



# USET

SOVEREIGNTY PROTECTION FUND

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## **Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Committee on Indian Affairs Legislative Hearing to Receive Testimony on S. 1322**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the May 3, 2023 Legislative Hearing on S. 1322, the UNLOCKED Act. We appreciate SCIA's consideration of this bill and its focus on addressing issues pertaining to land use and management by Tribal Nations. Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. For the federal government to fully support Tribal Nation sovereignty and self-determination, Congress must remove legal barriers that hinder, or outright obstruct, our inherent sovereign authorities to manage and develop our lands in ways that would best serve our Nations and citizens.

USET SPF supports passage of S. 1322, which would amend existing regulations at 25 USC 415(a) to empower Tribal Nations to lease trust lands for a period of up to 99 years. S. 1322 would also expand rights-of-way authorizations for all purposes across Tribal Lands by amending the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act to empower Tribal Nations to develop regulations for rights-of-way authorizations. USET SPF maintains that Congress must enact legislation that empowers Tribal Nations to manage and utilize our lands as we deem appropriate and the current statutory limitations to leasing Tribal Lands are proven barriers to attracting and pursuing economic development initiatives on our lands. Furthermore, empowering Tribal Nations to execute rights-of-way authorizations across our lands will streamline the approval and deployment processes of infrastructure projects. These actions are necessary for Tribal Nations to continue pursuing efforts in Nation rebuilding and the revitalization of our Tribal economies.

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 (Aquinnah) (MA).

*Because there is Strength in Unity*

### **Support for Passage of S. 1322, The UNLOCKED Act**

Under the 1834 Non-Intercourse Act, Tribal Nations are prohibited, unless explicitly authorized by an Act of Congress, to engage in transactions of lands held in trust by the federal government. In 1955, Congress enacted the Long-Term Leasing Act (LTLA) to authorize Tribal Nations to enter into surface leases, with the approval of the Secretary of the Interior, for a period of 25 years with the option to renew such leases for an additional 25 years. The LTLA was amended in 2012 by the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, which empowered Tribal Nations to negotiate and enter into surface leases once their HEARTH Act regulations were approved by the Secretary of the Interior. This process streamlines Tribal Nation lease transactions as well as empowers Tribal Nations to exercise self-determination in developing and implementing our own leasing and land use priorities. According to the Department of the Interior, 82 Tribal Nations have adopted their own HEARTH Act regulations to lease trust lands. However, the limitations of the LTLA's 25-year leasing authority have limited Tribal Nation abilities to attract capital and business entities to enter into these lease agreements. Today, lease authority of up to 99 years is often required for long term commercial leases and some financing contracts from banking institutions.

Additionally, S. 1322 expands Tribal Nation authority under the HEARTH Act to authorize rights-of-way approvals across Tribal Lands once Tribal Nation regulations are approved by the Secretary of the Interior. Empowering Tribal Nations with regard to rights-of-way permitting will streamline infrastructure project approval and deployment processes and ensure projects are not delayed while waiting for approval of rights-of-way applications at the Department of the Interior. More importantly, it improves the promotion and recognition of Tribal Nation sovereignty and self-determination in our homelands. This authority will become extremely beneficial to Tribal Nations in working with federal and non-federal entities for the deployment of infrastructure projects funded by the American Rescue Plan Act and the Infrastructure Investment and Jobs Act.

USET SPF fully supports passage of S.1322 to authorize Tribal Nation authority to conduct leases of trust lands for a period of up to 99 years. This will end the practice of Tribal Nations requiring approval by an Act of Congress to offer and enter into long term leases for periods beyond the current 25-year leasing threshold authorized by the LTLA. Enactment of S. 1322 will support Tribal Nation efforts to rebuild our economies by expediting Tribal economic development plans on trust lands, as well as other initiatives Tribal Nations may pursue for the general welfare of our communities and citizens. It will also ensure that all Tribal Nations can negotiate effectively to execute these long-term leases and compete with non-Tribal landholders near our jurisdictional boundaries. Furthermore, S. 1322 will recognize Tribal Nation authority to approve rights-of-way permits across our lands to expedite the deployment of critical infrastructure needed for economic development, housing, broadband, electricity, and water and wastewater services.

### **Conclusion**

Congress enacted the Long-Term Leasing Act of 1955 (LTLA) to empower Tribal Nations to enter into surface leases, with the approval of the Secretary of the Interior, for a period of 25 years with the option to renew such leases for an additional 25 years. However, the current 25-year lease restriction imposed by the LTLA and the archaic federal practices of managing Tribal Lands do not support our sovereignty and self-determination. This is especially evident in the lease restrictions imposed by statutes and regulations that limit Tribal Nation authorities to effectively pursue land use planning and development for Nation rebuilding. Tribal Nations are sophisticated and focused on determining the best land use planning, development, and management activities to pursue economic development projects and other initiatives to improve the general welfare of our communities and citizens. As sovereign Tribal Nations, we are best

suited to manage leasing and development activities on our lands without federal interference. The current legal barriers that have prevented or unduly prolonged Tribal Nations from executing long-term leases of Tribal Lands must finally be appropriately addressed by Congress through amendment of the LTLA. For these reasons, we fully support and encourage the swift passage of S. 1322 to empower Tribal Nations to execute long-term leases of trust lands and the authority to develop rights-of-way regulations to execute these permits across Tribal Lands to facilitate the deployment of critical infrastructures.