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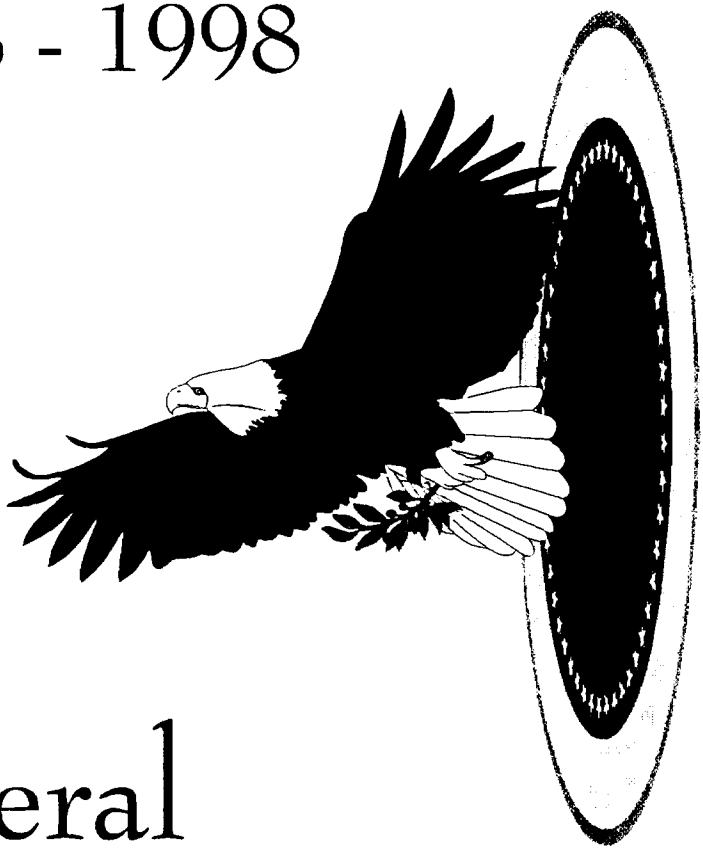

Federal Indian Policies

"Together we can open the greatest era of cooperation, understanding and respect among our people ever . . . and when we do, the judgement of history will be that the President of the United States and the leaders of the sovereign Indian nations met . . . and together lifted our great nations to a new and better place."

William J. Clinton

April 29, 1994

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"Fulfillment of the Federal Indian trust responsibility is not only one of the Interior Department's highest priorities, it is one of the Department's most important legal obligations. . . . we are strongly committed to ensuring that each bureau and office understands its trust obligations and conducts all activities that affect American Indian tribes and tribal members in accordance with the highest fiduciary standard."

Bruce Babbitt

February 13, 1996

Executive Order No. 13084
Consultation and Coordination with Indian Tribal Governments

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self- government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

Section 1. **Definitions.**

For purposes of this Order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior

acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. §3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. §3502(5).

Section 2. **Policymaking Criteria.** In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Section 3. **Consultation.**

(a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with

representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

Section 4. **Increasing Flexibility for Indian Tribal Waivers.**

(a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This Section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Section 5. **Cooperation in developing regulations.** On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Section 6. **Independent agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this Order.

Section 7. **General provisions.**

(a) This Order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This Order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This Order shall complement the consultation and waiver provisions in Sections 4 and 5 of the Executive Order, entitled "Federalism," being issued on this day.

(d) This Order shall be effective 90 days after the date of this Order.

William J. Clinton

May 14, 1998

Executive Order No. 13021
Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and laws of the United States of America, in reaffirmation of the special relationship of the Federal Government to American Indians and Alaska Natives, and, for the purposes of helping to:

(a) ensure that tribal colleges and universities are more fully recognized as accredited institutions, have access to the opportunities afforded other institutions, and have Federal resources committed to them on a continuing basis;

(b) establish a mechanism that will increase accessibility of Federal resources for tribal colleges and universities in tribal communities;

(c) promote access to high - quality educational opportunity for economically disadvantaged students;

(d) promote the preservation and the revitalization of American Indian and Alaska Native languages and cultural traditions;

(e) explore innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs; and

(f) support the National Education Goals (20 U.S.C. §5812), it is hereby ordered as follows:

Section 1. **Definition of Tribal Colleges and Universities.** Tribal colleges and universities ("tribal colleges") are those institutions cited in Section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. §301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. §1801 et seq.), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95-471, title II (25 U.S.C. §640a note).

