



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-16-067

TITLE: Tribal Trust Compliance for Federal Infrastructure Permitting

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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, as part of the efforts to strengthen the economy and create new jobs, the Obama Administration has taken actions to expedite federal review of infrastructure projects, including:

- Development of the Federal Infrastructure Projects Permitting Dashboard;
- Executive Order 13604, Improving Performance of Federal Permitting and Review of Infrastructure Projects;
- Establishment of a Steering Committee chaired by the Office of Management and Budget in consultation with the Council on Environmental Quality;
- Creation of an Implementation Plan for Modernizing Infrastructure Permitting; and

WHEREAS, the “Fixing America’s Surface Transportation Act” or “FAST Act” was signed into law in December 2015, and will further streamline the federal permitting process for all renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, and many other sectors; and

WHEREAS, the Implementation Plan and streamlined processes fail to include Indian tribal governments or any recognition of the federal trust responsibility to tribal lands, resources, and sacred places; and

WHEREAS, 56 million acres of tribal land are held in trust by the United States under binding legal obligations to protect the lands, waters, and the Native communities residing thereon; and

WHEREAS, the United States also has trust and treaty obligations to protect tribal lands, waters, and sacred places; and

WHEREAS, under Executive Order 13175 the United States has a duty to consult with Indian tribes on any federal action that may affect tribal interests; and

WHEREAS, under the United Nations Declaration on the Rights of Indigenous Peoples the United States has a duty to seek free, prior, and informed consent on any decision affecting tribal lands or interests; and

WHEREAS, the United States has statutory obligations to tribal nations under Section 106 of the National Historic Preservation Act; the National Environmental Policy Act; the Clean Water Act; the Native American Graves Protection and Repatriation Act; the American Indian Religious Freedom Act; the Archeological Resources Protection Act, and other federal laws; and

WHEREAS, Indian Nations are also subject to an array of laws restricting infrastructure development on Indian Reservations, and the Bureau of Indian Affairs is often slow in responding to requests for federal approval for leases, rights-of-way, property and many other infrastructure transactions; and

WHEREAS, the President and the Secretary of the Interior have authority to regulate matters affecting Indian lands under 25 U.S.C. §2 under “such regulations as the President may prescribe....”

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians calls upon the President and the Secretary of the Interior to ensure that all agencies permitting infrastructure projects affecting tribal lands, waters, or sacred places demonstrate compliance with federal trust obligations, treaties, the consultation requirements, the U.N. Declaration on the Rights of Indigenous Peoples, and all statutory obligations applicable to the project; and

BE IT FURTHER RESOLVED, that such tribal trust compliance be integrated into all regulations and guidance implementing the FAST Act and other federal infrastructure permitting projects; and

BE IT FURTHER RESOLVED, that appointees to the Federal Permitting Improvement Steering Council includes a Tribal Trust Compliance Officer who is knowledgeable about Indian tribes and tribal lands; and

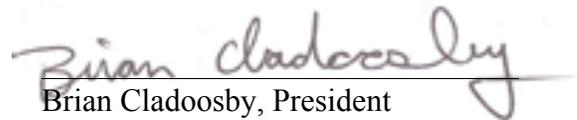
BE IT FURTHER RESOLVED, federal policy should support greater tribal control over infrastructure development on Indian lands, or lands where Indian tribes hold natural, cultural or spiritual resources, ceded territories, and when tribal nations are initiating or supporting an infrastructure project, there should be a presumption the tribe’s direct involvement is evidence that concerns over lands, waters, resources, and sacred places have been adequately addressed; and

BE IT FURTHER RESOLVED, that Indian tribal governments must be provided, in a manner similar to state governments, full and early participation in “purpose and need” infrastructure permitting discussions, and funding for participation in federal permitting processes; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9th- 14th 2016, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary