

September 25, 2002

The Honorable James V. Hansen
Chairman, House Committee on Resources
1324 Longworth Building
Washington, DC 20515

Dear Chairman Hansen:

As president of the Society for American Archaeology (SAA), I would like to submit the following remarks for the record of today 's Resources Committee hearing on the Native American Sacred Lands Act (H.R. 5155). The SAA strongly supports the protection of Native American sacred places, and has worked closely with Native Americans and Congress in the past to preserve and protect historically and religiously important places and wishes to continue to do so. However, we suggest that major revisions to this bill are needed to make it equitable. It is possible that many archaeological sites would be considered sacred places or would be included within sacred places; hence professional archaeologists have a strong interest in this legislation.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With nearly 7000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The SAA has members in all 50 states as well as many other nations around the world.

Previous legislation, including the 1966 National Historic Preservation Act (NHPA), the 1979 Archaeological Resources Protection Act (ARPA), the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) and Executive Order 13007 currently provide protection to Native American burials, sacred objects, and places, but they do so by seeking to achieve a balance between the concerns of Native Americans and those of other Americans. The proposed legislation does not contain that essential balance. In light of this, SAA has four major areas of concern.

Section 1 (4): As currently written, the definition of "sacred lands" could encompass vast tracts of land. It would be more desirable if this legislation used the existing definition of sacred sites contained in Executive Order 13007. Because many tribes consider the whole earth or their entire aboriginal territory to be a sacred landscape, it is necessary that this legislation focus on protecting the most important sacred places, those that are central to the practice of native religions. We urge the committee to write the definition in such a way that avoids the vagueness and ambiguity that would make it possible to declare almost any landscape as "sacred."

Section 3 (a): H.R. 5155 states that Federal lands shall be designated unsuitable for any or certain types of undertakings if, by a preponderance of the evidence, the undertaking is likely to cause significant damage to Indian sacred lands. The legislation needs to be specific about what is meant by "significant damage" in the context of a place's sacred character. For example, the current wording might be construed to include intangible damage. Because damage to the sacred qualities of a place is often intangible, land managers

need a clear definition in order to determine what constitutes significant damage. In the interests of equity, land managers must also have the authority to reasonably weigh the harm caused by any damage against the benefits of other valid uses of public land.

Section 3 (b): The legislation needs to be more specific about the method for determining sacred places. In section 3 (b) (2), the only supporting evidence mentioned is oral history, which, rightfully, is an important source of information. However, other evidentiary sources should be spelled out; these could include documentary sources (published and archival, historical and ethnological) and archaeology. The character of evidence should also be spelled out, e.g., there is a difference between evidence of specific activities (e.g., ceremonies) or associations and that of general attitudes or feelings. In addition, the method for determining who is authorized to speak for a tribe should be delineated. Determination of the preponderance of the evidence should include an objective evaluation of all information pertaining to the case.

Section 4: Although it is clear that information held by the tribe can rightfully be kept confidential if the tribe so wishes, it should be made clear that information gathered by archaeologists, anthropologists, or others in the process should still be available for educational and scholarly purposes.

I appreciate this opportunity to present SAA's views.

Sincerely,

Robert L. Kelly
President