



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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WASHINGTON DC 20310-0108

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MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF
ENGINEERS

SUBJECT: POLICY DIRECTIVE – Comprehensive Approach to Co-Land Management and Co-Stewardship of U.S. Army Corps of Engineers' Managed Lands and Facilities with Tribal Nations

1. Purpose. This memorandum issues policy direction on a comprehensive approach to co-management and co-stewardship of U.S. Army Corps of Engineers (USACE) Civil Works managed lands and facilities with Tribal Nations. This policy emphasizes the full use of existing authorities available for co-management and co-stewardship opportunities between USACE and federally recognized Tribes, Alaska Native Corporations (ANCs), and the Native Hawaiian Community through Native Hawaiian Organizations (NHOs). This directive also identifies areas for additional implementing guidance that must be developed in Nation-to-Nation (or Government-to-Government) consultation with federally recognized Tribes to maximize these opportunities.

2. References:

a. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 6 November 2000.

b. HQ, USACE, CECW-P memorandum (Implementation Guidance for Section 1031(b) of the Water Resources Reform and Development Act (WRRDA) of 2014- Cooperative Agreements (CAs) with Indian Tribes), 3 August 2016.

c. Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 26 January 2021.

d. USACE Civil Works Tribal Consultation Policy, 5 December 2023.

e. Office of Science and Technology Policy and Council on Environmental Quality Memorandum, Implementation Guidance for Federal Departments and Agencies on Indigenous Knowledge, 30 November 2022.

f. USACE Tribal Co-Management and Co-Stewardship Partnership Opportunities, 28 June 2024 (enclosed).

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3. Applicability. This directive is applicable to Headquarters (except Regulatory) and all Divisions, Districts, and USACE managed lands, facilities, and operating projects with primary actions identified for the Operation and Maintenance program (including recreation and natural resources management). The policies contained in this directive shall remain in effect unless modified, suspended, or rescinded expressly in writing by the Assistant Secretary of the Army for Civil Works (ASA(CW)).

4. Background. USACE is responsible for 12 million acres of public lands and waters nationwide, managing more than 400 lake and river projects in 43 states. Many USACE managed lands and operating projects are located on, within reservations, or adjacent to Tribal, ANC or Native Hawaiian lands or ceded territories that would benefit from co-management or co-stewardship, particularly where Tribes have treaty or reserved rights, and Indigenous Peoples have place-based body of knowledge, or otherwise have historical ties. When conducting Nation-to-Nation consultation to update the Civil Works Tribal Consultation Policy (reference 2.d), many Tribes embraced incorporation of Indigenous Knowledge into Civil Works projects as described by the memorandum to Federal Agencies (reference 2.e) from the Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ). Others challenged the agency to do more to fulfil its federal trust responsibilities by actively pursuing co-management and co-stewardship opportunities. Federally recognized Tribes, ANCS, and NHOs have natural resource management and stewardship expertise that can foster innovation and support implementation of the Civil Works program. Implementing these opportunities to the greatest extent possible and in a consistent manner across the agency can help USACE continue to build a solid foundation of trust and mutually beneficial partnerships in support of Tribal self-determination.

5. Definitions. For this guidance, the following definitions apply:

a. Co-Management. Cooperative management, or co-management, refers to the sharing of management responsibility between USACE and non-federal entities, typically through a formal agreement. This requires a legal authority that allows for a collaborative and/or joint roles and responsibilities at a Civil Works project. Specifically, Tribal co-management involves implementing Tribal activities on federal lands and facilities and involving Tribes as long-term partners in federal land and facility management decisions.

b. Co-Stewardship. Cooperative stewardship, or co-stewardship, is a generic term used for collaborating with Tribes under a variety of authorities that allow for the exchange of services, funds, supplies, and materials. It consists of a broad umbrella of working relationships. Forms of co-stewardship may include sharing of technical expertise; combining tribal and agency capabilities to improve resource management

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and advance the responsibilities and interests of each; or making Indigenous Knowledge, experience, and perspectives integral to the public's experience of USACE lands.

