

117TH CONGRESS
2D SESSION

S. 4423

To establish the Tribal Cultural Areas System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2022

Mr. HEINRICH introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To establish the Tribal Cultural Areas System, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Cultural Areas
5 Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EXISTING USE.—The term “existing use”,
9 with respect to a Tribal cultural area, means a use
10 that is occurring within the Tribal cultural area on

1 the date on which the Tribal cultural area is des-
2 ignated for inclusion in the System.

3 (2) FORMER RESERVATION.—The term “former
4 reservation” means land that is within the exterior
5 boundaries of the last reservation that was estab-
6 lished by treaty, Executive order, or Secretarial
7 order for an Indian Tribe.

8 (3) HISTORIC PROPERTY.—The term “historic
9 property” means a historic or precontact site, build-
10 ing, structure, or object that has religious, medic-
11 inal, or cultural significance to an interested Indian
12 Tribe.

13 (4) INDIAN LAND.—The term “Indian land”
14 means land of an Indian Tribe or an individual In-
15 dian that is—

16 (A) held in trust by the United States; or

17 (B) subject to a restriction against alien-
18 ation imposed by the United States.

19 (5) INDIAN TRIBE.—The term “Indian Tribe”
20 means the governing body of any Indian or Alaska
21 Native tribe, band, nation, pueblo, village, commu-
22 nity, component band, or component reservation in-
23 dividually identified (including parenthetically) on
24 the list published by the Secretary under section 104

1 of the Federally Recognized Indian Tribe List Act of
2 1994 (25 U.S.C. 5131).

3 (6) INTERESTED INDIAN TRIBE.—The term
4 “interested Indian Tribe”, with respect to a tract of
5 public land, means an Indian Tribe with—

6 (A) historic, precontact, cultural, or reli-
7 gious connections to a Tribal cultural site lo-
8 cated on the tract of public land;

9 (B) a former reservation located on the
10 tract of public land; or

11 (C) treaty rights or other reserved rights
12 associated with the tract of public land.

13 (7) MANAGEMENT PLAN.—The term “manage-
14 ment plan” means the management plan developed
15 for a Tribal cultural area under section 5(d)(3)(A).

16 (8) NATIONAL FOREST SYSTEM.—The term
17 “National Forest System” has the meaning given
18 the term in section 11(a) of the Forest and Range-
19 land Renewable Resources Planning Act of 1974 (16
20 U.S.C. 1609(a)).

21 (9) NATIVE KNOWLEDGE.—The term “Native
22 knowledge” has the meaning given the term in sec-
23 tion 219.19 of title 36, Code of Federal Regulations
24 (as in effect on the date of enactment of this Act).

25 (10) NEW USE.—

1 (A) IN GENERAL.—The term “new use”,
2 with respect to a Tribal cultural area, means—

3 (i) a use that involves surface disturb-
4 ance and is not occurring in the Tribal cul-
5 tural area on the date on which the Tribal
6 cultural area is designated for inclusion in
7 the System; and

8 (ii) a use that is occurring in the
9 Tribal cultural area on the date on which
10 the Tribal cultural area is designated for
11 inclusion in the System, but that is being
12 modified so as—

13 (I) to create a surface disturb-
14 ance;

15 (II) to significantly expand or
16 alter impacts of the use on the land,
17 water, air, cultural resources, or wild-
18 life of the Tribal cultural area; or

19 (III) to be inconsistent with the
20 purposes for which the Tribal cultural
21 area is—

22 (aa) designated under sec-
23 tion 5; or

24 (bb) recommended under
25 section 8.

1 (B) EXCLUSION.—The term “new use”,
2 with respect to a Tribal cultural area, does not
3 include a use that—

4 (i) is categorically excluded from the
5 requirements of title I of the National En-
6 vironmental Policy Act of 1969 (42 U.S.C.
7 4331 et seq.);

8 (ii) is carried out to comply with the
9 Endangered Species Act of 1973 (16
10 U.S.C. 1531 et seq.);

11 (iii) is necessary to maintain a road,
12 trail, structure, or facility within the Tribal
13 cultural area that is—

14 (I) in existence on the date on
15 which the Tribal cultural area is des-
16 ignated for inclusion in the System;
17 and

18 (II) identified in the management
19 planning documents of the applicable
20 land management agency as a road,
21 trail, structure, or facility intended for
22 continued use; or

23 (iv) the Secretary concerned deter-
24 mines to be necessary for the control of
25 fire, insects, or diseases, subject to such

1 terms and conditions as the Secretary con-
2 cerned determines appropriate.

3 (11) PUBLIC LAND.—The term “public land”
4 means—

5 (A) land under the jurisdiction of the Sec-
6 retary (other than Indian land); and

7 (B) National Forest System land.

8 (12) RESTORATION.—The term “restoration”
9 has the meaning given the term in section 219.19 of
10 title 36, Code of Federal Regulations (as in effect on
11 the date of enactment of this Act).

12 (13) SACRED SITE.—The term “sacred site”
13 means a specific, discrete, narrowly delineated site
14 on public land that is identified by an Indian Tribe
15 as sacred by virtue of the established religious sig-
16 nificance of the site to, or ceremonial use of the site
17 by, an Indian Tribe.

