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The National Congress of American Indians
Resolution #PSC-26-016

TITLE: Strengthening Protections for Tribal Sacred Places, Religious Freedom, and Cultural Heritage by Defending Section 106 of the National Historic Preservation Act from Regulatory and Administrative Action

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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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, 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, Tribal Nations possess inherent sovereignty and maintain distinct political, legal, cultural, and spiritual relationships with their ancestral homelands, sacred places, burial grounds, traditional cultural places, cultural landscapes, waterways, mountains, plants, medicines, and other properties and resources of traditional religious and cultural importance; and

WHEREAS, the federal government has trust and treaty obligations to Tribal Nations that include responsibilities to respect Tribal sovereignty, protect Tribal cultural heritage and religious practices, and engage in meaningful government-to-government consultation when federal actions may affect Tribal rights, lands, resources, sacred places, or cultural interests; and

WHEREAS, for generations, federal policies resulted in the taking, destruction, desecration, and dispossession of Tribal homelands and sacred places and actively suppressed American Indian and Alaska Native religions, ceremonies, languages, and traditional practices, making the protection of the remaining sacred places, cultural landscapes, and cultural heritages a matter of continuing federal responsibility; and

WHEREAS, the exercise of Tribal religious freedom is inseparable from access to and protection of sacred places, traditional cultural places, cultural landscapes, ancestral lands, burial places, waterways, mountains, natural features, and other locations where ceremonies, gathering, prayer, teaching, and other traditional practices have occurred since time immemorial; and

WHEREAS, the American Indian Religious Freedom Act of 1978 established federal policy to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise traditional religions, including access to sites and possession and use of sacred objects; and

WHEREAS, the Religious Freedom Restoration Act, federal Indian treaties, the National Historic Preservation Act (NHPA), Executive Orders concerning sacred sites, and other federal authorities further demonstrate the importance of protecting Tribal religious practices and the places necessary to exercise those practices; and

WHEREAS, Congress enacted the NHPA to establish a national policy for the preservation of historic properties and created the Section 106 review process, now codified at 54 U.S.C. § 306108, requiring federal agencies to consider the effects of federal undertakings on historic properties before making final decisions; and

WHEREAS, the NHPA, as amended in 1992, provides that property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register of Historic Places, 54 U.S.C. § 302706(a), and requires that a federal agency carrying out its Section 106 responsibilities "shall consult with any Indian tribe or Native Hawaiian organization" that attaches religious and cultural significance to such property regardless of where they are located, 54 U.S.C. § 302706(b); and

WHEREAS, Section 106 and its implementing regulations at 36 C.F.R. Part 800 provide one of the federal government's most important procedural mechanisms for identifying and considering effects on properties of traditional religious and cultural importance to Tribal Nations before federal actions that could result in irreversible harm; and

WHEREAS, Section 106 applies broadly to federal undertakings, including projects carried out by federal agencies and projects involving federal financial assistance, permits, licenses, and approvals, ensuring that historic preservation considerations are incorporated into federal decision-making before final decisions are made; and

WHEREAS, Section 106 is particularly important to Tribal Nations because many sacred places, cultural landscapes, ancestral lands, burial places, and other culturally significant locations are located outside present-day reservation boundaries as a consequence of removal, dispossession, treaty-making, allotment, federal land policies, and other historical actions of the United States; and

WHEREAS, on August 20, 2026, the Secretary of the Interior issued Secretarial Order 3452, "Timely Completion of NHPA Section 106 Reviews," which directs Department of the Interior bureaus, including the Bureau of Land Management, the National Park Service, the Bureau of Indian Affairs, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service, to streamline Section 106 reviews; and

WHEREAS, the Department of the Interior is the lead federal agency for upholding the trust relationship with Tribal Nations, administers the National Register and the Historic Preservation Fund, and has committed through Executive Order 13175 and its own tribal consultation policy to consult with Tribal Nations before taking actions that have tribal implications; and

WHEREAS, SO 3452 directs bureaus to identify programs and categories of undertakings that can be exempted from Section 106 review, to expand the use of program alternatives such as programmatic agreements and program comments, to apply strict response deadlines to State Historic Preservation Offices and Tribal Historic Preservation Officers (THPOs), to treat 180 days as the outer limit for resolving adverse effects, to require bureau director approval for any extension, to coordinate Section 106 with NEPA timelines, and to limit the use of off-site compensatory mitigation for effects on cultural and historic resources; and

