



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PSP-09-087c

TITLE: Advancing Consultation Regarding Tribal Section 106 Concerns in the ARRA Broadband Programs

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 American Recovery and Reinvestment Act of 2009 (ARRA) provides \$7.2 billion to the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) and the U.S. Department of Agriculture's Rural Utilities Service (RUS) to expand access to broadband services throughout the nation, including on Tribal lands nationwide; and

WHEREAS, NTIA in implementing its ARRA responsibility through the Broadband Technology Opportunities Program (BTOP) will award \$4.7 billion in grants to expand public computer capacity, encourage sustainable adoption of broadband service and deploy broadband infrastructure to unserved and underserved areas; and

WHEREAS, RUS in implementing its ARRA responsibility through the Broadband Initiatives Program (BIP) will invest \$2.5 billion in loans and loan/grant combinations to support broadband deployment in rural communities; and

WHEREAS, NTIA may approve applications for the installation of broadband infrastructure projects submitted under BTOP, thereby making those proposals "undertakings", as defined in 36 CFR Part 800, subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. §470f (NHPA), and its implementing regulations ("Protection of Historic Properties, (36 CFR Part 800) (hereinafter referred to as Section 106); and

WHEREAS, RUS may approve applications for the installation of broadband infrastructure projects submitted under BIP, thereby making those proposals "undertakings" subject to review under 36 CFR Part 800; and

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WHEREAS, RUS and NTIA have received almost 2200 applications requesting almost \$28 billion in funding for the first round of funding, the announcement of round one awards is scheduled to begin in early November, subsequent rounds of funding have not yet been announced, and the rapid disbursement of funds is critical because all ARRA awards must be made prior to September 30, 2010; and

WHEREAS, Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties, included in or eligible for inclusion in the National Register of Historic Places, which may include properties of “traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization”(16 U.S.C. section 470a(d)(6)(A)); and

WHEREAS, NTIA and RUS have certain trust responsibilities when dealing with federally recognized Tribes (those Tribal Entities listed by the Secretary of the Department of Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. Section 479a et seq.)(Tribes) that devolve from the unique government to government trust relationship they share with Tribal Entities and the inherent sovereign status of Tribes; and

WHEREAS, Section 101 of the NHPA also requires federal agencies to consult with Indian Tribes with regard to historic properties to which an Indian Tribe or Native Hawaiian organization attaches religious and cultural significance (16 U.S.C. Section 470a(d)(6)(B)); and

WHEREAS, several Senior Federal Officials of RUS and NTIA attended the NCAI 66th Annual Convention and Tradeshow, and addressed, and participated in both a panel session and a NCAI Telecommunications Subcommittee Listening Session, consulting directly from Tribal leaders and addressing their many and significant concerns about the ability of Indian Country to meaningfully participate in the BIP/BTOP processes, including the Section 106 consultation process; and

WHEREAS, RUS and NTIA have articulated to NCAI the need to execute certain efficiencies so that the volume of undertakings does not overwhelm Section 106 consulting parties, including federally recognized American Indian and Alaska Native Tribal Entities; and

WHEREAS, to support their early involvement, RUS and NTIA intend to notify Tribal Entities about those ARRA broadband applications qualified for environmental review using a version of the Federal Communications Commission (FCC) Tower Construction Notification System (TCNS) specially modified for the BIP/BTOP program for the timeframe of the ARRA funding cycle; and

WHEREAS, RUS, for its BIP, and NTIA, for BTOP, have determined that some of the identified undertakings which propose broadband infrastructure projects could have potential adverse effects on historic properties; and

WHEREAS, in addition to using a modified version of TCNS, RUS and NTIA propose to develop a Nationwide Programmatic Agreement (Nationwide PA), in accordance with 36 CFR § 800.14(b), that would establish reasonable, efficient and consistent procedures for the expedited review of undertakings that include a variety of broadband infrastructure projects funded under the ARRA; and

WHEREAS, RUS and NTIA will oversee the implementation of the Nationwide PA and ensure that appropriate conditions and mitigation, i.e. discovery provisions, no adverse effect conditions, construction monitoring, are included in the assistance approval; and

WHEREAS, RUS and NTIA have indicated to NCAI that they recognize the critical importance of consultation with Tribes to developing and implementing this Nationwide PA and have indicated that they will take into account all comments provided on the draft conceptual plan in developing the Nationwide PA, to be made available for comment in late October, 2009; and

WHEREAS, RUS and NTIA initiated government-to-government consultation with Tribes for their ARRA broadband programs and development of this Nationwide PA, by letter dated September 23, 2009, including a draft conceptual plan; and

WHEREAS, the NCAI Telecommunications Subcommittee was informed at the NCAI 66th Annual Convention and Tradeshow that the United South and Eastern Tribes, Inc., on behalf of their member tribes, and the Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, and the Agua Caliente Band of Cahuilla Indians, have formally responded the September 23, 2009 letter of RUS and NTIA, indicating the many and serious concerns of Tribes in this matter; and

WHEREAS, the United South and Eastern Tribes is a recognized leading inter-Tribal government organization on Section 106 matters and the protection of Tribal sacred sites--having worked directly with the Federal Communications Commission in 2003 and 2004 on many similar issues related to Section 106 and commercial mobile radio and broadcast communications tower siting, including the negotiation and promulgation of a FCC-USET Best Practices Agreement, (Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review pursuant to Section 106 of the National Historic Preservation Act); and

WHEREAS, NCAI has coordinated often in the past with USET on matters involving Section 106; and

WHEREAS, Tribes and Tribal organizations have expressed concern to NCAI about several elements of the draft conceptual plan including the short time frames in which a Nationwide Programmatic Agreement is to be finalized and the short time frames within the plan for tribal consultation.

NOW THEREFORE BE IT RESOLVED, that the NCAI expresses support for government-to-government consultation on the development of this Nationwide PA; and

BE IT FURTHER RESOLVED, that the NCAI does hereby support that the NTIA and RUS establish a streamlined, efficient and consistent approach to the deployment of broadband infrastructure undertakings, both on and off Indian lands and lands of Native Hawaiians and Alaskan Native Villages; and

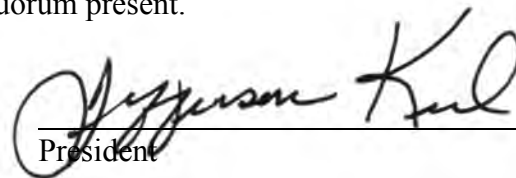
BE IT FURTHER RESOLVED, that the NCAI does hereby support the efforts of the USET and Tribes, in their efforts to address the concerns of Tribes raised with respect to NTIA's and RUS's draft conceptual plan; and

BE IT FURTHER RESOLVED, that the NCAI calls upon RUS and NTIA to address fully the concerns raised by Tribes, NCAI, USET, and other Tribal entities that work on Section 106 issues in the fashioning of a Nationwide PA, as soon as possible, that protects vital Tribal interests while also establishing an efficient and consistent approach to the deployment of ARRA broadband infrastructure undertakings; 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 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.



President

ATTEST:



Recording Secretary