

§ 262.6

Indian landowners for the purpose of requesting the consent documents listed under paragraph (c) of this section or of seeking the consultation and consent required under paragraph (d) of this section may be obtained from the BIA office to which the permit application is submitted.

(f) Contractual agreements with the BIA or Indian tribes and permits issued by Indian tribes may be accepted as support documents for permit applications. They may also double as permit documents, if they demonstrate that the provisions for permit issuance in this part and at 43 CFR part 7 have been met and they are attached to a Department of the Interior permit form. This form must be signed by the Area Director, but need only contain the following or similar statement: "This permit is issued to the person(s) named, and in accordance with the terms and conditions in the attached (contractual agreement/tribal permit)."

(g) Area Directors shall respond to permit applications within 15 working days of receipt.

§ 262.6 Landowner consent by the Secretary.

The Secretary of the Interior, or delegate thereof, may, on behalf of the owner(s) of lands of Indian individuals, grant consent for the purposes in § 262.5(c)(1) and (3) when the Secretary or his or her delegate finds that such consent will not result in any injury to the land or owner(s) and when one or more of the following conditions exist:

(a) The owner is a minor or a person *non compos mentis*;

(b) The heirs or devisees of a deceased owner have not been determined;

(c) The whereabouts of the owner are unknown;

(d) Multiple owners are so numerous that the Secretary or his or her delegate finds, after documenting his or her efforts to do so, that it would be impractical to obtain their consent, as prescribed in § 262.5(c)(1)(iv) and provided the Secretary or his or her delegate also notifies, in writing, the tribe, if any, having jurisdiction over the land and allows 15 working days from the date of mailing date for response; or

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(e) The owner has given the Secretary or his or her delegate written authority to grant such consent on his or her behalf.

§ 262.7 Notice to Indian tribes of possible harm to cultural or religious sites.

When consent by an Indian tribe to proposed excavation or removal of archaeological resources from Indian lands it owns or over which it has jurisdiction contains all of the information written as prescribed and advised in § 262.5(c)(1), it may be taken to mean that subject to such terms and conditions as the tribe might specify, issuance of a permit for the proposed work will not result in harm to, or destruction of, any site of religious or cultural importance. No further notification is necessary, unless the Area Director has reason to believe that the proposed work might harm or destroy a site of religious or cultural importance to another tribe or Native American group. He or she shall then follow the notification procedures at 43 CFR 7.7. Those procedures must also be followed when proposed work might affect lands of Indian individuals over which there is no tribal jurisdiction or public lands owned or administered by the BIA.

§ 262.8 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from Indian lands, except for human remains of Indians, funerary objects, sacred objects and objects of cultural patrimony, remain the property of the Indian tribe or individual(s) having rights of ownership over such lands. Ownership and right of control over the disposition of the excepted items shall be in accordance with the order of priority provided in the Native American Graves Protection and Repatriation Act (Pub. L. 101-601), adapted for the purpose of this rule as follows:

(1) In the case of human remains of Indians and funerary objects, in the lineal descendants of the Indian; or

(2) In any case in which such lineal descendants cannot be ascertained, and in the case of sacred objects and objects of cultural patrimony:

(i) In the Indian tribe on whose tribal lands, or on the individual Indian lands of whose members, such remains or objects are discovered;

(ii) In the Indian tribe recognized as aboriginally occupying the public lands owned or administered by the BIA on which such remains or objects are discovered, if upon notice, that tribe states a claim for those remains or objects; or

(iii) Where it can be so demonstrated by a preponderance of evidence, in the tribe other than that in paragraph (a)(2)(i) or (ii) of this section having the strongest cultural relationship with such remains or objects, if, upon notice, that tribe states a claim for those remains or objects.

(iv) The Area Director shall provide the required notice to any Indian tribe identified under paragraph (a)(2)(ii) or (iii) of this section, in writing, within 5 working days after such identification has been documented and confirmed, and shall at the same time submit a copy of the notice for publication in the FEDERAL REGISTER. This notice shall include a description of the remains or objects; of where, how, and why they were excavated or removed; and of the evidence used to identify the tribe being notified. The remains or objects in question shall be considered the property of the pertinent tribe under paragraph (a)(2)(i) of this section or, in the case of paragraph (a)(2)(ii) of this section, held and administered by the BIA until or unless a claim is stated.

(b) No permit for the excavation or removal of archaeological resources on Indian lands may be issued without the written consent of the Indian landowner(s) either to grant custody of the resources recovered (other than human remains of Indians, funerary objects, sacred objects or objects of cultural patrimony) to a curatorial facility that meets the requirements of 36 CFR part 79 or to allow the permittee a reasonable period of time to hold or have ready access to them at an appropriate location for study. The excepted remains and objects are covered under § 262.5(d) of this part which, in general, permits their excavation or removal only when the research objectives and provisions for recovery, recording, and

analysis are scientifically appropriate. Written consent to custody by a curatorial facility may include terms and conditions regarding curation (e.g., cleaning, viewing, loaning, studying, etc.), provided these are consistent with 36 CFR part 79.

