



USET

SOVEREIGNTY PROTECTION FUND

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USET Resolution No. 2017 SPF:021

REQUESTING BIA GUIDANCE ON RIGHTS-OF-WAY FINAL RULE

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-six (26) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** the Final Rule for Rights-of-Way on Indian Land Federal Register (Vol 80 No 223) at 25 C.F.R. Part 169 became effective on December 21, 2015. This regulation is applicable to the Tribal Transportation Program (TTP) administered jointly by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) pursuant to 25 C.F.R. Part 170; and
- WHEREAS,** the Final Rule, 25 C.F.R. § 169.4(b), clarified that Tribal Nations may dedicate their own lands for specific uses, such as highways, by expressly stating that an Indian Tribe does not need to acquire a right-of-way to cross Indian land when the Tribe is the owner of the trust or restricted lands; and
- WHEREAS,** the BIA's lands records system and TTP regulations (25 C.F.R. Part 170) have not been updated to reflect that tribal dedications of their own trust and restricted lands for transportation purposes do not require a right-of-way; and
- WHEREAS,** the BIA's reliance on outdated procedures and regulations continues to cause substantial project delays and unnecessary costs by requiring Tribal Nations to conduct surveys and obtain rights-of-way that are not required by federal law or regulation, nor consistent with core principles of the Indian Self-Determination Policy and the inherent sovereignty of Indian Tribes over their territories; and
- WHEREAS,** the Associate Administrator for the Office of Federal Lands Highway, Timothy G. Hess, on behalf of the FHWA, issued a letter to BIA Director Weldon Loudermilk dated November 30, 2016, notifying the BIA that the FHWA would begin implementing 25 C.F.R. § 169.4(b) in January 2017 by instructing tribes that a Tribal resolution or other authorization and a legal description of the land would be sufficient to meet FHWA's right-of-way requirements associated with the TTP; and
- WHEREAS,** the letter from Associate Administrator Hess stated that it "is imperative that the BIA issue implementation guidance for pertaining to 25 CFR 169.004(b) as soon as possible", which should include a template resolution that would meet the applicable requirements; and
- WHEREAS,** the members of the USET Transportation Committee reported extensive delays and substantial costs associated with the BIA requiring USET SPF Tribes to comply with outdated BIA right-of-way requirements and therefore the BIA should issue implementation

guidance to help ensure the Rights-of-Way (ROW) for Title 23 funded TTP projects are properly established, documented, and recorded; and

WHEREAS, in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

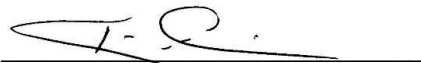
RESOLVED that USET SPF requests the Bureau of Indian Affairs issue implementation guidance pertaining to 25 C.F.R. § 169.4(b), including a template resolution to be used in lieu of a right-of-way submission; and, be it further

RESOLVED that the USET SPF Board of Directors issue a letter to Bureau of Indian Affairs Director Loudermilk in support of the letter from the Associate Administrator for the Office of Federal Lands Highway dated November 30, 2016; and be it finally

RESOLVED that this resolution shall be the policy of USET Sovereignty Protection Fund until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 9, 2017.



Chief Kirk Francis, Sr., President
United South and Eastern Tribes, Inc.



Chief Lynn Malerba, Secretary
United South and Eastern Tribes, Inc.