

**Army Regulation 200-4**

**Environmental Quality**

# **Cultural Resources Management**

**Headquarters  
Department of the Army  
Washington, DC  
1 October 1998**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 200-4

Cultural Resources Management

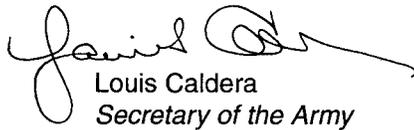
This new Army regulation--

- o Reflects the transfer of responsibilities previously assigned to the Assistant Chief of Engineers to the Assistant Chief of Staff for Installation Management (para 1-5).
- o Provides installation commanders greater authority for compliance with cultural resources legal requirements (para 1-9).
- o Reflects new emphasis on Native American affairs (paras 2-4, 2-5, and 2-8).
- o Establishes new policy for preparation of and staffing procedures for cultural resources compliance agreements (paras 3-1 and 3-3).
- o Establishes new policy for Integrated Cultural Resources Management Plans (para 4-1).

Effective 1 November 1998

## Environmental Quality

# Cultural Resources Management



Louis Caldera  
Secretary of the Army

**History.** This new regulation replaces AR 420-40, printed 15 April 1984.

**Summary.** This regulation updates the Army's policy for managing cultural resources to meet legal compliance requirements and to support the military mission. Cultural resources are: historic properties as defined in the National Historic Preservation Act, cultural items as defined in the Native American Graves Protection and Repatriation Act, archeological resources as defined in the Archeological Resources Protection Act, sacred sites as defined in Executive Order 13007 to which access is provided under the American Indian Religious Freedom Act, and collections as defined in 36 CFR 79, Curation of Federally-Owned and -Administered Collections. Requirements set forth in the National Environmental Policy Act of 1969 as amended, National Historic Preservation Act, Archeological Resources Protection Act, Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, 36 CFR 79, Executive Order 13007, Executive Order 11593, and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, define the basis of the Army's compliance responsibilities for management of cultural resources. Regulations applicable to the Army's management of cultural resources include those promulgated by the Advisory Council on Historic Preservation and the National Park Service.

**Applicability.**

*a.* This regulation applies to the Active Army, the Army National Guard of the

United States, the U.S. Army Reserve and to all installations and activities under control of the Department of the Army by ownership, lease, license, public land withdrawal, or any similar instrument. Specifically it applies to—

(1) Army installations and activities.

(2) Army National Guard Federal installations, activities, and sites supported with Federally appropriated funds or subject to Federal approval.

(3) Installations and activities, or portions thereof, that are in full-time or intermittent use by the U.S. Army Reserve or Reserve Officer Training Corps.

(4) Real property of other Federal, State, and local agencies and private parties used by the U.S. Army, U.S. Army Reserve, or Reserve Officers' Training Corps under license, permit, lease, or other land and or facility use agreement.

(5) Military functions of the U.S. Army Corps of Engineers.

(6) Tenants, such as other Federal agencies, contractor activities, lessees, and all others performing activities in direct support of the Army located on real property under Department of the Army jurisdiction.

(7) Contracts at Government-owned, contractor-operated facilities which will reference this regulation and or will designate by specific citation applicable provisions of this regulation.

*b.* All of the above will be referred to in this regulation as the Army, unless otherwise noted.

*c.* This regulation does not apply to the Civil Works functions of the U.S. Army Corps of Engineers, except when the U.S. Army Corps of Engineers is operating on or using funds of military installations and activities.

*d.* Nothing in this regulation changes any rights granted by treaty or otherwise to any Indian tribe, Native Hawaiian organization, or to its members.

*e.* This regulation applies to installations and activities within any state of the United States, the District of Columbia, and territories of the United States (United States).

*f.* Commanders outside of the United States will comply with—

(1) Substantive cultural resources requirements of general applicability included in

host nation law and regulation to the extent practicable or, when adopted, those requirements identified in Final Governing Standards adopted by the DoD Executive Agent.

(2) International Treaties and Status of Forces Agreements.

(3) National Historic Preservation Act Amendments of 1980, Section 402 (16 USC 470a-2).

**Proponent and exception authority.**

The proponent of this regulation is the Assistant Chief of Staff for Installation Management. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling Federal law and regulation. Proponents may delegate the approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

**Army management control process.**

This regulation is subject to the requirements of AR 11-2. It contains management control provisions but does not contain checklists for conducting environmental management reviews.

**Supplementation.** Supplementation to this regulation and establishment of command and local forms is prohibited without the prior approval of the Director of Environmental Programs, DAIM-ED, 600 ARMY PENTAGON, WASH, DC 20310-0600. The requirements of such supplements must be consistent with and no less stringent than the requirements of this regulation.

**Suggested Improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA, DAIM-ED-N, 600 ARMY PENTAGON, WASH, DC 20310-0600.

**Distribution.** Distribution of this publication is made in accordance with the initial distribution number (IDN) 095561, intended for command levels C, D, and E for Active Army, Army National Guard of the United States, and U.S. Army Reserve.

\*This regulation supersedes AR 420-40, 15 April 1984.

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## Chapter 1 Introduction

### Section I General

#### 1-1. Purpose

This regulation prescribes Army policies, procedures, and responsibilities for meeting cultural resources compliance and management requirements. The scope of this regulation includes the National Historic Preservation Act (NHPA); American Indian Religious Freedom Act (AIRFA) and Executive Order (EO) 13007; Native American Graves Protection and Repatriation Act (NAGPRA); Archeological Resources Protection Act (ARPA), 36 CFR 79; and other requirements and policies affecting cultural resources management. These policies are designed to ensure that Army installations make informed decisions regarding the cultural resources under their control in compliance with public laws, in support of the military mission, and consistent with sound principles of cultural resource management.

#### 1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

#### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

### Section II Responsibilities

#### 1-4. Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (DASA(ESOH))

The DASA(ESOH) is the Army's Federal Preservation Officer (FPO) pursuant to designation by the Assistant Secretary of the Army (Installations, Logistics, and Environment) on behalf of the Secretary of the Army. As the FPO, the DASA(ESOH) is responsible for oversight and coordination of the Army's activities under the NHPA, including approval and signature on Army National Register of Historic Places nominations for Federally-owned and -controlled historic properties. DASA(ESOH) FPO signature authority for National Register nominations may be delegated to the ACSIM.

#### 1-5. The Assistant Chief of Staff for Installation Management (ACSIM)

ACSIM is the Army Staff proponent for the military Cultural Resources Management Program. ACSIM functional responsibilities in this program area are implemented as follows:

*a.* The Director of Environmental Programs (DEP) carries out the ACSIM Army Staff function for the military Cultural Resources Management Program through the following responsibilities:

- (1) Promulgates cultural resources policy and guidance.
- (2) Identifies, supports, and defends cultural resources requirements.
- (3) Directs and coordinates Army Staff cultural resources management program requirements.

*b.* The Commander, U.S. Army Environmental Center (AEC), under the direction of the DEP, is responsible for a broad range of technical support and oversight services for execution of the military cultural resources management program worldwide including:

- (1) Support for HQDA, MACOM, and installation cultural resources compliance activities and programs.
- (2) HQDA technical oversight and review of the Army Cultural Resources Management Program including NHPA Section 106 Programmatic Agreements (PAs) and Memoranda of Agreement (MOA), NAGPRA Comprehensive Agreements (CAs) and Plans of Action, other cultural resources agreements and actions, and National Register of Historic Places nominations.

- (3) Identification of Army-wide cultural resources requirements

and shortfalls through analysis of Army programming data, emerging statutory and regulatory requirements, and the Army Environmental Strategic Action Plan (AESAP). Development, execution and management of programs and initiatives to address shortfalls and requirements.

#### 1-6. The Judge Advocate General (TJAG)

TJAG provides legal advice to the Army on military cultural resources legal matters. The Chief, Environmental Law Division (ELD), will exercise those authorities on behalf of TJAG and will—

- a.* Serve as legal advisor to the ACSIM and DEP with regard to the Army Cultural Resources Management Program.
- b.* Review draft cultural resources compliance agreements IAW the procedures and time frames of this regulation.
- c.* Serve as agency counsel for the Army in appropriate administrative cases, hearings, and enforcement actions.

