

Report to the U.S. Congress
on
Department of Defense Consultation
With Native Hawaiians

Office of the Under Secretary of Defense
for Acquisition and Sustainment

September 2019

Introduction

Pursuant to House Report 116-120, page 327, the National Defense Authorization Act for Fiscal Year 2020, the House Committee on Armed Services (Committee) requested the Secretary of Defense submit a report by September 1, 2019, on how the Department of Defense (DoD) could include Native Hawaiians in its consultation policy concerning federally recognized tribes; a strategy for inclusion of Native Hawaiian consultations in military construction and land lease activities; and information on consultation or meetings with Native Hawaiians.

In September 2006, the DoD established the *Department of Defense Instruction (DoDI) 4710.02: DoD Interactions With Federally Recognized Tribes*. The stated purpose within the DoDI is to provide procedures for tribal consultation in accordance with E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. DoD updated and reissued DoDI 4710.02 on September 24, 2018. DoDI 4710.02 requires DoD Components to “[c]onsult with federally recognized tribal governments on a government-to-government basis on matters that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands.” DoDI 4710.02 (Sept. 24, 2018), § 2.3(d).

Native Hawaiian Organizations (NHO) are not federally recognized tribes, and currently there is no federally recognized Native Hawaiian entity available for government-to-government consultation with DoD. In recognition of the unique legal and cultural context for consultation in Hawaii and the volume of military operations across the state, DoD established a separate consultation policy 2011, *Department of Defense Instruction 4710.03: Consultation With Native Hawaiian Organizations* (DoDI 4710.03). DoD remains the only federal agency with a policy specific to consultation with NHOs.

This report addresses Committee concerns about DoD’s commitment to enhancing coordination with the Native Hawaiian community related to military activities, and explains how the DoD’s policy, *DoDI 4710.03: Consultation With Native Hawaiian Organizations*, addresses consultation with (NHO) concerning military construction and land lease activities. This report also provides information on consultation and meetings with Native Hawaiians informing DoD’s plans to update DoDI 4710.03 by October 2021.

Development of DoDI 4710.03: Consultation With Native Hawaiian Organizations

In developing DoDI 4710.03, DoD consulted with and received input from Native Hawaiian community members who attended meetings held in community centers, schools, park district offices, and at civic club gatherings. DoD partnered with the Office of Hawaiian Affairs (OHA), several NHOs, and the Association of Hawaiian Civic Clubs (AOHCC), both to organize these events and in drafting the policy. Participants at the community meetings included elected leaders such as Trustees of the Office of Hawaiian Affairs, kupuna (elders), cultural practitioners, business owners, and other representatives interested in the impact of DoD operations and efforts to preserve natural and cultural resources and places of traditional religious and cultural significance. Consultations held from late 2006 into early 2008 included meeting at locations across Oahu, as well as on the islands of Kauai, Maui, and Hawaii.

Following community meetings, the Office of the Secretary of Defense (OSD) consolidated the input of the Native Hawaiian community and reviewed the draft DoDI 4710.03 with DoD Components operating in Hawaii. DoD finalized and published DoDI 4710.03 in October 2011. The published policy was circulated in late 2011 to NHOs on the Native Hawaiian Organization Notification List maintained by the Office of Native Hawaiian Relations in the U.S. Department of the Interior. Copies were provided to OHA and posted to DoD's Native American Affairs website, www.denix.osd.mil.na. DoD also provided hard copies to participants at the 2012 annual conference of the AOHCC in October 2012. DoDI 4710.03 is available at www.denix.osd.mil/na/policy.

Consultation Requirements in DoDI 4710.03

Guidelines in DoDI 4710.03 help ensure consistency in compliance with consultation required under federal law across DoD Components working in Hawaii. The DoDI establishes policy and assigns responsibilities within DoD regarding pre-decisional, meaningful, and respectful consultation with NHOs when DoD Components propose actions that may affect a property or place of traditional religious and cultural importance to Native Hawaiians.

OSD's primary roles under DoDI 4710.03 are to develop policy and guidance for the DoD Components, provide training to the Components on how to work with the Native Hawaiian community, and assist Components in consultations as needed.