18 (14) SECRETARY.—The term “Secretary”
19 means the Secretary of the Interior.

20 (15) SECRETARY CONCERNED.—The term
21 “Secretary concerned” means—

22 (A) the Secretary, with respect to public
23 land described in paragraph (11)(A); and

1 (B) the Secretary of Agriculture, with re-
 2 spect to public land described in paragraph
 3 (11)(B).

4 (16) SURFACE DISTURBANCE.—The term “sur-
 5 face disturbance” means any new disruption of soil
 6 or vegetation that would require restoration to re-
 7 turn the soil or vegetation to natural appearance or
 8 ecological function.

9 (17) SYSTEM.—The term “System” means the
 10 Tribal Cultural Areas System established by section
 11 5(a).

12 (18) TRIBAL COMMISSION.—The term “Tribal
 13 commission” means the Tribal commission estab-
 14 lished for a Tribal cultural area under section 6(a).

15 (19) TRIBAL CULTURAL AREA.—The term
 16 “Tribal cultural area” means a Tribal cultural site
 17 that has been designated for inclusion in the Sys-
 18 tem.

19 (20) TRIBAL CULTURAL SITE.—The term
 20 “Tribal cultural site” means—

21 (A) a historic property; and

22 (B) a landform, landscape, or location
 23 that—

1 (i) is or may be important to the cus-
2 toms, practices, objects, places, religions,
3 or ceremonies of an Indian Tribe;

4 (ii) is or may be important to an In-
5 dian Tribe for the undertaking of religious,
6 cultural, spiritual, traditional subsistence,
7 or other traditional practices;

8 (iii) contains unique or important tra-
9 ditional Tribal food, medicinal, or material
10 gathering areas; or

11 (iv) is connected through features,
12 ceremonies, objects, histories, or cultural
13 practices to other sites or to a larger sa-
14 cred landscape, as determined by an In-
15 dian Tribe.

16 (21) TRIBAL ORGANIZATION.—The term “Trib-
17 al organization” has the meaning given the term in
18 section 4 of the Indian Self-Determination and Edu-
19 cation Assistance Act (25 U.S.C. 5304).

20 **SEC. 3. FINDINGS.**

21 Congress finds that—

22 (1) the Federal Government manages more
23 than 640,000,000 acres of public land that was
24 carved out of the ancestral homeland of Indian
25 Tribes;

1 (2) Indians Tribes and members of Indian
2 Tribes—

3 (A) have maintained historical, religious,
4 and spiritual connections to land now des-
5 ignated as public land;

6 (B) continue to exercise treaty rights on
7 public land; and

8 (C) use public land to pray, conduct cere-
9 monies, visit burial sites, gather plants, and un-
10 dertake other traditional cultural activities;

11 (3) treaties, Executive orders, court decisions,
12 and Federal laws and regulations—

13 (A) acknowledge the rights of Indian
14 Tribes and members of Indian Tribes on public
15 land; and

16 (B) require public land managers to con-
17 sult with Indian Tribes prior to taking action
18 that would impact those rights; and

19 (4) efforts to commercially develop or transfer
20 ownership of public land often ignore the rights and
21 protections of Indian Tribes and have resulted in—

22 (A) the desecration of sacred sites;

23 (B) the diminishment of Tribal treaty
24 rights; and

1 (C) the mismanagement of sacred sites, in-
2 cluding the looting of sacred objects and burial
3 sites and the diminishment of harvests of tradi-
4 tional native plants used in religious ceremonies
5 and for other purposes.

6 **SEC. 4. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

- 8 (1) the preservation of Tribal cultural sites lo-
9 cated on public land is in the public interest;
10 (2) through their unique history and traditional
11 knowledge, Indian Tribes have an important role in
12 managing Tribal cultural sites on public land; and
13 (3) Tribal cultural sites on public land should
14 be permanently protected for the benefit of Indian
15 Tribes.

16 **SEC. 5. TRIBAL CULTURAL AREAS SYSTEM.**

17 (a) ESTABLISHMENT.—In order to preserve Tribal
18 cultural sites on public land, there is established the Tribal
19 Cultural Areas System.

20 (b) PURPOSES.—The purposes of the System are—

- 21 (1) to preserve opportunities for Indian Tribes
22 to undertake religious, cultural, spiritual, medicinal,
23 or traditional practices within Tribal cultural sites;

1 (2) to permanently protect the religious, cul-
2 tural, spiritual, scenic, ecological, medicinal, and tra-
3 ditional values of Tribal cultural sites; and

4 (3) to enhance opportunities for Indian Tribes
5 to engage in the preservation and management of
6 Tribal cultural sites on public land.

7 (c) AREAS INCLUDED.—

8 (1) ELIGIBLE CULTURAL SITES.—Any Tribal
9 cultural site located on public land is eligible to be
10 designated by Congress as a Tribal cultural area for
11 inclusion in the System.

12 (2) DESIGNATION.—A Tribal cultural site may
13 be designated as a Tribal cultural area for inclusion
14 in the System only by an Act of Congress.

