D. Department of Game, Fish and Parks, but SHPO requested an additional letter. Per their request, this additional step was undertaken. The following summaries the responses received:

- October 1, 2002 - Office of Tribal Government Relations: After reviewing the reports and documents and consulting with the Bear Butte Park Ranger, concurs with the project.
- October 9, 2002 - South Dakota Department of Game, Fish and Parks: Based on the studies and assessments, does not feel that the project will be a negative impact.
- October 17, 2002 - U.S. Department of the Interior, National Parks Service: After reviewing the information submitted, the NPS still expressed concern regarding the noise level and specifically the type of noise from the firearms that would be involved compared to the military firearms on which the model is based. While their letter did not state a negative comment towards the project, they suggested that actual gunfire tests be conducted to let the interested parties experience the sound levels from Bear Butte. This is not practical because to conduct such a test, the facility would have to be constructed and have the planned topographic features that will be incorporated into the project design, including berms and baffling which would further dampen the predicted noise level.

Based on this information, we requested and received from the South Dakota State Historic Preservation Officer a Section 106 Determination of NO ADVERSE EFFECT for the project. This letter is attached for reference purposes.

Mr. Don L. Kilma, Director
December 3, 2002
Page Three

The process undertaken to acquire input was not intended to circumvent the Tribal Historic Preservation Office(s) but rather was the process agreed to in our meeting with SHPO on September 11, 2002. Hopefully, the steps that we took regarding the noise issue is satisfactory given the fact that a worse case scenario was used, the project site is not three miles but greater than four miles north, and the fact that Bear Butte itself will be a noise barrier from the actual location of the area used for religious ceremonies.

Again, thank you for you letter regarding the Environmental Assessment undertaken for the project

Sincerely

Van A. Lindquist
Environmental Certifying Officer
Executive Director

VAL/val
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cc: Mr. Howard Kutzer, Environmental Officer
Hud Colorado State Office
First Interstate Tower North
633 - 17th Street
Denver, Colorado 80202-3607

Mr. Steven Harding, Coordinator
CDBG Special Projects
Governor's Office of Economic Development
CDBG Division
Capitol Lake Plaza, 711 East Wells Avenue
Pierre, South Dakota 57501-5070