6. Tribal Policy Principles for Co-Management and Co-Stewardship Activities. USACE is committed to working with partners to implement the Civil Works program and building enduring relationships through trust, transparency, and shared values. These partnering opportunities, made possible by strong Nation-to-Nation relationships, ensure mutually beneficial outcomes. USACE should not only comply with existing federal Tribal trust obligations but also strive to do more through policy as existing authorities allow. In fulfilling the intent of this policy directive, USACE affirms the following principles:

a. Federally recognized Tribes exercise their inherent sovereign authorities and self-determination to realize outcomes that promote their political, economic, and community objectives, and among their strategies is engaging in intergovernmental relationships. Tribal governments set their own priorities and develop and manage Tribal resources, which may be located on or near USACE managed lands or facilities. Based on a Government-to-Government relationship, federally recognized Tribes can engage directly with USACE to advance actions that are mutually beneficial through available programs and authorities.

b. The Native Hawaiian Community has a long-standing political and trust relationship with the U.S. government and uses Native Hawaiian Organizations as representatives when consulting with federal agencies. USACE is required to consult with NHOs under specific statutes such as the Native American Graves Protection Act and Section 106 of the National Historic Preservation Act before taking actions that have the potential to significantly affect Native Hawaiian resources, rights or lands through meaningful consultation.

c. USACE recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCs and the Federal Government. USACE is required to consult with ANCs on the same basis as federally recognized Tribes under reference 2.a. Consultations are conducted for actions which have a substantial direct effect on ANCs including actions on or affecting Alaska Native Claims Settlement Act (ANCSA) lands, or actions for which any federally recognized Tribes have expressed interest in consultation.

d. USACE will engage in early and meaningful consultation with Tribal Nations and ANCs in accordance with the Civil Works Tribal Consultation Policy (reference 2.d) to further identify the types of projects, actions, and decisions that may have implications

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to Tribes and ANCs and trigger consultation requirements from the perspective of the Tribes. USACE will also seek to understand the role Tribal governments could play in the management and stewardship of USACE owned lands and facilities.

e. USACE will protect Tribes' and Native Hawaiians' access to protected Tribal resources and sacred sites on, under, and in USACE managed lands and facilities, in accordance with Executive Order 13007, Indian Sacred Sites, the Archaeological Resources Protection Act, American Indian Religious Freedom Act, and other applicable laws, regulations, and guidance.

f. USACE will consider and incorporate Indigenous Knowledge and related expertise throughout the federal decision-making process. This is particularly important when it concerns USACE managed lands and operating projects that are subject to Tribal treaty and reserved rights, subsistence uses, and cultural and natural resources protection.

g. USACE will support Tribal self-determination, self-reliance, and capacity building to the fullest extent of the law and policy. Where lands are still required by USACE to maintain an authorized purpose of a water resources development project, USACE will fully support Tribal efforts to lease, operate, co-manage water resources projects (including full operability), and co-steward lands, where appropriate (16 U.S.C. 460d).

7. Priority action areas. This policy directive identifies priority action areas that require immediate attention to fully utilize co-management and co-stewardship authorities with federally recognized Tribes on USACE managed lands and facilities, and identify where there may be opportunities with ANCs, and NHOs.

a. Tribal Consultation. To further understand where these mutually beneficial opportunities exist, Army Civil Works requested an assessment (reference 1.f) of all existing USACE partnering authorities and examples of current partnerships and collaboration with federally recognized Tribes. This assessment explored the possible opportunities, current challenges, best practices, and other recommendations for increasing Tribal co-management and co-stewardship opportunities on USACE managed lands and facilities. To maximize the reach of this policy, USACE is directed to engage in national and regional listening sessions and consultation to identify areas across USACE operating projects for opportunities to engage in co-management and co-stewardship with Tribal Nations, ANCs, and NHOs. This includes identification of opportunities to protect Tribal resources and access to sacred sites on USACE managed lands. Oversight of this consultation should be managed by the Headquarters Senior Tribal Liaison and Natural Resources Management team to ensure appropriate engagement in accordance with reference 2.d. This effort will highlight specific areas

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where Tribes, ANCs, and NHOs are interested in partnering with USACE on existing projects and provide my office with additional considerations.

b. Use of Cooperative Agreements. USACE recognizes the central role of federally recognized Tribes in protecting and managing their own resources and remains committed to working in partnership to build Tribal capacity. Cooperative agreements are an available tool to enter into funded agreements with federally recognized Tribes. USACE is directed to update reference 2.b with direction to maximize its use to the extent possible for co-management at USACE operated projects. USACE is directed to evaluate the approval level of the overarching memoranda of agreements with Tribes for cooperative agreements and make a recommendation to the ASA(CW) on the usefulness of delegation of this authority.

