



USET

SOVEREIGNTY PROTECTION FUND

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Advancing Racial Justice and Equity through Implementation of the Infrastructure Investment and Jobs Act

USET Sovereignty Protection Fund Principles and Priorities

Background - Centuries of Federal Underinvestment

United South and Eastern Tribes Sovereignty Protection Fund (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.

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. Indeed, there are hundreds of billions of dollars in unmet infrastructure obligations across Indian Country to include housing, transportation, judicial, health care, and communication, among other forms of infrastructure. One only need consult the U.S. Commission on Civil Rights’ reports, [A Quiet Crisis](#) (2003) and [Broken Promises](#) (2018), to witness the federal government’s historic and ongoing failure to live up to its promises and its persistent impacts in Indian Country. With this in mind, we agree that the Infrastructure Investment and Jobs Act (IIJA), presents an opportunity to begin to right historic wrongs. At the same time, while infrastructure development is critical, in both Indian Country and nationwide, it cannot be at the expense of Tribal sovereignty or our interests. As the Biden Administration implements the IIJA, it must remember that it has legal and moral obligations to Tribal Nations, which supersede those it may have to other communities.

Tribal Sovereignty and Laws of General Applicability

While we understand and appreciate this Administration’s focus on racial equity and justice, we underscore that the relationship between Tribal Nations and the United States is not race-based, but rather a political, diplomatic relationship. Compliance with certain laws of general applicability, including non-discrimination laws, that have never been applied to Tribal Nations due to our unique sovereign, political status, as a condition of receipt of IIJA funds is completely inappropriate. Efforts must be made to ensure that all federal department and agency actions are consistent with the President’s expectation that Tribal sovereignty is

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).

Because there is Strength in Unity

respected to the fullest extent. We call on the Biden Administration to begin its consideration of whether to apply any laws and other requirements that are generally applicable to the public to Tribal Nations by first assuming they do not and should not apply to Tribal Nations. For more information, we draw your attention to a [letter](#) on this issue we recently transmitted to the White House Council on Native American Affairs.

Tribal Consultation and Consent

Any infrastructure buildout, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health. As IIJA spurs an exponential increase in infrastructure development nationwide, Tribal Nations must be consulted with a goal of reaching consent for federal action whenever this development impacts our people, lands, governance, or sacred sites—regardless of whether it occurs on or off Tribal homelands. The federal government must further ensure that the proper cultural, historic, and environmental reviews are being conducted, including National Historic Preservation Act (NHPA) Section 106 cultural reviews, apart from situations in which a Tribal Nation has determined a project is categorically excluded.

Further, due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct NHPA Section 106 reviews. The explosion in infrastructure development that will be funded by IIJA is likely to overwhelm THPOs without additional funding and other resources. While we recognize an increase THPO funding is proposed under FY 2022 appropriations bills and the Build Back Better Act, we urge the Biden Administration to provide and support additional resources for THPOs, so that we may protect our cultural and sacred sites.

Equitable, Expedient, Streamlined Distribution of Funds

Direct funding for Tribal Nations should be distributed promptly, on an equitable basis, and in a way that upholds Tribal sovereignty. It is critical that the federal government ensure that all 574 Tribal Nations have access to infrastructure funding in a prompt, expedient, and equitable manner. This should be accomplished using existing funding mechanisms, including Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts. Additionally, we continue to urge the federal government to avoid competitive mechanisms for this funding. Forcing Tribal Nations to compete—with each other or other entities—for federal dollars is an abrogation of federal trust and treaty obligations. Finally, to the extent possible, we urge you to ensure that Tribal Nations are direct recipients of funding, as opposed to passing dollars through states and other entities.

In addition, given the chronic underfunding of infrastructure in Indian Country, the federal government should not only focus on funding 'shovel-ready' projects. We understand the desire to address as many shovel-ready projects as possible in the early years of this funding but want to be sure that those Tribal Nations without shovel-ready projects receive equitable access to funding and support.

Finally, while matching funds and non-duplication requirements may be appropriate for other units of government seeking federal funding, they run sharply counter to federal trust and treaty obligations. Federal funds are delivered to Tribal Nations in fulfillment of these obligations and therefore, must not require the expenditure of limited Tribal resources as a condition of receipt. Non-duplication requirements will only serve as a barrier to infrastructure development in Indian Country. Recognizing that funding for Tribal Nations is limited, the federal government should instead be promoting the creative use of federal dollars to achieve our infrastructure goals.

Maximum Flexibility to Tribal Nations in Application, Funds Use, and Reporting

Broadly, Tribal Nations must have maximum flexibility in the use of all funding allocated under the IIJA in fulfillment of trust and treaty obligations. This includes ensuring Tribal Nations have broad authority in

allowable costs and activities, unless expressly prohibited by law. Flexibility in use of funds will ensure Tribal Nations have the ability to utilize infrastructure funds in manner that best suits our individual circumstances and communities. Further, Tribal Nations must not be subject to burdensome administrative requirements for use of these funds. This includes application, reporting, audit, or other types of compliance requirements. Any reporting requirements mandated by law must be streamlined and only the minimum required that Tribal Nations may focus on nation rebuilding.

Marshall Plan for Indian Country

As the Biden Administration seeks to “build back better”, the United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders. While the amount of funding allocated to Indian Country in recent legislative packages, including IJJA, is historic, it will not address the centuries of federal policies focused on terminating and assimilating Tribal Nations or the chronic failures in the delivery of federal trust and treaty obligations. With this in mind, USET SPF continues to call for a comprehensive plan to address unmet infrastructure obligations in Indian Country.

Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States.

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