Section 2. **Board of Advisors.**

(a) **Establishment.** There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities ("Board"). Notwithstanding the provisions of any other Executive Order, the responsibilities of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Board, shall be performed by the Secretary of Education ("Secretary"), in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) **Composition.** The Board shall consist of not more than 15 Members who shall be appointed by the President. The Board shall include representatives of tribal colleges. The Board may also include representatives of the higher, early childhood, elementary, and secondary education communities; tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate. Members of the Board will serve terms of 2 years and may be reappointed to additional terms. A Member may continue to serve until his or her successor is appointed. In the event a Member fails to serve a full term, an individual appointed to replace that Member will serve the remainder of that term. All terms will expire upon the termination of the Board.

(c) **Role of Board.** The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this Order. The Board shall also provide recommendations to the President and the Secretary at least annually on ways tribal colleges can:

(1) utilize long-term development, endowment building, and master planning to strengthen institutional viability;

(2) utilize the Federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives;

(3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

(4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) help achieve National Education Goals and meet other high standards of education accomplishment.

(d) **Scheduled Meetings.** The Board shall meet at least annually to provide advice and consultation on tribal colleges and relevant Federal and private sector activities, and to transmit reports and present recommendations.

Section 3. **Office of White House Initiative.** There shall be established in the Department of Education the White House Initiative on Tribal Colleges and Universities ("Initiative"). The Initiative shall be authorized to:

(a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and tribal colleges;

(c) serve the Secretary in carrying out the Secretary's responsibilities under this Order; and

(d) utilize the services, personnel, information, and facilities of other Federal, State, tribal, and local agencies with their consent, and with or without reimbursement, consistent with applicable law. To the extent permitted by law and regulations, each Federal agency shall cooperate in providing resources, including personnel detailed to the Initiative, to meet the objectives of the Order.

Section 4. **Department and Agency Participation.** Each participating executive department and agency (hereinafter collectively referred to as "agency"), as determined by the Secretary, shall appoint a senior official, who

is a full-time officer of the Federal Government and who is responsible for management or program administration, to serve as liaison to the White House Initiative. The official shall report directly to the agency head, or agency representative, on agency activity under this Order and serve as liaison to the White House Initiative. To the extent permitted by law and regulation, each agency shall provide appropriate information in readily available formats requested by the White House Initiative staff pursuant to this Order.

Section 5. **Five-Year Federal Plan.**

(a) **Content.** Each agency shall, in collaboration with tribal colleges, develop and document a Five-Year Plan of the agency's efforts to fulfill the purpose of this Order. These Five-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. The plans shall address among other relevant issues:

(1) barriers impeding the access of tribal colleges to funding opportunities and to participation in Federal programs, and ways to eliminate the barriers;

(2) technical assistance and information that will be made available to tribal colleges regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, or contracts; and

(3) an annual goal for agency funds to be awarded to tribally controlled colleges and universities in:

(A) grants, cooperative agreements, contracts, and procurement;

(B) related excess property-type acquisitions under various authorities such as Section 923 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. §2206a) and the Federal Property and Administrative Services Act of 1949, chapter 288, 63 Stat. 377 (codified as described at 40 U.S.C.§471 note); and

(c) the transfer of excess and surplus Federal computer equipment under Executive Order 12999. In developing the Five-Year Plans required by this Order, agencies shall strive to include tribal colleges in all aspects and activities related to the attainment of the participation goals described in Executive Order 12928, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions." The Plans may also emphasize access to high-quality educational opportunity for economically disadvantaged Indian students; the preservation and revitalization of American Indian and Alaska Native languages and cultural traditions; innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs; and the National Education Goals.

(b) **Submission.** Each agency shall submit its Five-Year Plan to the White House Initiative Office. In consultation with the Board, the White House Initiative Office shall then review these Five-Year Plans and develop an integrated Five-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. The Five-Year Plan for Assistance to Tribal Colleges may be revised within the 5-year period.

(c) **Annual Performance Reports.** Each agency shall submit to the White House Initiative Office an Annual Performance Report that shall measure each agency's performance against the objectives set forth in its Five-Year Plan. In consultation with the Board, the White House Initiative Office shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

Section 6. **Private Sector.** In cooperation with the Board, the White House Initiative Office shall encourage the private sector to assist tribal colleges through increased use of such strategies as:

(a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finance, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

Section 7. **Termination.** The Board shall terminate 2 years after the date of this Executive Order unless the Board is renewed by the President prior to the end of that 2-year period.

