



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
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EMS TRANSMISSION 09/13/2022  
Permanent Instruction Memorandum No. 2022-011

To: BLM State Directors

From: Director, Bureau of Land Management  
Principal Deputy Director, Bureau of Land Management

Subject: Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes  
Pursuant to Secretary's Order 3403

**Program Area:** Stewardship.

**Purpose:** To provide direction for implementing provisions of [Joint Secretary's Order 3403](#) (SO 3403), Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters.

The Joint Order issued by the Secretary of Agriculture and the Secretary of the Interior (Secretaries) ensures that the Department of Agriculture and the Department of the Interior (Departments) and their component Bureaus and Offices are managing Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes including the Native Hawaiian Community; that such management is consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes; and, that such management fulfills the United States' unique trust obligation to federally recognized Indian Tribes and their citizens.

**Policy/Action:**

1. **General:** The BLM will adhere to the principles set forth in SO 3403 to engage Tribes in meaningful consultation at the earliest phases of planning and decision-making in order to provide an opportunity for Tribes to shape the direction of the BLM's land management activities. Upon request by a Tribe, the BLM will meet and consult regarding co-stewardship opportunities and evaluate proposals submitted by Tribes, including proposals to build both Tribal and Federal capacity to carry out the SO.

2. **Principles of co-stewardship:** Although BLM has substantial leeway to design co-stewardship arrangements, such arrangements must comply with governing law. The BLM should consult with the Office of the Solicitor on a case-by-case basis to ensure that any potential co-stewardship arrangement complies with all applicable laws. In general, all such arrangements should comply with the following:
  - a. First, BLM cannot cede to a Tribe any inherently Federal function or otherwise exceed BLM’s legal authority, which generally prohibits the BLM from ceding complete decision-making authority over Federal lands to a Tribe. If a proposed co-stewardship arrangement involves decision-making authority over Federal property, enforcement, or the rights of third parties, please consult the Office of the Solicitor.
  - b. Second, the BLM must also follow any limitations or conditions set forth in the statute authorizing the particular agreement. For example, both the Tribal Forest Protection Act (TFPA) and BLM’s Stewardship Contracting authority are limited to discrete “projects.”<sup>1</sup> Both statutes also limit the types of projects that can be carried out under their authority: for example, the TFPA applies only to projects located on Federal lands “bordering or adjacent to” Tribal lands or communities and intended “to protect” the Tribal lands or “to restore” the Federal lands,<sup>2</sup> while BLM’s Stewardship Contracting authority similarly enumerates the land management goals that can be pursued under the statute.<sup>3</sup>
3. **Co-stewardship at different levels of BLM decision-making:** Generally speaking, and subject to the conditions in paragraph 2 above, the BLM has substantial leeway to involve Tribes in its decision-making processes. The extent of the role that a Tribe can play in any given decision-making process depends on the breadth of the decision being made and on how closely the decision relates to the Tribe’s sovereign jurisdiction, interests, and citizens. In some circumstances, it is also acceptable to make a decision to approve an action contingent on the concurrence of a Tribe as long as there is a reasonable connection between the Tribe’s jurisdiction, interests, and citizens and the BLM’s decision. The following discussion illustrates how these general principles apply to different levels of BLM decision-making. The BLM has a broader set of options earlier in the process, starting with land use planning and continuing through implementation decisions, including execution of projects.
  - a. *Land use planning:* Section 202(c)(9) of FLPMA requires the BLM to “coordinate [its] land use . . . planning . . . activities . . . with the land use planning and management programs . . . of or for Indian tribes.”<sup>4</sup> One way to ensure such coordination is to use BLM’s cooperative agreement authority under Section 307(b)

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<sup>1</sup> See 25 U.S.C. 3115a(b)(1); 16 U.S.C. 6591c(b).

<sup>2</sup> See § 3115a(b)-(c); see also § 3115a(c), (e) (listing additional “criteria” and “evaluation and determination factors” to consider in determining whether to enter into an agreement).

<sup>3</sup> See § 6591c(c).