15 (3) SECRETARIAL RECOMMENDATION.—In de-
16 termining whether to designate a Tribal cultural site
17 as a Tribal cultural area for inclusion in the System,
18 Congress shall take into consideration the rec-
19 ommendations of the Secretary concerned under
20 subsections (a)(6) and (d)(3)(C)(ii)(I) of section 8.

21 (4) REMOVAL.—A Tribal cultural area may be
22 removed from the System only by an Act of Con-
23 gress.

24 (d) MANAGEMENT.—

1 (1) IN GENERAL.—Subject to valid existing
2 rights, the Secretary concerned shall manage Tribal
3 cultural areas—

4 (A) to preserve Tribal cultural sites within
5 each Tribal cultural area;

6 (B) in consultation with the applicable
7 Tribal commission; and

8 (C) in accordance with—

9 (i) this Act; and

10 (ii) any other applicable laws (includ-
11 ing regulations).

12 (2) USES.—

13 (A) IN GENERAL.—In accordance with this
14 Act, the Secretary concerned shall only author-
15 ize new uses or existing uses within a Tribal
16 cultural area that the Secretary determines, in
17 consultation with the applicable Tribal commis-
18 sion, are consistent with—

19 (i) the purposes described in sub-
20 section (b);

21 (ii) the preservation of Tribal cultural
22 sites within the Tribal cultural area; and

23 (iii) this Act.

24 (B) NEW USES.—

1 (i) IN GENERAL.—If the Secretary
2 concerned determines under subparagraph
3 (A) that a new use is consistent with the
4 requirements of clauses (i) through (iii) of
5 that subparagraph, before authorizing the
6 new use, the Secretary concerned shall re-
7 quest agreement from the applicable Tribal
8 commission.

9 (ii) APPROVAL.—If the applicable
10 Tribal commission agrees to the new use
11 for which the Secretary concerned requests
12 agreement under clause (i), or does not re-
13 spond to the request by the date that is 60
14 days after the date on which the Secretary
15 concerned makes the request under that
16 clause, the Secretary concerned shall au-
17 thorize the new use.

18 (iii) DENIAL.—If the applicable Tribal
19 commission denies agreement for a new
20 use by the date that is 30 days after the
21 date on which the Secretary concerned
22 makes the request under clause (i), the
23 Secretary concerned shall—

24 (I) consult with the applicable
25 Tribal commission to determine spe-

1 cific measures to eliminate or mitigate
 2 potential adverse impacts to the Trib-
 3 al cultural area resulting from the
 4 new use; and

5 (II) authorize the new use, sub-
 6 ject to the measures determined under
 7 subclause (I).

8 (3) MANAGEMENT PLAN.—

9 (A) IN GENERAL.—Not later than 3 years
 10 after the date on which a Tribal cultural area
 11 is designated for inclusion in the System, the
 12 Secretary concerned shall develop a comprehen-
 13 sive plan for the management of the Tribal cul-
 14 tural area in accordance with paragraph (2).

15 (B) REQUIREMENTS.—In developing a
 16 management plan under subparagraph (A), the
 17 Secretary concerned shall—

18 (i) closely collaborate with the applica-
 19 ble Tribal commission in accordance with
 20 subparagraph (C);

21 (ii) consult with—

22 (I) Indian Tribes;

23 (II) appropriate State and local
 24 governmental entities; and

25 (III) members of the public;

(iii) at the request of an interested Indian Tribe identified under section 9(a)(1), include the interested Indian Tribe as a cooperating agency in the development of the management plan; and

(iv) to the maximum extent practicable, incorporate Native knowledge.

(C) INCORPORATION OF RECOMMENDATIONS.—

(i) IN GENERAL.—In developing a management plan under subparagraph (A), the Secretary concerned shall carefully and fully consider incorporating the traditional, historical, and cultural knowledge and Native knowledge of the applicable Tribal commission, which shall be submitted to the Secretary concerned as written recommendations.

(ii) CONSULTATION.—If the Secretary concerned determines that a specific recommendation submitted to the Secretary concerned under clause (i) is impracticable, infeasible, or not in the public interest, the Secretary concerned shall consult with the applicable Tribal commission to determine

specific measures to modify, or otherwise address, the recommendation.

(iii) WRITTEN EXPLANATION.—If, after consultation under clause (ii), the Secretary concerned determines not to incorporate a specific recommendation submitted to the Secretary concerned under clause (i), the Secretary concerned shall provide to the Tribal commission a written explanation of the reason for the determination by the date that is 30 days after the date on which the determination is made.

(4) ROAD CONSTRUCTION.—

(A) IN GENERAL.—No new roads shall be constructed within a Tribal cultural area.

(B) TEMPORARY ROADS.—No temporary roads shall be constructed within a Tribal cultural area, except as necessary—

(i) to meet the minimum requirements for the administration of the Tribal cultural area;

(ii) to protect public health and safety;

(iii) to respond to an emergency; and

1 (iv) for the control of fire, insects, or
2 diseases, subject to such terms and condi-
3 tions as the Secretary concerned deter-
4 mines to be appropriate.

5 (C) EFFECT.—Subject to appropriations,
6 the Secretary concerned shall maintain existing
7 roads determined by the Secretary concerned,
8 in consultation with the applicable Tribal com-
9 mission, to be necessary for authorized existing
10 uses and the administration of the Tribal cul-
11 tural area.

