



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SAC-12-044

### TITLE: Support for Tribal Inclusion in National Historic Preservation Act Processes

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the sacred places of Tribal Nations are a continued source of spiritual renewal and important assets for all Tribal Nations, and it is vitally important to preserve those sacred places and ensure that they remain unspoiled, untouched by development as they have been for thousands of years; and

**WHEREAS**, as stewards of these sacred lands, Tribal Nations want to ensure that these areas will be available for their citizens, their children and grandchildren; as free from destructive development as possible; and

**WHEREAS**, a critical tool that can be used to protect sacred places and sacred lands are Tribal Historic Preservation Offices (THPO), established by many Tribal Nations, that help keep the Tribe and its leaders aware of current developments and upcoming projects that could adversely impact sacred places and lands; and

**WHEREAS**, the National Historic Preservation Act (NHPA), allowed for the establishment of Tribal Historic Preservation Offices in 1992, and NHPA affirmed that each Indian Tribe should retain jurisdiction over its own cultural, historic and sacred places, and affords Tribes the opportunity to consult on projects which will impact any area on which our Tribe places religious and/or cultural significance; and

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**WHEREAS**, the Tribal Historic Preservation Officer of each Tribe is a designated representative who consults on undertakings which impact historic properties and (or) traditional cultural properties, and in response, under the NHPA, the Federal government has a legal and financial responsibility to comply with the requirements of the NHPA and to assist Tribes to preserve cultural and spiritually significant sites and lands; and

**WHEREAS**, the process under NHPA for Indian Tribes pursuant to Section 106 of NHPA requires that there be identification of historic properties, an assessment of adverse effects, an effort to resolve the adverse effects, coordination with the National Environmental Policy Act, review of Section 106 Compliance, as well as creation of standards for review and documentation, providing for emergency situations and post-review discoveries; and

**WHEREAS**, section 101(d)(6)(B) of the act requires the agency official to consult with any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking, a requirement that applies regardless of the location of the historic property; and

**WHEREAS**, the mandate of the NHPA as it is applied to Indian Tribes is not being adequately fulfilled by federal agencies, and hundreds of sites are being destroyed daily because of a lack of Tribal participation in identification of the sacred places within any particular undertaking as defined by the NHPA; and

**WHEREAS**, often non-Indian archeologists and scientists are used to assess a particular site and do not have the expertise that Tribal practitioners, surveyors and monitors do to properly identify and assess our sites, particularly because these individuals do not know what to look for or how to recognize a particular sacred place; and

**WHEREAS**, current regulations mandate that Federal agencies subject to the NHPA should carry out their responsibilities pursuant to a government-to-government relationship with Tribes; and each agency official subject to NHPA should consult with the representative designated or identified by the Tribal government or the governing body, which generally would be the THPO.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI recognizes that meaningful government to government consultation only occurs if the Section 106 process of the National Historic Preservation Act (NHPA) has been completed with an individual THPO for the affected Tribes, and urges federal agencies to comply with all aspects of the NHPA and its implementing regulations, including proper consultation and identification of historic properties under 36 CFR 800; and

**BE IT FURTHER RESOLVED**, that the NCAI urges that each Tribe's cultural experts be afforded the opportunity to participate in identification of historic properties and assessing their eligibility as allowed by the NHPA and the regulations pursuant to 36 CFR 800.4 (c) (1); and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary