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The National Congress of American Indians
Resolution #PSC-26-075

TITLE: Calling on Congress to Protect Tribal Sovereignty by Reinforcing and Preserving the National Historic Preservation Act Section 106 Consultation Requirements

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 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 welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI), founded in 1944, is the oldest, largest, and most representative national organization of American Indian and Alaska Native tribal governments and communities; and

WHEREAS, the United States holds trust and treaty responsibilities to Tribal Nations, including responsibilities concerning the protection of Tribal lands, waters, sacred places, cultural resources, and treaty-reserved rights; and

WHEREAS, Tribal Nations hold ancestral, cultural, and spiritual ties to places across the entire United States, including places far from present-day reservations, and the protection of those places is inseparable from tribal identity, ceremony, language, and sovereignty; and

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, requires federal agencies to take into account the effects of their undertakings on historic properties, and the NHPA, as amended in 1992, requires agencies to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected, including properties of traditional, religious and cultural importance; and

WHEREAS, the Section 106 regulations at 36 C.F.R. Part 800 require agencies to consult with Tribal Nations on a government-to-government basis, to provide a reasonable opportunity for tribes to identify concerns and participate in resolving adverse effects, and to recognize that the Federal government's consultation responsibility cannot be delegated and is grounded in the United States' trust responsibility; and

WHEREAS, Tribal Historic Preservation Officers (THPOs) perform a critical role in implementation of the NHPA, including by assisting federal agencies in satisfying their obligations under the NHPA and participating in consultation concerning federally permitted or funded projects, and hundreds of Tribal Nations across the US have established National Park Service recognized THPOs; and

WHEREAS, meaningful consultation requires that agencies engage in actions that are in person, interactive, pre-decisional, informational and transparent when planning actions with Tribal implications and in line with Free, Prior and Informed Consent principles consistent with SEA-25-009; and

WHEREAS, Tribal Nations and NCAI have long recognized the importance of the NHPA and Section 106, and have opposed efforts to diminish its protections, accelerate its procedures, diminish the role of Tribal Nations and THPOs in federal project planning, and jeopardize the protection of traditional cultural properties as outlined in NCAI Resolutions SD-95-076, CT-25-010, and MEM-26-046; and

WHEREAS, legislative efforts to accelerate infrastructure permitting frequently attempt to statutorily weaken the NHPA by narrowing critical definitions such as “undertaking” and “area of potential effects,” curtailing equitable judicial remedies by mandating remand without vacatur, imposing unreasonable statutes of limitations, and granting federal agencies unilateral deference to override cultural impacts without early and meaningful consultation; and

WHEREAS, on September 30, 2026, the leaders of the US Senate Environment and Public Works Committee and the Senate Energy and Natural Resources Committee introduced the Bipartisan American Affordability and Jobs Act of 2026 (S. 5653), that proposes sweeping changes that would alter the legal and regulatory framework under Section 106 of the NHPA under S. 5653’s Title III Historic Preservation provisions and also contains broad detrimental and problematic amendments to the broad, to the NHPA, the National Environmental Policy Act (NEPA), Clean Water Act, Endangered Species Act, and Federal Power Act; and

WHEREAS, the proposed changes would significantly diminish the effectiveness of section 101(d)(6)(B) of the NHPA, make Tribal consultation largely discretionary otherwise diminish its meaning and effectiveness; and

WHEREAS, many projects would not qualify as an "undertaking" under the proposed definitions, eliminating historic property and cultural resource management review before those projects are approved; and

WHEREAS, protection would be limited to existing properties listed on the National Register of Historic Places, leaving unlisted Tribal properties, especially those whose locations remain confidential to protect culturally sensitive information, tribal intellectual properties and tribal data sovereignty, without adequate protection; and

WHEREAS, requiring sacred sites to be entered into a database accessible to Federal and State officials as a condition of Tribal grant funding would jeopardize the confidentiality and security of those places and undermines Tribal Sovereignty and the inherent right of Tribal Nations to identify and safeguard cultural landscapes and resources; and

WHEREAS, the proposed provisions would authorize federal intervention and oversight in the status and functions of federal Tribal Historic Preservation Offices, including the potential assumption of those functions and withholding of funds, thereby undermining the recognition of Tribal sovereignty embodied in section 101(d)(2) of the NHPA; and

WHEREAS, granting developers expanded rights to sue would impose costs and burdens on Tribes and further weaken Tribal participation and meaningful consultation in the review process;

WHEREAS, these proposed changes to the NHPA will have significant consequences on Tribal Nations' ability to preserve properties of religious and cultural significance and the protection of sacred places, treaty rights, cultural resources and Tribal lands remains a national priority for Tribal Nations and NCAI; and

WHEREAS, Tribal Nations and Native Hawaiians were not consulted during the development of this legislation or provided a meaningful opportunity to engage in the legislative process before it was introduced; and

WHEREAS, on November 9, 2026, the United States Senate is expected to vote on S. 5653.

NOW THEREFORE BE IT RESOLVED, that NCAI urges Congress to protect Tribal sovereignty and the National Historic Preservation Act consultation requirements by expressly opposing provisions of S. 5653, including the entirety of Title III Historic Preservation, that decimate Section 106 review, diminish meaningful Tribal consultation, narrow the definition of covered undertakings and effects, and restrict protections to properties already eligible for or listed on the National Register of Historic Places or preclude the addition of any protections to any traditional religious and cultural properties; and

BE IT FURTHER RESOLVED, that NCAI vehemently opposes any permitting reform legislation that seeks to limit the scope of Section 106 reviews, restricts Tribal participation in early project scoping, grants federal agencies unilateral deference to override cultural impacts, imposes punitive measures on THPOs, or curtails judicial review and equitable remedies, such as vacatur and injunctions, for violations of the NHPA; and

BE IT FURTHER RESOLVED, that any legislation affecting historic preservation shall protect confidential information concerning sacred and culturally significant places, preserve Tribal authority over Tribal Historic Preservation Offices' status and functions, and ensure that Federal funding is not conditioned on information disclosure that could endanger sacred places or the perceived performance of Tribal Historic Preservation Offices; and

BE IT FURTHER RESOLVED, that NCAI affirms that efforts to improve the efficiency of federal permitting and project review must not come at the expense of Tribal sovereignty, treaty and trust responsibilities, meaningful government-to-government consultation, or the protection of sacred places, cultural resources and historic properties; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to withdraw the Title III of S.5653 and to work directly with Tribal Nations and THPOs on any permitting reform legislation; and

BE IT FURTHER RESOLVED, that copies of this resolution shall be transmitted to the appropriate members of Congress, federal agencies, Tribal Nations, and other relevant officials and organizations; and

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

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CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2026 Annual Convention of the National Congress of American Indians, held October 18-22, 2026 in Palm Springs, California, with a quorum present.

Mark Macarro, President

ATTEST:

Christie Modlin, Recording Secretary