TITLE: NCAI Policy Statement on Sacred Places

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 NCAI Human, Religious and Cultural Concerns Subcommittee met during the NCAI 65th Convention and discussed pressing issues and remedies regarding protection of Native sacred places; and

WHEREAS, the Subcommittee considered and wrote a paper, Policy Statement on Sacred Places, which it wishes NCAI to adopt and transmit to the Presidential Transition immediately following the outcome of the 2008 national election; and

WHEREAS, the exact text of the Policy Statement on Sacred Places reads:

As the oldest and largest national organization of American Indian and Alaska Native tribal governments, NCAI is deeply concerned with the respectful treatment and the protection of Native American sacred landscapes. Historically subjected to the devastating systemic destruction of our religious practices and places, we continue to suffer the heartbreaking loss and destruction of our precious few remaining sacred places.

The American Indian Religious Freedom Act (AIRFA) was enacted into law 30 years ago, in 1978, and states that "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."
However, 20 years ago, in 1988, the Supreme Court ruled that neither AIRFA nor the U.S. Constitution provides a cause of action for Native Americans to defend their sacred places in court. The high court also stated that Congress would need to enact a statute for that purpose, but Congress has not enacted a statutory right of action for tribes to protect their sacred places and site-specific ceremonies.

In two recent decisions, courts have ruled that the Religious Freedom Restoration Act does not protect Native American religious interests at the San Francisco Peaks or Snoqualmie Falls. Other legal instruments -- such as AIRFA, the Executive Order on Sacred Sites (EO 13007), the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) -- often are ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

Year after year, sacred landscapes that are integral to the exercise of Indian religions are being destroyed and are under threat by development, pollution, recreation, vandalism and other public and private actions. There is no comprehensive, effective policy to preserve and protect sacred places.

Protecting sacred places is necessary for the survival of traditional religions, cultures and lifeways and our identity and status as sovereign nations. We Native Peoples are required by the tenets of our traditional religions to protect the physical integrity of these places and we call on others to remove legal and other barriers that stand in the way of our spiritual duty of care and protection. We insist on our access to these landscapes, where appropriate and necessary to our lifeways. We seek public understanding and agreement that one use of a place may be not to use it and that some of these places are geophysically delicate and may not support non-cultural usage.

Here are action steps that are needed at this time to protect Native American sacred places:

- **Enact a statutory right of action for tribes to defend sacred places**
  
  Today, there is no federal statute for the express purpose of protecting Native American sacred places. It is time for Congress to enact a right of action for tribes to defend sacred places. Unless tribes can sustain lawsuits, they will not have a seat at federal negotiation tables and agencies and developers will continue to disregard existing consultation requirements. Meaningful consultation and respectful negotiations can obviate the need for litigation. However, if negotiated accords cannot be reached, tribes must be able to protect their holy places in court.

- **Update and Executive Order 13007 and all consultative instruments**
  
  Executive Order 13007 needs to be updated to assure that Native nations have sufficient, ongoing and meaningful opportunities to consult and participate in federal planning and decision-making processes that may affect Native American sacred landscapes and site-specific ceremonies. EO 13007 does not include a cause of action and any codification of it needs to include a specific right of action for legal protection of Native American sacred places. The federal government has failed to assure adequate nation-to-nation dealings with tribes regarding sacred places and needs to begin by updating and strengthening all its tribal consultative instruments.
• **Evaluate and implement specific sacred places policies**
Federal agencies, in consultation with tribal and religious leaders, should evaluate and implement, to the maximum extent possible, policies that would: 1) transfer sacred and culturally significant landscapes back to the tribes with a cultural affinity to them; 2) develop co-management and co-stewardship agreements with tribes to manage areas of religious and cultural importance; 3) prevent development (through withdrawal or other mechanisms) of areas of cultural sensitivity that are located on public lands; and 4) maintain the confidentiality of information pertaining to culturally sensitive places.

• **Establish policy for cultural surveys prior to transfers and permits**
Establish a federal policy to assure that, prior to any transfer or any issuance of permits, a cultural survey is undertaken in consultation with tribes as part of the initial stages of any federally-mandated identification process. This process must affirm the inherent rights of access to and protection of Native Peoples’ historic, cultural, holy and sacred places; cultural patrimony; and our ancestors.

• **Strengthen the Native American Graves Protection and Repatriation Act**
The Native American Graves Protection and Repatriation Act (NAGPRA) needs to be strengthened in several ways. First, NAGPRA’s definition of “Native American” needs to be technically clarified and returned to its original intent by adding the following italicized words to the existing definition: “Native American” means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States. Second, NAGPRA needs increased penalties for violations of burials and burial grounds, human remains and cultural items. Third, NAGPRA needs to be specifically strengthened with tools for improved law enforcement and prosecutions.

• **Protect burial places and ancestors from current threats**
Burial places are also sacred places. At present, there are entities subverting existing laws designed to protect our burial places and our ancestors. These entities include, for example, prominent universities in the University of California system and other federal and federally-assisted educational institutions, museums and agencies. Vigorous enforcement of existing laws and maximum penalties are needed to address these ongoing violations of law, including the failure to recognize the rights of the historic tribes in California, which tribes have standing under the repatriation laws.

• **Appoint Native people to federal land-managing decision-making entities**
Many of the federal land-managing agencies’ decisions affect sacred landscapes, tribal ceremonies and the cultural well being of Native people, but Native people do not sit on the key federal land-management committees, boards and panels which make those decisions. Native Americans need to be appointed to those bodies that make and drive policies and decisions in the federal land-managing agencies, especially those that may affect sacred places and site-specific ceremonies.
Use and strengthen existing administrative policies and regulations
Many federal officials have failed to use existing administrative policies and regulations to protect sacred landscapes or to accommodate the ceremonial use of sacred places by tribes, moieties and traditional practitioners. Any policies and regulations that are deemed inadequate for these purposes need to be strengthened, in full consultation with tribes, religious leaders and traditional practitioners. Federal land managers need to provide the means for scientific and cultural experts, as well as other assistance to tribes in the consultative process.

Establish discrete processes for sacred places trust easements
Establish discrete processes for tribes to obtain and hold trust easements to provide access to and protect the physical integrity of sacred places and viewscapes located on public and private lands. Public officials, in consultation with tribes, moieties and traditional practitioners, need to develop co-management or joint stewardship agreements, as well as practical economic incentives for private land owners to enter into sacred places easements. Tribes, moieties and traditional practitioners need to be provided with the means and assistance to obtain and hold easements. The public process must be discrete, efficient and timely, and the Bureau of Indian Affairs process must allow cultural easements in the fee land to trust land process, which it does not do now.

(Note: The NCAI tribal leadership has adopted resolutions which support the action steps above, including Resolution BIS-02-043, Sacred Lands, at the Mid-Year Conference, June 2002 in Bismarck, ND, in support of legislation that furthers the protection of sacred lands and sacred places; and Resolution SD-02-027, Essential Elements of Public Policy to Protect Native Sacred Places, at the Annual Convention in November 2002 in San Diego, CA.)

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby adopt the language above as the NCAI Policy Statement on Sacred Places and directs its transmittal to the Presidential Transition immediately following the results of the 2008 national election.

BE IT FURTHER 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 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.

President

ATTEST:
W. Ron Allen
Recording Secretary