



## **2016 Annual Convention Tulalip, Washington**

### **RESOLUTION #16 - 43**

#### **“FOREST PRACTICES HABITAT CONSERVATION PLAN SECTION 106 COMPLIANCE”**

##### **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 to 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 the ATNI; and

**WHEREAS**, Washington state includes ceded, traditional, and usual and accustomed lands of dozens of Federally recognized Tribes; and

**WHEREAS**, the United States Fish and Wildlife Service and the National Marine Fisheries Service (Federal Agencies) approved the Forest Practices Habitat Conservation Plan

(FPHCP) for Washington state in June 2006, which included issuing 50-year Federal Incidental Take Permits (ITP) under the Endangered Species Act (ESA); and

**WHEREAS**, a Federal permit is defined as an undertaking under the National Historic Preservation Act (NHPA) [36 CFR 800.16(y)] and there is no ambiguity in the definition for “kind” or “type” of permit as all Federal permits are undertakings; and

**WHEREAS**, Federal Agencies are required to take into account the effects of their undertakings on historic properties as defined in Section 106 of the National Historic Preservation Act [36 CFR 800.1(a)]; and

**WHEREAS**, it is the statutory obligation of the Federal Agencies to fulfill the requirements of Section 106 and to ensure the agencies take legal and financial responsibility for Section 106 compliance [36 CFR 800.2(a)]; and

**WHEREAS**, Section 106 requires consultation [36 CFR 800.16(f)] with Indian Tribes [36 CFR 800.2(c)(2)] that attach religious and cultural significance to historic properties that may be affected by the undertaking regardless of the location of the historic property [36 CFR 800.2(c)(2)(ii)]; and

**WHEREAS**, the area of potential effect (APE) for the Federal Undertakings, the Incidental Take Permits, is defined as “existing and future private and state-owned forest lands in Washington State” in a Federal Agencies’ report, “Washington State Forest Practices Habitat Conservation Plan Section 106 Compliance Report”; and

**WHEREAS**, the Forest Practices activities across the area of potential effect have the potential to “take” [16 USC 1532 (19)] threatened and endangered aquatic species, a violation of the Endangered Species Act [16 USC 1538(a)(1)(B)]; and

**WHEREAS**, the Final Environmental Impact Statement (FEIS) for the Forest Practices Habitat Conservation Plan stated, issuing Incidental Take Permits are undertakings subject to the National Historic Preservation Act and part of the Section 106 responsibilities is to “gather information to determine if any cultural or historic properties within the area of potential effect are eligible for the National Register of Historic Places (NRHP)” (p. 4-263); and

**WHEREAS**, the FEIS admits that the “actual numbers of archaeological sites and resources, historic sites, and cultural resources are mostly unknown” (p. 4-267) and the Federal Agencies did NOT “make a reasonable and good faith effort to carry out appropriate identification efforts” [36 CFR 800.4(b)(1)]; and

**WHEREAS**, the FEIS says that Washington Department of Natural Resources (DNR) follows “procedures equivalent to those required under Section 106 of the National Historic Preservation Act” (p. 5-57) even though the Washington state laws, rules and voluntary processes do NOT require Tribal consultation [36 CFR 800.2(c)(2)] or a reasonable and good faith effort to carry out appropriate identification of historic properties that may be affected by the undertaking [36 CFR 800.4(b)(1)]; and

**WHEREAS**, the Federal Agencies produced a report, “Washington State Forest Practices Habitat Conservation Plan Section 106 Compliance Report”, that identified Washington’s Forest Practices Act; Forest Practices Rules; the 1987 Timber, Fish and Wildlife Agreement; the Forest and Fish Report; RCW 27.44 and RCW 27.53 as meeting their Section 106 responsibilities for the Forest Practices Habitat Conservation Plan even though none of the state laws, rules and voluntary processes require Tribal consultation [36 CFR 800.2(c)(2)] or a reasonable and good faith effort to carry out appropriate identification of historic properties that may be affected by the undertaking [36 CFR 800.4(b)(1)]; and

**WHEREAS**, the Federal Agencies did NOT consult with Indian Tribes on their undertakings, the 50-year Incidental Take Permits, in disregard to numerous requests for consultation [36 CFR 800.2(c)(2)] under the National Historic Preservation Act from Federally recognized Tribes and did NOT make a reasonable and good faith effort to identify historic properties that may be affected by their undertakings [36 CFR 800.4(b)(1)]; and

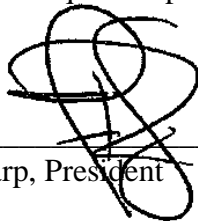
**WHEREAS**, the Federal Agencies granted Federal assurances as relief from any claim that Forest Practices would constitute an impermissible “take” of threatened or endangered aquatic species [16 USC 1539(a)(1)(B)] without fulfilling their Section 106 responsibilities of Tribal consultation [36 CFR 800.2(c)(2)] and efforts to identify cultural and historic properties [36 CFR 800.4(b)(1)]; and

**WHEREAS**, the Forest Practices activities have been occurring on the area of potential effect for over ten years and there is another forty years on the Incidental Take Permits, the Federal undertakings, there is a continuing obligation by the Federal Agencies to fulfill their Section 106 responsibilities on each and every Forest Practices Application (FPA) under the Forest Practices Habitat Conservation Plan; now

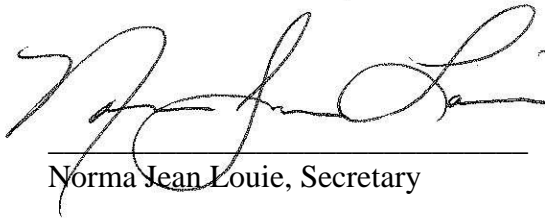
**THEREFORE BE IT RESOLVED**, that ATNI hereby requests the Federal Agencies to immediately initiate a process to fulfill their Section 106 responsibilities under the National Historic Preservation Act for their 50-year Incidental Take Permits, Federal undertakings, for the Forest Practices Habitat Conservation Plan by engaging in Tribal consultation [36 CFR 800.2(c)(2)] and cultural resources identification [36 CFR 800.4(b)(1)] for each and every Forest Practices Application.

### **CERTIFICATION**

The foregoing resolution was adopted at the 2016 Annual Convention of the Affiliated Tribes of Northwest Indians, held at Tulalip Resort Casino, Tulalip, Washington on September 26–29, with a quorum present.



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Fawn Sharp, President



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Norma Jean Louie, Secretary