Section 8. **Administration.**

(a) **Compensation.** Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. §§5701-5707).

(b) **Funding.** The Board and the Initiative shall be funded by the Department of Education.

(c) **Administrative Support.** The Department of Education shall provide appropriate administrative services and staff support for the Board and the Initiative. With the consent of the Department of Education, other agencies participating in the Initiative shall provide administrative support to the White House Initiative Office consistent with statutory authority and shall make use of Section 112 of title 3, United States Code, to detail agency employees to the extent permitted by law. The Board and the White House Initiative Office shall have a core staff and shall be supported at appropriate levels.

William J. Clinton

October 21, 1996

Executive Order No. 13007
Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. **Accommodation of Sacred Sites.**

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,

(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and

(2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this Order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "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 appropriately authoritative

representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Section 2. **Procedures.**

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of Section 1 of this Order, including, where practicable and appropriate, procedures to ensure 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. In all actions pursuant to this Section, agencies shall comply with the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this Order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this Order. Such reports shall address, among other things,

(i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;

(ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and

(iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands

that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Section 3. Nothing in this Order shall be construed to require a taking of vested property interests. Nor shall this Order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this Order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C §551(13)).

Section 4. This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

May 24, 1996

"One hundred years ago, Indian people were thought to be a dying race. The assumption . . . was the disappearance of tribal communities and the absorption of Indian people into the surrounding world until their distinctiveness was gone. . . . And yet, somehow, 100 years later, the sun is rising again and Indian people and their tribal communities are still here. They are recovering and growing stronger."

Kevin Gover

October 30, 1997

Government-to-Government Relations with Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government 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.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

April 29, 1994

Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes

Memorandum for the Heads of Executive Departments and Agencies

Eagle feathers hold a sacred place in Native American culture and religious practices. Because of the feathers' significance to Native American heritage and consistent with due respect for the government-to-government relationship between the Federal and Native American tribal governments, this Administration has undertaken policy and procedural changes to facilitate the collection and distribution of scarce eagle bodies and parts for this purpose. This memorandum affirms and formalizes executive branch policy to ensure that progress begun on this important matter continues across the executive branch. Today, as part of an historic meeting with all federally recognized tribal governments, I am directing executive departments and agencies (hereafter collectively "agency" or "agencies") to work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law.

As part of these efforts, agencies shall take steps to improve their collection and transfer of eagle carcasses and eagle body parts ("eagles") for Native American religious purposes. The success of this initiative requires the participation, and is therefore the responsibility, of all Federal land managing agencies, not just those within the Department of the Interior. I therefore direct each agency responsible for managing Federal lands to diligently and expeditiously recover salvageable eagles found on lands under their jurisdiction and ensure that the eagles are promptly shipped to the National Eagle Repository ("Repository"). To assist agencies in this expanded effort, the Secretary of the Interior shall issue guidelines to all relevant agencies for the proper shipment of eagles to the Repository. After receiving these guidelines, agencies shall immediately adopt policies, practices, and procedures necessary in accordance with these guidelines to recover and transfer eagles to the Repository promptly.

I support and encourage the initial steps taken by the Department of the Interior to improve the distribution of eagles for Native American religious purposes. In particular, the Department of the Interior shall continue to adopt policies and procedures and take those actions necessary to:

(a) ensure the priority of distribution of eagles, upon permit application, first for traditional Native American religious purposes, to the extent permitted by law, and then to other uses;

(b) simplify the eagle permit application process quickly and to the greatest extent possible to help achieve the objectives of this memorandum;

(c) minimize the delay and ensure respect and dignity in the process of distributing eagles for Native American religious purposes to the greatest extent possible;

(d) expand efforts to involve Native American tribes, organizations, and individuals in the distribution process, both at the Repository and on tribal lands, consistent with applicable laws;

(e) review means to ensure that adequate refrigerated storage space is available to process the eagles; and

(f) continue efforts to improve the Repository's ability to facilitate the objectives of this memorandum.

The Department of the Interior shall be responsible for coordinating any interagency efforts to address continuing executive branch actions necessary to achieve the objectives of this memorandum.

