



2022 Virtual Winter Convention

RESOLUTION #2022 – 07

“IN SUPPORT OF AMENDING NATIONAL HISTORIC PRESERVATION ACT IMPLEMENTING REGULATION TO CLEARLY DIRECT FEDERAL AGENCY OFFICIALS TO INVITE TRIBES AS SIGNATORIES TO AGREEMENTS SETTling RESOLUTIONS OF ADVERSE EFFECTS ON HISTORIC PROPERTIES FOR A PROJECT”

PREAMBLE

We, the members of the Affiliated Tribes of Northwest 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, Executive Orders and benefits to which we are entitled under the laws and constitution of the United States and several 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:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, ATNI recognizes that federal, federally approved and federally funded projects regularly adversely impact Tribal cultural resources as well as sites of religious and traditional significance despite the regulations put in place to protect them; and

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to notify and meaningfully consult with Tribes to identify and consider the

effects of federally funded projects on historic properties, assess and seek ways to avoid, minimize, or mitigate any adverse impacts on historic properties when a federal project or federally funded project or federal undertaking is proposed; and

WHEREAS according to the National Historic Preservation Act, historic properties include prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places; and

WHEREAS, regardless of the location, federal agencies must consult Tribal Historic Preservation Offices and Tribes about undertakings when they may affect historic properties to which a Tribe attaches religious or cultural significance¹ and

WHEREAS, the implementing regulations for Section 106 National Historic Preservation Act, 54 U.S.C. § 306108, developed by the Advisory Council on Historic Preservation (ACHP) can be found in the Code of Federal Regulations (CFR) published at 36 CFR Part 800, “Protecting Historic Properties.”; and

WHEREAS according to 36 CFR Part 800 *Subpart B and C* allow for adverse impacts to be resolved through a memorandum of agreement or programmatic agreement between federal agency official and SHPO, and THPO (on Tribal lands), as well as the ACHP, and other invited signatories; and

WHEREAS, specifically 36 CFR § 800.6(c)(2)(ii) states that “the agency official may invite an Indian tribe... that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties” ; and

WHEREAS, the Federal Energy Regulatory Commission (FERC), the federal agency responsible for approving natural gas projects and licensing non-federal hydropower facilities, has taken the position that it does not need to consider the intent of the regulation and, without reason, has denied signatory status to Tribes that meet the criteria outlined in 36 CFR § 800.6(c)(2)(ii); and

WHEREAS, without clear direction in regulation, any federal agency can determine at its own discretion, like FERC, whether or not to invite Tribes as signatories for projects that will impact Tribal resources; and

WHEREAS, the regulations implementing the National Historic Preservation Act must be amended to provide active roles to Tribes for identification, evaluations, and resolution of adverse effects to historic properties; and

WHEREAS, more specifically, 36 CFR § 800.6(c)(2)(ii) must be amended to require agency officials to include Tribes as invited signatories to agreements prepared to resolve adverse effects to historic properties to which they attach religious and cultural significance regardless of their location; and

¹ 36 CFR § 800.2(c)(2)(ii) and 36 CFR § 800.2(c)(2)(ii)(D)

WHEREAS, ATNI recommends that when identifying historic properties, federal agencies afford Tribes a meaningful role in evaluating historic significance in 36 CFR § 800.4(c)(2) in recognition of 36 CFR § 800.4(c)(1) because they “possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them”; now

THEREFORE BE IT RESOLVED, that ATNI calls upon the ACHP to update the National Historic Preservation Act implementing regulations in 36 CFR Part 800 to afford signatory status to memoranda of agreement to Tribes that attach religious and cultural significance to historic properties located off tribal lands.

BE IT FINALLY RESOLVED, that ATNI calls upon all federal agencies to review and update their policies, practices, and responsibilities in consultation with Tribes and ACHP regarding the implementation of the NHPA to better align with the intent of the NHPA and afford signatory status to memoranda of agreement to all Tribes that attach religious and cultural significance to historic properties located off tribal lands.

CERTIFICATION

The foregoing resolution was adopted at the 2022 Virtual Winter Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on January 24-27, 2022, with a quorum approving.

Leonard Forsman, President

Norma Jean Louie, Secretary