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Transmitted Electronically to:
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November 19, 2021

Eric Werwa
Deputy Assistant Secretary
For Policy and Environmental Management
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Deputy Assistant Secretary Werwa,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Department of the Interior (DOI) on the Framework for its Fiscal Year (FY) 2022 – 2026 Strategic Plan (Plan). We appreciate the opportunity to provide guidance prior to the development and finalization of the Plan. As written, the Framework does not represent a commitment to uphold DOI's trust and treaty obligations to Tribal Nations; it doesn't even mention them. The final Plan must reflect these solemn obligations, as well as a commitment to nation rebuilding within Indian Country, to measurable goals for the execution of federal functions, and to the promotion and advancement of self-governance and self-determination. With this in mind, we offer the below comments to provide some broad guidance to DOI as it seeks to achieve a Plan that is more reflective of its full commitment to 21st century Tribal Nations.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Trust and Treaty Obligations Should be Central to the Plan

Given this Administration's and DOI's repeatedly stated commitment to upholding trust and treaty obligations to Tribal Nations, it is disappointing to see this foundational promise to our governments absent

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

from the Plan's framework. While Strategic Goal #1 seeks to, "promote well-being, equity, and justice for Tribes, Native Americans, Alaska Natives, and Insular Communities," neither the goal nor its objectives include a directive to honor trust and treaty obligations. Furthermore, this is the only goal that explicitly mentions Tribal Nations, despite each goal having relevance to DOI's obligations to our governments. These omissions are illustrative of DOI's need to further institutionalize a deep understanding of and appreciation for trust and treaty obligations among all of its bureaus, agencies, and personnel.

The execution of trust and treaty obligations is a core responsibility and function of DOI. With this in mind, a commitment to their delivery must be imbued throughout the Plan, at both the highest and most granular levels. In addition, each of DOI's bureaus and agencies should speak to their trust responsibilities and obligations in accordance with their designated sections of the Plan, as well as include appropriate goals, strategies, and measures associated with their solemn obligation.

DOI Must Uphold Tribal Sovereignty and Self-Governance

Similarly, the Plan Framework does not include any explicit acknowledgement of our diplomatic Nation-to-Nation relationship or the DOI's obligation to promote and protect Tribal sovereignty and self-governance. While Strategic Objective 1.2 includes respect for our, "rights and cultures," this language is not a substitute for a recognition of our political status as sovereign Tribal Nations. This diplomatic relationship, and its accordant trust and treaty obligations, has been upheld in law and policy, and supersedes DOI's responsibilities to any other community, including insular communities. As with trust and treaty obligations, the protection and advancement of Tribal sovereignty and self-governance are central to DOI's mission and should feature prominently throughout the final Plan. Our federal partners must recognize the inherent right of Tribal Nations to fully engage in self-governance and work toward an expanded recognition of the authority of Tribal governments, so we may exercise full decision-making in the management of our own affairs and governmental services, including jurisdiction over our lands and people. Indian Country needs to know that you will stand with us in face of challenges to our sovereign status and this commitment should be solidified in the final Plan.

Additionally, we suggest that DOI consider decoupling its goals and objectives for Indian Country from those for Insular communities, as the history and purpose of our relationship with the United States differs considerably. Finally, we note that recent "Dear Tribal Leader" letter communications have also included letters addressed to CEOs and Native Hawaiian Community Leaders. While DOI may have valid reasons for seeking guidance from these and other communities, only Tribal Nations and the U.S. share in our government-to-government, Nation-to-Nation relationship. As such, Tribal consultation should only be reserved for representatives of federally recognized Tribal Nations and the DOI. If it is the desire and intent of the DOI to engage with these entities, a process other than consultation should be created to distinguish those efforts from the Nation-to-Nation, sovereign-to-sovereign, diplomatic consultation space.

Full and Mandatory Funding for Indian Country Obligations

Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations. This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government's trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. At no point has the government fully delivered upon these obligations.

USET SPF continues to extend its unequivocal support to full and mandatory funding for the Indian Health Service (IHS). However, the funding and services provided by IHS are only one aspect of the federal government's trust and treaty obligations. All DOI bureaus, including the Bureau of Indian Affairs (BIA) and

Bureau of Indian Education (BIE), along with other federal agencies and programs, carry substantial responsibility for the execution of trust and treaty obligations, as well. USET SPF has repeatedly called for full and mandatory funding for all federal agencies and programs serving Indian Country, as it is more representative of perpetual trust and treaty obligations. We urge DOI to work with the Office of Management and Budget, as well as Congress, and consult with Tribal Nations to develop a proactive plan to identify unfulfilled DOI trust and treaty obligations and a related plan to work towards achievement of full and mandatory funding for all bureaus of the DOI. This should be included in the final Plan.

As the plan is developed, each division of DOI should demonstrate how it plans to propose and advocate to secure the federal funding necessary to carry out its obligations. Utilizing the White House Council on Native American Affairs (WHCNA) as a centralized coordinating body, agencies and departments across the Administration are looking to DOI to set the tone for their relationships with Indian Country and delivery on trust obligations. Therefore, DOI must, through its strategic Plan and its own actions, lead the federal government in upholding trust responsibilities and obligations.

Funding for Inherently Federal Functions

In considering full and mandatory funding for Indian Country programs within the DOI and as DOI seeks to better execute its trust and treaty obligations, there must be adequate funding for those functions that remain inherently federal. Many inefficiencies and delays at DOI are caused, at least in part, by inadequate funding and a lack of required personnel. It is DOI's responsibility to determine and advocate for the funding necessary to fully and timely deliver upon its obligations. This is a necessary component of any Strategic Plan. Further, each division of DOI should also demonstrate how it plans to secure the federal funding necessary to carry out its obligations in a manner that does not negatively impact Tribal Nation programmatic funding levels.