12 (5) MOTORIZED VEHICLES.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the use of motorized vehicles
15 in a Tribal cultural area shall be permitted only
16 on roads designated by the management plan
17 for the use of motorized vehicles.

18 (B) EXCEPTION.—The use of motorized
19 vehicles shall be permitted in a Tribal cultural
20 area on roads not designated by the manage-
21 ment plan for the use of motorized vehicles in
22 cases in which the use is—

23 (i) necessary—

24 (I) for administrative purposes;

1 (II) to respond to an emergency;

2 or

3 (III) for traditional cultural pur-
4 poses, including the exercise of rights
5 secured by treaty, statute, Executive
6 order, or other Federal law; or

7 (ii) determined necessary by the appli-
8 cable Tribal commission.

9 (C) SAVINGS CLAUSE.—Nothing in this
10 paragraph authorizes the use of motorized vehi-
11 cles on public land (as defined in section
12 10(d)(1)) within a Tribal cultural area if the
13 use is otherwise prohibited on the public land.

14 (6) GRAZING.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), the grazing of livestock in a Tribal
17 cultural area established before the date on
18 which the Tribal cultural area is designated for
19 inclusion in the System shall be permitted to
20 continue.

21 (B) REQUIREMENT.—

22 (i) CONSISTENCY REQUIRED.—Graz-
23 ing permitted under subparagraph (A)
24 shall be—

25 (I) subject to—

1 (aa) a determination by the
 2 Secretary concerned, in consulta-
 3 tion with the applicable Tribal
 4 commission, that grazing may be
 5 carried out in a manner con-
 6 sistent with the purposes for
 7 which the Tribal cultural area is
 8 established;

9 (bb) such reasonable regula-
 10 tions, policies, and practices as
 11 the Secretary concerned deter-
 12 mines necessary; and

13 (cc) applicable law (includ-
 14 ing regulations); and

15 (II) carried out in a manner con-
 16 sistent with the purposes described in
 17 subsection (b).

18 (ii) MODIFICATION.—On a determina-
 19 tion by the Secretary concerned that graz-
 20 ing within a Tribal cultural area is incon-
 21 sistent with the purposes for which the
 22 Tribal cultural area is established, the Sec-
 23 retary concerned shall modify or terminate
 24 the grazing permit or lease, as determined
 25 appropriate by the Secretary concerned.

1 (C) VOLUNTARY GRAZING PERMIT OR
2 LEASE DONATION PROGRAM.—

3 (i) DONATION OF PERMIT OR
4 LEASE.—

5 (I) ACCEPTANCE.—The Secretary
6 concerned shall accept the donation of
7 any valid existing permits or leases
8 authorizing grazing on public land, all
9 or a portion of which is within a Trib-
10 al cultural area.

11 (II) TERMINATION.—The Sec-
12 retary concerned shall terminate any
13 grazing permit or lease acquired
14 under subclause (I).

15 (III) NO NEW GRAZING PERMITS
16 OR LEASES.—Except as provided in
17 clauses (ii) and (iii), with respect to
18 each grazing permit and lease donated
19 under subclause (I), the Secretary
20 concerned—

21 (aa) shall not issue any new
22 grazing permit or lease within
23 the grazing allotment covered by
24 the grazing permit or lease; and

1 (bb) shall ensure a perma-
 2 nent end to livestock grazing on
 3 the grazing allotment covered by
 4 the grazing permit or lease.

5 (ii) DONATION OF PORTION OF GRAZ-
 6 ING LEASE.—

7 (I) IN GENERAL.—If a person
 8 holding a valid grazing permit or lease
 9 donates less than the full amount of
 10 grazing use authorized under the per-
 11 mit or lease, the Secretary concerned
 12 shall—

13 (aa) reduce the authorized
 14 grazing level to reflect the dona-
 15 tion; and

16 (bb) modify the permit or
 17 lease to reflect the revised level of
 18 use.

19 (II) AUTHORIZED LEVEL.—To
 20 ensure that there is a permanent re-
 21 duction in the authorized level of
 22 grazing on the land covered by a per-
 23 mit or lease donated under subclause
 24 (I), the Secretary concerned shall not
 25 allow grazing use to exceed the au-

1 thorized level established under that
2 subclause.

3 (iii) COMMON ALLOTMENTS.—

4 (I) IN GENERAL.—If a grazing
5 allotment covered by a grazing permit
6 or lease or portion of a grazing permit
7 or lease that is donated under clause
8 (i) or (ii) also is covered by another
9 grazing permit or lease that is not do-
10 nated, the Secretary concerned shall
11 reduce the grazing level on the graz-
12 ing allotment to reflect the donation.

13 (II) AUTHORIZED LEVEL.—To
14 ensure that there is a permanent re-
15 duction in the level of livestock graz-
16 ing on the land covered by a grazing
17 permit or lease or portion of a grazing
18 permit or lease donated under clause
19 (i) or (ii), the Secretary concerned
20 shall not allow grazing to exceed the
21 level established under subclause (I).

