

Report on U.S. Army Implementation of Executive Order 13007, "Sacred Sites"

This report is submitted in accordance with Section 2(b) of Executive Order 13007, "Sacred Sites," dated May 24, 1996. The following points shall be addressed:

- (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;
- (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and
- (iii) procedures implemented or proposed to facilitate:
 - (a) consultation with appropriate Indian tribes and religious leaders
 - (b) the expeditious resolution of disputes relating to agency action on federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Introduction

Army-Indian relations have improved significantly in recent years as the Army has attempted through changes in policy, increased sensitivity to environmental issues, and active public outreach, to address issues of concern to Native Americans, Alaska Natives, and Native Hawaiians. These efforts to accommodate the concerns of native peoples were, until recently, apt to vary significantly by installation and major Army command. However, in response to recent Executive and Legislative mandates, the Army has become pro-active in its efforts to shape a uniform approach to address tribal concerns. Proposed new Army regulations will require installation commanders to establish on-going relationships with tribes on a government-to-government basis and to afford them an opportunity to comment and consult at the earliest practicable time in the planning and execution of Army undertakings.

Changes Necessary to Accommodate Access to and Ceremonial Use of Indian Sacred Sites

Prior to May 24, 1996, Army Regulation (AR) 420-40, "Historic Preservation," (15 April 1984), prescribed Army policy, procedure, and responsibilities for complying with the National Historic Preservation Act (NHPA) of 1966, as amended, and other cultural resources statutes enacted prior to 1984. Native American concerns were addressed in this regulation to the extent that historic properties, including traditional cultural properties which may include sacred sites, were addressed in the NHPA.

In response to Executive Order 13007, the Presidential Memorandum on Government to Government Relations with Native American Tribal Governments, and certain statutes such as the American Indian Religious Freedom Act of 1978 which established mandates that had not been addressed in AR 420-40, the Army drafted Army Regulation 200-4, Cultural Resource Management, which is scheduled for

publication in CY 1997. AR 200-4, Section 2-4, AIRFA and EO 13007 Indian Sacred Sites, states the following:

a. Installation Commanders will develop and implement procedures to protect and preserve the American Indian, Eskimo, Aleut, and Native Hawaiian's right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to sacred sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites. Installation commanders shall also establish procedures to facilitate consultation with federally-recognized Indian tribes and Native Hawaiian organizations, as appropriate.

b. Installation commanders shall consult with Indian tribes and Native Hawaiians to identify sacred sites that are necessary to the exercise of traditional religions and shall provide access to Army installations for the practice of traditional religions, rights, and ceremonies. The installation commander shall maintain the confidentiality of sacred site locations. Installation commanders may impose reasonable terms, conditions and restrictions upon access to such sites when the commander deems it necessary for the protection of personal health and safety, or to avoid interference with the military mission, or for other reasons of national security.

It should be noted that certain Army installations have routinely accommodated Indian access to sacred sites in compliance with the American Indian Religious Freedom Act of 1978, and have actively endeavored to consider tribal concerns in the execution of their missions.

A wide range of ceremonial activities is accommodated at sacred sites located on Army installations, from individual prayers to reburials of ancestral remains to rituals involving dozens or even hundreds of participants. For example, at Fort Sill, Native American servicemen conduct an annual sweatlodge ceremony at Medicine Bluffs, a prominent landform long held sacred by Plains Indian tribes. At Fort Hood, the Leon River Medicine Wheel site is used for individual prayers, periodic rituals, and as a reburial site for Native American human remains found on the installation.

Changes Necessary to Avoid Adversely Affecting the Physical Integrity of Indian Sacred Sites

Protection of Indian sacred sites is addressed in Army Regulation 200-4, Section 2-4, as follows:

c. Installation Commanders will avoid adversely affecting the physical integrity of sacred sites and shall establish procedures to ensure reasonable notice is provided to federally recognized Indian tribes and Native Hawaiian organizations when proposed actions or land management policies and practices may restrict future access to, ceremonial use of, or adversely affect the physical integrity of sacred sites. If a sacred site will be affected by installation land management policies or practices, the

installation commander shall also ensure that the compliance requirements of the NHPA are met if the sacred site meets the NHPA definition of an historic property.

