



# USET

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July 21, 2023

Jane Nishida  
Assistant Administrator  
Office of International and Tribal Affairs  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

Dear Assistant Administrator Nishida,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to proposed changes to the Environmental Protection Agency's (EPA) *Policy on Consultation and Coordination with Indian Tribes* (Tribal Consultation Policy, or Policy), and its *Guidance for Discussing Tribal Treaty or Similar Rights* (Tribal Treaty Rights Guidance) documents. Previously updated in 2011, the EPA's Tribal Consultation Policy was developed to implement EPA's 1984, *Policy for the Administration of Environmental Programs on Indian Reservations*, as well as Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. EPA's proposed 2023 revisions to its 2011 Policy seek to improve consultation and coordination between EPA and Tribal Nations by updating definitions, guiding principles, the consultation process, and the consultation process review. Similarly, the proposed revisions to update the Tribal Treaty Rights Guidance include the addition of language expanding treaty rights to include other rights memorialized in other sources of law. While many of the proposed revisions provide substantial updates to these documents to reflect the current Administration's policy stances, such as integration of Indigenous Knowledge to inform federal policy decision-making, USET SPF's comments seek to provide general guidance regarding consultation, as well as additional clarification and recommendations to certain clauses in these documents.

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*

## **USET SPF's General Tribal Consultation Principles**

On March 31, 2021, USET SPF submitted [comments](#) to EPA in response to Tribal consultations held to review its Tribal Consultation Policy and plan for implementation to follow the directives of Executive Order 13175. USET SPF is pleased that EPA has proceeded with the next phase of updating its Tribal Consultation Policy and has also decided to propose revisions to its Tribal Treaty Rights Guidance. We continue to maintain the stance that the U.S. must work to reform the Tribal consultation process in a way that truly modernizes our relationship with the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. It is time for a Tribal Nation-defined consultation model, with dual consent as the basis for strong and respectful diplomatic relations between two equally sovereign nations. Our recommendations below reiterate our March 2021 comments, with additional reference to concerns on federal consultation with non-Tribal entities. USET SPF continues to emphasize these general consultation principles of how federal departments and agencies must improve their coordination and consultation efforts—

- **Evolve Consultation to Consent**

The U.S. must move beyond a “check the box” method of consultation and instead work to formalize diplomatic relations with and seek the consent of Tribal Nations individually. This directive is reflected in Article 19 of the U.S.-endorsed United Nations Declaration on the Rights of Indigenous Peoples, which states that nations, “shall consult and cooperate in good faith”, with the governmental institutions of our Tribal Nations, “in order to obtain [our] free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect [us].” As a result of the COVID-19 pandemic, virtual and teleconference consultations have taken the place of in-person, face-to-face, consultations. While this is not a preferred method of consultation, it does offer the federal government another opportunity to engage, communicate, and consult at a Leader-to-Leader level. These methods of consultation provide the federal government with the opportunity to engage and communicate directly with every Tribal Nation.

- **Standardize and Codify Consultation Requirements**

For far too long, Tribal Nations have experienced inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Accountability is required to ensure Tribal consultation is meaningful and results in corresponding federal efforts to honor Tribal input and mitigate any concerns. All federal agencies, including independent federal agencies and the Office of Management and Budget, must be statutorily required to adhere to consultation policies with additional oversight from the White House and Congress. USET SPF strongly supports the codification of consultation requirements for all federal agencies and departments, including a right of action to seek judicial review of consultation when the federal government has failed to engage, communicate, and consult appropriately.

