



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ATL-14-087

TITLE: Call for Federal Entities to Take Actions on Sacred “Sites” Memorandum of Understanding

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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, NCAI has authorized a joint initiative for the protection of Sacred Places, #TUL-13-007, whose mission fits within the goals, policies and opinions of the NCAI, as expressed in previous resolutions concerning sacred places, including those numbered #PHX-08-069C, NCAI Policy Statement on Sacred Places, and #ABQ-10-065, Calling for Legislation to Provide a Right of Action to Protect Native Peoples' Sacred Places; and

WHEREAS, the Supreme Court has explained throughout its First Amendment and Religious Freedom Restoration Act jurisprudence that the sincerity of religious beliefs shall be presumed and not be questioned; yet, despite this principle, Native American religious beliefs, and the sacredness of religious sites in particular, are frequently questioned and a high burden is placed on Native Americans to prove the sacredness of sites by federal authorities; and

WHEREAS, on December 4, 2012, the United States Departments of Defense, the Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation entered into a Memorandum of Understanding, “Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites” (MOU), purportedly, “to improve the protection of and tribal access to Indian sacred sites through enhanced and improved intertribal coordination and collaboration;” and

WHEREAS, NCAI recognizes the MOU commits the federal signatories to, among other things, work together on developing guidance on the management and treatment of sacred places, on identifying and recommending ways to overcome impediments to the protection of such places while preserving confidentiality regarding the places, on creating a training program for federal staff, and on developing outreach plans to both the public and to non-federal partners; and

WHEREAS, on March 5, 2013, the signatories released a corresponding action plan to implement the MOU, followed by a progress report on the implementation of the MOU in May 2014, with the work organized into five area subgroups - Training, Confidentiality Standards, Management Practices and Capacity Building, Public Outreach and Communications, and Policy Review; and

WHEREAS, in October 2014, the signatories released draft documents of a proposal for federal training, a federal policy statement on confidentiality of sacred sites information, and an information paper on sacred places for education and outreach, and their representatives participated in a roundtable discussion with regard to these draft documents on October 27, 2014, at the NCAI Annual Convention and Marketplace Breakout Session titled, *Protecting Our Sacred Places: An Overview and Discussion of Current Efforts*; and

WHEREAS, despite being nearly two years removed from the signing of the MOU, the draft documents and the sentiments expressed by the signatories in the roundtable discussion are severely lacking in many respects and are in large part only a rehashing of talking points seen in the past, which does not represent a reasonable effort to meet the goals of the MOU, let alone address the problems tribal commentators have expressed to the signatory agencies or provide useful guidance to staff on how to address sacred places issues.

NOW THEREFORE BE IT RESOLVED, that NCAI calls on the federal signatories to the MOU to abide by the commitments they made in the MOU in all the subject areas related to sacred places and to propose and implement, only after extensive tribal consultation, meaningful policy changes that preserve and protect sacred places and Native Peoples' rights to access and use them in accordance with traditional practices in original territories and without intimidation or penalty; and

BE IT FURTHER RESOLVED, that NCAI calls on the signatories to incorporate the presumption of the sincerity of religious beliefs into these policies to strengthen the confidentiality of information and improve federal decision making processes; and

BE IT FURTHER RESOLVED, that NCAI calls on the signatories to draft an accurate context statement, explaining the need for the MOU and the policy changes, that includes an explanation of past failings in protection, confidentiality, communication, and violations of trust responsibility and other applicable laws, which will serve as a base to explain and evaluate policy changes; and

BE IT FURTHER RESOLVED, that NCAI calls on the signatories to identify existing confidentiality standards, explicitly recognize their lack of effectiveness, and develop actual policy and guidance to address these shortcomings, which include:

- developing guidance for staff on options to protect sacred places without requiring specific information,
- developing detailed guidance on applicable disclosure laws and exceptions, including where discretion is available and how to handle that discretion,
- directing staff to explain these laws prior to collecting information and not make promises of confidentiality that cannot be kept, and
- developing an overarching policy of a presumption to protect the confidentiality of information; and

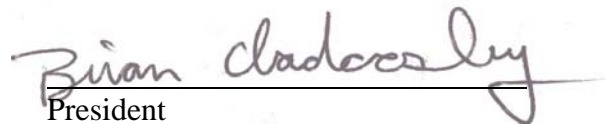
BE IT FURTHER RESOLVED, that NCAI calls on the signatories to work with the White House to revise Executive Order 13007 as a matter of policy “Where appropriate,” shall be replaced with “to the maximum extent” in the sentence referring to confidentiality, which was recommended by the USDA Office of Tribal Relations and USDA Forest Service Draft Report to the Secretary of Agriculture USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites in 2011, but removed from the Final Report with no explanation; and

BE IT FURTHER RESOLVED, that NCAI calls on the signatories to require that all staff attend a mandatory training on working effectively with tribal governments, which also must be held to the same high standards and develop a comprehensive training on sacred places protection with the assistance of Native subject matter experts and extensive Native involvement within the timeline presented in the draft, including the organizations that comprise the NCAI joint initiative for the protection of Sacred Places, #TUL-13-007; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.


President

ATTEST:


Recording Secretary