Most Army installations that have been involved in sacred sites consultation have taken steps to protect the physical integrity of known sacred sites. The standard practice at Forts Hood and Lewis has been to follow the guidance of National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," treating known sacred sites as historic properties that are eligible for listing on the National Register of Historic Places (NRHP). Where this has been the practice, the sites are already protected from adverse effects under provisions of the NHPA, the Archeological Resources Protection Act (ARPA), and other federal laws. At Fort McCoy, tribal representatives have participated in NHPA Section 106 review for every planned undertaking, providing an opportunity to revise the undertaking to avoid sacred sites. At Fort Sill, the sacred sites are well-known and are considered in the initial stages of the planning process.

Physical protection of sacred site integrity at Army installations ranges from site fencing to the prohibition or close monitoring of certain activities within the site vicinity. Some installations, particularly Forts Hood and Huachuca, have already fenced sites to prevent vandalism, desecration, and inadvertent impacts.

Procedures Implemented or Proposed to Facilitate Consultation with Appropriate American Indian Tribes and Religious Leaders

Army Regulation 200-4, Section 2-8, Memorandum for Heads of Executive Departments and Agencies dated April 29, 1994: Government to Government Relations with Native American Tribal Governments, states the following:

a. This memorandum requires that consultation between the Army and federally recognized Indian tribes occur on a government-to-government basis

b. Designated representatives of federally recognized Indian tribal governments shall be treated by installation commanders as the representative of a government.

c. Consultation with federally recognized Indian tribes on a government-to-government basis occurs formally and directly between installation commanders and heads of federally recognized tribal governments. Installation and tribal staff-to-staff communications do not constitute formal government-to-government consultation but are normally necessary prerequisites to formal consultation.

The Army has been actively developing a program to improve relations between its installations and Native American tribes, Alaska Native groups, and Native Hawaiian organizations, that have an interest in cultural resources on Army land. In March 1996, the U.S. Army Environmental Center hosted the Lessons Learned Workshop at Fort Sill, Oklahoma, bringing together 73 representatives from Native American tribes, Native

Hawaiian organizations, the U.S. Army, the National Guard, and the Bureau of Indian Affairs, to discuss consultation issues, learn more about each other's governmental structures, and comment on the Army's draft consultation guidelines. A second workshop is scheduled for May 1997 to address, among other topics, the issues of access to sacred sites and identification of traditional cultural properties.

The Army has drafted a document titled "Guidelines for Consultation With Native Americans," which will be incorporated into Department of the Army (DA) Pamphlet 200-4, Cultural Resources Management, which supplements and provides guidance for the implementation and execution of AR 200-4. This document is scheduled for publication during CY 1997 and the consultation guidelines contained therein will offer basic procedures to initiate, conduct, and conclude consultation with tribes. In addition, on-site consultation assistance has been funded by the Army and, through the auspices of the Army Environmental Center, will be available during FY 1997 to Army installations upon request.

Procedures Implemented or Proposed for the Expeditious Resolution of Disputes Relating to Agency Action on Federal Lands that May Adversely Affect Access to Ceremonial Use of, or the Physical Integrity of Sacred Sites

DA Pamphlet 200-4, Appendix G, Guidelines for Consultation with Native Americans, Section IV-7, "Dispute Resolution," states the following:

If specific Army installations and Indian tribal representatives cannot reach mutually acceptable terms for resolving consultation issues, it may be prudent to designate alternative parties to resolve the situation. Within the Army, consultation mostly will be the responsibility of representatives of individual Army installations. Thus, Major Commands could designate Army officials that are not stationed at the specific installation in question to assist with dispute resolution for the Army. It also may be suggested that Indian representatives turn to the Bureau of Indian Affairs (area or agency office) to help resolve disputes. The designation of such dispute resolution procedures and parties should be discussed early on in the consultation process.