<sup>4</sup> See 43 U.S.C. 1712(c)(9).

of FLPMA to create structured opportunities for tribes to provide early and direct input into the BLM's land use planning process. Moreover, in addition to involving Tribes in the land use planning process itself, the BLM can also use land use plans to formalize its commitment to engage in co-stewardship arrangements for subsequent implementation decisions. For example, the BLM can incorporate Tribal priorities into the designation and management of resource management areas. The BLM can also commit in a land use plan to prioritize agency actions (such as habitat restoration projects) that are proposed by Tribes, and to make decisions related to such actions through co-stewardship arrangements. In particular, the BLM can identify co-stewardship arrangements of this kind as interventions that are needed to respond to site-specific resource concerns identified in the land use plan.<sup>5</sup>

- b. *Implementation decisions*: Tribes can participate in activity-level implementation decisions, which provide guidance for subsequent decisions within a particular resource or geographic area, and in project-specific implementation decisions, such as whether or not to undertake discrete projects. For example, a Tribe could formulate, propose, and execute habitat restoration projects in an area where the Tribe holds reserved treaty rights, with a limited role for BLM in developing the proposals, so long as the BLM retains the authority for approval over individual projects. In addition, project approvals may be made contingent on Tribal consent as long as there is a reasonable connection between the Tribe's jurisdiction and the BLM's decision (such as a nexus between the proposed action and the Tribe's off-reservation treaty rights). Tribes can also participate broadly in execution of previously approved actions or projects carrying out activities such as habitat restoration projects or wild horse and burro gathers that have already been approved.
4. **Identifying opportunities for co-stewardship**: BLM Offices will identify opportunities for co-stewardship as follows:
- a. The BLM will identify opportunities for co-stewardship as part of Tribal consultation and engagement during land use planning and implementation decisions, including for activity-level plans and projects.
  - b. The BLM will cooperate and coordinate in co-stewardship efforts and initiatives with other agencies and Departments.
  - c. Within 6 months of this IM, State Directors will create state-specific plans for outreach to identify co-stewardship opportunities, including identifying potential Tribal partners and sources of Indigenous Knowledge.

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<sup>5</sup> See generally Land Use Planning Handbook at 13 (discussing the use of “intervention[s]” to address “unsatisfactory resource conditions”).

- d. Within 6 months of this IM and periodically thereafter, the BLM, through the Assistant Directors for National Conservation Lands and Community Partnerships and Resources and Planning, along with the National Tribal Liaison Officer, will review and update existing policies and procedures, including consultation policies, to ensure compliance with SO 3403 and the provisions of this IM.
5. **Indigenous Knowledge:** The BLM will evaluate and incorporate Indigenous Knowledge in its analysis and decision-making, and will protect sensitive information provided by Tribes to the extent possible under Federal law, including by invoking relevant provisions of the National Historic Preservation Act, Archaeological Resources Protection Act, and other laws.
6. **Documentation of co-stewardship agreements:** All co-stewardship arrangements will be documented in writing, through documents prepared with assistance from the Office of the Solicitor to set out the parameters of the co-stewardship efforts and cooperation, and shall include appropriate dispute resolution procedures (as directed by SO 3403).
7. **Training:** The Assistant Director for National Conservation Lands and Community Partnerships, along with the National Tribal Liaison Officer, will develop training regarding co-stewardship, working with the Office of the Director and the National Training Center.
8. **Performance plans:** Consistent with the requirements of SO 3403, applicable Senior Executive Service performance plans, under Critical Element 4 Coalition Building, goals will include specific actions related to co-stewardship, including collaboration through agreements, training, and reporting requirements.
9. **Reporting:** To facilitate BLM's reporting under Section 1(e) of SO 3403, each State Office shall keep track of their actions under this IM and report its activities pursuant to this IM on a yearly basis, to be submitted to the Director at the end of each fiscal year. BLM Headquarters will use this information to prepare a combined report.

**Timeframe:** This IM is effective immediately.

**Budget Impact:** None

**Background:** BLM administers more surface land (245 million acres or one-tenth of America's land base) and more subsurface mineral estate (700 million acres) than any other government agency in the United States. These lands are the ancestral homelands of Indian and Alaska Native Tribes, and BLM respects the nation-to-nation relationship that exists with Indian and Alaska Native Tribes that is based on the U.S Constitution, treaties, statutes, and common law.

This Instruction Memorandum sets forth how the BLM will implement Secretary's Order 3403 that directs the Department and its bureaus to manage Federal lands and waters "in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Tribes." SO 3403 broadly requires that consultation and collaboration be included in "Federal

land management priorities and direction for recreation, range, timber, energy production and other uses, and conservation of wilderness, refuges, watersheds, wildlife habitat, and other values.” SO 3403 directs the BLM and other bureaus to undertake five specific actions, summarized as: (1) ensure that all decisions include consideration of how to safeguard the interests of Indian Tribes; (2) enter into co-stewardship agreements; (3) identify and support opportunities to consolidate Tribal homelands and empower Tribal stewardship; (4) perform a legal review of treaty responsibilities and authorities; and (5) issue a report on compliance with SO 3403. Section 3 sets forth eight principles of implementation that are incorporated by reference.

