



# USET

SOVEREIGNTY PROTECTION FUND

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March 10, 2023

Christine Harada  
Executive Director  
Federal Permitting Improvement Steering Council  
1800 G St NW  
Washington, DC 20590

Dear Executive Director Harada,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultations held on funding transfers to Tribal Nations for the purposes of reviewing FAST-41 covered infrastructure projects (FAST-41 projects). The Federal Permitting Improvement Steering Council (FPISC, or Council) has made an initial allocation of \$5 million to transfer to Tribal Nations for the permitting review and authorization process of FAST-41 projects. During several consultations held throughout February 2023, FPISC sought input from Tribal Nations to develop criteria for what types of resources and activities would be eligible for funding from the \$5 million allocation. USET SPF appreciates FPISC's decision to set aside this initial allocation, however, these funds are insufficient to address these review processes. Due to the discretionary nature of these funds, we urge further allocations from FPISC, as well as the Council's support and advocacy for additional funding for Tribal Nations to be active participants in the environmental review processes for FAST-41 projects. Ensuring Tribal Nations have these necessary resources is beneficial to us, the federal government, and project proponents, as this facilitates the protection of our cultures, lands, and people, as well as more prompt, efficient, and informed reviews of these projects. These actions are central to FPISC's trust and treaty obligations to assist us and support our efforts to protect our cultural resources, sacred sites, natural environments, and the public health of our communities.

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

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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 (Aquinnah) (MA).

*Because there is Strength in Unity*

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

### **Support for the Award of Funds Through P.L. 93-638 Contracting and Compacting**

During the Tribal consultations hosted by FPISC to gather input on how to allocate the \$5 million to Tribal Nations, FPISC included a Framing Question about what types of federal fund transfer mechanisms with which Tribal Nations have experience. USET SPF fully supports the ability of Tribal Nations to request and receive funds from FPISC through 638 self-governance contracts and compacts. Since passage of the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638), Tribal Nations have become experienced in managing complex federal programs under these types of agreements. These agreements empower us to administer federal funds in a manner that we deem appropriate and necessary to achieve our goals and priorities to better serve our citizens and communities. The 638 contracting and compacting method empowers our Tribal Nations to more fully exercise our sovereignty and self-determination. Other methods of federal funding, especially grant and competitive grantmaking models, treat Tribal Nations as not-for-profit entities, instead of sovereign governments, and create unnecessary barriers to services provided in fulfillment of perpetual trust and treaty obligations. Under a 638 mechanism, Tribal Nations can determine how to utilize funds received from the \$5 million allocation to appropriately conduct and participate in the environmental review processes of FAST-41 projects. Furthermore, this would enable Tribal Nations to direct funds for specific purposes, whether it be towards engagement, planning, the purchase of software, and/or hiring of technical experts.

### **FPISC Should Allocate Additional Funds and Direct its Member Agencies to Prioritize Technical Assistance Funding to Tribal Nations for Review of FAST-41 Projects**

USET SPF appreciates FPISC's initial allocation of \$5 million, and the potential opportunity for an additional future allocation, to Tribal Nations to assist in environmental reviews and authorizations of FAST-41 projects. However, we urge the Council to direct its member agencies to identify additional resources to assist Tribal Nations in these review processes due to the federal government's failure to uphold its trust and treaty obligations. Appropriations to support environmental, historic, and cultural review processes under the National Environmental Policy Act and Sec. 106 of the National Historic Preservation Act have never been funded at appropriate levels to fully staff and provide resources to Tribal Nations to meaningfully participate in these processes. As a federal entity, FPISC has trust and treaty obligations to assist and support Tribal Nations with these reviews so that we can protect our cultural heritage, sacred sites, and the health and well-being of our communities. Tribal Nations have consistently been overburdened with current review expectations and the anticipated large influx of projects as a result funding from the recently enacted infrastructure and COVID-19 relief laws will only exacerbate this issue.

Funding for Tribal Historic Preservation Officers (THPOs) has long remained stagnant and insufficient to support the costly and time-consuming review of proposed infrastructure projects. In the instances that Tribal Nations have a THPO and/or cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed their available capacity and resources. Review of these projects can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to historic and persistent funding shortfalls for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role.

Additionally, as you have become aware, several of USET SPF's member Tribal Nations are contending with the impacts of the deployment of offshore wind energy projects. This issue was emphasized to you by several Tribal Leaders during USET SPF's Impact Week Board of Directors Meeting held last month. Due

to the failure of the Bureau of Ocean Energy Management (BOEM) to conduct appropriate consultation and engagement with Tribal Nations prior to the approval of permits for these offshore wind projects, several of these projects are currently under construction. Additional project proposals are currently being considered and several Tribal Nations continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, and aquatic life. In recognition of these threats, USET SPF has adopted [USET SPF Resolution No. 2023 SPF:013](#), which urges a temporary moratorium on BOEM's offshore wind scoping and permitting processes until a Nationwide Programmatic Agreement (NPA) is developed and agreed upon with Tribal Nations.

This should serve as a key example of how federal actions in the pursuit of advancing infrastructure projects can have harmful, detrimental consequences for Tribal Nations and our cultural heritage. Furthermore, it serves to highlight the failure of trust and treaty obligations to actively consult with Tribal Nations prior to the issuance of a permit, as well as provide us with the appropriate resources needed to participate in project reviews. These actions harm opportunities to build and enhance trust and relationships, as well as contribute to delays in the development of project proposals. In response to these activities, FPISC should direct its member agencies to identify additional resources to provide technical assistance and staffing support to Tribal Nations for reviews of FAST-41 project proposals and permit applications, especially those contending with offshore wind development.

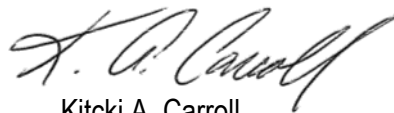
### **Conclusion**

The costs associated with reviewing permit applications, environmental assessments and impact statements, Section 106 reviews under the National Historic Preservation Act, and other activities associated with federal actions and undertakings for infrastructure projects can be extremely high and time consuming. In addition to streamlining the award process of the \$5 million allocation to Tribal Nations for review of FAST-41 projects, we strongly recommend that FPISC allocate additional funds and direct its member federal agencies to identify resources to support Tribal Nations in reviewing these projects. Tribal Nations have and continue to be inundated with the costly and lengthy review of infrastructure projects being developed on our aboriginal lands located outside our current jurisdictional boundaries. The failure of the federal government to fully fund and uphold its trust and treaty obligations to provide critical resources for review of these projects has only exacerbated this issue, especially with enactment of tremendous infrastructure funding packages like the Bipartisan Infrastructure Law and the Inflation Reduction Act. FPISC and its member federal agencies have fundamental trust and treaty obligations to support and assist Tribal Nations with the protection of our cultural resources, sacred sites, and the health and well-being of our communities. We appreciate your efforts to consult with Tribal Nations to ascertain how to appropriately support our efforts to review FAST-41 projects and look forward to continued dialogue and engagement on this important issue. 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,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director