We must continue to be committed to greater intergovernmental communication and cooperation. In addition to working more closely with tribal governments, we must enlist the assistance of, and cooperate with, State and local governments to achieve the objectives of this memorandum. I therefore request that the Department of the Interior work with State fish and game agencies and other relevant State and local authorities to facilitate the objectives of this memorandum.

With commitment and cooperation by all of the agencies in the executive branch and with tribal governments, I am confident that we will be able to accomplish meaningful progress in the distribution of eagles for Native American religious purposes.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

April 29, 1994

"Religious freedom is literally our first freedom. . . . With the Religious Freedom Restoration Act we made it possible, . . . for Native Americans, . . . to practice the full range of their religious practices when they might have otherwise come in contact with some governmental regulation."

William J. Clinton

July 12, 1995

Secretarial Order No. 3206
American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

Section 1. **Purpose and Authority.** This Order is issued by the Secretary of the Interior and the Secretary of Commerce (Secretaries) pursuant to the Endangered Species Act of 1973, 16 U.S.C. §1531, as amended (the Act), the federal-tribal trust relationship, and other federal law. Specifically, this Order clarifies the responsibilities of the component agencies, bureaus and offices of the Department of the Interior and the Department of Commerce (Departments), when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in this Order. This Order further acknowledges the trust responsibility and treaty obligations of the United States toward Indian tribes and tribal members and its government-to-government relationship in dealing with tribes. Accordingly, the Departments will carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments, and that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.

Section 2. **Scope and Limitations.**

(A) This Order is for guidance within the Departments only and is adopted pursuant to, and is consistent with, existing law.

(B) This Order shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Order be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(C) This Order does not preempt or modify the Departments' statutory authorities or the authorities of Indian tribes or the states.

(D) Nothing in this Order shall be applied to authorize direct (directed) take of listed species, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. Incidental take issues under this Order are addressed in Principle 3(C) of Section 5.

(E) Nothing in this Order shall require additional procedural requirements for substantially completed Departmental actions, activities, or policy initiatives.

(F) Implementation of this Order shall be subject to the availability of resources and the requirements of the Anti-Deficiency Act.

(G) Should any tribe(s) and the Department(s) agree that greater efficiency in the implementation of this Order can be achieved, nothing in this Order shall prevent them from implementing strategies to do so.

(H) This Order shall not be construed to supersede, amend, or otherwise modify or affect the implementation of, existing agreements or understandings with the Departments or their agencies, bureaus, or offices including, but not limited to, memoranda of understanding, memoranda of agreement, or statements of relationship, unless mutually agreed by the signatory parties.

Section 3. **Definitions.** For the purposes of this Order, except as otherwise expressly provided, the following terms shall apply:

(A) The term "Indian tribe" shall mean any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of tribes maintained by the Bureau of Indian Affairs.

(B) The term "tribal trust resources" means those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes

through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.

(C) The term "tribal rights" means those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

(D) The term "Indian lands" means any lands title to which is either:

1) held in trust by the United States for the benefit of any Indian tribe or individual; or

2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Section 4. **Background.** The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from other entities that deal with, or are affected by, the federal government. This relationship has given rise to a special federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

The Departments recognize the importance of tribal self-governance and the protocols of a government-to-government relationship with Indian tribes. Long-standing Congressional and Administrative policies promote tribal self-government, self-sufficiency, and self-determination, recognizing and endorsing the fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinctive ways of life. The Departments recognize and respect, and shall consider, the value that tribal traditional knowledge provides to tribal and federal land management decision-making and tribal resource management activities. The Departments recognize that Indian tribes are governmental sovereigns; inherent in this sovereign authority is the power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect tribal trust

resources. The Departments shall be sensitive to the fact that Indian cultures, religions, and spirituality often involve ceremonial and medicinal uses of plants, animals, and specific geographic places.

Indian lands are not federal public lands or part of the public domain, and are not subject to federal public land laws. They were retained by tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

Because of the unique government-to-government relationship between Indian tribes and the United States, the Departments and affected Indian tribes need to establish and maintain effective working relationships and mutual partnerships to promote the conservation of sensitive species (including candidate, proposed and listed species) and the health of ecosystems upon which they depend. Such relationships should focus on cooperative assistance, consultation, the sharing of information, and the creation of government-to-government partnerships to promote healthy ecosystems.