- **Tribal Consultation Should Occur on a Nation-to-Nation, Leader-to-Leader Basis**

Although consultation can pertain to very specific programmatic issues requiring technical and subject matter expertise, true consultation should occur at a Leader-to-Leader level. Duly elected or appointed Tribal Leaders must be afforded the respect and opportunity to directly voice Tribal Nation concerns to those federal officials with actual decision-making authority. We must further have the opportunity to include and confer with our respective expert staff during every consultation, just as federal officials do. In addition, because the U.S. is engaged in a diplomatic relationship with each federally recognized Tribal Nation, greater effort must be made to consult

with Tribal Nations on an individual basis. Due to the COVID-19 pandemic, virtual and teleconference consultations have had to take the place of in-person, face-to-face, consultations. While this is not a preferred method of consultation, it does offer the federal government another opportunity to engage, communicate, and consult at a Leader-to-Leader level. These methods of consultation provide the federal government with the opportunity to engage and communicate directly with every Tribal Nation.

- **No Delegation of Federal Consultation Obligations**

The trust relationship exists between the federal government and Tribal Nations exclusively. To this point, the federal government must not delegate its consultation obligation to third party entities, which include non-profit organizations, industries/corporations, hired consultants and contractors, non-Tribal archaeologists and anthropologists, and other units of government. When other entities are party to or involved in federal actions, the federal government must exercise appropriate oversight in ensuring Tribal interests are not adversely impacted. Tribal Nations, and not any other entity, are the final arbiters of whether a federal action impacts our governments, homelands, cultures, public health, or sacred sites.

- **Consultation Should be Early and Ongoing, with Advance Notice and Sufficient Response Timelines**

One of the guiding principles of Executive Order 13175 is to establish regular, meaningful consultation and collaboration with Tribal Nations in developing and implementing federal policies. However, this principle has been exercised using methods that have not always taken into consideration the direct and in-direct implications for Tribal Nations. Under the current consultation framework, federal departments and agencies often unilaterally conduct their own internal review of proposed policies and actions, which frequently results in a finding of no impact. This fails to recognize and adhere to the federal government's fiduciary trust and treaty obligations to Tribal Nations. Rather, consultation and collaboration must recognize Tribal Nations as equal sovereigns. Tribal Nations must always be engaged at the earliest stages of the federal decision-making process. In addition, our authority to initiate consultation in response to federal action (or proposed federal action) must be recognized and honored.

- **Deference to Tribal Nations**

Executive Order 13175, Section 3, lays out a set of policymaking criteria that have been implemented unevenly over the last two decades. In particular, this includes directives to extend "maximum administrative discretion" to Tribal Nations by encouraging Tribal Nations to develop our own policies and standards to achieve objectives as well as consult with us on the necessity of any federal standards. USET SPF urges EPA to consider how this section can be better operationalized and consistently applied throughout the Agency. In addition, the Indian Canons of Construction should always be applied during Tribal consultation, the policymaking process, and beyond. That is, any ambiguities in law or policy should be interpreted in favor of Tribal Nations.

- **Flexibility for Tribal Waivers**

Similarly, Executive Order 13175, Section 6, encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. With some notable exceptions, this section does not appear to be actively implemented across the federal government. EPA and the Biden Administration should revisit this section and examine what further Executive action is necessary to ensure its widespread operationalization.

- **Transparency in Decision-making**

All too often following Tribal consultation, the federal government renders a decision without further explanation as to how that decision was reached. This is particularly true in the case of "check-the-box" consultation, where Tribal Nations provide input and that guidance is ignored completely. Not

only does this run counter to the federal government's consultation obligations, it undermines our Nation-to-Nation relationship. In recognition of and out of respect for our governmental status, as well as in the spirit of transparency, each federal agency should be required to publish a summary of all comments received, how that guidance influenced the agency's decision, and why the decision was reached. Keep in mind that information Tribal Leaders and/or their appointees/designees state should be redacted from the record during consultation proceedings, due to cultural and other sensitivities, should not be included in these summary reports.

- **Educate Federal Employees on Tribal Sovereignty and U.S.-Tribal Nation Relations**

It is critically important that all employees of federal departments and agencies receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens. Every right-of-way permit, application for land into trust, and environmental and cultural review document are reviewed by federal employees. However, many of the same federal employees engaging in decision-making that impacts our interests do not fully understand the history of U.S.-Tribal Nation relations and the federal trust obligation. This lack of education and understanding regarding fiduciary trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This training should be designed in consultation with Tribal Nations.