#### 1-7. Director, Army National Guard Bureau (ARNGB)

The Director, Army National Guard Bureau will—

- a.* Approve, oversee, and coordinate all cultural resources compliance activities on ARNG Federally-owned or controlled installations and sites, or for actions that are supported with Federal funds or subject to Federal approval.
- b.* Provide directions to the Assistant Deputy Director, Army National Guard Bureau (NGB-ILE) in all matters relating to cultural resources management.
- c.* Act as the official channel of communication between the State and Territory Adjutants General and HQDA.

#### 1-8. MACOM Commanders; Commander, U.S. Army Reserve Command; and Director of Environmental Programs, National Guard Bureau (MACOM commanders)

MACOM commanders will direct and assist their installations in the conduct of installation cultural resources programs consistent with this regulation. Each MACOM commander and the Director of Environmental Programs, National Guard Bureau will—

- a.* Ensure that cultural resources responsibilities are implemented across all installations.
- b.* Monitor installation cultural resources management programs.
- c.* Review ICRMPs, NHPA MOAs and PAs, National Register determinations of eligibility and nominations, NAGPRA CAs and Plans of Action. Forward NHPA PAs and MOAs, NAGPRA CAs and Plans of Action, and National Register nominations to HQDA (AEC) for HQDA review. MACOM commanders may also elect to sign NHPA PAs and MOAs, and NAGPRA CAs and Plans of Action.
- d.* Implement HQDA cultural resources management policy and guidelines in this regulation and in DA Pamphlet 200-4 at their respective installations.
- e.* Provide MACOM cultural resources reporting information to HQDA to include, the Installation Status Report (ISR), the Environmental Quality Report (EQR), and the Environmental Program Requirements (EPR).
- f.* Assist installation commanders in establishing reasonable funding priorities and meeting appropriate milestones in program development and implementation IAW this regulation.
- g.* Ensure that installation cultural resources programs are accurately evaluated when conducting environmental compliance assessments pursuant to AR 200-1.
- h.* MACOM commanders may delegate any of these responsibilities to commanders of their major subordinate commands.

#### 1-9. Installation Commanders; Commanders, of US Army Reserve Regional Support Commands; and the Adjutants General (Installation commanders)

Installation commanders will—

- a.* Establish an Installation Cultural Resources Management Program by implementation of this regulation and DA Pamphlet 200-4.
- b.* Designate NLT 1 June 1999, an installation Cultural Resource Manager (CRM) to coordinate the installation's cultural resources management program. The installation commander will ensure that

the CRM has appropriate knowledge, skills, and professional training and education to carry out installation cultural resources management responsibilities. The installation commander will also ensure that all cultural resources technical work (including but not limited to identification, evaluation, and treatment of historic properties, and preparation and implementation of an ICRMP), is conducted by individuals who meet the applicable professional qualifications standards established by the National Park Service in 36 CFR 61, Appendix A.

c. The installation commander will establish a government-to-government relationship with Federally-recognized Indian tribes, as needed. If there are significant Native American issues, the installation commander will also designate an installation "Coordinator for Native American Affairs" to facilitate the government-to-government relationship. The installation commander will ensure that the Coordinator for Native American Affairs has appropriate knowledge, skills, and professional training and education to conduct installation consultation responsibilities with Indian tribes.

d. Establish a process that requires early coordination between the CRM and other installation staff elements, tenants, and others early in the planning of projects and activities that may affect cultural resources.

e. Prepare and implement, if appropriate, an installation wide NHPA Section 106 PA, and a NAGPRA CA where required to address and streamline NHPA and NAGPRA compliance procedures for ongoing mission and operations. If an installation-wide NHPA Section 106 PA and NAGPRA CA is not prepared, the commander must ensure that individual undertakings and activities follow NHPA Section 106 (36 CFR 800) and NAGPRA (43 CFR 10) compliance procedures.

f. Ensure that cultural resources management is integrated with installation training and testing activities, master planning (AR 210-20), environmental impact analysis (AR 200-2), natural resources and endangered species management planning and programming to include Integrated Natural Resources Management Plans (AR 200-3), and the Integrated Training Area Management (ITAM) program. Ensure that the installation cultural resources management program is developed and implemented IAW the policies and guidelines set forth in this regulation and in DA Pam 200-4.

g. Establish funding priorities and program funds for cultural resources compliance and management activities into the Environmental Program Requirements report.

h. Conduct a comprehensive evaluation of the installation's cultural resources management program as part of the environmental compliance assessment required by AR 200-1.

i. Develop ICRMPs, cultural resources inventory plans and schedules, NHPA PAs and MOAs, NAGPRA CAs and Plans of Action, and other documents as appropriate, and coordinate such documents with the MACOM and HQDA IAW this regulation.

j. Serve as the Agency Official as defined in 36 CFR 800 with responsibility for installation compliance with the NHPA.

k. Serve as the Federal Agency Official as defined in 43 CFR 10 with responsibility for installation compliance with NAGPRA.

l. Serve as the Federal land manager as defined in 32 CFR 229 with responsibility for installation compliance with ARPA. ARPA permits are issued by the supporting USACE District Real Estate office upon approval of the installation commander IAW ER 405-1-12 and AR 405-80. Installation commander approval is provided through the issuance of the Report of Availability to the supporting USACE District Real Estate office.

m. Serve as the Federal Agency Official as defined in 36 CFR 79 with management authority over archeological collections and associated records.

n. Sign NHPA PAs and MOAs, and NAGPRA CAs and Plans of Action and other installation cultural resources agreements after MACOM and HQDA comments have been addressed.

## **Chapter 2 Cultural Resources Compliance Requirements**

### **2-1. Cultural Resources Management Program**

a. This chapter identifies the basic compliance requirements associated with the major Federal cultural resources laws and regulations applicable to Army activities. Installation commanders must comply with applicable cultural resources statutes, regulations, Executive Orders, and Presidential Memoranda listed in appendix B.

b. DA personnel, at all levels, must ensure that mission requirements are carried out in harmony with such statutory and regulatory requirements. Failure to fulfill these requirements could result in halting or delaying ongoing or proposed mission essential projects, training and testing actions, and could deplete limited financial and staff resources. Proponents of Army actions should coordinate with the CRM early in the planning stage of projects and activities to identify potential cultural resources compliance requirements.

c. The key to the successful balance of mission requirements and cultural resources compliance and management responsibilities is early planning, and coordination to prevent conflicts between the mission and the resources. Integrated Cultural Resources Management Plans, as identified in chapter 4, are the installation commander's primary tool for planning and integration of cultural resources compliance and management activities into the military mission.

d. In fulfilling its cultural resources responsibilities, the installation will work closely with the appropriate authorities designated in applicable Federal statute and regulation.

### **2-2. National Environmental Policy Act of 1969 as amended (NEPA)**

a. NEPA requires installation commanders and other Army decision makers to consider the environmental effects of their proposed programs, projects, and actions prior to initiation. Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality regulations 40 CFR 1500-1508, the proponents of Army actions will ensure that cultural resources are fully considered when preparing NEPA documents. Army policy for compliance with NEPA is found in AR 200-2.

b. NEPA documents will include a comprehensive assessment of the impacts of proposed Army actions or activities on cultural resources. However, compliance with NEPA for a specific action does not relieve the Army of the independent compliance procedures associated with applicable cultural resources requirements in appendix A. Information and findings obtained through compliance with cultural resources statutes, regulations, Executive Orders, and Presidential Memoranda should be integrated into the concurrent NEPA compliance process and documents.

c. Impact assessments under NEPA must consider the effects of proposed Federal actions on cultural resources and the effects on Indian tribes, Native Hawaiian Organizations, Native Alaskans, and other ethnic and social communities to whom the cultural resources may have importance. The information needed to make such impact assessments may be acquired from information developed as a result of compliance with cultural resources statutes, regulations and Executive Orders.

### **2-3. National Historic Preservation Act of 1966 as amended (NHPA)**

a. The National Historic Preservation Act (NHPA) establishes the Federal government's policy to provide leadership in the preservation of historic properties and to administer Federally-owned or -controlled historic properties in a spirit of stewardship. The installation commander shall administer, manage and treat historic properties in accordance with the NHPA. The installation commander shall also identify, evaluate, and nominate historic properties for listing in the National Register of Historic Places consistent with the policies and guidelines in this regulation and DA Pam 200-4.

b. Section 106 of the NHPA:

(1) The installation commander shall identify, evaluate and take into account the effects of all undertakings on historic properties IAW the procedures set forth in 36 CFR 800 and this regulation.