In facilitating a government-to-government relationship, the Departments may work with intertribal organizations, to the extent such organizations are authorized by their member tribes to carry out resource management responsibilities.

Section 5. **Responsibilities.** To achieve the objectives of this Order, the heads of all agencies, bureaus and offices within the Department of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce, shall be responsible for ensuring that the following directives are followed:

Principle 1. The Departments Shall Work Directly with Indian Tribes on a Government-to-Government Basis to Promote Healthy Ecosystems.

The Departments shall recognize the unique and distinctive political and constitutionally based relationship that exists between the United States and each Indian tribe, and shall view tribal governments as sovereign entities with

authority and responsibility for the health and welfare of ecosystems on Indian lands. The Departments recognize that Indian tribes are governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources. Accordingly, the Departments shall seek to establish effective government-to-government working relationships with tribes to achieve the common goal of promoting and protecting the health of these ecosystems. Whenever the agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. This shall include providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes. To facilitate the government-to-government relationship, the Departments may coordinate their discussions with a representative from an intertribal organization, if so designated by the affected tribe(s).

Except when determined necessary for investigative or prosecutorial law enforcement activities, or when otherwise provided in a federal-tribal agreement, the Departments, to the maximum extent practicable, shall obtain permission from tribes before knowingly entering Indian reservations and tribally-owned fee lands for purposes of ESA-related activities, and shall communicate as necessary with the appropriate tribal officials. If a tribe believes this section has been violated, such tribe may file a complaint with the appropriate Secretary, who shall promptly investigate and respond to the tribe.

Principle 2. The Departments Shall Recognize That Indian Lands Are Not Subject to the Same Controls as Federal Public Lands.

The Departments recognize that Indian lands, whether held in trust by the United States for the use and benefit of Indians or owned exclusively by an Indian tribe, are not subject to the controls or restrictions set forth in federal public land laws. Indian lands are not federal public lands or part of the public domain, but are rather retained by tribes or set aside for tribal use pursuant to treaties, statutes, court orders, executive orders, judicial decisions, or agreements. Accordingly, Indian tribes manage Indian lands in accordance with tribal goals and objectives, within the framework of applicable laws.

Principle 3. The Departments Shall Assist Indian Tribes in Developing and Expanding Tribal Programs So That Healthy Ecosystems Are Promoted and Conservation Restrictions Are Unnecessary.

(A) **The Departments shall take affirmative steps to assist Indian tribes in developing and expanding tribal programs that promote healthy ecosystems.**

The Departments shall take affirmative steps to achieve the common goals of promoting healthy ecosystems, Indian self-government, and productive government-to-government relationships under this Order, by assisting Indian tribes in developing and expanding tribal programs that promote the health of ecosystems upon which sensitive species (including candidate, proposed and listed species) depend. The Departments shall offer and provide such scientific and technical assistance and information as may be available for the development of tribal conservation and management plans to promote the maintenance, restoration, enhancement and health of the ecosystems upon which sensitive species (including candidate, proposed, and listed species) depend, including the cooperative identification of appropriate management measures to address concerns for such species and their habitats.

(B) **The Departments shall recognize that Indian tribes are appropriate governmental entities to manage their lands and tribal trust resources.**

The Departments acknowledge that Indian tribes value, and exercise responsibilities for, management of Indian lands and tribal trust resources. In keeping with the federal policy of promoting tribal self-government, the Departments shall respect the exercise of tribal sovereignty over the management of Indian lands, and tribal trust resources. Accordingly, the Departments shall give deference to tribal conservation and management plans for tribal trust resources that:

(a) govern activities on Indian lands, including, for the purposes of this section, tribally-owned fee lands, and

(b) address the conservation needs of listed species. The Departments shall conduct government-to-government consultations to discuss the extent to which tribal resource management plans for tribal trust resources outside Indian lands can be incorporated into actions to address the conservation needs of listed species.

(C) The Departments, as trustees, shall support tribal measures that preclude the need for conservation restrictions.