- **EPA Should Not Consult with Non-Governmental Entities**

USET SPF continues to be concerned by the views of some federal departments and agencies on consultation with Alaska Native Corporations (ANCs). In the spirit of partnership and with a goal of facilitating greater education and understanding of Tribal Nations, USET SPF reminds EPA that for-profit ANCs are not Tribal Nation governments, and therefore, do not enjoy a consultative relationship with the U.S. government—a sacred relationship that is founded in the mutual recognition of governmental status between consulting parties and the trust obligation to Tribal Nations.

While we fully support and affirm the governmental status Alaska Native Tribal Nations and villages, we underscore that ANCs are for-profit corporations. EPA may have an interest in seeking the input of ANCs on issues relevant to the Agency's roles and responsibilities, but to do so through consultation is an affront to our Tribal sovereignty and stands in violation of our Nation-to-Nation relationship with the United States. It is in pursuit of policy that does uphold this sacred relationship that we urge EPA to avoid equating Tribal Nations and ANCs for consultation purposes. We note that while other federal agencies and departments reserve Tribal consultation for Tribal Nations, several seek the input of non-governmental Tribal entities through a 'confer' process.<sup>2</sup> Further, we recognize that in the proposed revisions to EPA's Tribal Consultation Policy, EPA has stated that its Policy is separate from the Agency's *Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations*. We will provide further comments on this in the next section of our comments providing specific recommendations to the proposed revisions of EPA's Tribal Consultation Policy.

- **Investment in Diplomacy**

EPA must fully recognize and uphold our Nation-to-Nation diplomatic relationship. This directive extends to ensuring both the Agency and Tribal Nations have access to resources that support diplomatic activities. True diplomacy, as evidenced by activities conducted by the U.S. Department of State, would involve U.S. ambassadors appointed to liaise with each federally recognized Tribal

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<sup>2</sup> See the Indian Health Service's policy on conferring with Urban Indian Organizations. Available at <https://www.ihs.gov/ihtm/pc/part-5/p5c26/>.

Nation on behalf of the federal government, rather than facilitating this relationship through national or regional consultations. While we recognize retooling the consultative relationship to allow for a truly diplomatic relationship involves many steps, funding for these activities is certainly one of them. We encourage EPA to consider how it might include diplomacy in future budget requests. This would include funding for the Agency to build and sustain diplomatic infrastructure, as well as increased funding for Tribal Nation participation in these processes. EPA budgets should reflect a broad commitment to improvements in our Nation-to-Nation relationship, including its own functions.

### **General Support for Proposed Revisions to EPA's Tribal Consultation Policy**

**\*Note:** While EPA has defined "Indian tribe" and "tribe" (under Section III of its Policy) as, "an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.", USET SPF uses the term "Tribal Nation" instead of the terms "Indian tribe" and "tribe". This is in recognition of the Nation-to-Nation diplomatic relationship that exists between the U.S. federal government and Tribal Nations. References to "Tribal Nations" in our comments means those that have the inherent, sovereign status of federally recognized Tribal Nations.

USET SPF generally supports the proposed revisions to its Tribal Consultation Policy and offers comments below on specific sections that we encourage EPA to adopt in its final revised Policy. We have provided specific comments for further revision/clarification of EPA's proposed revised language to its Policy, as well as our opposition to the rescission of certain language from the 2011 Policy. Some of these recommendations are guided by USET SPF's general principles on Tribal consultation as well as consideration of the current political climate.