WHEREAS, the Order directs bureaus to propose new exemptions within 60 days of its issuance, establishing a short window in which new categories of Interior undertakings may be removed from review, the Order does not require Interior to consult with Tribal Nations before bureaus identify and propose those categories, and the Order itself was issued without prior government-to-government consultation with Tribal Nations; and

WHEREAS, a 30-day fixed response deadline imposed on THPOs and Tribal Nations risks converting meaningful consultation into a notice-and-comment exercise, and a tribal government's silence under an unrealistic deadline cannot be treated as consent; and

WHEREAS, no federal regulatory reform, permitting initiative, infrastructure policy, energy development policy, or administrative streamlining effort should weaken statutory protections established by Congress or diminish the federal government's trust and treaty obligations to Tribal Nations; and

WHEREAS, the effectiveness of Section 106 depends not only upon strong regulations but also upon adequate capacity within Tribal Nations, Tribal Historic Preservation Offices, the Advisory Council on Historic Preservation (ACHP), the National Park Service, and federal agency historic preservation and Tribal liaison offices; and

WHEREAS, THPOs perform critical governmental functions in identifying, evaluating, documenting, and protecting historic properties, including properties of traditional religious and cultural importance, yet Tribal Nations frequently face insufficient federal funding and staffing to respond to an increasing volume and complexity of federal undertakings and consultation requests; and

WHEREAS, streamlining federal permitting processes and protecting Tribal sovereignty and cultural heritage are not competing objectives, and Section 106 streamlining that sacrifices consultation will increase conflict, litigation, and delay rather than facilitate accelerated permitting; and

WHEREAS, on July 24, 2026, the ACHP voted to advance substantial proposed revisions to the regulations implementing Section 106 at 36 C.F.R. Part 800, representing the first major proposed revision of these regulations in more than two decades; and

WHEREAS, the proposed revisions would expand federal agency discretion regarding whether and how consultation with Tribal Nations occurs, narrow circumstances in which federal actions constitute undertakings subject to Section 106, narrow what may qualify as historic property, restrict consideration of impacts to Tribal cultural heritage, and limit Tribal participation in developing mitigation measures; and

WHEREAS, proposed changes to the definition and treatment of historic properties could exclude or make it substantially more difficult to protect traditional cultural places, cultural landscapes, mountains, valleys, waterways, natural features, ethnographic landscapes, and other properties of traditional religious and cultural importance merely because they lack tangible human improvements or are not geographically compact; and

WHEREAS, such limitations conflict with the lived cultural and religious traditions of many Tribal Nations because Tribal sacred geography is not defined by Western concepts of property boundaries, built structures, geographic compactness, or physical modification of the landscape; and

WHEREAS, proposed limitations on consideration of indirect, cumulative, visual, atmospheric, audible, and other effects could further prevent federal agencies from adequately evaluating the full consequences of federal actions upon Tribal sacred places, cultural landscapes, ceremonies, traditional practices, and religious use; and

WHEREAS, the proposed revisions are contrary to law because they would narrow what may qualify as a historic property notwithstanding Congress's direction in 54 U.S.C. § 302706(a) that property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for the National Register, would weaken the consultation that federal agencies "shall" conduct under 54 U.S.C. § 302706(b), and would strike the existing regulatory acknowledgment at 36 C.F.R. § 800.4(c)(1) that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of properties of religious and cultural significance to them; and

WHEREAS, the ACHP's Policy Statement Regarding the Council's Relationships with Indian Tribes, adopted November 17, 2000, commits the ACHP to consult with tribal leaders when developing policies, procedures, or programs that might affect tribal rights, cultural resources, or lands, and the ACHP's Consultation Procedures Pursuant to Executive Order 13175, dated April 26, 2021, require that any proposed revision to 36 C.F.R. Part 800 begin with written notification to Tribal Nations allowing no less than 60 days to respond, followed by government-to-government consultation; and

WHEREAS, the ACHP voted on July 24, 2026, to advance the proposed revisions without providing that notification and without conducting government-to-government consultation with Tribal Nations, in violation of its own policy and procedures; and