At the earliest indication that the need for federal conservation restrictions is being considered for any species, the Departments, acting in their trustee capacities, shall promptly notify all potentially affected tribes, and provide such technical, financial, or other assistance as may be appropriate, thereby assisting Indian tribes in identifying and implementing tribal conservation and other measures necessary to protect such species. In the event that the Departments determine that conservation restrictions are necessary in order to protect listed species, the Departments, in keeping with the trust responsibility and government-to-government relationships, shall consult with affected tribes and provide written notice to them of the intended restriction as far in advance as practicable. If the proposed conservation restriction is directed at a tribal activity that could raise the potential issue of direct (directed) take under the Act, then meaningful government-to-government consultation shall occur, in order to strive to harmonize the federal trust responsibility to tribes, tribal sovereignty and the statutory missions of the Departments. In cases involving an activity that could raise the potential issue of an incidental take under the Act, such notice shall include an analysis and determination that all of the following conservation standards have been met:

(i) the restriction is reasonable and necessary for conservation of the species at issue;

(ii) the conservation purpose of the restriction cannot be achieved by reasonable regulation of non-Indian activities;

(iii) the measure is the least restrictive alternative available to achieve the required conservation purpose;

(iv) the restriction does not discriminate against Indian activities, either as stated or applied; and,

(v) voluntary tribal measures are not adequate to achieve the necessary conservation purpose.

Principle 4. The Departments Shall Be Sensitive to Indian Culture, Religion and Spirituality.

The Departments shall take into consideration the impacts of their actions and policies under the Act on Indian use of listed species for cultural and religious purposes. The Departments shall avoid or minimize, to the extent practicable, adverse effects upon the noncommercial use of listed sacred plants and animals in medicinal treatments and in the expression of cultural and religious beliefs by Indian tribes. When appropriate, the Departments may issue guidelines to accommodate Indian access to, and traditional uses of, listed species, and to address unique circumstances that may exist when administering the Act.

Principle 5. The Departments Shall Make Available to Indian Tribes Information Related to Tribal Trust Resources and Indian Lands, And, to Facilitate the Mutual Exchange of Information, Shall Strive to Protect Sensitive Tribal Information from Disclosure.

To further tribal self-government and the promotion of healthy ecosystems, the Departments recognize the critical need for Indian tribes to possess complete and accurate information related to Indian lands and tribal trust resources. To the extent consistent with the provisions of the Privacy Act, the Freedom of Information Act (FOIA) and the Departments' abilities to continue to assert FOIA exemptions with regard to FOIA requests, the Departments shall make available to an Indian tribe all information held by the Departments which is related to its Indian lands and tribal trust resources. In the course of the mutual exchange of information, the Departments shall protect, to the maximum extent practicable, tribal information which has been

disclosed to or collected by the Departments. The Departments shall promptly notify and, when appropriate, consult with affected tribes regarding all requests for tribal information relating to the administration of the Act.

Section 6. **Federal-Tribal Intergovernmental Agreements.** The Departments shall, when appropriate and at the request of an Indian tribe, pursue intergovernmental agreements to formalize arrangements involving sensitive species (including candidate, proposed, and listed species) such as, but not limited to, land and resource management, multi-jurisdictional partnerships, cooperative law enforcement, and guidelines to accommodate Indian access to, and traditional uses of, natural products. Such agreements shall strive to establish partnerships that harmonize the Departments' missions under the Act with the Indian tribe's own ecosystem management objectives.

Section 7. **Alaska.** The Departments recognize that section 10(e) of the Act governs the taking of listed species by Alaska Natives for subsistence purposes and that there is a need to study the implementation of the Act as applied to Alaska tribes and natives. Accordingly, this Order shall not apply to Alaska and the Departments shall, within one year of the date of this Order, develop recommendations to the Secretaries to supplement or modify this Order and its Appendix, so as to guide the administration of the Act in Alaska. These recommendations shall be developed with the full cooperation and participation of Alaska tribes and natives. The purpose of these recommendations shall be to harmonize the government-to-government relationship with Alaska tribes, the federal trust responsibility to Alaska tribes and Alaska Natives, the rights of Alaska Natives, and the statutory missions of the Departments.

Section 8. **Special Study on Cultural and Religious Use of Natural Products.** The Departments recognize that there remain tribal concerns regarding the access to, and uses of, eagle feathers, animal parts, and other natural products for Indian cultural and religious purposes. Therefore, the Departments shall work together with Indian tribes to develop recommendations to the Secretaries within one year to revise or establish uniform administrative procedures to govern the possession, distribution, and

transportation of such natural products that are under federal jurisdiction or control.