(1) On lands of Indian tribes, consent must be obtained from the tribe.

(2) On lands of Indian individuals, consent must be obtained from the owner of the land or the owners of a majority of interests therein, except as provided in § 262.6.

(3) Where consent is by the owners of a majority of interests, it must, if the archaeological resources are to be retained by or returned after study to the interest holders, designate a representative to receive those resources. Whether and how these are subsequently distributed among themselves is a matter for the interest holders to decide.

(c) The Area Director may, after notifying the tribe (if any) having jurisdiction over such lands and allowing 15 working days for response, decline to issue a permit for lands of Indian individuals if he or she has any verifiable reason to believe that archaeological resources retained by the landowner(s) after being studied will be sold or exchanged other than to the tribe having jurisdiction or to a curatorial facility that meets the requirements of 36 CFR part 79. The basis for decline shall be that excavation or removal of resources under such circumstances would not be in the public interest and would thus be contrary to the purposes of the Act.

(d) The landowner(s) alone may grant custody of archaeological resources (except for human remains, funerary objects, sacred objects and objects of cultural patrimony, which are subject to the provisions of paragraph (a) of this section) excavated or removed from lands of Indian individuals that are under tribal jurisdiction to a curatorial facility that meets the requirements of 36 CFR part 79. When, however, such consignment constitutes the ultimate disposition of these resources, the tribe having jurisdiction must also grant its consent. Any subsequent exchange or disposition by the facility

must have the consent of both the landowner(s) and the tribe.

PART 265—ESTABLISHMENT OF ROADLESS AND WILD AREAS ON INDIAN RESERVATIONS

Sec.

265.1 Definition of roadless area.

265.3 Roads prohibited.

CROSS REFERENCE: For general regulations pertaining to the construction of roads, see part 170 of this chapter.

§ 265.1 Definition of roadless area.

A roadless area has been defined as one which contains no provision for the passage of motorized transportation and which is at least 100,000 acres in extent. Under this definition the Secretary of the Interior ordered (3 FR 609, Mar. 22, 1938) certain roadless areas established on Indian reservations. The following is the only presently existing roadless area:

Name of area—Wind River Reserve.
Reservation—Shoshone.
State—Wyoming.
Approximate acreage—180,387

(a) The boundaries of the Wind River Reserve roadless area are as follows:

WIND RIVER MERIDIAN, WYO.

Starting at the SW corner of sec. 22, T. 2 S., R. 3 W., on the south boundary of the Wind River Indian Reservation, thence north six (6) miles to the NE corner of sec. 28, T. 1 S., R. 3 W., thence west three (3) miles to the SW corner of sec. 19, T. 1 S., R. 3 W., thence north four (4) miles along range line to the Wind River Base Line, thence west one (1) mile along Wind River Base Line to the SW corner of Sec. 36, T. 1 N., R. 4 W., thence north six (6) miles to the NW corner of sec. 1, T. 1 N., R. 4 W., thence west five (5) miles along township line to the NE corner of sec. 1, T. 1 N., R. 5 W., thence north four and one-half (4½) miles along range line to the NE corner of the SE ¼ of sec. 12, T. 2 N., R. 5 W., thence west one and one-half (1½) miles to the center of sec. 11, T. 2 N., R. 5 W., thence on a straight line in a northwesterly direc-

tion to the top of Bold Mountain, thence on a straight line to the SE corner of sec. 35, T. 4 N., R. 6 W., thence west one (1) mile along township line to the SW corner of sec. 35, T. 4 N., R. 6 W., thence north two (2) miles to the NW corner of sec. 26, T. 4 N., R. 6 W., thence on a straight line in a northwesterly direction to the point where the north line of sec. 15, T. 4 N., R. 6 W. intersects the west boundary of the reservation, thence south, southeasterly and east along the reservation boundary to point of beginning.

(5 U.S.C. 301)

[30 FR 9813, Aug. 6, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 265.3 Roads prohibited.

(a) Within the boundaries of this officially designated roadless area it will be the policy of the Interior Department to refuse consent to the construction or establishment of any routes passable to motor transportation, including in this restriction highways, roads, truck trails, work roads, and all other types of ways constructed to make possible the passage of motor vehicles either for transportation of people or for the hauling of supplies and equipment, unless the requirements of fire protection, commercial use for the Indians' benefit or actual needs of the Indians clearly demand otherwise.

(b) Foot trails and horse trails are not barred. The Superintendent of the Wind River Reservation on which this roadless area has been established will be held strictly accountable for seeing that the area is maintained in a roadless condition. Elimination of this area or any part thereof from the restriction of this order will be made only upon a written showing of an actual and controlling need.

(5 U.S.C. 301)

[30 FR 9814, Aug. 6, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

CROSS REFERENCE: For rights-of-way for highways over Indian lands, see part 169 of this chapter.