This Instruction Memorandum sets out specific policies and guidelines consistent with the BLM’s mission and applicable law. The BLM considers co-stewardship to refer to a broad range of working relationships with Indian and Alaska Native Tribes (as defined in 25 U.S.C. 5130(2)<sup>6</sup> to include all Tribes in Alaska), as well as Tribal consortia and Tribally-led entities exercising the delegated authority of federally recognized Tribes. The BLM does not currently manage any land in Hawai’i but should it do so in the future, this IM shall apply to the Native Hawaiian community with equal force, to the extent permitted by law.

Co-stewardship can include co-management, collaborative and cooperative management, and Tribally-led stewardship, and can be implemented through cooperative agreements, memoranda of understanding, self-governance agreements (including annual funding agreements), and other mechanisms, as discussed below. In accordance with Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the BLM maintains a government-to-government relationship with Indian and Alaska Native Tribes. Co-stewardship may arise out of and complement Tribal consultation, but consultation does not by itself constitute co-stewardship, and this IM does not alter or reduce the BLM’s obligations to engage in consultation under the National Historic Preservation Act or any other laws.

BLM recognizes the unique Federal relationship to Alaska Native Corporations, which are for-profit corporations established under the Alaska Native Claims Settlement Act of 1971 (ANCSA). BLM will continue to consult with ANCSA Corporations when taking action that might have a substantial and direct effect on an ANCSA Corporation’s interests. The requirement to consult with ANCSA Corporations is distinct from, and does not diminish, the nation-to-nation relationship and consultation obligations between BLM and Alaska Native Tribes. To the extent that concerns expressed by Alaska Native Tribes and ANCSA Corporations substantively differ, the BLM will give due consideration to the rights, sovereignty, and self-governance of Alaska Native Tribes. For purposes of this guidance, the following definitions are applicable:

- “Co-Stewardship” broadly refers to cooperative and collaborative engagements of Bureau land managers and Tribes related to shared interests in managing, conserving, and preserving natural and cultural resources under the primary responsibility of Federal land managers. Such cooperative and collaborative engagements can take a wide variety of forms based on the circumstances and applicable authorities in each case. Forms of co-stewardship may include, among other forms, sharing of technical expertise; combining Tribal and Bureau capabilities to improve resource management and advance the

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<sup>6</sup> The Secretary of the Interior is required to publish an annual list of federally recognized Tribes. *See* 25 U.S.C. 5131. The most recent list is available at 87 Fed. Reg. 4636 (Jan. 28, 2022).

responsibilities and interests of each; and making Tribal knowledge, experience, and perspectives integral to the public's experience of Federal lands.

- Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, skills, practices, and beliefs developed by Tribes and Indigenous Peoples over millennia through direct contact and experience with the environment. Indigenous Knowledge is based in moral and ethical foundations often grounded in the understanding that social, spiritual, cultural, and natural systems are intertwined and inseparable. Indigenous Knowledge is inherently heterogeneous due to the cultural, geographic, and socioeconomic differences from which it is derived. Indigenous Knowledge can apply to phenomena across biological, physical, social, cultural, and spiritual systems, and definitions and terminology may vary.
- “Co-Management” refers to co-stewardship activities undertaken pursuant to Federal authority allowing for the delegation of some aspect of Federal decision-making or that makes co-management otherwise legally necessary.

**Authorities:** In addition to the broad Authorities cited in Section 2 of SO 3403, the BLM has available to it a number of specific authorities and tools to support co-stewardship activities and provide funds to tribal partners where appropriate, which may be exercised through entering into agreements with Tribes. These tools are summarized below and discussed in further detail in Appendix 1 to this IM:

