



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-A/CECW-O

29 JUN 1998

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS
AND DISTRICT COMMANDS

SUBJECT: Policy Guidance Letter No. 58, Implementation of Executive Order 13007, Indian Sacred Sites

1. Purpose. This Policy Guidance Letter (PGL) sets forth U.S. Army Corps of Engineers policy regarding the implementation of Executive Order (EO) 13007, Indian Sacred Sites, dated 24 May 1996. This guidance is applicable to all Civil Works programs and activities conducted on "Federal lands," as defined in the EO. The full text of Executive Order 13007 is enclosed for your review and reference.

2. Definitions. For the purposes of Executive Order 13007:

a. "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands.

b. "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has acknowledged to exist as an Indian tribe pursuant to Public Law 103-454, List of Federally Recognized Tribes. An "Indian" refers to a member of such an Indian tribe.

c. "Sacred site" means any specific, discrete, narrowly delineated location on Federal lands that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

3. Background and Discussion.

a. EO 13007 directs Federal agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners. It directs agencies to avoid adversely affecting the physical integrity of such sacred sites and to maintain confidentiality of information pertaining to such locations. The EO also emphasizes the need to develop and maintain government-to-government relations to ensure that proposed actions or land management policies do not adversely affect access to, use of, or physical integrity of, sacred sites.

b. "Federal lands" managed by the Corps, hereinafter referred to as Corps lands, contain sacred sites and places. Some are known to us. Many are known only to Indian peoples. Sacred sites are widely dispersed across the landscape; they can include burial grounds, springs, mountains, caves, rock shelters, tipi rings, rock rings, petroglyphs and pictographs, ground figures, and places on public lands where Indian

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religious activities have occurred, are occurring or could occur in the future. Native American spiritual and ritual life is inextricably linked to access to, and use of, sacred geography at sacred times. One Native American researcher has termed these "time/spaces" as "portals to the sacred." This sacred geography, or portals, are a source of Indian religious meaning, group identity and group cohesion.

4. Policy

a. Corps Commands will utilize all reasonable means to accommodate Indian tribes by providing meaningful access to sacred sites on Corps lands. Corps Commands will also ensure that Indian tribes have reasonable opportunities to review plans for activities and programs on Corps lands that could potentially adversely affect sacred sites.

b. To accomplish the policy goals set forth above, Corps Commands will initiate consultation with Indian tribes on EO 13007, or will focus ongoing consultation efforts on the requirements of the EO. Consultation should address current needs and interests of the tribes with regard to sacred places as well as a dialog on the development of procedures for long-term tribal input and comment. The use of Memoranda of Agreement (MOA) may be the most convenient vehicle for both the Corps and the tribes to ensure the protections of the executive order. MOAs can clearly delineate the responsible Corps/Indian tribe officials, the responsibilities of all parties with respect to sacred sites and safety issues associated with the accessing and use of sacred places. These agreement documents can also be used to reinforce or augment government-to-government protocols.

c. The "sacred" nature and "ceremonial use" of an area may imply a multiplicity of meanings. Ceremonial use can include, but is not necessarily limited to, the collection of plants, the clearing of habitat, the gathering of animal parts or feathers and other types of resource-consuming activities. Corps Commanders have the discretion to allow for consumptive use of Indian sacred sites if granting such use is consistent with the functioning of Corps activities at the site. Moreover, authorities other than Executive Order 13007, such as treaties, Federal laws, and other executive orders may require a Corps Commander to make accommodations for ceremonial use that include consumption of resources.

d. Accommodating Indian tribes through access to sacred sites may entail closing areas to the general public during particular times of the year, as well as during certain seasons or months. In the absence of a conflict with an essential command function, Corps Commanders should extend tribal accommodations to temporary partial closures of narrowly delineated areas. This executive order does not obligate the Corps to permanently close any areas to the general public, although Indian tribes may make, and Corps Commanders may consider, such requests.

e. A serious concern that all parties share is the confidentiality of information on sacred sites. One way to respond to these concerns is to minimize the information needs regarding sacred sites. There may be some, or indeed many, sacred sites on Corps lands that have few, if any, outward signs discernable to non-Indians and these sites may not be in any jeopardy or threat. These sites might be visited on a regular basis without being physically affected by religious practices. As part of the consultation process proposed above, Corps Commands and Indian tribes may agree that for these non-threatened and

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physically unaffected sites, tribes can continue to visit without reporting the sites' nature or location to Corps officials.

f. For those sacred sites which tribes report to Corps Commanders, Corps documentation of the existence and location of these sites, or of tribal activities at the sites may warrant protection from public disclosure under Exemption 3 of the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552(b)(3) (1998), and Section 304 of the National Historic Preservation Act, as amended, 16 U.S.C.A. § 470w-3(a). The former statute governs matters specifically exempted from disclosure by other statutes. The latter allows the head of a Federal agency, under specified circumstances and after consultation with the Secretary of the Interior, to withhold disclosure of "information about the location, character, or ownership of the historic resource." § 470w-3(a). In any event, Corps Commanders should not release information on Indian sacred sites without first consulting with counsel.

FOR THE COMMANDER:

Encl



RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

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(see pages 4 & 5)