The ACHP is responsible for providing comments on undertakings that affect historic properties. The State Historic Preservation Officer (SHPO) is a significant participant in the Section 106 compliance process by providing comments on efforts to identify, evaluate and treat any effects on historic properties. If an undertaking on Army lands may affect properties having historic value to a Federally-recognized Indian tribe, such tribe shall be afforded the opportunity to participate as interested persons during the consultation process defined at 36 CFR 800. Traditional cultural leaders and other Native Americans and Native Hawaiians are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons. If an undertaking may involve excavation of NAGPRA cultural items, the requirements of NAGPRA and 43 CFR 10 must also be met prior to implementation of the undertaking.

(2) Failure to take the effects of an undertaking on historic properties into account IAW NHPA Section 106 and 36 CFR 800 can result in formal notification from the ACHP to the Secretary of the Army of foreclosure of the ACHP's opportunity to comment on the undertaking pursuant to the NHPA. A notice of foreclosure can be used by litigants against the Army in a manner that can halt or delay critical mission activities.

(3) The installation commander will ensure that the efforts to identify, evaluate, and treat historic properties follow the Secretary of the Interior's Standards and Guidelines For Archeology And Historic Preservation and are conducted under the supervision of personnel who meet the applicable professional qualifications standards set forth in 36 CFR 61 appendix A. Disagreements between the installation commander and the SHPO regarding the eligibility of a property for listing in the National Register shall be resolved through the procedures at 36 CFR 63.2(d).

(4) PAs and MOAs executed pursuant to NHPA Section 106 and 36 CFR 800 are compliance agreements that set forth how the Army will satisfy the responsibilities of Section 106 of the NHPA in the context of an Army undertaking that will affect an historic property. Section 106 PAs that address and define ongoing installation-wide undertakings associated with mission activities and their effects on historic properties over a 5-year programming and budgeting cycle are encouraged because they can streamline the NHPA compliance process and serve as a program management tool. Any management procedures and determinations provided in PAs and MOAs should be integrated into the installation's ICRMP. However, NHPA PAs and MOAs shall not refer to or implement an ICRMP. An ICRMP is intended to integrate all of the installation's responsibilities for managing all cultural resources as defined by this regulation. Implementing such a document with an NHPA PA or MOA would vest review authority in the ACHP and SHPO over the installation's compliance with statutes and regulations that are clearly outside the statutory authority of the ACHP and SHPO. ACHP and SHPO statutory authority is limited to consultation with Federal agencies under the NHPA and 36 CFR 800.

c. Section 110 of the NHPA imposes specific responsibilities upon the installation commander regarding historic preservation. In accordance with Section 110(a)(1), the affirmative preservation responsibilities in Section 110 must be undertaken in a manner consistent with the installation's mission. Such responsibilities include but are not limited to the following:

(1) Establishing a historic preservation program to include the identification, evaluation and nomination of historic properties to the National Register of Historic Places in consultation with the ACHP, SHPO, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate. This responsibility is fulfilled by implementation of this regulation at all levels within the Army.

(2) Prior to acquiring, constructing, or leasing buildings, installation commanders must use available historic properties to the maximum extent feasible.

(3) The installation commander must document historic properties that will be altered or destroyed as a result of Army action.

Such actions must be reviewed in accordance with NHPA Section 106.

(4) In transferring Army historic properties, the installation commander must ensure that the significant historic values of the property are appropriately preserved.

(5) The Secretary of the Army must document decisions to proceed with Army undertakings that adversely affect historic properties when the installation commander has been unable to reach agreement through execution of a MOA or PA with the ACHP and SHPO. Procedures for installation commanders to follow when such a situation arises in the context of an NHPA undertaking are at section 3-1d of this regulation.

d. Section 304 of the NHPA requires that information about the location, character, or ownership of a historic property be withheld from public disclosure when the installation commander determines that disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners. After determining that information should be withheld, the installation commander will provide such a determination through command channels to HQDA (DEP).

e. Section 101(d)(2) of the NHPA provides for the assumption by Federally-recognized Indian tribes of all or any part of the functions of a SHPO with respect to tribal lands (for example, all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities). Section 101(d)(6) requires installations, in carrying out their Section 106 responsibilities, to consult with Federally recognized Indian tribes and Native Hawaiian Organizations that attach religious or cultural significance to an historic property. Installation commanders will consult with Federally-recognized Indian tribes and Native Hawaiian Organizations in the Section 106 process to identify, evaluate, and treat historic properties that have religious or cultural importance to those groups.

f. Section 111 of the NHPA requires installation commanders, to the extent practicable, to establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected installation mission requirements.

g. Section 112 of the NHPA requires that installation commanders who are responsible for protection of historic properties pursuant to NHPA ensure that all actions taken by employees or contractor meet professional historic preservation standards established by the Secretary of the Interior.

#### **2-4. American Indian Religious Freedom Act of 1978 (AIRFA) and EO 13007, Indian Sacred Sites**

a. Installation commanders will develop and implement procedures to protect and preserve the American Indian, Eskimo, Aleut, and Native Hawaiians' 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 ceremonies 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 Indian tribes and Native Hawaiian 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. The installation commander shall maintain the confidentiality of sacred site locations.

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. Such procedures should be set forth in an installation ICRMP. If a sacred site may 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.

## **2-5. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)**

a. The intent of NAGPRA is to identify proper ownership and to ensure the rightful disposition of cultural items (defined in Section 2 of NAGPRA) that are currently in Federal possession or control. NAGPRA mandates that installation commanders summarize, inventory, and repatriate cultural items in the possession or control of the installation to lineal descendants or to culturally affiliated Federally-recognized Indian tribes or Native Hawaiian organizations. NAGPRA also requires that certain procedures be followed when there is an intentional excavation of or an inadvertent discovery of cultural items. The installation commander will ensure compliance with NAGPRA (23 USC 3002) and its implementing regulation (43 CFR 10).

b. The installation commander may enter into CAs with Federally-recognized Indian tribes and Native Hawaiian organizations for the purposes of compliance with NAGPRA and 43 CFR 10. CAs should establish responsibilities and address all installation land management activities that could result in the intentional excavation or inadvertent discovery of cultural items, establish standard consultation procedures, and provide for the determination of custody, treatment, and disposition of cultural items. Such CA procedures and determinations should be incorporated by reference into any ICRMP prepared by the installation. However, CAs must be prepared independent of ICRMPs and such CAs shall not refer to or implement an ICRMP.

c. Absent a CA, the installation commander shall take reasonable steps to determine whether a planned activity may result in the intentional excavation or inadvertent discovery of cultural items from Federally-owned or -controlled Army lands. When it is determined that cultural items may be encountered and, prior to issuing approval to proceed with the activity, the commander shall carry out the consultation procedures and planning requirements of 43 CFR 10.3 and 10.5. Following consultation per 43 CFR 10.5 as part of the intentional excavation or inadvertent discovery of cultural items, a written Plan of Action must be prepared IAW the 43 CFR 10.5(e). Such procedures and actions should be coordinated with the requirements of the NHPA and ARPA when such excavations or discoveries may involve historic properties and or archeological resources.

d. If an inadvertent discovery of cultural items occurs in connection with an ongoing activity on the installation and there is no CA in effect that sets forth agreed upon procedures for such instances, then the installation commander must comply with 43 CFR 10.4 (a-d). Such compliance measures include but are not limited to notifications, cessation of the activity for 30 days in the area of the discovery, protection of the discovery, consultation with Indian tribes or Native Hawaiian organizations affiliated with the discovery IAW 43 CFR 10.5 and preparation of a written Plan of Action. The installation commander must ensure that all authorizations to carry out activities on Federally-owned or-controlled installation lands, including leases and permits, include a requirement for the holder of the authorization to notify the commander immediately upon the inadvertent discovery of cultural items and to protect such discoveries until applicable compliance procedures are satisfied.

e. Installation commanders must ensure that intentional excavation and response to any inadvertent discovery of NAGPRA cultural items are carried out in compliance with all applicable statutory and regulatory requirements of NAGPRA, ARPA and NHPA. Each statute mandates compliance with independent requirements. Compliance with one statutory requirement therefore, may not satisfy other applicable requirements.

f. Summary, inventory and repatriation of cultural items that are in existing collections under Army possession or control shall occur IAW NAGPRA Sections 5, 6, and 7 and 43 CFR 10. In instances

where there is a dispute as to the ownership of cultural items, the installation shall safeguard the cultural items until the dispute is resolved IAW NAGPRA Section 7(e). The installation commander shall notify the MACOM and HQDA (AEC) in the event of a dispute as to ownership of cultural items.

g. All activities carried out to comply with NAGPRA and 43 CFR 10 shall only occur with Federally-recognized Indian tribes, Native Hawaiian organizations, and lineal descendants as defined and provided for by NAGPRA.