1. Section 307(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1737(b), provides authority to enter into contracts and cooperative agreements, which the BLM has relied upon to enter into co-stewardship agreements. The BLM can also use its authority under other provisions of FLPMA to issue easements, permits, leases, or rights-of-way in appropriate circumstances to facilitate Tribal activities on public lands.
2. The BLM's Good Neighbor authority, 16 U.S.C. 2113a, allows the BLM to enter into sole-source cooperative agreements and contracts with entities, including Tribes, to carry out forest, rangeland and watershed restoration services, generally excluding construction and repair work.
3. The BLM's Stewardship Contracting authority, 16 U.S.C. 6591c, allows the BLM to enter into provides for contracts and agreements with entities, including Tribes, to complete projects related to a wide set of land management goals, including restoring and improving habitat and watersheds.
4. Section 809 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3119, authorizes the Secretary to enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State of Alaska, Alaska Native Corporations, and other appropriate persons and organizations, to address management of subsistence uses.
5. The Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5301, et seq., as amended, requires the Department to enter into self-determination contracts and self-

governance compacts and funding agreements with Tribes and eligible Tribal Organizations to plan, conduct, and administer certain Federal programs, functions, services, or activities (PFSAs), or portions thereof, including construction programs, and PFSAs administered by the Department other than the Bureau of Indian Affairs. Such agreements may also include PFSAs that are of special geographic, historical, or cultural significance to the requesting Tribe.

6. The Tribal Forest Protection Act, 25 U.S.C. 3115a, authorizes the BLM to enter into agreements with Tribes to carry out projects to protect Indian forests and rangelands, including on adjacent public lands.
7. The Native American Tourism and Improving Visitor Experience Act, 25 US.C. 4351-4355, requires the BLM to support Native American tourism and enhance self-determination and self-governance capabilities.

**Manual/ Handbook Sections Affected:** None

**Instruction Memorandums Affected:** None

**Coordination:** HQ200 Resources and Planning Directorate, HQ400 National Conservation Lands and Community Partnerships Directorate, HQ600 Communications Directorate, and HQ700 Business Management and Administration Directorate.

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Signed by:  
Tracy Stone-Manning  
Director

Signed by:  
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Authenticated by:  
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1 Attachment

1 - Detailed Discussion of Authorities (4 pp)

## Detailed Discussion of Authorities

1. Section 307(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the BLM to “enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.”<sup>1</sup> BLM relied on section 307(b) of FLPMA to enter into an assistance agreement with the Pueblo de Cochiti for collaborative management of Kasha-Katuwe Tent Rocks National Monument in New Mexico.<sup>2</sup> This agreement carries out the direction in the monument’s establishing proclamation to “manage the monument . . . in close cooperation with the Pueblo de Cochiti.”<sup>3</sup> The BLM also relied on section 307(b) of FLPMA to enter into a cooperative agreement (alongside the U.S. Forest Service) with the five tribal nations represented on the Bears Ears Commission for cooperative management of Bears Ears National Monument.<sup>4</sup>
2. Section 501(a) of FLPMA allows BLM to issue rights-of-way (ROWs) for a variety of purposes.<sup>5</sup> While most of the enumerated purposes involve the transportation or transmission of people, goods, energy, or communications across public lands, the statute also includes a catch-all provision, which applies to “such other necessary . . . systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through [public] lands.”<sup>6</sup> Under some circumstances, tribal activities on public lands could qualify as, or require the development of, a “system[] or facilit[y]”; in such a case, a ROW under section 501(a) of FLPMA could be a vehicle for facilitating these activities.
3. Section 302(b) of FLPMA allows the BLM to “regulate, through easements, permits, leases, [or] licenses, . . . the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns.”<sup>7</sup> The BLM’s regulations interpret this provision as complementing section

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<sup>1</sup> 43 USC 1737(b); *see also* 1737(a) (authorizing the BLM to “conduct investigations, studies, and experiments, on [its] own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands”).

<sup>2</sup> *See* BLM Rio Puerco Field Office, Record of Decision for Kasha-Katuwe Tent Rocks National Monument Resource Management Plan at ROD-9 (approved May 25, 2007), [https://eplanning.blm.gov/public\\_projects/lup/73145/134985/165139/Rio\\_Puerco\\_Field\\_Office-Kasha\\_Katuwe\\_Tent\\_Rocks\\_RMP\\_ROD\\_CB.pdf](https://eplanning.blm.gov/public_projects/lup/73145/134985/165139/Rio_Puerco_Field_Office-Kasha_Katuwe_Tent_Rocks_RMP_ROD_CB.pdf) (describing the assistance agreement).

<sup>3</sup> Proclamation No. 7394, 66 Fed. Reg. 7343, 7344 (published Jan. 22, 2001).