### **Specific Recommendations for Language Revisions to EPA's Tribal Consultation Policy**

- In the instances where EPA has an actionable, legal responsibility to uphold its trust and treaty obligations to consult with Tribal Nations, replace the use of the term "may" with "will" throughout its Tribal Consultation Policy. Under Section IV of the Policy, EPA has proposed the inclusion of language acknowledging that the U.S. Constitution, treaties, and federal statutes are the supreme law of the land, and that EPA recognizes the importance of respecting Tribal treaty rights and its obligation to do so. Therefore, the use of the term "may" when addressing EPA's consultation obligations to Tribal Nations does not adhere to the proposed addition of language under Section IV.
- Similarly, in the instances where an EPA action (e.g., the development, proposal, or implementation of an action/policy) is mentioned in its Tribal Consultation Policy, replace the use of the terms "may affect" with terms "may indirectly or directly affect". The use of the term "may affect" is edited in the following sections of these comments since it can limit EPA's consideration of how its actions/policies can inevitably have destructive indirect/direct impacts to our lands, natural and cultural resources, sacred sites, and the public health of our communities. For instance, the approval of environmental review and permitting processes occurring outside of Tribal jurisdictional lands could indirectly impact Tribal Nations and our citizens, such as upstream river and/or tributary contamination or waters that eventually reach our jurisdictional boundaries.

### **Under Section III(A) – Definitions (*EPA's proposed addition of language*)**

*"A. "Consultation" is a two-way, government-to-government exchange of information and dialogue between official representatives of the EPA and of federally recognized tribal governments.*

*Consultation involves the Agency giving meaningful consideration to tribal input prior to EPA taking actions or implementing decisions that may affect tribes. As a process, consultation includes several methods of interaction that may occur at different levels.*”

- USET SPF generally supports the addition of this definition of consultation in the proposed revisions to its Tribal Consultation Policy. However, we recommend further revision to the sentence, “*Consultation involves the Agency giving meaningful consideration to tribal input prior to EPA taking actions or implementing decisions that may affect tribes.*”

Instead, this sentence should read as (proposed USET SPF revisions in ~~striketthrough~~ and *italics*), “Consultation involves the Agency giving meaningful consideration to tribal input to prior EPA developing policies, taking actions, or implementing policies and decisions that may indirectly or directly affect tribes.”

#### **Under Section IV – Guiding Principles (*EPA’s proposed addition of language*)**

*“Treaties, like the U.S. Constitution and federal statutes, are part of the supreme law of the land. EPA recognizes the importance of respecting tribal treaty rights and its obligation to do so. In situations where tribal treaty or similar rights may be affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding such rights during consultation.*

*Effective consultation means that information obtained from tribes be given meaningful consideration and EPA should strive for consensus or a mutually desired outcome to the extent practicable and permitted by law.”*

- USET SPF supports the inclusion of the proposed language in its Tribal Consultation Policy that recognizes the U.S. Constitution, treaties, and federal statutes as the supreme law of the land. However, we recommend further revision to the sentence “*EPA recognizes the importance of respecting tribal treaty rights and its obligation to do so. In situations where tribal treaty or similar rights may be affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding such rights during consultation.*”
- Instead, this sentence should read as (proposed USET SPF revisions in ~~striketthrough~~ and *italics*), “EPA recognizes the importance of respecting tribal treaty and similar legal rights and its obligation to do so. In situations where tribal treaty or similar rights may be indirectly or directly affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding such rights during consultation. During these proceedings EPA is obligated to engage and consult with affected tribes in an equitable manner.”

“EPA recognizes Indigenous Knowledge and seeks information and recommendations based on Indigenous Knowledge during consultation.

EPA honors and acknowledges the importance of sacred sites. In situations where sacred sites may be affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding sacred sites during consultation.”

- USET SPF appreciates the inclusion of language recognizing and acknowledging the importance of Indigenous Knowledge and the importance of sacred sites. However, we offer the following edits to these proposed revisions:

(Proposed USET SPF revisions in *italics*)



“EPA recognizes Indigenous Knowledge as *integral to guiding the federal decision-making process*, and seeks information and recommendations based on Indigenous Knowledge during consultation. *EPA will consult, coordinate, and collaborate with tribes in good faith to ensure sensitive cultural and religious information is not shared publicly, especially through any written materials (e.g., Tribal consultation report summaries) and teleconference and video recordings and transcripts of consultation proceedings. Further, EPA will comply with the White House Memorandum on, “Guidance for Federal Departments and Agencies on Indigenous Knowledge”, and the White House Memorandum on, “Implementation of Guidance for Federal Departments and Agencies on Indigenous Knowledge”, both issued on November 30, 2022.*”

