



**THE NATIONAL CONGRESS OF
AMERICAN INDIANS**

RESOLUTION #SD-02-019

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Title: Compensation to Tribes for Section 106 Consultation

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 and their way of life, 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, federal agencies are required by federal law to consult with Indian tribes and Native Hawaiian organizations as part of the Section 106 process established pursuant to the National Historic Preservation Act (NHPA) in any case in which a proposed federal or federally-assisted undertaking may affect a historic property that the tribe or NHO regards as holding religious and cultural importance; and

WHEREAS, the NHPA Section 106 process, as implemented through regulations issued by the Advisory Council on Historic Preservation, establishes significant procedural rights for tribes, but most tribes have limited resources that they can devote to exercising these rights; and

WHEREAS, costs associated with compliance with federal environmental and cultural resource laws generally should be treated as part of the cost of a project, whether the proponent of a project is a government agency or a non-federal entity that receives federal funding or is otherwise subject to federal permitting, licensing or other approval authority; and

WHEREAS, the Advisory Council Historic Preservation has issued a burdensome and confusing memorandum that allows undue discretion to federal agencies in determining compensation to tribes in the Section 106 process advising federal agencies that, while they generally have discretion to provide monetary compensation to tribes for the costs they incur as participants in the Section 106 process, project sponsors are generally not required to do so; and

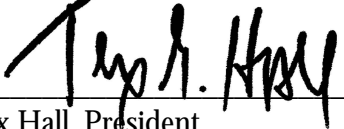
WHEREAS, Tribes incur substantial uncompensated cost as participants in the Section 106 process, for which they are often not adequately compensated which causes unsatisfactory or no consultation to take place.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby call on the Advisory Council on Historic Preservation to review this matter, in consultation with tribes and Native Hawaiian organizations, and develop a formal policy specifying circumstances in which compensation should be provided to tribes and Native Hawaiian organizations for their contributions to the Section 106 process; and

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 at the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002 with a quorum present.



Tex Hall, President

ATTEST:



Juana Maje, Recording Secretary

Adopted by the General Assembly during the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002.