United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 8 1997

PEP - Environmental Compliance Memorandum No. ECM97-2

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands

This memorandum provides guidance to Departmental bureaus and offices with regard to the implementation of and compliance with 512 DM Chapter 2, Departmental Responsibility for Indian Trust Resources, and Executive Order No. 13007 - Indian Sacred Sites. These subjects are dealt with in Part I and Part II of the memorandum, respectively.

Part 1 - 512 DM Chapter 2

This Chapter provides guidance to bureaus and offices regarding Departmental responsibilities for the protection of Indian trust resources. This Chapter requires that any anticipated impacts to Indian trust resources from a proposed project or action by bureaus and offices be explicitly addressed in environmental documents.

This Chapter also provides that Departmental bureaus and offices, when engaged in the planning of any proposed project or action, will ensure that any anticipated effects on Indian trust resources are explicitly addressed in the planning, decision and operational documents; i.e., Environmental Assessments (EAs), Environmental Impact Statements (EISs), Management Plans, etc., that are prepared for the project. These documents must clearly state the rationale for the recommended decision and explain how the decision will be consistent with the Department's trust responsibilities.

Accordingly, bureaus and offices must identify and evaluate during the scoping and\or planning processes any anticipated effects, direct or indirect, from the proposed project or action on Indian trust resources. If any impact to the Indian trust resources is identified, the bureau or office must consult with the affected tribe(s) on a government-to-government basis with respect to the impact from the proposed project or action.

If any significant impact to Indian trust resources is identified during the scoping and\or planning processes, the environmental document must clearly evaluate and state in the environmental consequences section, under a separate impact heading, how the proposed mitigation measures or actions in the document would be consistent with the Department's Indian trust responsibilities.

If a project or an action, however, is expected to have either an insignificant impact or no impact on any Indian trust resources, the document, under the scoping section in an EIS, must specifically state that the proposed project or action is expected to have either insignificant impact or no impact, direct or indirect, on any Indian trust resources, with reasons given. A similar statement must be included in an EA under an appropriate section.

Part 2 - Executive Order 13007

Executive Order No. 13007, dated May 24, 1996, provides that in managing Federal lands, each executive branch agency with statutory or administrative responsibility for management of Federal lands shall, to the extent practicable, permitted by law and not inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practioners and (2) avoid adversely affecting the physical integrity of such sacred sites. In addition, where appropriate, agencies shall maintain the confidentiality of sacred sites.

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

Federal agencies are required to promptly implement procedures for the purposes of carrying out the provisions of the Executive Order, including, where practicable and appropriate, procedures to ensure that reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites.

The Executive Order also carries with it the intent that Departmental bureaus and offices must ensure that any anticipated effects on Indian sacred sites which may arise from planning or proposed action are *explicitly* addressed in the planning, decision and operational documents; i.e., Environmental

Assessments (EAs), Environmental Impact Statements (EISs), Management Plans, etc. These documents must clearly state the rationale for the recommended decision and explain how the decision will be consistent with the Executive Order.

Accordingly, bureaus and offices must identify and evaluate during the scoping and/or planning processes any anticipated effects, direct or indirect, from the proposed project on Indian sacred sites on Federal lands. If any impact to Indian sacred sites is identified, the bureau or office must consult with the affected tribe(s) on a government-to-government basis with respect to the impact from the proposed project or action. In addition, bureaus and offices, to the extent practicable, must ensure that: (1) Indian religious practioners are provided access to and ceremonial use of Indian sacred sites, and (2) any action that adversely affects the physical integrity of Indian sacred sites is avoided.

If any <u>significant</u> impact to an Indian sacred site on Federal lands is unavoidable and is identified during the scoping and/or planning processes, the environmental document must clearly evaluate and state in the environmental consequences section, under a separate impact heading, how the proposed mitigation measures or actions in the document would be consistent with the provisions of the Executive Order.

If a project or an action, however, is expected to have either an insignificant impact or no impact on any Indian sacred site on Federal lands, the document, under the scoping section in an EIS, must specifically state that the proposed project or action is expected to have either insignificant impact or no impact, direct or indirect, on any Indian sacred site, with reasons given. A similar statement must be included in an EA under an appropriate section.

This Environmental Compliance Memorandum Replaces ECM95-2 dated May 15, 1995.