WHEREAS, the federal government's obligation to consult Tribal Nations regarding properties of traditional religious and cultural importance is not limited to present-day Tribal lands, and Tribal Nations retain cultural, spiritual, historical, treaty, and other connections to ancestral and ceded territories throughout the United States; and

WHEREAS, Tribes must be consulted on the development of any exemptions, program alternatives, and mitigation options, especially Tribal Nations whose resources are affected, in order to prevent permanent losses of sensitive resources and properties that cannot be remediated and to seek mitigation measures that will address Tribal, cultural, and religious values; and

WHEREAS, meaningful government-to-government consultation is not equivalent to public participation, stakeholder engagement, notice-and-comment rulemaking, or communication with project applicants, and consultation must recognize Tribal Nations as sovereign governments possessing unique knowledge regarding their own history, cultural heritage, traditional practices, and sacred places; an

WHEREAS, early, meaningful Tribal consultation can improve project planning, identify conflicts before they become costly, protect irreplaceable cultural resources, and create greater certainty for federal agencies, Tribal Nations, and project proponents.

NOW THEREFORE BE IT RESOLVED, that NCAI demands the Secretary of the Interior rescind Secretarial Order 3452 to the extent that it limits, shortens, or bypasses Tribal consultation under Section 106, and calls upon the Secretary to revise any remaining provisions of the Order following meaningful government-to-government consultation with Tribal Nations; and

BE IT FURTHER RESOLVED, that the NCAI reaffirms its strong support for Section 106 of the NHPA and opposes any legislative, regulatory, administrative, or executive action that weakens the ability of Tribal Nations to identify, evaluate, protect, avoid harm to, or mitigate adverse effects upon sacred places, traditional cultural properties, cultural landscapes, ancestral lands, burial places, and other properties of traditional religious and cultural importance, or that diminishes the protections and processes afforded to consulting parties under Section 106 of the NHPA; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to appropriate sufficient funds to empower Tribal Nations' meaningful participation in Section 106 consultation; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to conduct oversight of any revisions to the Section 106 regulatory framework and, where necessary, enact legislation clarifying and strengthening protections for Tribal consultation, sacred places, traditional cultural properties, traditional cultural landscapes, and properties of traditional religious and cultural importance; and

BE IT FURTHER RESOLVED, that NCAI urges the President, Congress, the ACHP, the Department of the Interior, the National Park Service, and all federal agencies to uphold the NHPA and the federal trust and treaty responsibility; and

BE IT FURTHER RESOLVED, that NCAI urges federal agencies to recognize Tribal Nations as authoritative sources regarding their own history, traditional knowledge, cultural practices, sacred places, and properties of traditional religious and cultural importance and to provide appropriate protections for sensitive and confidential Tribal cultural information; and

BE IT FURTHER RESOLVED, that NCAI calls upon the ACHP and all federal agencies to conduct formal, meaningful government-to-government consultation with Tribal Nations before advancing substantial revisions to 36 C.F.R. Part 800, and calls upon the ACHP to withdraw its proposed revisions to 36 C.F.R. Part 800 and to begin government-to-government consultation in accordance with its own Policy Statement Regarding the Council's Relationships with Indian Tribes and its Consultation Procedures Pursuant to Executive Order 13175; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Department of the Interior to consult with Tribal Nations before any bureau proposes, develops, or adopts any exemption, programmatic agreement, program comment, or other program alternative under the Order, and to refrain from adopting any alternative that affects tribal lands, ancestral territories, or properties of traditional religious and cultural importance without the consent of the affected Tribal Nations; and

BE IT FURTHER RESOLVED, that NCAI calls upon all federal agencies to initiate Section 106 consultation with potentially affected Tribal Nations at the earliest stages of project planning and before the agency or project proponent has committed substantial resources or made decisions that effectively foreclose project alternatives; and

BE IT FURTHER RESOLVED, that NCAI affirms that 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

BE IT FURTHER RESOLVED, that NCAI affirms that Federal Register notices, public comment periods, listening sessions, webinars, stakeholder engagement, meetings with individual organizations and other such activities do not substitute for government-to-government consultation with sovereign Tribal Nations; and

BE IT FURTHER RESOLVED, that NCAI affirms that Tribal consultation responsibilities and federal trust and treaty obligations are inherently federal governmental responsibilities and must not be delegated to project applicants, contractors, states, local governments, or other third parties in a manner that diminishes federal accountability or the government-to-government relationship; 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 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