



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PSP-09-033

TITLE: Support Removing Barriers and Providing Additional Funding for Preparation of Environmental Site Assessments and Cadastral Surveys for Fee-to-Trust Applications

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band – Mission Indians

RECORDING SECRETARY
Theresa Two Bulls
Oglala Sioux Tribe

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
William Martin
Central Council Tlingit & Haida

EASTERN OKLAHOMA
Cara Cowan Watts
Cherokee Nation

GREAT PLAINS
Marcus D. Levings
Mandan, Arikara and Hidatsa Nation

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomie

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Brian Cladoosby
Swinomish Tribal Community

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Archie Lynch
Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS
Darrell Flyingman
Cheyenne & Arapaho Tribes

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Irene Cuch
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

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, tribes have an interest in ensuring that the process for transferring fee land into trust status does not impose undue regulatory or financial burdens on Indian tribes or individual Indians; and

WHEREAS, prior to acquiring fee land into trust, the Bureau of Indian Affairs (BIA) requires preparation of a Pre-Acquisition Environmental Site Assessment (ESA), which is intended to identify any potential environmental issues; and

WHEREAS, on November 1, 2006, a new rule (40 CFR Part 312) promulgated by the Environmental Protection Agency became effective that amends the requirements for how ESAs are prepared; and

WHEREAS, among other things, the EPA rule provides that ESAs expire after 180 days and requires heightened educational and professional experience before an individual will be deemed qualified to prepare ESAs; and

WHEREAS, the BIA has chosen to comply with the EPA rule and as a result, fee to trust applications at many BIA agencies in the Northwest Region and Nationally have come to a standstill, because (a) once prepared, ESAs typically expire and must be updated at additional expense because other requirements of the fee-to-trust process cannot be completed within 180 days; and (b) the BIA has shifted the costs of preparing the ESAs onto tribes, where BIA personnel previously performed these functions; and

WHEREAS, in addition, the BIA's Northwest Regional Office has a longstanding policy that prohibits Indian tribes or their employees from preparing ESAs for tribal properties because of the perception that Indian tribes and their employees have an organizational conflict of interest; and

WHEREAS, in a December 5, 2007, memorandum from the Acting Northwest Regional Director, the Northwest Regional Office began requiring chain of surveys and detailed land description reviews for all fee-to-trust applications, the only such regional policy of its kind; and

WHEREAS, the BIA's decision to comply with the EPA rule and its lack of funding for tribes for the preparation of ESAs has created formidable and, for tribes with limited resources, insurmountable barriers for tribal fee to trust applications; and

WHEREAS, the Northwest Regional Office's conflict of interest policy for ESAs is paternalistic, contrary to tribal self determination, and unnecessarily prevents tribes from utilizing their own tribal members in the preparation of ESAs; and

WHEREAS, the requirements set forth in the Northwest Regional Office's December 5, 2007, memorandum are unnecessary for the vast majority of fee-to-trust applications, specifically those that involve parcels that border other trust lands, and are a new financial burden on tribes.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby request that Secretary and Assistant Secretary of the Department of Interior take whatever steps necessary to relax the requirements of the EPA rule as applied to Indian fee to trust applications, specifically the 180 day deadline and the heightened qualifications for individuals to prepare ESAs; and

BE IT FURTHER RESOLVED, that the NCAI requests Secretary and Assistant Secretary of the Department of Interior provide funding for BIA agency offices and Indian tribes to pay for the costs of preparing ESAs and cadastral surveys; and

BE IT FURTHER RESOLVED, that the NCAI requests Secretary and Assistant Secretary of the Department of Interior develop a program whereby tribal employees can be certified to conduct ESAs on parcels that are forested, undeveloped, or that otherwise have not been used for commercial purposes; and

BE IT FURTHER RESOLVED, that the NCAI requests Secretary and Assistant Secretary of the Department of Interior immediately rescind the conflict of interest policy with respect to preparation of ESAs; and

BE IT FURTHER RESOLVED, that that NCAI requests Secretary and Assistant Secretary of the Department of Interior immediately rescind any policies or memorandums that require chain of surveys and land description reviews for all fee-to-trust applications; 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