



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
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July 17, 2023

Eric Beightel
Executive Director
Federal Permitting Improvement Steering Council
1800 G St NW
Washington, DC 20590

Dear Executive Director Beightel,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultation held on July 10, 2023 on the draft application instructions for Tribal Nations to apply for the \$5 million Environmental Review Improvement Fund (ERIF). We appreciate the Federal Permitting Improvement Steering Council (FPISC), Office of the Executive Director's (OED) consideration of comments and feedback received on structuring the ERIF following Tribal consultations held in February this year. USET SPF previously submitted comments in response to these consultations on March 10, 2023, and we are pleased that the OED was receptive to our recommendation on the award of funds through Indian Self-Determination and Education Assistance Act (P.L. 93-638) contracting and compacting mechanisms. We reiterate, however, that the initial \$5 million investment in the ERIF is insufficient to address the environmental and cultural reviews associated with FAST-41 projects, especially as the U.S. begins to allocate and award funds for infrastructure projects authorized under the Inflation Reduction Act (IRA). We hope that as IRA and other related infrastructure funding is awarded, FPISC will direct its member agencies to prioritize additional funds for technical assistance to Tribal Nations to review FAST-41 projects. This action would uphold the federal government'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.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.

¹ 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

General Support for the Draft ERIF Application and Recommending Additional ERIF Support

USET SPF generally supports the draft ERIF application developed by FPISC and the OED. However, as emphasized in our [March 2023 comments](#), while we appreciate the initial \$5 million allocation for Tribal Nations to participate in National Environmental Policy Act (NEPA) and Sec. 106 of the National Historic Preservation Act (Sec. 106 NHPA) reviews of FAST-41 projects, this allocation will be insufficient to support Tribal Nations in these review processes. NEPA and Sec. 106 NHPA have never been funded at appropriate levels to fully staff and provide resources to Tribal Nations to meaningfully participate in these processes. Similarly, 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. For these reasons, FPISC must uphold its trust and treaty obligations to Tribal Nations and allocate additional funding for ERIF as well as direct its member agencies to identify and allocate funding to support our THPOs and other Tribal personnel to assist with review of FAST-41 projects. This would benefit both FPISC and Tribal Nations by streamlining review processes, limiting the potential for costly and lengthy litigation, and advancing the Administration's green infrastructure initiatives.

Support for ERIF Funds To Be Used to Hire Additional Personnel to Review FAST-41 Projects and Recommended Clarification on Timeline for Use of ERIF Funds

We are thankful that the OED has stated that ERIF funds can be used to hire contractors, consultants, and staff and we are hopeful that the OED and FPISC member agencies will allocate additional funds to ensure that these employees will have sustained funding to assist with NEPA and Sec. 106 NHPA reviews in perpetuity. In revising the draft ERIF application, USET SPF recommends additional clarification in the ERIF application that, while ERIF funds are intended to support Tribal engagement for up to three years, the OED can extend participation in ERIF funding if permitting processes of a FAST-41 project extend beyond the three-year period. This was a question raised during the July 10th Tribal consultation and FPISC staff responded that the OED could make this determination, which should be stated in the finalized ERIF application. Additionally, USET SPF recommends that the OED be flexible with the 10% cap on contract support costs to ensure that Tribal Nations can utilize ERIF awards to the maximum extent possible to conduct efficient reviews of FAST-41 projects. Like the three-year award period, the OED should exercise flexibility and work with Tribal Nations to ensure ERIF funds can appropriately provide the necessary resources and personnel to effectively conduct NEPA and Sec. 106 NHPA reviews of FAST-41 covered projects.

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. 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 IRA. While the lack of funding for Tribal Historic Preservation Officers and other Tribal personnel continues to be a persistent issue affecting Tribal Nations, USET SPF is encouraged that FPISC has indicated that the \$5 million ERIF is an initial investment, and that the OED may consider additional funding at a later date. We anticipate that the OED will identify and allocate additional funding to support Tribal Nations in our review of FAST-41 projects and that FPISC's member agencies will follow suit. We also commend the OED for acknowledging that ERIF funds can be used by Tribal Nations to engage in environmental, cultural, and historic reviews of FAST-41 projects being constructed on our aboriginal homelands. This recognition by the OED will greatly benefit Tribal Nations in the protection of our cultural resources and sacred and historic sites on our homelands outside of our current jurisdictional boundaries. For these reasons, USET SPF generally supports the draft ERIF application, but reminds the OED to exercise administrative flexibility in working with Tribal Nations, especially on reporting requirements for the use of ERIF funds and issues with capping contract support costs. This will ensure that ERIF funds are appropriately utilized by Tribal Nations to effectively participate in the review of FAST-41 projects. USET SPF looks forward to continued dialogue and engagement on these important issues. 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 or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director