<sup>4</sup> *See* BLM, U.S. Forest Service, Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation & Pueblo of Zuni, Inter-Governmental Cooperative Agreement for the Cooperative Management of the Federal Lands and Resources of the Bears Ears National Monument at 2 (effective June 18, 2022), <https://www.blm.gov/sites/default/files/docs/2022-06/BearsEarsNationalMonumentInter-GovernmentalAgreement2022.pdf>.

<sup>5</sup> 43 USC 1761(a).

<sup>6</sup> 43 USC 1761(a)(7); *accord* 43 CFR 2801.9(a)(7).

<sup>7</sup> 43 USC 1732(b).



501(a), providing that a lease, permit, or easement may be issued under section 302(b) for “[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law,” including “residential, agricultural, industrial, and commercial [uses], and uses that cannot be authorized under” section 501(a).<sup>8</sup> Specifically, “[l]eases shall be used to authorize uses of public lands involving substantial construction, development, or land improvement and the investment of large amounts of capital which are to be amortized over time,” while “[p]ermits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction, or investment, or investment which can be amortized within the term of the permit.”<sup>9</sup> Like ROWs under section 501(a), leases, permits, and easements under section 302(b) could in some circumstances be used to facilitate tribal activities on public lands – or, in the case of easements, to restrict activities on public lands that are incompatible with the tribes’ needs.

4. The BLM’s Good Neighbor authority allows the agency to enter into cooperative agreements or contracts with states, counties, Alaska Native Corporations, or Tribes to carry out “similar and complementary forest, rangeland, and watershed restoration services . . . on Federal land, non-Federal land, and land owned by an Indian tribe.”<sup>10</sup> Activities that can be included in a Good Neighbor agreement include “activities to treat insect- and disease-infected trees” or “reduce hazardous fuels,” or “any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat,” but generally exclude construction or repair of roads, parking areas, or public buildings or works.<sup>11</sup>
5. The BLM’s Stewardship Contracting authority allows the agency to enter, “via agreement or contract as appropriate, . . . into stewardship contracting projects with private persons or other public or private entities to perform services to achieve land management goals for . . . the public lands that meet local and rural community need.”<sup>12</sup> The land management goals that can be pursued under this authority include “[r]oad and trail maintenance or obliteration to restore or maintain water quality,” improving “[s]oil productivity, habitat for wildlife and fisheries, or other resource values,” “[s]etting of prescribed fires to improve the composition, structure, condition, and health of stands or to improve wildlife habitat,” “[r]emoving vegetation or other activities to promote healthy forest stands, reduce fire hazards, or achieve other land management objectives,” “[w]atershed restoration and maintenance,” “[r]estoration and maintenance of wildlife and fish,” and “[c]ontrol of noxious and exotic weeds and reestablishing native plant species.”<sup>13</sup>
6. Section 809 of the Alaska National Interest Lands Conservation Act (ANILCA) authorizes the Secretary to “enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, [Alaska] Native Corporations, other appropriate persons and

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<sup>8</sup> 43 CFR 2920.1-1.

<sup>9</sup> 43 CFR 2920.1-1(a)-(b).

<sup>10</sup> See 16 USC 2113a(a)(1), (a)(5), (a)(6), (a)(7), (b)(1) (A). <sup>11</sup> 16 USC 2113a(a)(4).

<sup>12</sup> 16 USC 6591c(b).

<sup>13</sup> 16 USC 6591c(c).

organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of” Title VIII of ANILCA.<sup>14</sup> Title VIII of ANILCA, in turn, addresses the management of subsistence use of federal lands in Alaska by rural residents.<sup>15</sup> The Department, on behalf of the BLM, the National Park Service, and the U.S. Fish and Wildlife Service, relied on Section 809 of ANILCA to enter into a memorandum of agreement with the Ahtna Intertribal Resource Commission, a body representing eight tribes and two Alaska Native Corporations based in the Ahtna region of Alaska.<sup>16</sup>

7. As part of the Indian Self-Determination and Education Assistance Act, as amended, the Tribal Self-Governance Act (TSGA) allows the BLM to enter into funding agreements with eligible tribes, Alaska Native Corporations, or tribal consortia that “authorize the tribe to plan, conduct, . . . and administer” certain federal programs.<sup>17</sup> Such funding agreements may include, alongside programs that specifically serve tribes and their members, “other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe.”<sup>18</sup> BLM’s use of this authority has been very limited to date, but can be expanded based on individual opportunities.
8. The Tribal Forest Protection Act (TFPA) authorizes the BLM to enter into agreements with tribes “to carry out . . . project[s] to protect Indian forest land or rangeland (including . . . project[s] to restore Federal land that borders on or is adjacent to Indian forest land or rangeland).”<sup>19</sup> The statute defines “Indian forest land or rangeland” as “land that . . . is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe,” and is “forest land . . . ; or . . . has a cover of grasses,

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<sup>14</sup> 16 USC 3119.