22 (7) VEGETATION MANAGEMENT.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), vegetation management within a
25 Tribal cultural area may be permitted—

1 (i) if necessary to protect, maintain,
 2 or enhance a Tribal cultural area (includ-
 3 ing the enhancement of traditional food or
 4 material gathering); and

5 (ii) for restoration purposes.

6 (B) REQUIREMENT.—Vegetation manage-
 7 ment permitted under subparagraph (A) shall
 8 be—

9 (i) subject to—

10 (I) such reasonable regulations,
 11 policies, and practices as the Sec-
 12 retary concerned determines nec-
 13 essary; and

14 (II) applicable law (including reg-
 15 ulations); and

16 (ii) in a manner consistent with the
 17 purposes described in subsection (b).

18 (e) VALID EXISTING RIGHTS.—The designation of a
 19 Tribal cultural area shall be subject to valid existing
 20 rights.

21 (f) WITHDRAWAL.—Subject to valid existing rights,
 22 all public land within a Tribal cultural area, and all land
 23 and interests in land acquired by the United States within
 24 a Tribal cultural area, shall be withdrawn from—

1 (1) all forms of entry, appropriation, or disposal
2 under the public land laws;

3 (2) location, entry, and patent under the mining
4 laws; and

5 (3) operation of the mineral leasing, mineral
6 materials, and geothermal leasing laws.

7 (g) TRIBAL CULTURAL AND RELIGIOUS USES.—

8 (1) IN GENERAL.—Nothing in this Act dimin-
9 ishes any Tribal rights regarding access to public
10 land for Tribal activities, including spiritual, cul-
11 tural, medicinal, and traditional food gathering ac-
12 tivities.

13 (2) TRIBAL USES AND INTERESTS.—

14 (A) ACCESS AND USE.—In accordance with
15 applicable law, and subject to section 10(d)(3),
16 the Secretary concerned shall ensure access to
17 a Tribal cultural area by members of an inter-
18 ested Indian Tribe for traditional cultural and
19 religious purposes.

20 (B) TEMPORARY CLOSURE.—

21 (i) IN GENERAL.—In carrying out
22 subparagraph (A), the Secretary con-
23 cerned, in consultation with the applicable
24 Tribal commission, on request of an Indian
25 Tribe or applicable Tribal commission, may

1 temporarily close to the general public the
2 use of 1 or more specific portions of a
3 Tribal cultural area to protect the privacy
4 of cultural, religious, and food and medic-
5 inal and materials gathering activities by
6 members of the Indian Tribe.

7 (ii) REQUIREMENTS.—

8 (I) IN GENERAL.—Any closure
9 under clause (i) shall be made so as
10 to affect the smallest practicable area
11 for the minimum period of time nec-
12 essary.

13 (II) ACCESS.—Access by mem-
14 bers of an Indian Tribe to a portion
15 of a Tribal cultural area closed under
16 clause (i) shall be consistent with the
17 purpose and intent of Public Law 95–
18 341 (commonly known as the “Amer-
19 ican Indian Religious Freedom Act”)
20 (42 U.S.C. 1996 et seq.) and other
21 applicable law.

22 (h) FEDERALLY SECURED RIGHTS; INDIAN LAND.—

23 (1) FEDERALLY SECURED RIGHTS.—Nothing in
24 this Act alters, modifies, enlarges, diminishes, or ab-
25 rogates rights secured by treaty, statute, Executive

1 order, or other Federal law of any Indian Tribe, in-
2 cluding off-reservation reserved rights.

3 (2) INDIAN LAND.—Nothing in this Act affects
4 any Indian land.

5 (i) LAW ENFORCEMENT.—

6 (1) IN GENERAL.—The Secretary concerned, in
7 coordination with the applicable Tribal commission,
8 shall ensure adequate law enforcement presence with
9 respect to law enforcement matters under the juris-
10 diction of the Secretary concerned to maintain the
11 integrity of a Tribal cultural area.

12 (2) NO EFFECT ON JURISDICTION.—Nothing in
13 this Act limits or otherwise affects the civil or crimi-
14 nal regulatory jurisdiction, including law enforce-
15 ment, for issues under the jurisdiction of an Indian
16 Tribe.

17 **SEC. 6. TRIBAL COMMISSION.**

18 (a) IN GENERAL.—To ensure that the management
19 of a Tribal cultural area reflects the expertise and tradi-
20 tional, cultural, ecological, and historical knowledge and
21 Native knowledge of members of interested Indian Tribes,
22 not later than 180 days after the date on which the Tribal
23 cultural area is designated for inclusion in the System, the
24 Secretary concerned shall establish for the Tribal cultural
25 area a Tribal commission.

1 (b) DUTIES.—Each Tribal commission shall provide
2 guidance and recommendations on the development and
3 implementation of the management plan for, and policies
4 of, the applicable Tribal cultural area.

5 (c) MEMBERSHIP.—

6 (1) COMPOSITION.—Each Tribal commission
7 shall consist of the representatives designated by
8 each interested Indian Tribe with a historical asso-
9 ciation with the land within the boundaries of the
10 Tribal cultural area for which the Tribal commission
11 is established (with a maximum of 1 representative
12 per interested Indian Tribe).