Section 9. **Dispute Resolution.**

(A) Federal-tribal disputes regarding implementation of this Order shall be addressed through government-to-government discourse. Such discourse is to be respectful of government-to-government relationships and relevant federal-tribal agreements, treaties, judicial decisions, and policies pertaining to Indian tribes. Alternative dispute resolution processes may be employed as necessary to resolve disputes on technical or policy issues within statutory time frames; provided that such alternative dispute resolution processes are not intended to apply in the context of investigative or prosecutorial law enforcement activities.

(B) Questions and concerns on matters relating to the use or possession of listed plants or listed animal parts used for religious or cultural purposes shall be referred to the appropriate Departmental officials and the appropriate tribal contacts for religious and cultural affairs.

Section 10. **Implementation.** This Order shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable. In addition, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall implement their specific responsibilities under the Act in accordance with the guidance contained in the attached Appendix.

Section 11. **Effective Date.** This Order, issued within the Department of the Interior as Order No. 3206, is effective immediately and will remain in effect until amended, superseded, or revoked. This Secretarial Order, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," and its accompanying Appendix were issued this fifth day of June, 1997, in Washington, D.C., by the Secretary of the Interior and the Secretary of Commerce.

Bruce Babbitt *William M. Daley*

June 5, 1997

Secretarial Order No. 3175

Departmental Responsibilities for Indian Trust Resources

Section 1. **Purpose.** This Order clarifies the responsibility of the component bureaus and office of the Department of the Interior to ensure that the trust resources of federally recognized Indian tribes and their members that may be affected by the activities of those bureaus and offices are identified, conserved and protected. It is the intent of this Order that each bureau and office will operate within a government to government relationship with federally recognized Indian tribes and that the Bureau of Indian Affairs provide timely and accurate information upon the request of their Interior Department counterparts.

This Order is for internal management guidance only, and shall not be construed to grant or vest any right to any party in respect to any Federal action not otherwise granted or vested by existing law or regulations.

Section 2. **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

Section 3. **Responsibility.** The heads of bureaus and offices are responsible for being aware of the impact of their plans, projects, programs or activities on Indian trust resources. 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, Environmental Impact Statements, Management Plans, etc., that are prepared for the project. These documents should clearly state the rationale for the recommended decision and explain how the decision will be consistent with the Department's trust responsibilities. Bureaus and offices are required to consult with the recognized tribal government with jurisdiction over the trust property that the proposal may affect, the appropriate office of the Bureau of Indian Affairs, and the Office of the Solicitor (for legal assistance) if their evaluation reveals any impacts on Indian trust resources. All consultations with tribal governments are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.

The heads of the Department's bureaus and offices will prepare and publish procedures and directives prior to the expiration of this Order to ensure that their respective units are fully aware of this Order and that they are in compliance with the intent of the Order. Prior to final insurance, the Office of American Indian Trust will review and comment on these procedures before their approval by the Assistant Secretary - Indian Affairs.

Section 4. **Effective Date.** This Order is effective immediately. Its provisions will remain in effect until October 1, 1994 or until it is amended, superseded, or revoked, whichever occurs first.

Bruce Babbitt

November 8, 1993

National American Indian Heritage Month 1997
By The President of
The United States of America
A Proclamation

American Indians and Alaska Natives have played a vital role in the life of our country, and their many contributions have enhanced the freedom, prosperity, and greatness of America today. In celebrating National American Indian Heritage Month, we reaffirm our country's commitment to remember those contributions and to honor the unique heritage of our continent's first inhabitants.

This special observance also reflects our continuing commitment to American Indian and Alaska Native tribal governments as an integral part of the social, political, and economic fabric of the United States. The framers of our Constitution incorporated Indian nations into the political and legal framework of this country, forever joining the destiny of the tribal nations with that of the American people. By this action, our founders charged themselves and future generations with the moral obligation to guard the rights and fundamental liberties of our country's tribal peoples as zealously as we protect the rights of all Americans.

As we enter the next millennium, we have an exciting opportunity to open a new era of understanding, cooperation, and respect among all of America's people. We must work together to tear down the walls of separation and mistrust and build a strong foundation for the future. To accomplish this, we must strengthen tribal governments, improve the quality of education for American Indian and Alaska Native youth, build stable, diversified economies in tribal communities, create high-wage jobs, and ensure that all our citizens have the skills, education, and opportunities they need to reach their full potential.