<sup>15</sup> See, e.g., 16 USC 3111(1) (declaring the congressional finding that “the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the [federal] lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence”).

<sup>16</sup> See *Memorandum of Agreement Between United States Department of the Interior and Ahtna Inter-Tribal Resource Commission for a Demonstration Project for Cooperative Management of Customary and Traditional Subsistence Uses in the Ahtna Region* at 2-3 (2016), [https://www.doi.gov/sites/doi.gov/files/uploads/ahtna\\_doi\\_moa\\_with\\_signature\\_pages\\_final.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/ahtna_doi_moa_with_signature_pages_final.pdf); see also *Who We Are*, Ahtna Intertribal Res. Comm’n, <https://www.ahtnatribal.org/about> (last visited July 18, 2022).

<sup>17</sup> 25 USC 5363(b)(2). The TSGA was enacted in 1994 as an amendment to the Indian Self-Determination and Education Assistance Act. See Indian Self-Determination Contract Reform Act of 1994, Pub. L. No. 103-413, 108 Stat. 4250.

<sup>18</sup> 5363(c); see also 25 CFR 1000.126 (defining “special geographic, historical or cultural [significance]”). While the TSGA generally allows tribes to “redesign or consolidate . . . or reallocate funds for programs” that specifically serve the tribes and their members, tribes can only redesign, consolidate, or reallocate funds for other-special-significance programs with the agreement of the Secretary. See 25 USC 5365(d).

<sup>19</sup> 25 USC 3115a(b)(1).

brush, or any similar vegetation; or . . . formerly had a forest cover or vegetative cover that is capable of restoration.”<sup>20</sup> Covered projects must meet certain criteria, including that the BLM-managed lands involved must “border[] on or [be] adjacent to” the Tribe’s trust lands; “pose[] a fire, disease, or other threat to” those trust lands or to “a tribal community,” or be “in need of land restoration activities”; and “present[] or involve[] a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).”<sup>21</sup> When a Tribe carries out a project under the TFPA, it may also “contract to perform administrative, management, and other functions” related to the project through a TSGA contract.<sup>22</sup>

9. The Native American Tourism and Improving Visitor Experience Act (NATIVE Act) is intended, among other purposes, to “increase coordination and collaboration between Federal tourism assets to support Native American tourism” and to “enhance and improve self-determination and self-governance capabilities in the Native American community.”<sup>23</sup> Although the act focuses on tourism planning, rather than on land management, several provisions could authorize the BLM to undertake projects that would reflect tribal priorities, and that could be carried out by tribes under the authorities discussed above.<sup>24</sup> In particular, the act’s provision requiring agencies to “support the efforts of Indian tribes . . . to identify and enhance or maintain traditions and cultural features that are important to sustain the distinctiveness of the local Native American community” could be read as a broad mandate for land managers to accommodate and support tribal cultural practices on federal lands.<sup>25</sup>

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<sup>20</sup> 25 USC 3115a(a)(2).

<sup>21</sup> 25 USC 3115a(c).

<sup>22</sup> 25 USC 3115b(a).

<sup>23</sup> 25 USC 4351(2), (4).

<sup>24</sup> These provisions direct federal agencies to incorporate into their plans proposals to “develop innovative visitor portals for parks, landmarks, heritage and cultural sites, and assets that showcase and respect the diversity of the indigenous peoples of the United States”; “share local Native American heritage through the development of bilingual interpretive and directional signage that could include or incorporate English and the local Native American language or languages”; “improve access to transportation programs related to Native American community capacity building for tourism and trade”; “take actions that help empower Indian tribes . . . to showcase the heritage, foods, traditions, history, and continuing vitality of Native American communities”; “support the efforts of Indian tribes . . . to identify and enhance or maintain traditions and cultural features that are important to sustain the distinctiveness of the local Native American community” and “provide visitor experiences that are authentic and respectful”; and “provide assistance to interpret the connections between the indigenous peoples of the United States and the national identity of the United States.” *See* 25 USC 4353(c)(1)(G)-(I), 4354(a).

<sup>25</sup> *See* 25 USC 4354(a)(2).