13 (2) PROCESS.—The Secretary concerned shall
14 conduct government-to-government consultation with
15 each interested Indian Tribe with a historical asso-
16 ciation with the land within the boundaries of the
17 Tribal cultural area for which the Tribal commission
18 is established to determine whether the interested
19 Indian Tribe may designate a representative to be a
20 member of the Tribal commission under paragraph
21 (1).

22 (d) EXEMPTION.—The Federal Advisory Committee
23 Act (5 U.S.C. App.) shall not apply to any Tribal commis-
24 sion.

1 **SEC. 7. SELF-DETERMINATION CONTRACTS.**

2 (a) IN GENERAL.—The Secretary concerned may
3 contract with 1 or more Indian Tribes or Tribal organiza-
4 tions to perform administrative or management functions
5 within a Tribal cultural area through contracts entered
6 into under the Indian Self-Determination and Education
7 Assistance Act (25 U.S.C. 5301 et seq.).

8 (b) TRIBAL ASSISTANCE.—The Secretary concerned
9 may provide technical and financial assistance to an In-
10 dian Tribe in accordance with section 103 of the Indian
11 Self-Determination and Education Assistance Act (25
12 U.S.C. 5322) to improve the capacity of the Indian Tribe
13 to develop, enter into, and carry out activities under a con-
14 tract under subsection (a).

15 **SEC. 8. AGENCY RECOMMENDATIONS.**

16 (a) INITIAL AGENCY RECOMMENDATIONS.—Not later
17 than 3 years after the date of enactment of this Act, the
18 Secretary concerned, in consultation with interested In-
19 dian Tribes, shall—

20 (1) establish criteria for recommending Tribal
21 cultural sites for designation as Tribal cultural areas
22 for inclusion in the System, using the factors de-
23 scribed in subsection (b);

24 (2) solicit recommendations for Tribal cultural
25 sites on land under the jurisdiction of the Secretary

1 concerned to be designated as Tribal cultural areas
2 for inclusion in the System from—

3 (A) any interested Indian Tribe;

4 (B) any applicable State Historic Preserva-
5 tion Officer; and

6 (C) any applicable Tribal Historic Preser-
7 vation Officer;

8 (3) review designations in local land manage-
9 ment plans to identify Tribal cultural sites that meet
10 the criteria established by the Secretary concerned
11 under paragraph (1);

12 (4) consider any other relevant information, in-
13 cluding oral histories, traditional knowledge, Native
14 knowledge, and traditional ecological knowledge, re-
15 garding Tribal cultural sites on public land that may
16 qualify for designation as a Tribal cultural area;

17 (5) consider and evaluate Tribal cultural sites,
18 including Tribal cultural sites identified under para-
19 graphs (2) through (4), for designation as a Tribal
20 cultural area for inclusion in the System; and

21 (6) make recommendations to Congress regard-
22 ing Tribal cultural sites that the Secretary con-
23 cerned determines should be designated as Tribal
24 cultural areas for inclusion in the System.

1 (b) FACTORS.—The factors that the Secretary con-
2 cerned shall consider in establishing criteria for recom-
3 mending a Tribal cultural site for designation as a Tribal
4 cultural area for inclusion in the System under subsection
5 (a)(1) shall include—

6 (1) the importance of the potential Tribal cul-
7 tural area to an Indian Tribe or members of an In-
8 dian Tribe for traditional cultural activities, includ-
9 ing praying, conducting ceremonies, visiting burial
10 sites, gathering plants, and undertaking other tradi-
11 tional cultural activities;

12 (2) the past or present cultural, traditional, and
13 historical affiliations of an Indian Tribe to the po-
14 tential Tribal cultural area;

15 (3) the existence of rights secured by treaty,
16 statute, Executive order, or other Federal law; and

17 (4) recommendations made by 1 or more Indian
18 Tribes.

19 (c) ONGOING AGENCY RECOMMENDATIONS.—As a
20 part of any update or revision of a local land management
21 plan, the Secretary concerned shall identify, evaluate, and
22 make recommendations regarding any Tribal cultural sites
23 on land covered by the local land management plan that
24 would be suitable for designation as Tribal cultural areas
25 for inclusion in the System.

1 (d) ADDITIONAL AREAS.—

2 (1) IN GENERAL.—One or more interested In-
3 dian Tribes may submit to the Secretary concerned
4 a petition to recommend the designation of a Tribal
5 cultural area for inclusion in the System.

6 (2) CONTENTS.—A petition under paragraph
7 (1) shall contain—

8 (A) a description of the cultural signifi-
9 cance and history of the proposed Tribal cul-
10 tural area;

11 (B) a map showing specific boundaries of
12 the proposed Tribal cultural area; and

13 (C) a list of interested Indian Tribes that
14 possess cultural, religious, historic, or
15 precontact connections to the proposed Tribal
16 cultural area.

17 (3) APPROVAL PROCESS.—

18 (A) IN GENERAL.—Not later than 18
19 months after the date on which a petition is
20 submitted under paragraph (1), the Secretary
21 concerned shall approve or deny the petition.

22 (B) FAILURE TO MEET DEADLINE.—

23 (i) IN GENERAL.—Subject to clause

24 (ii), if the Secretary concerned does not
25 approve or deny a petition submitted under

paragraph (1) by the deadline described in subparagraph (A), the petition shall be considered to have been denied by the Secretary concerned.