## **2-6. Antiquities Act of 1906 and Archeological Resources Protection Act of 1979 (ARPA) and Archeological and Historic Preservation Act of 1974 (AHPA)**

a. The Antiquities Act of 1906 and ARPA prohibit the excavation, collection, removal, and disturbance of archeological resources (as defined by ARPA) and objects of antiquity (as referenced in the Antiquities Act) on Federally-owned Army property without a permit issued by the USACE District Real Estate Office on the approval of the installation commander. Violation of either statute may result in the assessment of civil or criminal penalties, and forfeiture of vehicles and equipment that were used in connection with the violation.

b. Paleontological Resources. Paleontological remains and deposits are considered to be objects of antiquity pursuant to the Antiquities Act. Management of important paleontological remains or deposits should be integrated into ICRMPs prepared pursuant to this regulation. Paleontological resources are scientifically significant fossilized remains, specimens, deposits and other such data from prehistoric, non-human life. The AHPA specifically provides for the survey and recovery of scientifically significant data which may be irreparably lost as a result of any alteration of the terrain from any federal construction projects, or Federally licensed project, activity, or program. Any installation paleontological resource management requirements will be integrated in ICRMPs and will establish and include installation policy for limitation of collection and removal of paleontological resources. Known paleontological resources will also be addressed in any NEPA documentation prepared for actions that may impact or cause irreparable loss or destruction of such resources.

(1) When an installation finds, or is notified in writing by an appropriate authority that its activities may cause irreparable loss or destruction of scientifically significant paleontological resources, the installation commander will notify the Secretary of the Interior in writing and will provide information concerning the activity IAW AHPA. Such notification may be incorporated as part of the NEPA public review and comment process for the subject activity.

(2) Upon notification by the installation that scientific data may be irrevocably lost or destroyed by a proposed activity, the Secretary of the Interior shall, if he or she determines that such data are significant and after reasonable notice to the installation responsible for the activity, conduct or cause to be conducted a survey and other investigation of the affected area and recover and preserve such data. APHA provides installation commanders the authority to assist the Secretary of the Interior with funds for surveys or other activities to recover significant scientific data, but such financial assistance is not required. Likewise, installation commanders may choose to undertake such professional survey and recovery activities themselves with funds appropriated for the project, program, or activity. Such project requirements shall be programmed in the Environmental Program Requirements Report.

c. The use of metal detectors to locate archeological resources is prohibited on Army installations except when used by Army personnel, contractors, or permittees in association with official cultural resource management activities or pursuant to a permit issued under ARPA.

d. ARPA permits for archeological investigations that may result in the excavation or removal of Native American human remains and other cultural items, as defined in NAGPRA, or in the excavation of archeological resources that are of religious or cultural importance to Federally-recognized Indian tribes, will be issued IAW AR 405-80 and this regulation. An installation's supporting USACE

District Real Estate Office will issue the permit after the installation commander conducts consultation IAW 43 CFR 10.5 and 32 CFR 229.7 with the culturally affiliated Indian tribes or Native Hawaiian organizations. The installation commander provides the USACE District with approval to issue the permit by means of a Report of Availability prepared after necessary consultation and compliance actions have been met. ARPA permits shall provide for the disposition of NAGPRA cultural items in accordance with NAGPRA subsections 3(a) and (b) and 43 CFR 10. The installation commander will ensure that documentation of consultation with culturally affiliated Indian tribes or Native Hawaiian organizations is prepared and maintained as part of the record of each such permit.

*e.* The installation will ensure that ARPA permits—

(1) Comply with the requirements of 32 CFR 229, 43 CFR 10,

(2) Require that any interests which Federally-recognized Indian tribes or Native Hawaiian organizations may have in the permitted activity are addressed in a manner consistent with the requirements of NHPA and NAGPRA, prior to issuance of the permit,

(3) Require permitted activities be performed according to applicable professional standards of the Secretary of Interior, and

(4) Require that the excavated archeological artifact collection and associated records are permanently curated in a curation facility which meets the requirements of 36 CFR 79.

*f.* Archeological resources, objects of antiquity, and scientific data from Federal installations belong to the installation, except where NAGPRA requires repatriation to a lineal descendant, Indian tribe or Native Hawaiian organization. Archeological resources and objects of antiquity from non-Federal land belong to the State, Territory, or land owner. Such resources from lands used by the Army but for which fee title is held by another agency are the property of the agency designated as the land manager in the land use instrument (for example, Public Land Order, Special Use Permit, etc.). Installation commanders should ensure that land use instruments allowing for military use are reviewed to determine proper roles and responsibilities.

*g.* Army staff or contractors carrying out official duties associated with the management of archeological resources who meet the professional qualifications and whose investigations meet the requirements of 32 CFR 229.8 are not required to obtain a permit under ARPA or the Antiquities Act for the investigation of archeological resources on a Federally-owned or-controlled installation, including situations where cultural items as defined by NAGPRA may be excavated. However, in situations where NAGPRA cultural items or NHPA historic properties may be encountered during intentional excavation of archeological resources, the requirements of NAGPRA and 43 CFR 10, and NHPA and 36 CFR 800 must be met prior to such archeological excavations.

*h.* For the purposes of Army compliance with ARPA, the installation commander is considered the Federal land manager as defined in 32 CFR 229.3(c). As the Federal land manager, the installation commander may determine that certain archeological resources in specified areas under his or her jurisdiction, and under specific circumstances, are not or are no longer of archeological interest and are not considered archeological resources for the purposes of ARPA (IAW 32 CFR 229.3(a)(5)). All such determinations shall be justified and documented by memorandum and shall be formally staffed for review through the MACOM to HQDA (AEC) prior to final determination.

*i.* The installation commander will ensure that military police, installation legal staff, the installation Public Affairs Office (PAO), and the fish, game, and recreation management staff are familiar with the requirements and applicable civil and criminal penalties under ARPA. Also, IAW ARPA Section 9, the installation commander may withhold information concerning the nature and location of archeological resources from the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law.

## **2-7. 36 CFR 79, Curation of Federally-Owned and -Administered Archeological Collections**

*a.* The installation commander will ensure that all “collections,” as defined in 36 CFR 79.4(a) are processed, maintained and curated in accordance with the requirements of 36 CFR 79. However, NAGPRA cultural items in the installation’s possession and control shall be disposed of in a manner consistent with the requirements of NAGPRA and 43 CFR 10.

*b.* Installation archeological collections may be processed, maintained, and curated on and by the installation, by another Federal agency, State agency, or other outside institution or non-Governmental organization, in cooperative repositories maintained by or on behalf of multiple agencies, or in other facilities, under contract, cooperative agreement or other formal funding and administrative arrangement provided the standards of 36 CFR 79 are met. Generally, installations should not establish archeological curation facilities on the installation due to the permanent recurring costs and personnel requirements to maintain such repositories to the minimum standards in 36 CFR 79 in perpetuity. Prior to the installation commander’s approval of the establishment of an on-post archeological curation facility, a cost analysis shall be conducted and included as a primary factor in the decision. The cost analysis will include factors such as professional curatorial personnel costs for the installation; initial installation infrastructure start-up costs to establish the facility; and installation costs for annual operation, materials, maintenance, and repair. These installation cost factors should be compared with similar costs associated with curating the materials in a outside facility such as at a State museum, other federal or state agency, or with a non-Governmental organization. If a certified Army museum exists on the installation (pursuant to AR 870-20), use of that facility for archeological curation should be investigated prior to any other action to establish or contract out for curation services.

*c.* Installation commanders shall establish procedures in the installation ICMRP to minimize the amount of archeological “material remains” (as defined in 36 CFR 79.4(a)(1), that are collected during archeological inventory and site excavation and permanently curated. Such procedures will be integrated into any SOPs and contracts or cooperative agreements for such activities and will serve to reduce the long term costs associated with archeological materials curation requirements. Such procedures shall recognize that not all archeological material remains recovered from field work need be accessioned into the installation collection and permanently curated. Archeological material remains recovered during field inventory and site identification efforts should be analyzed and recorded, but generally should not be accessioned into the permanent installation archeological collection. For artifacts recovered from more extensive excavations (mitigation), some classes of material remains may be analyzed and recorded but not permanently accessioned into the installation collection. Permanent curation should be reserved for diagnostic artifacts and other significant and environmentally sensitive material that will add important information to site interpretation.

## **2-8. Presidential Memorandum for Heads of Executive Departments and Agencies dated April 29, 1994: Government-to-Government Relations with Native American Tribal Governments.**

This memorandum requires that—

*a.* Consultation between the Army and Federally-recognized Indian tribes occur on a government-to-government basis, and in an open and candid manner.

*b.* 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 commanders establish government-to-government relations with Federally recognized Indian tribes by means of formal, written letters to the heads of tribal governments. Such letters should designate an installation Coordinator for Native American Affairs who is authorized to conduct follow-on consultations with designated representatives of the tribal government. Any final

decisions on installation plans, projects, programs or activities that have been subject of government-to-government consultation will be formally transmitted from the installation commander to the head of the tribal government.

c. Installations assess the impact of their plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

### **Chapter 3**

## **NHPA Section 106 PAs, and MOAs, National Register of Historic Places, NAGPRA CAs and Plans of Action, Cooperative Agreements and Funding**

### **3-1. NHPA Section 106 PAs and MOAs**

a. When an installation commander requires a NHPA Section 106 PA or MOA, the following principles and procedures shall be followed:

(1) PAs and MOAs should contain a compliance schedule with deadlines set to meet the needs of particular undertakings, and procedures for schedule and task modification, dispute resolution, and amendment and termination of the agreement. All agreements will clearly identify the Army undertakings, the affected historic properties, and will address only NHPA compliance responsibilities. PAs shall identify specific installation undertakings over a 5-year planning cycle to the greatest extent possible. Installation undertakings shall be identified through an analysis of such documents including but not limited to the Master Plan, military construction plans, troop training and range operation plans, Integrated Natural Resources Management Plans, and historic property rehabilitation or demolition plans.

(2) PAs and MOAs shall not provide the SHPO, ACHP or other consulting party with authority to review, consult, or comment on activities associated with the management of cultural resources other than historic properties. Such comments may be obtained as non-binding technical review comments outside of the Section 106 regulatory process.

(3) PAs and MOAs shall not provide the SHPO, ACHP or other consulting party with any approval authorities over any Army undertakings or work products associated with execution of an NHPA undertaking. Such authorities are beyond those provided to the SHPO, ACHP or consulting parties under NHPA, and rest with the installation commander. This provision equally applies to any and all conditions associated with no adverse effect determinations made IAW 36 CFR 800. It is recognized however, that the National Park Service has approval authority regarding: acceptance of HABS/HAER documentation into the Library of Congress, acceptance of nominations for formal listing of historic properties in the National Register of Historic Places, and has the final decision in determinations of National Register eligibility.

(4) All actions requiring expenditure of funds in future fiscal years shall be identified in PAs or MOAs as being subject to availability of funds for purposes of compliance with the Anti-Deficiency Act. PAs and MOAs shall stipulate that if sufficient funds are not made available to fully execute the agreement, the installation commander shall consult with the other signatories to either terminate or amend the PA or MOA IAW the termination and amendment procedures set forth in the agreement.

(5) The initial Draft PAs or MOAs prepared by the installation shall be staffed for review through the MACOM to HQDA (AEC). If the SHPO or another consulting party prepares the PA or MOA, the initial draft shall be likewise forwarded from the installation commander for MACOM and HQDA review. The MACOM will provide a technical and legal review as appropriate. HQDA (AEC) will provide HQDA technical review and will coordinate with TJAG (ELD) to obtain HQDA legal review. HQDA (AEC) will provide the MACOM and installation commander with the HQDA technical

and legal reviews. When forwarded for MACOM and HQDA reviews, draft PAs and MOAs shall be accompanied by a "For Official Use Only" (FOUO) document prepared by the installation that contains—

(a) Cost estimates by fiscal year and a funding plan ensuring that the compliance schedule set in the PA or MOA can be met and that costs for out year actions will be programmed into the Environmental Program Requirements Report and the installation Command Budget Estimate, and

(b) Confirmation that relevant installation level activities and offices, including but not limited to the installation Office of the Staff Judge Advocate have reviewed and concur with the draft agreement.

b. Within 15 days from HQDA (AEC) receipt of the draft agreement and supporting documentation, HQDA (AEC) will notify the MACOM and installation commander that—

(1) The agreement is IAW HQDA policy, and follows appropriate technical and legal practices and procedures. In such instances, the installation shall proceed with execution of the agreement, or

(2) The agreement requires revision and that HQDA review comments will be forwarded within the following 15 days, or

(3) The draft PA or MOA addresses an issue or property type with Army-wide applicability, or that it is a precedent setting action, or that it has major financial implications. In such instances, AEC will advise the DEP and TJAG (ELD). The DEP may elect to be a participant in and an Army signatory to such agreement.

c. Signature authority and procedures for finalizing NHPA PAs and MOAs is as follows:

(1) The installation commander has signature authority for NHPA PAs, MOAs, pertaining to Army owned and controlled Federal properties, or actions subject to Army Federal approval, that fall within the installation commanders area of responsibility. The DEP has signature authority for PAs and MOAs having Army-wide implications.

(2) In preparing final PAs and MOAs, the installation commander will work cooperatively to address all MACOM and HQDA comments on the draft agreements. Following integration of MACOM and HQDA comments, the installation commander will sign the agreement, obtain SHPO, MACOM (as appropriate), and any consulting party signature, and forward the document to the ACHP for signature. The ACHP will return the signed agreement to the installation commander.

(3) In instances where the DEP elects to be a signatory to an agreement, HQDA (AEC) shall act on behalf of the DEP and, as needed, in coordination with MACOMs, installations, SHPO and ACHP in development of the compliance agreement. The DEP shall sign the final agreement. HQDA(AEC) will then staff the agreement to the SHPO, any consulting parties, and the ACH for their signature.

(4) A copy of the fully executed PA or MOA will be provided to the MACOM and HQDA (AEC) by the installation.

d. The following procedures shall be complied with when Section 106 consultation is terminated IAW 36 CFR 800.5(e)(6), and the installation intends to proceed with an undertaking that will have an adverse effect on an historic property absent a PA or MOA.

(1) In such instances, the installation commander shall request ACHP comments IAW the procedures in 36 CFR 800.6(b), and this regulation. The ACHP provides their comments in this circumstance directly to the Secretary of the Army. The Secretary of the Army, IAW NHPA Section 110(1), must document all decisions to proceed with an undertaking that will have an adverse effect on an historic property absent an agreement, and may not delegate this documentation responsibility. Such documentation is provided through a response directly for the Secretariat to the ACHP. Once the Secretary of the Army has provided such documentation in response to the ACHP's comments, the installation commander may proceed with the undertaking IAW the Secretary of the Army's documentation.

(2) To provide advance notice of termination actions to the Secretariat, the installation commander shall provide notification through the MACOM to HQDA (AEC) will provide the DEP and TJAG (ELD) with an analysis of the termination action. The DEP will advise the Army FPO of such actions in preparation for the

required Secretariat response to ACHP comments. Installation commanders should be prepared to provide HQDA any and all other requested information regarding the termination of consultation.

e. Installation commanders may seek a 1-year variance from HQDA review of all NHPA MOAs and PAs. To justify a 1-year variance from HQDA MOA review, the installation commander must have available both technical and legal personnel who have prior experience in developing and implementing NHPA Section 106 compliance agreements. Requests for variance shall be made as follows:

(1) Installation requests for the 1-year variance from HQDA MOA and PA review requirements are made by memorandum through the MACOM to HQDA (AEC). The request for variance shall include information on the installation staff personnel meeting the above requirement and any anticipated MOAs and PAs that may be developed. The request must include the installation commander's guarantee that HQDA policies and principles established by chapter 3-1.a (1-4) of this regulation shall be followed in preparation and execution of MOAs and PAs that when said policies and procedures cannot be met, the standard staffing procedures at chapter 3-1.a (5) of this regulation will be followed.