EPA honors and acknowledges the importance of sacred sites. In situations where sacred sites may be *indirectly or directly* affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding sacred sites during consultation. *As stated in the previous clause of this section, EPA will consult, coordinate, and collaborate with tribes in good faith to protect this sensitive information from public dissemination.*”

### **Section V(B)(1) – What activities may involve consultation?**

(Removal of “Legislative comments” language from the current non-exclusive list of EPA activity categories)

~~Legislative comments—Legislative comments are a special case where, due to short legislative timeframes, consultation in advance of comment submission may not always be possible. Nevertheless, EPA will strive to inform tribes when it submits legislative comments on activities that may affect Indian Country or other tribal governmental interests.~~

- USET SPF does not support the removal of this language under Section V(B)(1). Given the current political climate and focus on revising the statutory requirements for review and permitting processes under the National Environmental Policy Act (NEPA), Tribal Nations must be consulted when Members of Congress and Congressional Committees request technical assistance or recommendations on revising NEPA. We recommend reinstatement of this language with the proposed edits:

(Proposed USET SPF revisions in ~~striketrough~~ and *italics*)

“Legislative comments - Legislative comments are a special case where, due to short legislative timeframes, consultation in advance of comment submission may not always be possible. Nevertheless, EPA will ~~inform tribes~~ *inform tribes when it is requested to provide legislative comments to Members of Congress and Congressional Committees and will pursue consultation efforts with tribes prior to submitting* ~~when it submits~~ legislative comments on activities that may *indirectly or directly* affect Indian ~~Country~~ or other tribal governmental interests. *EPA will also inform tribes of the legislative comments submitted to Members of Congress and Congressional Committees on activities that may indirectly or directly affect Indian country or other tribal governmental interests.*”

**(EPA’s proposed addition of language)**

### **“Section V(F) – *Related Public Engagement Laws, Regulations, and Policies*”**

This document puts forward the EPA’s policy for consulting with federally recognized tribal governments. It is helpful to note the distinction between this Policy, federal environmental laws and regulations pertaining to public involvement, and EPA’s work to address the environmental concerns of non-federally recognized tribes, individual tribal members, tribal community-based organizations, and other indigenous stakeholders.

In addition, this Policy is separate from the *Environmental Protection Agency's Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations (2022)*, which clarifies the manner in which the EPA consults with Alaska Native Claims Settlement Act Corporations on the same basis as Indian tribes under Executive Order 13175.”

- USET SPF appreciates the proposed inclusion of a new Section V(F) in its Tribal Consultation Policy, which explicitly states that this Policy is specifically for consulting with federally recognized Tribal Nations. However, as previously stated under the section of our comments, ‘USET SPF’s General Tribal Consultation Principles’, we remind EPA that it should not consult with non-governmental entities, such as Alaska Native Corporations (ANCs).

While we fully support and affirm the governmental status of Alaska Native Tribal Nations and villages, we underscore that ANCs are for-profit corporations. EPA may have an interest in seeking the input of ANCs on issues relevant to the Agency’s roles and responsibilities, but to do so through consultation is an affront to our Tribal sovereignty and stands in violation of our Nation-to-Nation relationship with the United States. It is in pursuit of policy that does uphold this sacred relationship that we urge EPA to avoid equating Tribal Nations and ANCs for consultation purposes. We note that while other federal agencies and departments reserve Tribal consultation for Tribal Nations, several seek the input of non-governmental Tribal entities through a ‘confer’ process.<sup>3</sup>

#### **General Support for EPA’s Proposed Revisions to its Tribal Treaty Rights Guidance**

USET SPF generally supports the EPA’s proposed revisions to its Tribal Treaty Rights Guidance. EPA has proposed addition of the following language:

“The Agency also recognizes that tribes hold similar rights memorialized in other sources of law such as federal statutes (e.g., congressionally enacted Indian land claim settlements). This Guidance uses the term “tribal rights” as any rights to natural resources reserved or held by tribes, either expressly or implicitly, through treaties, statutes, executive orders, or other sources of Federal law.”