(ii) EXTENSION.—The Secretary concerned and the 1 or more Indian Tribes that submitted the petition may mutually agree to extend the deadline for responding to the petition under subparagraph (A).

(C) APPROVAL.—

(i) IN GENERAL.—The Secretary concerned shall approve a petition submitted under paragraph (1) unless the Secretary concerned determines that—

(I) the proposed Tribal cultural area does not meet the criteria established under subsection (a)(1); or

(II) approving the petition—

(aa) would violate Federal law; or

(bb) is not in the public interest.

(ii) RECOMMENDATIONS.—On approval of a petition submitted under paragraph (1), the Secretary concerned shall—

1 (I) recommend that Congress
 2 designate the proposed Tribal cultural
 3 area for inclusion in the System; and
 4 (II) manage the proposed Tribal
 5 cultural area in accordance with sub-
 6 section (e).

7 (D) DENIAL.—Not later than 60 days
 8 after the date on which the Secretary con-
 9 cerned, as applicable, denies a petition sub-
 10 mitted under paragraph (1) or fails to meet the
 11 applicable deadline described in subparagraph
 12 (B), the Secretary concerned shall provide to
 13 the 1 or more interested Indian Tribes that
 14 submitted the petition—

15 (i) a written response detailing the
 16 reasons why the Secretary concerned de-
 17 nied the petition; and

18 (ii) an opportunity to correct any defi-
 19 ciencies in the petition.

20 (e) MANAGEMENT OF RECOMMENDED AREAS.—

21 (1) IN GENERAL.—Until Congress determines
 22 otherwise, the Secretary concerned shall—

23 (A) manage each recommended Tribal cul-
 24 tural area—

1 (i) in a manner so as to preserve the
2 Tribal cultural sites and cultural values of
3 the area; and

4 (ii) in accordance with—

5 (I) paragraphs (4) through (7) of
6 section 5(d); and

7 (II) subsections (g) through (i) of
8 section 5; and

9 (B) only allow such uses in the rec-
10 ommended Tribal cultural area as are con-
11 sistent with preserving Tribal cultural sites and
12 cultural values of the area, as determined by
13 the Secretary concerned after consultation with
14 interested Indian Tribes.

15 (2) WITHDRAWAL.—Subject to valid existing
16 rights, until Congress has determined otherwise, the
17 Secretary concerned shall withdraw all public land
18 within a recommended Tribal cultural area from—

19 (A) all forms of entry, appropriation, or
20 disposal under the public land laws;

21 (B) location, entry, and patent under the
22 mining laws; and

23 (C) operation of the mineral leasing, min-
24 eral materials, and geothermal leasing laws.

1 (3) CONSULTATION.—The Secretary concerned
 2 shall consult with interested Indian Tribes with an
 3 interest in a recommended Tribal cultural area not
 4 less frequently than twice each year to discuss—

5 (A) the protection and management of the
 6 recommended Tribal cultural area; and

7 (B) proposed new uses of the rec-
 8 ommended Tribal cultural area.

9 **SEC. 9. TRIBAL COORDINATION.**

10 (a) SELECTION.—

11 (1) IN GENERAL.—Not later than 180 days
 12 after the date on which a Tribal cultural area is des-
 13 ignated for inclusion in the System, the Secretary
 14 concerned, in consultation with the Director of the
 15 Bureau of Indian Affairs, shall identify 1 or more
 16 interested Indian Tribes with an interest in the
 17 management of the Tribal cultural area.

18 (2) INTERESTED INDIAN TRIBES.—An inter-
 19 ested Indian Tribe may petition the Secretary con-
 20 cerned to be identified as having an interest in the
 21 management of a Tribal cultural area under para-
 22 graph (1).

23 (b) CONSULTATION.—

24 (1) IN GENERAL.—The Secretary concerned
 25 shall consult with the applicable Tribal commission

1 not less frequently than twice each year, unless oth-
2 erwise mutually agreed, concerning the protection,
3 preservation, and management of the applicable
4 Tribal cultural area, including—

5 (A) any proposed new uses within the
6 Tribal cultural area; and

7 (B) any necessary management actions
8 within the Tribal cultural area.

9 (2) TRIBAL MANAGEMENT PROPOSALS.—The
10 Secretary concerned shall consider any proposals for
11 management actions within a Tribal cultural area
12 submitted by the applicable Tribal commission.

13 (3) CONSIDERATION.—If the Secretary con-
14 cerned determines that a proposed management ac-
15 tion submitted to the Secretary concerned under
16 paragraph (2) is impracticable, infeasible, or not in
17 the public interest, the Secretary concerned shall
18 consult with the applicable Tribal commission to de-
19 termine specific measures to modify, or otherwise
20 address, the proposed management action.

21 (4) WRITTEN EXPLANATION.—If, after con-
22 sultation under paragraph (3), the Secretary con-
23 cerned determines not to implement a proposed
24 management action submitted to the Secretary con-
25 cerned under paragraph (2), not later than 90 days

1 after making such a determination, the Secretary
2 concerned shall provide to the applicable Tribal com-
3 mission a written explanation of the reason for the
4 determination.