(2) HQDA (AEC) will review and will forward the request for variance with an analysis and recommendation to the DEP and TJAG (ELD). Variance from HQDA review of MOAs and PAs are provided by the DEP for the specified one-year period. Installation commanders may request an annual renewal of the 1-year variance through the procedures in section 3-1e(1).

f. In instances where an installation is identified and included in the Base Realignment and Closure (BRAC) program, MACOM commanders will function as the installation commander for the purposes of NHPA compliance and PA and MOA staffing. Staffing procedures established by the Army Base Closure Office (DAIM-BO) for BRAC NHPA PAs and MOAs shall be followed for BRAC agreements.

### **3-2. National Register of Historic Places Determinations of Eligibility, Nominations, and Delisting**

a. *Determinations of Eligibility.* MACOM commanders shall establish a process for review of the installation determinations of National Register eligibility of properties that are made IAW 36 CFR 800.4(c). The MACOM process will provide for review of such determinations prior to their transmittal to the SHPO, and shall be integrated with installation undertakings in a manner that does not impact project schedules or costs.

b. *Disagreement regarding National Register Eligibility.* When a disagreement regarding a historic property's eligibility for the National Register occurs between the installation and the SHPO in the context of a NHPA Section 106 undertaking and compliance with 36 CFR 800.4(c), the installation shall request a determination of eligibility from the Keeper of the National Register IAW 36 CFR 63 and provide a description of the property, statement of significance or lack thereof, photographs, and the written opinion of the SHPO regarding the eligibility of the property. A draft copy of such requests may be provided through the MACOM to HQDA (AEC) for technical review and comment prior to the installation's submittal to the Keeper of the National Register.

c. *Nominations for formal listing of historic properties in the National Register of Historic Places.* In such instances, following information and staffing procedures shall be followed:

(1) Financial and personnel resources shall be primarily devoted to the operation of the internal cultural resources program for identification, evaluation to determine National Register eligibility, and management of historic properties. Formal nomination of historic properties to the Keeper of the National Register of Historic Places in not a high program priority. Formal nomination for listing in the National Register makes no difference in the way historic properties are managed, and diverts scarce resources away from other cultural resources management activities. The Army will formally nominate only those properties that it intends to interpret, commemorate, or

otherwise actively manage as sites of popular interest that are normally open to the general public.

(2) Installations will coordinate their intention to formally nominate a property for listing on the National Register through the MACOM to HQDA (AEC) for review and comment prior to the commitment of funds or personnel resources for preparation of National Register nomination packages. When the above policy threshold for formal nomination of a historic property to the National Register is met, all materials required to nominate historic properties for listing in the National Register prepared by the installation are forwarded to the SHPO for review and for SHPO signature. The SHPO shall be requested to return the signed nomination to the installation commander.

(3) The installation commander will forward the nomination with the SHPO's signature through the MACOM to HQDA(AEC). HQDA (AEC) will review the nomination and MACOM comments and will provide a recommendation to the DEP. Upon DEP concurrence, he or she will provide the DASA (ESOH) with the nomination and a request for signature. The DASA (ESOH), as the Army FPO, has the Army signature authority for all nominations and forwards nominations to the Keeper of the National Register for formal listing in the National Register of Historic Places.

d. *Removal of Historic Properties from the National Register.* Installation commanders may request that historic properties be removed from the National Register IAW 36 CFR 60.15. In such instances, following information and staffing procedures shall be followed:

(1) The installation commander will prepare documentation detailing the grounds for removal of the historic property from the National Register as specified in 36 CFR 60.15.

(2) The installation commander will notify and obtain the comments of the SHPO and forward those comments with the documentation detailing the grounds for removal through the MACOM to HQDA (AEC). HQDA (AEC) will review the documentation and provide a recommendation to the DEP. Upon DEP concurrence, he or she will provide the DASA (ESOH) with the documentation and a request that a petition for removal of the historic property from the National Register be made to the Keeper of the National Register. The DASA (ESOH) will forward such petitions to the Keeper of the National Register.

### **3-3. NAGPRA CAs and Plans of Action**

a. When the installation commander requires a CA or Plan of Action, the following principles and procedures shall be followed:

(1) NAGPRA CAs and Plans of Action should contain a compliance schedule with deadlines, procedures for schedule and task modification, dispute resolution and termination, standard consultation procedures for land management activities that could result in intentional or inadvertent discovery of cultural items, and determination of custody for cultural items. Pursuant to NAGPRA and 43 CFR 10, the consulting parties are to be provided review and consultation regarding the land management activities that are the subject of the agreement. CAs and Plans of Action will not provide the consulting parties with any approval authorities over any Army land management activities or work products associated with execution of the land management activities. Such approval authority is beyond the authority provided to consulting parties under NAGPRA and rests with the installation commander. Plans of Action shall contain all documentation requirements specified in 43 CFR 10.5e.(1-9).

(2) All actions requiring expenditure of funds in future fiscal years will be identified in the agreement as being "subject to availability of funds" (SAF) for purposes of compliance with the Anti-Deficiency Act.

(3) Initial draft CAs and Plans of Action will be staffed through the MACOM to HQDA (AEC) for review. The installation shall ensure that the initial draft CA or Plan of Action that is coordinated with the MACOM and HQDA (AEC) embodies and reflects the prior NAGPRA consultations between the installation commander and the head of the Federally-recognized Indian tribal government

or Native Hawaiian organization. AEC will provide HQDA technical review and will coordinate with TJAG (ELD) for HQDA legal review. HQDA (AEC) will provide the HQDA technical and legal review comments to the MACOM and installation commander. When forwarded for MACOM and HQDA (AEC) review, such draft agreements shall be accompanied by a "For Official Use Only" (FOUO) document prepared by the installation that contains—

(a) Cost estimates by fiscal year and a funding plan ensuring that the compliance schedule set in the CA or Plan of Action can be met and that costs for out year actions will be programmed into the Environmental Program Requirements Report (formerly the RCS 1383 report) and the installation Command Budget Estimate.

(b) Confirmation that relevant installation level activities and offices, including but not limited to the installation Office of the Staff Judge Advocate have reviewed and concur with the agreement.

b. Within 15 days from HQDA (AEC) receipt of the draft agreement and supporting memorandum, HQDA (AEC) will notify the MACOM and installation that—

(1) The agreement is IAW HQDA policy, and follows appropriate technical and legal practices and procedures. In such instances, the installation should proceed with execution of the agreement, or

(2) The agreement requires revision and that HQDA review comments will be forwarded within the following 15 days, or

(3) The draft CA or Plan of Action addresses an issue with Army-wide applicability, or that it is a precedent setting action, or that it has major financial implications. In such instances, AEC will advise the DEP and TJAG (ELD), and the DEP may elect to be a participant in and an Army signatory to the agreement.

c. Signature authority and procedures for finalizing CAs and Plans of Action are as follows:

(1) The installation commander has signature authority for CAs and Plans of Action pertaining to Army owned and controlled Federal properties, or actions subject to Army Federal approval that fall within the installation commanders area of responsibility. The DEP has signature authority for CAs and Plans of Action having Army-wide implications.

(2) In preparing final CAs and Plans of Action the installation commander will address all MACOM and HQDA comments on the draft agreements. Following integration of MACOM and HQDA comments, the installation commander will sign the agreement and forward the document to the MACOM (as appropriate), and Federally-recognized Indian tribe or Native Hawaiian organization for their signature. A signed copy will be requested and returned to the installation commander.

(3) In instances where the DEP elects to be a signatory to an agreement, HQDA (AEC) shall act on behalf of the DEP and in coordination with the installations, MACOMs, and Indian Tribe or Native Hawaiian organization in development of the agreement. HQDA (AEC) will staff such agreements to the Federally-recognized Indian tribes or Native Hawaiian organizations for signature.

d. Installation commanders may seek a 1-year variance from HQDA review of all NAGPRA Plans of Action and CAs. To justify a 1-year variance from HQDA review, the installation commander must have technical and legal personnel on staff who have significant experience in NAGPRA compliance activities or in consultation with Indian tribes or Native Hawaiian organizations.

(1) Requests for variance from HQDA Plan of Action review requirements are made by memorandum through the MACOM to HQDA (AEC). The request for variance shall include information on the staff personnel meeting the above requirement and any anticipated Plans of Action that may be developed. The request must include the installation commander's guarantee that HQDA policies and principles established by paragraph 3-3a(1-2) of this regulation shall be followed in preparation and execution of Plans of Action and CAs and that when said policies and procedures cannot be met, the standard staffing procedures at paragraph 3-1a(3) of this regulation will be followed.