The government-to-government relationship between the tribes and the United States embodies the fundamental American belief that people of widely varied and diverse cultural backgrounds can join together to build a great country. Such greatness can be sustained, however, only so long as we honor

the ideals and principles upon which America is founded and abide by our commitments to all our people. In recognition of America's moral and legal obligations to American Indians and Alaska Natives, and in light of the special trust relationship between tribal governments and the Government of the United States, we celebrate National American Indian Heritage Month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1997 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

November 1, 1997

National American Indian Heritage Month 1996
By The President of
The United States of America
A Proclamation

Throughout our history, American Indian and Alaska Native peoples have been an integral part of the American character. Against the odds, America's first peoples have endured, and they remain a vital cultural, political, social, and moral presence. Tribal America has brought to this great country certain values and ideas that have become ingrained in the American spirit: the knowledge that humans can thrive and prosper without destroying the natural environment; the understanding that people from very different backgrounds, cultures, religions, and traditions can come together to build a great country; and the awareness that diversity can be a source of strength rather than division.

As we celebrate American Indian Heritage Month this year, we take note of the injustices that have been suffered by American Indian people. Even today, few enjoy the full bounty of America's prosperity. But even as we look to the past, we must also look to the future. Along with other Americans, American Indians and Alaska Natives will face new challenges in the coming century. We can ill afford to leave any of our people behind. Tribal America must figure as prominently in our future as it has in our past.

Let us rededicate ourselves to the principle that all Americans have the tools to make the most of their God-given potential. For Indian tribes and tribal members, this means that the authority of tribal governments must be accorded the respect and support to which they are entitled under the law. It means that American Indian children and youth must be provided a solid education and the opportunity to go on to college. It means that more must be done to stimulate tribal economies, create jobs, and increase economic opportunities.

Our bridge to the 21st century will rest upon the foundation we build today. We must teach our children about our past -- both the good and the bad -- so that they may learn from our successes and mistakes. We must provide our

children with the knowledge and skills to permit them to surpass our own achievements and create a stronger, more united American community. We must provide them greater opportunity. It was the Iroquois who taught that in every deliberation we should consider the impact of our decisions on the next 7 generations.

In recognition of the important contributions of American Indian and Alaska Native peoples to our country and in light of the special legal relationship between the tribes and the Government of the United States, and obligations pursuant thereto, we celebrate National American Indian Heritage Month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1996 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

October 29, 1996

National American Indian Heritage Month 1995
By The President of
The United States of America
A Proclamation

November is traditionally the season for thanksgiving in America, the time when we reflect on the abundance with which we have been blessed. It is especially fitting, then, that we set aside this month to pause and reflect on the many gifts bestowed on our land and our heritage by American Indians and Alaska Natives.

American Indians have a great reverence for the earth and its bounty, and they generously shared their knowledge and their food with the early European settlers in our country. We still enjoy that harvest today, with an agricultural industry that supports America and the world with the corn, potatoes, beans, cotton, and countless other crops first cultivated on this continent by American Indians.

A second and equally precious gift is that of courage. American Indians and Alaska Natives have fought and died for the United States of America in time of war, answering the call to service to defend our freedoms. The Navajo, Lakota, and Dakota Codetalkers were crucial to our victory in the Pacific during World War II, and it was a Pima Indian, Ira Hayes, who helped to raise the American flag on Iwo Jima. They and so many others have endured separation, hardship, and sacrifice so that the world might know peace.

The gift of wisdom is one that our society has struggled to learn. Living in harmony with nature instead of seeking domination, American Indians have shown us how to be responsible for our environment, to treasure the beauty and resources of the land and water for which we are stewards, and to preserve them for the generations who will come after us. They have taught us as well the value of sharing, of recognizing that there must be room at America's table for all her peoples.

American Indians and Alaska Natives have made invaluable contributions to our common heritage; in every field of human endeavor, from the arts,

sciences, and humanities to politics, religion, and public service, they have added immeasurably to the strength of our civilization. As we celebrate National American Indian Heritage Month, we give thanks for these contributions and acknowledge the special legal relationship that exists between the tribes and the Government of the United States of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1995 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

November 2, 1995

"The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken away from them without their consent . . . but laws founded in justice an humanity shall from time to time be made, for preventing wrongs to them . . ."

Article Three
Northwest Ordinance
1789

For More Information Contact:

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