5 **SEC. 10. EFFECT.**

6 (a) ENVIRONMENTAL REQUIREMENTS.—

7 (1) DEFINITION OF FEDERAL ENVIRONMENTAL
8 LAW.—In this subsection, the term “Federal envi-
9 ronmental law” means—

10 (A) the Federal Water Pollution Control
11 Act (33 U.S.C. 1251 et seq.);

12 (B) the National Environmental Policy Act
13 of 1969 (42 U.S.C. 4321 et seq.); and

14 (C) any other applicable Federal environ-
15 mental law (including regulations).

16 (2) EFFECT.—Nothing in this Act alters or
17 abridges the application of any Federal environ-
18 mental law.

19 (3) ENVIRONMENTAL ANALYSES.—Nothing in
20 this Act authorizes the Secretary concerned, an In-
21 dian Tribe, or a Tribal organization to waive comple-
22 tion of any necessary environmental analysis under
23 applicable Federal environmental law.

24 (4) RETENTION OF NEPA RESPONSIBILITIES.—

25 The Secretary concerned shall make any decision re-

1 quired to be made under the National Environ-
 2 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 3 or other applicable Federal environmental law with
 4 respect to any activity to be carried out on public
 5 land under this Act.

6 (b) APPLICABILITY OF THE ADMINISTRATIVE PROCE-
 7 DURE ACT.—Nothing in this Act alters or abridges the
 8 application of subchapter II of chapter 5, or chapter 7,
 9 of title 5, United States Code (commonly known as the
 10 “Administrative Procedure Act”), to this Act.

11 (c) FISH AND WILDLIFE.—Nothing in this Act—

12 (1) alters or abridges the application of the En-
 13 dangered Species Act of 1973 (16 U.S.C. 1531 et
 14 seq.); or

15 (2) affects—

16 (A) the jurisdiction or responsibilities of a
 17 State with respect to fish or wildlife; or

18 (B) the jurisdiction of any Indian Tribe
 19 with respect to fish or wildlife.

20 (d) PUBLIC ACCESS.—Except as otherwise provided
 21 in this Act, nothing in this Act affects public access to
 22 land within a Tribal cultural area or a recommended Trib-
 23 al cultural area.

24 (e) WATER RIGHTS.—

25 (1) IN GENERAL.—Nothing in this Act—

1 (A) constitutes an express or implied res-
 2 ervation by the United States of water or water
 3 rights for any purpose; or

4 (B) modifies or otherwise affects any water
 5 rights existing on the date of enactment of this
 6 Act, including any water rights held by the
 7 United States.

8 (2) STATE WATER LAW.—The Secretary con-
 9 cerned shall follow the procedural and substantive
 10 requirements of the applicable State and Federal law
 11 to obtain and hold any water rights not in existence
 12 on the date of enactment of this Act with respect to
 13 any Tribal cultural area.

14 (f) SPECIAL MANAGEMENT AREAS.—

15 (1) DEFINITION OF PUBLIC LAND.—In this
 16 subsection, the term “public land” includes—

17 (A) a unit of the National Park System;

18 (B) a unit of the National Wildlife Refuge
 19 System;

20 (C) a component of the National Wilder-
 21 ness Preservation System;

22 (D) a designated wilderness study area or
 23 other area managed for wilderness characteris-
 24 tics;

25 (E) a National Conservation Area;

- 1 (F) a National Monument;
- 2 (G) a National Volcanic Monument;
- 3 (H) a National Recreation Area;
- 4 (I) a National Scenic Area;
- 5 (J) an inventoried roadless area within the
- 6 National Forest System;
- 7 (K) a component of the National Wild and
- 8 Scenic Rivers System; and
- 9 (L) any other area identified as National
- 10 Conservation Lands.

11 (2) EFFECT.—The designation of a Tribal cul-
 12 tural area for inclusion in the System shall not di-
 13 minish the protections granted to, or the manage-
 14 ment status of, any public land or any portion of
 15 public land.

16 (3) CONFLICT OF LAWS.—If there is a conflict
 17 between the laws (including regulations) applicable
 18 to an area described in paragraph (1) and this Act,
 19 the more restrictive provision shall control.

20 (g) NONDISCLOSURE.—

21 (1) IN GENERAL.—The Secretary concerned
 22 shall not disclose to the public information regarding
 23 the nature or location of any sacred site if the Sec-
 24 retary concerned determines, in consultation with

1 any interested Indian Tribe, that such a disclosure
2 may—

3 (A) risk harm to the cultural resources of
4 the sacred site;

5 (B) cause a significant invasion of privacy;
6 or

7 (C) impede the use of the sacred site for
8 traditional cultural activities by an Indian Tribe
9 or members of an Indian Tribe.

10 (2) FREEDOM OF INFORMATION ACT APPLICA-
11 BILITY.—

12 (A) IN GENERAL.—Information described
13 in paragraph (1) shall be exempt from disclo-
14 sure under section 552 of title 5, United States
15 Code.

16 (B) APPLICABILITY.—For purposes of sub-
17 paragraph (A), this subsection shall be consid-
18 ered a statute described in section 552(b)(3)(B)
19 of title 5, United States Code.

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