(2) HQDA (AEC) will forward the request for 1-year variance with an analysis and recommendation to the DEP and TJAG (ELD). Variance from HQDA review of Plans of Action and CA's are

provided by the DEP for the specified 1-year period only. Installation commanders may request an annual renewal of the 1-year variance through the procedures at section 3-3d(1).

e. In instances where an installation is identified and included in the Base Realignment and Closure (BRAC) program, MACOM commanders will function as the installation commander for the purposes of NAGPRA compliance and CA and Plan of Action staffing. Additional HQDA staff review of BRAC NAGPRA CAs and Plans of Action may be required beyond those identified in this regulation.

### **3-4. Cooperative Agreements and Interagency Agreements**

a. As a general rule, Federal agencies, including the Army, must engage in full and open competition IAW the Federal Acquisition Regulation (FAR) to obtain goods and services. Congress, however, has created exceptions to that rule through enactment of independent statutory authority, empowering Federal agencies to procure goods and services from other Federal agencies, states, local governments and private nonprofit organizations through interagency or cooperative agreements. Installations are hereby authorized to develop and implement interagency agreements and or cooperative agreements, relevant to cultural resources management, with said entities on the basis of the following statutory authorities:

(1) Economy Act, 31 USC 1535, authorizes the Army to issue orders to other Federal agencies to provide goods or services, so long as the order is in the best interests of the Government, is cheaper or more convenient than procurement under contract, and does not conflict with another agency's authority.

(2) Title 10 USC 2684 authorizes the Army to enter cooperative agreement with States, local governments, or other entities for the preservation, maintenance, and improvement of cultural resources on military installations and for the conduct of research regarding cultural resources on installations. (National Defense Authorization Act for Fiscal Year 1997, Public Law No 104-210, 110 Stat. 2422, Section 2862 (1996), adding section 2684 to Chapter 159 of title 10 of the United States Code.)

b. Agreements (for example, Interagency Agreements, Memoranda of Understanding, and Cooperative Agreements) have been established between the DOD, other Federal agencies and nonprofit organizations which provide arrangements for DOD components to enter into implementing agreements with such agencies and organizations for the attainment of mutual conservation objectives. Installation commanders and commanders of other Army activities, utilizing relevant and appropriate statutory authority, as set forth above, may develop and sign implementing Interagency Agreements (IAG), Memoranda of Understanding, or Cooperative Agreements with said entities. All IAGs and Cooperative Agreements entered into IAW the provisions of this section must receive technical and legal review prior to the installation commander's signature.

### **3-5. Funding Cultural Resources Activities**

a. HQDA policy for use of environmental funds for cultural resources activities is established in "Policy and Guidelines for identifying U.S. Army Environmental Program Requirements(EPR Report)". Part 1, item 1 of the EPR policy specifies projects and activities that are not eligible for environmental funding.

(1) Projects and activities that are not eligible for environmental funding include routine grounds maintenance such as grass mowing, tree pruning, and landscaping, and includes those activities when they occur in historic cemeteries.

(2) Repair, maintenance, and rehabilitation of historic properties (including National Register eligible and listed buildings, structures, sites, objects, landscapes, districts, and cemeteries) are not eligible for environmental funding. In cases where repair, maintenance, and rehabilitation activities are stipulated and required in NHPA Section 106 PAs or ICRMPs, such activities remain ineligible for environmental funds. Appropriate funding sources for these activities include the Real Property Maintenance Account (RPMA).

b. Plans and studies for historic property identification; evaluation; maintenance; stabilization; repair; rehabilitation; conditions assessments; and reports, are eligible for environmental funds when such documents are developed IAW professional historic preservation standards and guidelines established by the Secretary of the Interior.

## **Chapter 4 Integrated Cultural Resources Management Plans (ICRMPs)**

### **4-1. Scope and Purpose of ICRMPs**

a. An ICRMP is a 5-year plan for compliance with the requirements outlined in chapter 3 of this regulation. As a component of the installation master plan, the ICRMP is the installation commander's decision document for cultural resources management actions and specific compliance procedures. ICRMPs are internal Army compliance and management plans that integrate the entirety of the installation cultural resources program with ongoing mission activities, allow for ready identification of potential conflicts between the installation's mission and cultural resources, and identify compliance actions necessary to maintain the availability of mission essential properties and acreage. While ICRMPs are not required by any statute or regulation other than this regulation, ICRMPs should address the applicable cultural resources legal requirements as defined by this regulation. ICRMPs are subject to NEPA analysis and documentation requirements. It is recommended that an Environmental Assessment be prepared to implement ICRMPs. ICRMPs shall supersede and replace Historic Preservation Plans (HPP) prepared under AR 420-40. ICRMPs shall be prepared IAW the guidelines in DA Pam 200-4.

b. ICRMPs shall not be the subject of, implemented by reference to, or included in NHPA PAs or MOAs, or NAGPRA CAs or Plans of Action. The scope of an ICRMP includes statutes and regulations that are beyond the statutory authority of the ACHP and SHPO, or Indian tribes and Native Hawaiian organizations. The section of the ICRMP that pertains to NHPA compliance may be extracted from the ICRMP and those actions may be integrated by reference into a NHPA PA or MOA. Similarly, the section of the ICRMP that pertains to NAGPRA compliance may be extracted from the ICRMP, modified, and may be integrated by reference into a NAGPRA CA or Plan of Action. The installation's internal operating procedures required to implement such agreements should be found in the ICRMP. Installations may request the SHPO, Indian tribe, or any other interested party for a nonbinding technical review of ICRMPs outside of any statutory or regulatory requirement to take advantage of outside expertise. Such comments should also be obtained throughout the ICRMP NEPA review process.

c. ICRMPs shall be prepared and implemented by all Federally-owned or -controlled Army installations having statutory and regulatory cultural resource management responsibilities. Installations with an existing plan (Cultural Resources Management Plan and or a Historic Preservation Plan developed IAW AR 420-40) that was prepared less than 3 years prior to the effective date of this regulation need not prepare an ICRMP IAW this regulation until the 3-year point is reached.

d. Installation commanders may seek a HQDA variance from ICRMP preparation requirements. The conditions for a variance include situations such as where the installation has conducted comprehensive efforts to locate and identify cultural resources following the appropriate statutory and regulatory procedures, and the installation commander has determined that there is minimal added value that would result from preparation of an ICRMP because there are very limited or no cultural resources within the area of the installation commander's responsibility. Such situations are expected to be rare. Requests for variance with a justification statement shall be staffed from the installation commander through the MACOM to HQDA (AEC) for review. HQDA (AEC) will forward the request

for variance with an analysis and recommendation to the DEP and TJAG (ELD). Variance from ICRMP requirements are provided by the DEP.

e. Installations that have received a HQDA variance from ICRMP preparation requirements IAW this regulation shall reevaluate the need to prepare a ICRMP in conjunction with each environmental audit conducted in accordance with AR 200-1.

f. Draft ICRMPs prepared by the installation commander will be formally staffed to the MACOM for review. The installation commander will consider MACOM and other comments and finalize the ICRMP.

g. Installations scheduled for closure within 5 years pursuant to base realignment and closure law are exempt from the ICRMP preparation requirements of this regulation.

### **4-2. Content of ICRMPs**

a. ICRMPs will be prepared IAW DA Pam 200-4 and will include but not be limited to—

(1) Identification of all applicable legal requirements and procedures for integrating compliance between the various independent cultural resources legal requirements.

(2) Identification to the extent possible, of specific actions, projects and undertakings projected over a 5-year period that may require cultural resources legal compliance actions.

(3) Development and implementation, as appropriate, of a cultural landscape approach to installation cultural resources management and planning as described in DA Pam 200-4.

(4) A planning level survey that includes existing information on cultural resources, development of or reference to existing historic contexts, an archeological sensitivity assessment or archeological predictive model, and a listing of any Federally-recognized Indian tribes or Native Hawaiian organizations associated with the installation.

(5) A plan for the actual field inventory and evaluation of cultural resources that is prioritized according to the inventory and evaluation requirements associated with specific installation compliance requirements, such as NHPA Section 106 undertakings, that could affect cultural resources. Any electronic spatial data produced by inventories shall conform with the Federal Information Processing Standards and spatial data standards for DOD to ensure that the spatial data is useable in various spatial data systems.

