



# USET

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To [regulations.gov](http://regulations.gov)*

May 25, 2022

Brenda Mallory  
Chair  
Council on Environmental Quality  
730 Jackson PI NW  
Washington, DC 20506

**Re: USET SPF Comments on the CEJS Tool, Docket ID No. CEQ-2022-0002**

Dear Chair Mallory,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Tribal consultations held by the Council on Environmental Quality (CEQ) on the beta version of its Climate and Economic Justice Screening Tool (CEJS Tool). These consultations were held to receive recommendations on how to improve the beta version of the CEJS Tool to appropriately reflect the environmental and climate challenges of Tribal Nations. The CEJS Tool was created to assist federal agencies in identifying communities to receive support from the Justice40 Initiative, which aims to provide 40 percent of all federal programs and services to 'disadvantaged' communities. USET SPF submits these comments to remind CEQ that terms such as 'disadvantaged' should not be used to reference Tribal Nations and that all Tribal Nations must be eligible for the Justice40 Initiative due to the federal government's trust and treaty obligations.

USET 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.<sup>1</sup> 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.

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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 (Aquinna) (MA).

### **Tribal Nation Eligibility to Participate in the Justice40 Initiative Must Reflect the Federal Government's Trust and Treaty Obligations**

On January 27, 2021, President Biden issued Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad" (EO 14008), which directed CEQ to develop the CEJS Tool to support the Justice40 Initiative. This initiative aims to provide 40 percent of funding from federal services and programs to target areas such as climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water infrastructure. As directed by EO 14008, the CEJS Tool will provide federal agencies with information on communities eligible to receive federal programs and services from the Justice40 Initiative, which includes Tribal communities. The current beta version of the CEJS Tool provides a geospatial map that identifies areas exhibiting conditions of underinvestment in energy, transit, housing and water infrastructure, job training and employment, and disproportionate pollution burden. CEQ has identified these areas in the current beta version of the CEJS Tool as communities that are 'disadvantaged', 'marginalized', 'underserved', and those that are 'overburdened' by pollution. While USET SPF supports the Administration's goals of the Justice40 Initiative, we do not support the use of these terms to reference Tribal Nations since they are inappropriately used to identify and describe our trust relationship with the federal government. Instead, we remind the Administration that the eligibility of Tribal Nations to access the federal programs and services authorized under this initiative must be grounded in the federal government's trust and treaty obligations.

Although the words 'disadvantaged', 'marginalized', and 'underserved' are terms used broadly across the federal government to identify areas eligible for certain federal programs and services, Tribal Nations must be recognized as eligible governments and communities to participate in the Justice40 Initiative due to the trust and treaty obligations of the federal government. Despite the federal government's legal and moral promises to uphold its trust and treaty obligations, which were made in perpetuity, Tribal Nations continue to experience challenges and barriers to exercise Tribal sovereignty and pursue self-determination to advance our Nation building and rebuilding efforts. These challenges have put us in precarious positions where our lands and communities experience harmful public health and environmental impacts from resource extraction and production on lands or waters adjacent to, or upstream from, our current jurisdictional boundaries. Due to these historical and ongoing injustices and the federal government's unmet obligations to uphold trust and treaty rights, our lands and communities must be eligible for all the programs and services of the Justice40 Initiative. Recognizing this eligibility would uphold the federal government's trust and treaty obligations and acknowledge its obligation to all Tribal Nations to protect, sustain, and revitalize our lands and communities, especially those that have been affected by the detrimental effects of climate change and resource extraction and production. This would also support the federal government's obligations to promote Tribal sovereignty and self-determination to pursue job creation and workforce development, clean energy, energy efficiency, and build affordable and sustainable housing and clean water infrastructure in our communities.

### **Tribal Nations Should Self-Identify Tribal Lands Eligible for the Justice40 Initiative and Whether Those Lands are Viewable on the CEJS Tool**

One of the questions posed by CEQ during the Tribal consultations on the beta version of the CEJS Tool was whether Tribal Nations should be represented and viewable on the CEJS Tool geospatial online map. Currently, the jurisdictional boundaries of Tribal Lands are not viewable on the beta version of the CEJS Tool. Rather, the areas that are currently viewable have been identified by CEQ based on 2010 U.S. Census data and CEQ has indicated that it will update this data as 2020 Census data becomes available. CEQ has used current, available Census data to identify Census tracts that meet the 'disadvantaged'

community' eligibility criteria for participation in the Justice40 Initiative. CEQ has inquired whether it should work with the Department of the Interior, Bureau of Indian Affairs, or other federal agencies, to obtain geospatial data that identifies our jurisdictional boundaries and overlay this data with existing Census tracts to identify Tribal Lands eligible to participate in the Justice40 Initiative. While USET SPF has stated that all Tribal Lands must be eligible to access programs and services under the Justice40 Initiative, we also recommend that Tribal Nations be empowered to self-identify Tribal Lands eligible to participate in the initiative.

Census data and tracts do not accurately capture our jurisdictional boundaries or reflect the actual social and economic demographics of our lands and citizens. Often, the use of and reliance on Census tract data has prevented Tribal Nation eligibility for certain federal programs because these tracts do not conform to our jurisdictional boundaries. Since Census tracts can encompass lands within and outside of our jurisdictional boundaries, a Census tract can be deemed ineligible for certain federal programs and services because it does not meet the 'disadvantaged' or 'unserved/underserved' definitions of a federal program's authorizing statute or regulations. Therefore, Tribal Nations should be empowered to self-identify/self-designate and self-determine if Tribal Lands are viewable and eligible to receive federal support under the Justice40 Initiative. Furthermore, it is important to inform CEQ that some Tribal Nations may want to protect certain areas of Tribal Lands from being mapped and viewable on the CEJS Tool due to historical, cultural, and other sensitivities. This should not prevent Tribal Nations from accessing funds and services from the Justice40 Initiative to protect, preserve, and/or revitalize these lands. CEQ must take these issues into consideration and uphold its trust and treaty obligations by supporting our efforts to access federal funds, programs, and services to meet the goals of the Justice40 Initiative.

### **Conclusion**

While USET SPF supports the Administration's goals of the Justice40 Initiative, we firmly express that all Tribal Lands must be recognized as eligible to access funds, programs, and services from federal agencies directed by the goals of the Justice40 Initiative. This action would address the federal government's historic and ongoing failure to uphold its trust and treaty obligations and the unmet promises to fully fund programs and services to support Tribal sovereignty and self-determination. Additionally, empowering Tribal Nations to self-identify and self-designate Tribal Lands as eligible communities to receive federal support under the Justice40 initiative will support Tribal Nation building and rebuilding through workforce development, job training, and economic development initiatives. These actions uphold and advance the federal government's trust and treaty obligations to protect, preserve, and revitalize our lands and communities affected by the increasing occurrence of major weather events and natural disasters resulting from climate change, as well as the harmful impacts of resource extraction and production adjacent to our communities. We look forward to continuing to work with CEQ on further development of the CEJS Tool and implementation of the Justice40 Initiative. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,