c. Indigenous Knowledge. In November 2022, the OSTP and CEQ issued a memorandum to all federal agencies implementing guidance on Indigenous Knowledge (reference 2.e). The OSTP and CEQ guidance specifies that Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment, and is developed by Indigenous Peoples including, but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. The federal guidance further established Indigenous Knowledge as a valid form of evidence for inclusion in federal policy, research, and decision making. Indigenous Knowledge will be considered and incorporated where appropriate in all Civil Works activities. In the context of increased co-management and co-stewardship opportunities with Tribal Nations, Indigenous Knowledge is critically important to the responsible management of USACE managed lands and facilities.

Focusing on specific projects, USACE may revisit Water Control Manuals or Plans to reflect any added or modified features since construction completion or engage in master planning for comprehensive management and development of all recreational, natural, and cultural resources. In both instances, Tribal Nations have expressed interest in being involved in these activities where they have unique and specialized expertise. With consent of Tribal Nations, Indigenous Knowledge can be considered to inform decision making for continued operation and maintenance of USACE operating projects and to ensure access for cultural or spiritual practices, while avoiding impacts to culturally sensitive areas and resources. USACE is directed to develop specific training for Operations Project Managers and Natural Resource Managers to be able to request, incorporate, and protect, to the extent practicable, Indigenous Knowledge for co-management and co-stewardship activities.

d. Land Management Monitoring, Surveys, Evaluation, and Innovation Activities. USACE conducts monitoring, evaluations, surveys, and other innovative technical

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analyses (collectively referred to as MSE&I) concerning resources, landscapes, and waterways that may be of significant interest to Tribal Nations. It is important that USACE consults with Tribal Nations as per applicable federal regulations and authorities to provide opportunities for Tribal Nations to contribute technical expertise for MSE&I activities, to the extent practicable. USACE should explore all available authorities to support Tribal technical staff engagement on relevant MSE&I efforts. Past MSE&I activities that have successfully engaged Tribal expertise include fish passage and survival studies, fish hatchery monitoring, cultural resource surveys, and watershed and hydrology assessments. Engaging Tribal Nations with relevant technical MSE&I expertise yields mutual benefits. USACE is directed to assess the feasibility of involving Tribal Nations in MSE&I efforts. This assessment should be presented to my office in the briefings identified in paragraph 8.

e. USACE as a Land Manager. In cases where USACE continues to require lands to operate existing projects, USACE can grant leases (outgrants) of land without monetary consideration to federally recognized Tribes for any public purpose that the Secretary of the Army determines to be in the public interest (16 U.S.C. 460d). In granting leases at water resource development projects, USACE shall give preference to federally recognized Tribes in accordance with 16 U.S.C. 460d. USACE also has the authority under 16 U.S.C. 460d-3 to issue Special Use Activity or Event Permits. An administrative fee has typically been waived for Tribal activities such as collection, gathering, and ceremonies. USACE is directed to outline legal authorities, legal impediments, gaps in agency guidance, and where model agreements may be useful through consultation with federally recognized Tribes as requested in paragraph 7.a.

8. Briefing. USACE is directed to provide my office two briefings following the signing of this memorandum:

a. Within 60 days from the date of this memorandum, I request a comprehensive briefing on the ongoing, planned, and additional Civil Works actions that can expand opportunities for co-management and co-stewardship opportunities with Tribal Nations, ANCs, and NHOs on USACE managed lands. This should include the strategy for consultation identified in paragraph 7.a, what additional implementing guidance is being considered for development, associated timelines, and what funding is required to maximize these efforts.

b. I also request a briefing updating my office within six months of the date of this memorandum to report on the progress of this effort. The second briefing will include any legal or policy challenges as well as budgetary requirements for implementing identified opportunities where Tribal partners express interest and USACE has existing authority.

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9. Point of Contact. Questions regarding this matter may be directed to Milton Boyd, Acting Director of Policy and Legislation, Office of the Assistant Secretary of the Army (Civil Works) at milton.d.boyd.civ@army.mil.

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