In particular, we urge DOI to ensure that it requests sufficient funding to support the acquisition of trust lands, both for Tribal Nation purchase of land and for fee to trust application processing. Given the importance of Tribal trust acquisitions, DOI's lack of efficiency in reviewing and approving trust applications is confounding. Many simple, straight-forward requests for acquisition of trust lands often linger for months, if not years—well beyond the period of time that seems necessary for the BIA to thoroughly review and issue an application decision. These delays create significant harm for Tribal governments who are seeking trust acquisitions for critical governmental and economic development purposes for the benefit of Tribal citizens and communities. The Plan should include a commitment to requesting additional funding from Congress for increased resources in order to prioritize fee-to-trust initiatives, including hiring additional BIA and Solicitor's Office personnel to work exclusively or primarily on trust land acquisition. We further urge DOI to weave in reforms, to be developed in consultation with Tribal Nations, that would streamline its processes to achieve efficiencies and timely delivery of objectives.

Additionally, while USET SPF firmly believes that the trust obligation supersedes responsibilities to other units of government, one opportunity to mitigate the impacts of trust land acquisition asserted by state and local governments lies within the Payment in Lieu of Taxes (PILT) program. Currently, state and local jurisdictions, citing lost tax revenue, frequently oppose the restoration of Tribal homelands (either indefinitely or until Tribal Nations agree to payments), hindering efforts to restore Tribal land bases, provide governmental services to Tribal citizens, and engage in economic development.

Since 1977, DOI has issued billions in PILT to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the Bureau of Land Management, the National Park Service, the U.S.

Fish and Wildlife Service, and the U.S. Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF believes that PILT (or a PILT-like mechanism) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue. We call upon DOI to work with Tribal Nations and Congress to further explore and develop a plan to implement a PILT offset for BIA trust land acquisition.

Measurable Goals and Metrics

When developed, the Plan should be clear and consistent in what is being measured and how measures will indicate performance. DOI should establish metrics that measure its actions as trustee and how well it is fulfilling its funding obligations to and investments in Indian Country. DOI's Plan should evolve to be more reflective of the Indian Self Determination and Education Assistance Act and its lack of reporting requirements, as well as the principles of Nation rebuilding and a modernized trust relationship.

In addition to a focus on process reforms, DOI must clearly articulate strategic goals and metrics that align with its obligations to Tribal Nations. In the past, DOI has set seemingly arbitrary targets for itself, such as a proposal to improve roads maintenance by 13% due to "expected funding." This is inappropriate, as a 13% improvement, for example, means DOI continues to fall dramatically short on roads maintenance. Setting this goal, however, allowed DOI to state to Congress that it had fulfilled its goal at 100%. USET SPF firmly believes that goals, objectives, and other metrics should be set based on the fulfillment of trust responsibilities and obligations at 100%. They should measure DOI's commitment to Nation rebuilding, as well as be communicated clearly and in a way that allows DOI and Tribal Nations to hold the Department accountable for its actions.

Additionally, as stated in our recent comments on the protection and restoration of Tribal homelands, we strongly urge the Department to set targets for timely processing fee to trust applications, consistency across regions, and set a measurable fee-to-trust application review and acres-into-trust goals. In addition to requesting sufficient funding to support the acquisition of trust lands, both for Tribal Nation purchase of land and for fee to trust application processing, we urge DOI to work with the Department of Justice ensure robust funding for the strong defense of trust land acquisition.

Restore Tribal Economies

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves rebuilding of our Tribal economies as a core foundation of healthy and productive communities. We are pleased that the Plan Framework already includes a commitment to our "economic security and growth." To that end, the tax treatment of Tribal Nations and our instrumentalities must reflect our governmental status, as well as the trust obligation to support our economies. As DOI is aware, dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically infeasible.

As a matter of economic fairness and in recognition of its obligation to rebuild Tribal Nation economies, USET SPF urges DOI to ensure that the final Plan includes directives to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal lands by confirming the exclusive authority of Tribal governments to assess taxes on all economic activities occurring within our borders, including through DOI regulations. This includes the implementation of the recommendations of the Treasury Tribal Advisory

Committee (TTAC) Dual Tax Subcommittee, which include proposed agency actions by the Departments of the Treasury and Interior to clarify and improve regulations and administrative guidance, as well as work with Congress to establish legislation clarifying Tribal tax jurisdiction over economic activity taking place on Tribal homelands.

DOI Secretary's Tribal Advisory Committee (DOI STAC)

On November 16, 2021, DOI announced the formation of the first Tribal Advisory Committee to strengthen its nation-to-nation relationship with Tribal Nations. While the existing Health and Human Services Secretary's Advisory Committee (HHS STAC) offers a template for the structure of the new DOI STAC, DOI should commit to working in partnership with Indian Country to further refine and strengthen the HHS STAC model for the specific and unique nature of the DOI role. As the Plan is developed, there should be a clear implementation strategy outlined.

Conclusion

Along with other actions, statements, and initiatives, USET SPF views DOI's Strategic Plan as reflective of its commitment to Tribal Nations. Historically, DOI's Plans have come up short in articulating a clear vision for delivery of trust and treaty obligations and support for our sovereignty. We urge DOI to make measurable improvements as it develops and finalizes its Strategic Plan for FY 2022-2026. This necessarily includes ensuring its obligations to Tribal Nations are front and center. USET SPF welcomes the opportunity, through consultation, to further refine DOI's Strategic Plan. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at lmalerba@usetinc.org.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director