

**MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY
COORDINATION AND COLLABORATION FOR THE PROTECTION OF TRIBAL
TREATY RIGHTS AND RESERVED RIGHTS**

among the

Advisory Council on Historic Preservation,
U.S. Department of Agriculture,
U.S. Department of Commerce,
U.S. Department of Defense,
U.S. Department of Education,
U.S. Department of Energy,
U.S. Department of Homeland Security,
U.S. Department of Housing and Urban Development,
U.S. Department of the Interior,
U.S. Department of Justice,
U.S. Department of Labor,
U.S. Department of State,
U.S. Department of Transportation,
U.S. Department of Veterans Affairs,
U.S. Environmental Protection Agency,
U.S. Office of Personnel Management,
White House Council on Environmental Quality

I. Purpose and Principles

The signatory agencies (Parties) enter into this Memorandum of Understanding (MOU) to affirm our commitment to protect tribal treaty rights, reserved rights and similar tribal rights to natural and cultural resources. The Parties intend to demonstrate that commitment through early consideration of treaty and reserved rights in agency decision-making and regulatory processes. The Parties intend to enhance interagency coordination and collaboration to protect such treaty and reserved rights and to fully implement federal government treaty obligations.

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Treaty-protected rights to use of and access to natural and cultural resources are an intrinsic part of tribal life and are of deep cultural, economic, and subsistence importance to tribes. Many treaties protect not only the right to access natural resources, such as fisheries, but also protect the resource itself from significant degradation. Under the U.S. Constitution, treaties are part of the supreme law of the land, with the same legal force and effect as federal statutes. Pursuant to this principle, and its trust relationship with federally recognized tribes, the United States has an obligation to honor the rights reserved through treaties, including rights to both on and, where applicable, off-reservation resources, and to ensure that its actions are consistent with those rights and their attendant protections. Accordingly, the Parties recognize the need to consider and account for the effects of their actions on the habitats that support treaty-protected rights, including how those habitats will be impacted by climate change.

Tribes, Alaskan Natives and Native Hawaiians that do not have formal treaties may also have rights that should be considered in federal decision-making and regulatory processes addressed by Parties under the framework of this MOU.

II. Background

From 1778 to 1871, the United States' relations with American Indian tribes were defined and conducted largely through treaty-making. Through these treaties, Indian tribes ceded land and other natural and cultural resources to the United States, while retaining all rights not expressly granted. The United States Supreme Court has affirmed this principle of reserved rights, explaining that treaties are "not a grant of rights to the Indians, but a grant of rights from them, a reservation of those not granted." *United States v. Winans*, 198 U.S. 371, 381 (1905). Many of these treaties guaranteed the signatory tribes a unique set of rights both on and, where applicable, off reservation, including rights to health care, education and rights reserved by tribes relating to natural resources, such as the right to hunt, fish, and gather on land ceded by tribes and on reservation land retained by tribes.

The Supreme Court has explained that Indian treaties are to be interpreted liberally in favor of tribes, giving effect to the treaty terms as tribes would have understood them, with ambiguous provisions interpreted for their benefit. Treaties are to be interpreted in accordance with the federal Indian canons of construction, a set of longstanding principles developed by courts to guide the interpretation of treaties between the U.S. government and Indian tribes. This means that federal agencies must give effect to treaty language and ensure that federal agency actions do not conflict with tribal treaty and reserved rights.

Integrating consideration of tribal treaty and reserved rights into agency decision-making and regulatory processes is consistent with the federal government's trust responsibility to federally recognized tribes and to fundamental principles of good government. Treaties themselves are the source of legal authority to ensure that agency processes account for reserved treaty rights.

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The Parties also recognize that the United States has affirmed the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP). While not legally binding, the UN DRIP affirms the responsibility of the Parties to recognize, respect and consider tribal interpretations of their own treaty and reserved rights.

The Parties recognize that other sources of federal law may also protect treaty and reserved tribal rights relating to cultural and natural resources. The Parties intend to consider these other sources and rights as well, as part of the activities listed below.