The leadership of DoD Components have the responsibility to ensure compliance with the policy and all procedures regarding when to consult, whom to consult, how to consult, and how to consider cultural and natural resources significant to NHOs. DoDI 4710.03 also provides DoD Components with a framework to develop localized processes to facilitate consultation. OSD encourages installation commanders and staff to consult with the NHOs about the installation's mission, routine training, and other operations that could affect cultural and natural resources, as well as planned military construction projects. Early discussions help build awareness of the priorities of all parties and develop insight into the location of properties of traditional religious and cultural importance.

DoD Support for Implementation of DoDI 4710.03

OSD's implementation of DoDI 4710.03 emphasizes building DoD Components' capacity for effective consultation and engaging key organizations in understanding how to work effectively in Hawaii. OSD's implementation strategy for DoDI 4710.03 emphasizes Component consultation beginning early in the project planning process to engage NHOs in meaningful dialog and provide respectful consideration of NHOs' concerns.

Since 2008, OSD has also produced and administered the Native Hawaiian Cultural Communications and Consultation Course (NHCCCC) for Military and civilian personnel located in Hawaii. The NHCCCC is taught by DoD staff and Native Hawaiian experts in history, culture, and the law. The course addresses Native Hawaiian perspectives on Hawaiian history, culture and resources, consultation requirements in Federal law and DoD policy, and intercultural communications. The course offers participants practical tools and tips as well as

opportunities to meet cultural practitioners and visit important cultural sites. In May of 2019, the OSD provided the NHCCCC at Fort Shafter on Oahu. The U.S. Army Garrison-Hawaii hosted 67 military and civilian personnel from the Army, Navy, Air Force, Marine Corps, and Missile Defense Agency in a two-day class for action officers and a half-day course for senior leadership. To date, OSD has trained 501 military and civilian personnel, providing invaluable tools to assist installations in building stronger and more effecting working relationships with Native Hawaiians.

OSD collaborates with leading organizations representing Native Hawaiian interests to better understand how to work effectively in Hawaii and support the efforts of DoD Components with mission-critical training, construction projects, and installation operations. A key OSD partner in Hawaii is the Office of Hawaiian Affairs (OHA), a special purpose state agency focused on improving conditions for Native Hawaiians. OHA was instrumental in helping DoD plan community meetings during the original drafting of DoDI 4710.03. OHA leadership supports the OSD-sponsored NHCCCC, and OHA senior staff have helped deliver the course since 2009. In May 2019, OSD requested OHA review DoDI 4710.03 and provide detailed recommendations for improvements. OSD also requested OHA's assistance in identifying other NHOs and Native Hawaiian stakeholders for input into the upcoming review of DoDI 4710.03.

OSD routinely coordinates with the State Historic Preservation Division (SHPD) within the Department of Land and Natural Resources to ensure components provide SHPD staff timely and appropriate documentation required for review of proposed military projects with potential to adversely affect historical and cultural resources important to Native Hawaiians. DoD also works with the Council for Native Hawaiian Advancement (CNHA), a nonprofit organization representing Native Hawaiian interests, to support effective implementation of DoDI 4710.03. CNHA helped organize community meetings from 2006-2008, assisting in development of DoDI 4710.03.

Next Step – Enhancing DoDI 4710.03

OSD reviews each of its policies every ten years to update as needed. DoD intends to update DoDI 4710.03 by October 2021. As part of this process, OSD will request input from stakeholders affected by the policy. DoD will consult, review, and address input gathered from NHOs, OHA, CNHA, Native Hawaiian experts who serves as NHCCCC instructors, as well as the DoD Components. The update will provide DoD Components with improved guidance regarding their responsibilities to avoid or minimize the effects of routine training activities, ongoing installation operations, and proposed MILCON projects on properties of traditional religious or cultural importance.

Conclusion

DoD is committed to consulting in good faith with NHOs, complying with applicable federal laws and regulations, and ensuring DoD Components avoid or minimize, to the extent practicable and consistent with applicable laws, the effects of DoD actions on properties and places of traditional religious or cultural importance to Native Hawaiians. DoD will also provide a collaborative review and input process to ensure the pending update to DoDI 4710.03 enhances

guidance to DoD Components and supports consultation with NHOs that is pre-decisional, substantive, and respectful of Native Hawaiian culture.