(6) Internal procedures for consultation, survey, inventory, evaluation, treatment, recordation, monitoring, emergency or inadvertent discovery, reporting, etc., tailored for the particular conditions and specific requirements at the installation. Interface requirements between the cultural resources management program and other program areas (including but not limited to natural resources management, ITAM, master planning, facilities and housing and mission related training and testing activities) should be identified. The coordination processes within the installation and between the installation, MACOM, HQDA, regulatory agencies, and the interested public should also be defined.

(7) Provisions for curation of collections and records (IAW 36 CFR 79) that are, associated with NHPA undertakings, and procedures to reduce the amount of materials that are accessioned and permanently curated by the installation.

(8) Provisions for limiting the availability of cultural resource locational information for the purposes of protecting resources from damage.

(9) Provisions and procedures for the conduct of an economic analysis and alternative use analysis on historic properties that are being considered for demolition and replacement.

(10) Procedures to ensure Indian tribes and Native Hawaiian organizations are provided access to sacred sites and are consulted when future access may be restricted or when adverse effects to the physical integrity of the sacred site may occur.

(11) Development of standard treatment measures for cultural resources.

(12) An estimate of resources required to execute the plan. Such estimates must have restricted access and be "For Official Use Only" due to protection of Government cost estimates.

## Appendix A References

### Section I Required Publications

#### AR 200-1

Environmental Protection and Enhancement. (Cited in paras 1-1-8g, 1-9h, and 4-1e.)

#### AR 200-2

Environmental Effects of Army Actions. (Cited in paras 1-9f, and 2-2a.)

#### AR 200-3

Natural Resources, Land, Forest, and Wildlife Management. (Cited in para 1-9f.)

#### DA Pamphlet 200-4

Cultural Resources Management. (Cited in para 1-9f.)

#### AR 405-80

Granting Use of Real Estate (Cited in para 1-9l and 2-6d.)

### Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

#### AR 15-13

Military Construction Army (MCA) Disposal of Structures.

#### AR 190-31

Crime Prevention Program, Department of the Army.

#### AR 210-20

Master Planning for Army Installations.

#### AR 405-10

Acquisition of Real Property and Interests Therein.

#### AR 405-90

Disposal of Real Estate.

#### AR 415-15

Military Construction, Army (MCA) Program Development).

#### AR 415-35

Minor Construction.

#### AR 420-10

Facilities Engineering: General Provisions, Organizations, Functions, and Personnel.

#### AR 420-17

Real Property and Resource Management.

#### AR 420-22

Preventative Maintenance and Self-Help.

#### AR 870-20

Historical Properties and Museums.

#### DODI 4715.3

Environmental Conservation Program.

### EPR Report

Policy and Guidance for Identifying U.S. Army Environmental Program Requirements, ODEP

### Section III Prescribed Forms

This section contains no entries.

### Section IV Referenced Forms

This section contains no entries.

## Appendix B Federal Statutes, Regulations, Executive Orders and Presidential Memorandum

### Statutes

Abandoned Shipwreck Act of 1987 43 USC 2101-2106.

American Indian Religious Freedom Act of 1978, as amended 42 USC 1996-1996a.

Antiquities Act of 1906 16 USC 431-433; 34 Stat. 225.

Archeological and Historic Data Preservation Act of 1974 16 USC 469-469c.

Archeological Resources Protection Act of 1979 16 USC 470aa-470ll.

Historic Sites Act of 1935 16 USC 461-467.

National Environmental Policy Act 42 USC 4321-4370c.

National Historic Preservation Act of 1966, as amended 16 USC 470-470w.

Native American Graves Protection and Repatriation Act of 1990 25 USC 3001-3013.

### Federal Regulations

Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties, 36 CFR 800.

Council on Environmental Quality, Regulations Implementing the National Environmental Policy Act, 40 CFR 1500-1508.

Department of Defense, Protection of Archeological Resources, 32 CFR 229.

Department of the Interior, Native American Graves Protection and Repatriation Act, 43 CFR 10.

Department of the Interior, Curation of Federally-owned and Administered Archeological Collections, 36 CFR 79.

Department of the Interior, Determinations of Eligibility for Inclusion in the National Register of Historic Places, 36 CFR 63.

Department of the Interior, National Historic Landmark Program, 36 CFR 65.

Department of the Interior, National Register of Historic Places, 36 CFR 60.

Department of the Interior, Preservation of American Antiquities, 43 CFR 3.

Department of the Interior, Supplemental Regulations (per ARPA), 43 CFR 7.2.

Department of the Interior, Waiver of Federal Agency Responsibility under Section 110 of the National Historic Preservation Act, 36 CFR 78.

### Executive Orders

EO 11593—Protection and Enhancement of the Cultural Environment.

EO 13007—Indian Sacred Sites

### Presidential Memoranda

Memorandum for the Heads of Executive Departments and Agencies, dated April 29, 1994: Government-to-Government Relations with Native American Tribal Governments.

## Glossary

### Section I Abbreviations

#### ACHP

Advisory Council on Historic Preservation

#### ACSIM

Assistant Chief of Staff for Installation Management

#### AEC

Army Environmental Center

#### AHPA

Archeological and Historical Preservation Act

#### AIRFA

American Indian Religious Freedom Act

#### ARNG

Army National Guard

#### ARPA

Archeological Resources Protection Act

#### CA

Comprehensive Agreement (per 43 CFR 10)

#### CFR

Code of Federal Regulations

#### CRM

Cultural Resources Manager

#### DASA(ESOH)

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health)

#### DEP

Director of Environmental Programs

#### FOUO

For Official Use Only

#### FPO

Federal Preservation Officer

#### HPP

Historic Preservation Plan

#### HQDA

Headquarters, Department of the Army

#### IAW

In accordance with

#### ICRMP

Integrated Cultural Resources Management Plan

#### ITAM

Integrated Training Area Management (program)

#### MACOM

major Army command

#### MCA

Military Construction Army

#### MOA

Memorandum of Agreement (per 36 CFR 800)

#### NAGPRA

Native American Graves Protection and Repatriation Act

#### NEPA

National Environmental Policy Act of 1969, as amended

#### NGB-ARE

National Guard Bureau, Environmental Programs

#### NHPA

National Historic Preservation Act of 1966, as amended

#### NPS

National Park Service

#### PA

Programmatic Agreement (per 36 CFR 800)

#### SHPO

State Historic Preservation Officer

#### TJAG (ELD)

The Judge Advocate General (Environmental Law Division)

#### USACE

U.S. Army Corps of Engineers

### Section II Terms

#### Cultural Resources

Historic properties as defined by the NHPA, cultural items as defined by NAGPRA, archeological resources as defined by ARPA, sacred sites as defined in EO 13007 to which access is afforded under AIRFA, and collections and associated records as defined in 36 CFR 79.

#### Integrated Cultural Resources Management Plan (ICRMP)

A 5-year plan developed and implemented by an installation commander to provide for the management of cultural resources in a way that maximizes beneficial effects on such resources and minimizes adverse effects and impacts without impeding the mission.

#### Cultural Resources Management Program

Activities carried out under the authority of this regulation to comply with Federal statutes and regulations pertaining to cultural resources.

#### Indian Tribe

Any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the

Alaska Native Claims Settlement Act (43 USC 1601 et seq.) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. Such acknowledged or "Federally-recognized" Indian tribes exist as unique political entities in a government-to-government relationship with the United States.

#### National Register of Historic Places (National Register)

The nation's inventory of known historic properties that have been formally listed by the NPS. The National Register of Historic Places is administered by the NPS on the behalf of the Secretary of the Interior. National Register listings include districts, landscapes, sites, buildings, structures, and objects that meet the set of criteria found in 36 CFR 60.4.

#### Native Hawaiian Organization

Any organization that serves and represents the interests of, has a primary stated purpose to provide services to, and has expertise in Native Hawaiians and Native Hawaiian affairs. Such organizations must include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei.

#### Undertaking

Any project, activity, or program that can result in changes in the character or use of historic properties as defined by the NHPA. The project, activity or program must be under the direct or indirect jurisdiction of the installation commander. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106 of the NHPA.

### Section III Special Abbreviations and Terms

This section contains no entries.

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