



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #LNK-12-023

TITLE: Federal Investigation of Observance of Federal Trust Responsibility to Protect Native American Ancestral Lands and Cultural Resources

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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, the NCAI has been active in the preservation and protection of native sacred sites across the nation; and

WHEREAS, the NCAI recognizes that Indian Nations are unique sovereigns and their resources, languages, land, property and values are diverse beyond words; and

WHEREAS, Indian Nations have been forced to become experts in and bear significant expense to protect their ancestral lands and cultural resources against actions and developments by private and governmental entities; and

WHEREAS, the federal government has a federal trust responsibility to Indian Nations; and

WHEREAS, Indian Nations continue to face an accelerated amount of projects that are funded and benefit private parties and governmental entities that results in (1) unparalleled ignorance and disregard for the values of Indian Nations of their land and resources; (2) irreparable harm to ancestral land and cultural resources aboriginal and/or sacred to Indian Nations; and (3) little or no mitigation or other relief to the affected Indian Nation; and

WHEREAS, the current methodology for project planning and assessment of adverse impacts to the integrity of ancestral land and cultural resources, if identified, promotes the resolve of "mitigation;" an agreement between interested parties that equates with disturbance and permanent destruction of cultural resources and dangerous precedent for historical preservation; and

WHEREAS, many projects reach the mitigation phase because the technical basis for the project to move forward is inadequate, flawed and improperly scoped; and

WHEREAS, the ongoing mass destruction of ancestral land and cultural resources evidences inadequate project planning, financing and a dire lack of meaningful and informed tribal consultation; and

WHEREAS, Indian Nations truly bear the burden of responsibility to ensure that developers and federal agencies observe compliance with procedural and substantive regulations.

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby holds that Indian Nations are entitled to free, prior and informed consent of all actions, records and plans that may affect their sacred sites, air shed, water shed, natural resources, ancestral remains, whether known or discovered within the development process; and

BE IT FURTHER RESOLVED, that the NCAI hereby supports a formal request for the Government Accountability Office (GAO) and Congress to (1) investigate and produce a report regarding the implementation of civil and/or criminal protections provided by federal agencies or courts, including but not limited to the Department of Interior (DOI), Department of Justice (DOJ), and the Environmental Protection Agency (EPA), to protect Indian Nations from encroachment on their sacred sites, and (2) to identify the actual costs assumed by Indian Nations to observe and enforce federal undertakings, particularly those that have little or no benefit to tribal interests; and

BE IT FURTHER RESOLVED, that the NCAI finds it critical and essential that the GAO and Congress work with the Indian Nations either directly or through an appropriately assembled and qualified working task force throughout the investigatory process to assist with outreach for data collection to all federally recognize tribes, as well as make advisory recommendations to achieve solid and complete investigatory findings; and

BE IT FURTHER RESOLVED, that the NCAI hereby insists that members of Congress draft legislation that allows tribes to (1) meet standing requirements, (2) obtain immediate restraining orders to halt noncompliant projects, and (3) be afforded the proper relief for civil and criminal damages when private or government actions, with or without full compliance with project impact assessments, cause irreparable harm to the integrity of ancestral lands and cultural resources of Indian Nations. Such legislation should (A) increase the liability and accountability of developers in the development process where historical and cultural resources are adversely impacted, (B) incentivize developers to budget and adequately plan to assume the actual costs of a project, particularly those that involve tribal time and resources, (C) authorize Indian Nations to collect fees to cover the costs incurred in actual project planning, assessment, mitigation and enforcement, and (D) authorize and properly fund mitigation plans as binding instruments in the aforementioned process, if reached; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges Congress to immediately improve tribal consultation in the entire project process that involves any federal jurisdiction and imposes a tribal consultation requirement that meaningfully affords Indian Nations the right of free, prior and informed consent in a meaningful, informed and confidential process; and

BE IT FURTHER RESOLVED, that NCAI demands a more streamlined the processes in which Indian Nations interact with the federal government by incorporating the following:

- Increase authority, oversight and intervention by the Advisory Council on Historic Preservation (ACHP);
- Develop with the DOJ, DOI, EPA a jurisdictional trust responsibility to protect tribes from encroachment on their sacred sites, ancestral burial remains, air shed, water shed and natural resources; whether known or discovered;
- Require tribal consultation prior to any cultural resources or archaeological research on all federal projects. Many projects are announced to tribes after studies are complete and the majority of regulatory requirements are met. Both developers and agencies are often unwilling to revisit project activities and conclusions with “new” information provided by tribes. Tribes need to weigh in on a project’s scope of services relating to tribal interests as well as the selection of contractors/service providers that are competent and unbiased on any given project *early* in the project planning process;
- As a part of free, prior and informed consent, improve requirements for the scoping and execution of archeological research, excavations, data recovery, curatorial services and repatriation of resources; 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 Mid-Year Session of the National Congress of American Indians, held at The Cornhusker Hotel from June 17-20, 2012 in Lincoln, Nebraska, with a quorum present.


President

ATTEST:


Recording Secretary