III. Participating Agency Agreement

The Parties intend to work together to consult and coordinate with federally recognized Indian tribes, as appropriate, in developing and implementing the following actions:

1. Support the creation, integration, and use of a searchable and indexed database of all treaties between the United States government and tribal nations, to facilitate compliance with our treaty obligations and this MOU;
2. Continue and enhance the Parties' ongoing efforts to integrate consideration of tribal treaty and reserved rights early into Parties' decision-making and regulatory processes to ensure that agency actions are consistent with constitutional, treaty, reserved, and statutory rights;
3. Continue to develop, improve and share tools and resources to identify, understand, and analyze tribal treaty and reserved rights that may be adversely impacted or otherwise affected by agency decision-making, regulatory processes or other actions or inaction;
4. Strengthen its consultation policies to give clear guidance on the duties and responsibilities of the Parties to incorporate tribal treaty and reserved rights early in their decision-making process, to improve consultation and coordination with federally recognized tribes, and to provide a means of dispute resolution regarding tribal complaints of the sufficiency, timing and agency compliance with those consultation policy requirements;
5. Integrate consideration of tribal treaty and reserved rights into the Parties' ongoing work to address the climate crisis, including sharing data and information regarding how tribal treaty and reserved rights are affected by climate change;
6. Develop best practices and procedures to protect tribal treaty and reserved rights in federal decision-making and regulatory processes. Within one year of signing this MOU,

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each participating agency will provide to the Executive Director of the White House Council on Native American Affairs the practices and procedures it has implemented to meet this objective.

7. Establish a working group with members from each of the participating agencies. The purpose of the working group is to enhance interagency collaboration and coordination, address significant issues as they arise, and report annually on Party actions regarding tribal treaty and reserved rights. The working group intends to:
 - a. Meet monthly;
 - b. Include a sub-group of agency attorneys to provide legal support to the working group;
 - c. Facilitate interagency coordination on legal issues relating to tribal treaty rights;
 - d. Submit an initial report to the Executive Director of the White House Council on Native American Affairs within 180 days of the execution of this MOU. This Report will identify steps signatory agencies have taken to implement the original version of this MOU, signed in 2016.
 - e. Develop an annual combined report with information submitted by the Parties for Party leadership and the Executive Director of the White House Council on Native American Affairs. This annual combined report will highlight significant issues raised by representatives of Indian tribes, Indigenous organizations, and agency officials regarding the protection of treaty and reserved rights. The report will also highlight the best practices and procedures developed by Parties of the working group.

8. Train appropriate staff on how to recognize tribal treaty and reserved rights and ensure that these rights are considered early in Parties decision-making processes.

IV. General Provisions and Limitations

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual or fiscal obligations, and is not enforceable by any party. It does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any party, against the Parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the Parties.

All commitments made by the Parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the Parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the

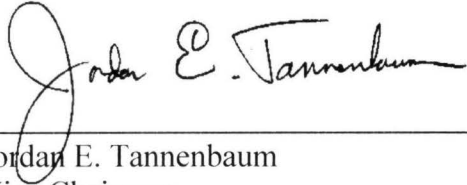
Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

V. Administrative Provisions

1. This MOU shall be executed as of the date of the last signature and shall remain in effect for ten (10) years unless terminated or otherwise extended through a modification of this MOU. This MOU may be extended or amended upon written request from any Party and the subsequent written concurrence of the others.
2. Any Party can opt out of this MOU by providing a 60-day written notice to the other signatories.
3. Other federal agencies may participate in this MOU at any time while the MOU is in effect. Participation will be evidenced by an agency official signature on the MOU.

VI. Signatures of the Parties of the MOU on Tribal Treaty Rights

See attachments.

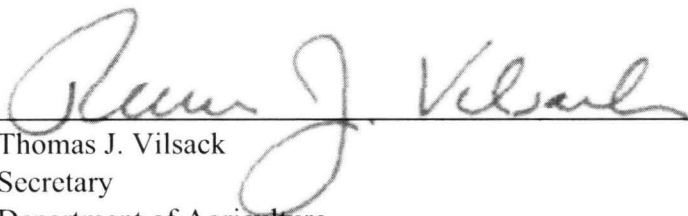


8/4/2021

Jordan E. Tannenbaum
Vice Chairman
Advisory Council on Historic Preservation

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AND RESERVED RIGHTS**

November 2021



Thomas J. Vilsack
Secretary
Department of Agriculture

Date

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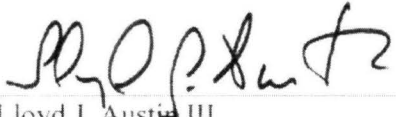


Gina M. Raimondo
Secretary
Department of Commerce

10/8/2021

Date

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND
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Lloyd J. Austin III
Secretary
U.S. Department of Defense

27 Oct 2021

Date

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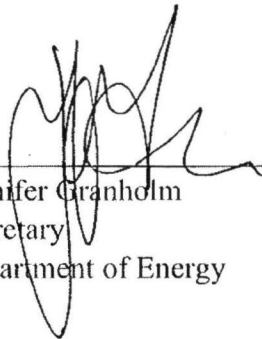


11/09/2021

Miguel A. Cardona, Ed.D.
Secretary
U.S. Department of Education

Date

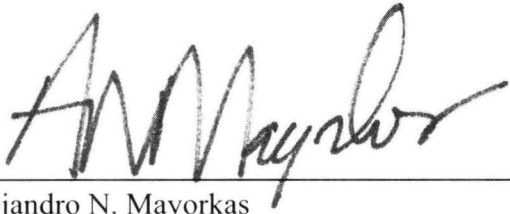
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Jennifer Granholm
Secretary
Department of Energy

11/8/21
Date

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND
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Alejandro N. Mayorkas
Secretary
Department of Homeland Security

10/31/2021

Date

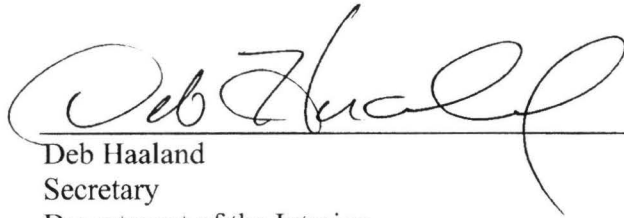
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Marcia L. Fudge

Marcia L. Fudge
Secretary
Department of Housing and Urban Development

9/28/2021

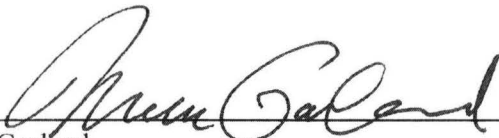
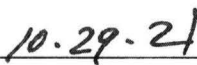
Date



Deb Haaland
Secretary
Department of the Interior

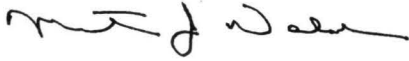
AUG 05 2021

Date

Merrick B. Garland
Attorney General
United States Department of Justice
Date

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND
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10/28/2021

Martin J. Walsh
Secretary
U.S. Department of Labor

Date

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Brian P. McKeon

10/28/2021

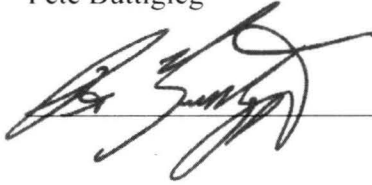
Brian P. McKeon
Deputy Secretary of State for Management and Resources
Department of State

Date

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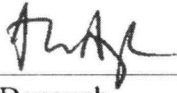
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Secretary, Department of Transportation
Pete Buttigieg

A handwritten signature in black ink, appearing to read "Pete Buttigieg", is written over a horizontal line that spans the width of the page.

Date: 10/29/2021

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND
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Denis McDonough
Secretary
Department of Veterans Affairs

11/9/21
Date

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Michael S. Regan
Administrator
U.S. Environmental Protection Agency

August 5, 2021

Date

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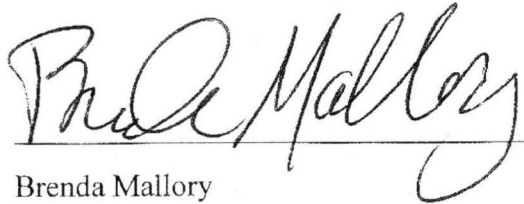
Kiran A. Ahuja

Kiran Ahuja
Director
Office of Personnel Management

10/16/2021

Date

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8/5/2021

Brenda Mallory
Chair
White House Council on Environmental Quality

Date