We appreciate recognition by EPA that in addition to treaty rights, Tribal Nations hold similar rights memorialized in other sources of federal law. USET SPF has long advocated that federally recognized Tribal Nations, regardless of treaty status, have an inherent sovereign political and legal status and diplomatic relationship with the federal government. However, we emphasize that treaty and similar rights memorialized in other sources of federal law go beyond just rights to natural resources. Several types of Tribal rights that are outlined in treaties and other sources of law include those pertaining to lands, fishing and hunting, water rights, and goods and services such as food, education, and healthcare, which are not explicitly stated in the introduction paragraph of the Tribal Treaty Rights Guidance. Although some of these are referenced throughout various sections of the Guidance, there is no reference to treaty and similar Tribal rights to goods and services such as food, education, and healthcare. It is important to include references to these because they are all interconnected since they influence and contribute to the social and public health well-being of our communities and citizens. In the introductory paragraph of its Guidance, EPA must take a holistic stance on how it views treaty and similar Tribal rights memorialized in federal law,

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<sup>3</sup> See the Indian Health Service’s policy on conferring with Urban Indian Organizations. Available at <https://www.ihs.gov/ihtm/pc/part-5/p5c26/>.



Furthermore, under the section “Determining When to Ask about Tribal Rights During Consultation”, USET SPF again recommends inclusion of language that when EPA consults with Tribal Nations it will work in good faith with Tribal Nations to protect Indigenous Knowledge and other sensitive cultural and religious information from public dissemination. We also recommend the revision of “may affect” to “may indirectly or directly affect” throughout EPA’s Tribal Treaty Rights Guidance, for reasons articulated in the previous section of these comments. This recommendation also applies to the section of the Guidance titled, “EPA Actions That May Affect Tribal Rights”, which should read, “*EPA Actions That May Indirectly or Directly Affect Tribal Rights*”.

### **Conclusion**

An essential aspect of the federal trust responsibility and obligations to Tribal Nations is the duty to consult on the development of federal policies and actions that have indirect and direct implications for Tribal Nations and our citizens. This requirement is borne out of the sacred relationship between the federal government and Tribal Nations, as well as numerous treaties, laws, court cases, and executive actions. It is a recognition of our inherent sovereignty and self-determination. For too long, the United States has failed to fully uphold and implement Executive Order 13175 and other consultation directives. This has resulted in irreparable damage to Tribal Nation homelands, sacred sites, and our cultural, religious, and public well-being. It has also led to costly and lengthy litigation against the federal government—an entity with explicit, inherent trust and treaty obligations to Tribal Nations. There has existed a perpetual need for radical transformation in the recognition of our governmental status and the delivery of federal obligations to our people.

We can no longer accept the status quo of incremental change that continues to maintain a broken system. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. This includes evolving away from the current broken model of Tribal consultation and protection of our Tribal treaty and similar rights, and into a future in which Tribal Nation consent is sought for prior to and during any federal action. USET SPF appreciates that EPA has sought to revise and consult with Tribal Nations on proposed revisions to its Tribal Consultation Policy and Tribal Treaty Rights Guidance. However, we remind EPA that it must ensure that its finalized Tribal Consultation Policy and Tribal Treaty Rights Guidance documents comply with the directives stated in President Biden’s 2022 Memorandum on, “Uniform Standards for Tribal Consultation.” EPA’s policies, procedures, and staff directives on these issues should also be updated regularly in response to Tribal Nation consultations and our recommendations to improve the Agency’s trust and treaty obligations. We look forward to our continued dialogue on these important issues and to effectuate positive changes for how EPA, and the federal government, can improve its consultation, coordination, and collaboration efforts with Tribal Nations. 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,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director