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**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the Senate Energy and Natural Resources Hearing to
“Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission
Lines, Pipelines, and Energy Production on Federal Lands”**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Energy and Natural Resources Committee (Committee) with the following testimony for the record of the July 26, 2023 hearing to, “Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands.” On May 11, 2023, the Committee held a similar hearing to examine opportunities for permitting reform for energy and mineral projects. During the July 26th hearing the general tone was that there was a significant need to reform federal permitting processes on federal lands and waters, such as those required by the National Environmental Policy Act (NEPA). Although USET SPF will refrain from engaging in much of the debate around issues raised during the hearing, we feel compelled to expand upon and highlight some related issues.

As a matter of Tribal sovereignty and self-determination, Tribal Nations continue to pursue the rebuilding of our Tribal economies, especially following the COVID-19 public health emergency. The deployment, upgrade, and maintenance of infrastructure on Tribal Lands remains a critical component of these efforts in our pursuit of Nation rebuilding. However, the deployment of new infrastructure projects, including energy infrastructures, and the streamlining of federal permitting processes remain a major concern for USET SPF because of the potential impacts to Tribal sovereignty, cultural and sacred sites, and the public health and lifeways of our communities. We note that the Committee did discuss issues with National Environmental Policy Act (NEPA) permitting and how the law needs to be revised in favor of streamlining the process. USET SPF has serious concerns regarding changes to NEPA, particularly because the federal government is already failing to uphold its current process and streamlining would further threaten our cultural and sacred sites. We also have serious concerns with the ongoing authorization of offshore wind leases absent early and appropriate Tribal consultation, as well as the lack of funding and planning for avoidance and mitigation measures and impact aid to Tribal Nations.

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

⁽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

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.

While the Committee perceives that the purpose of the July 26th hearing was to focus on reforming and streamlining NEPA permitting approvals on federal lands, it must recognize that such lands are the traditional homelands of our Tribal Nations. While these lands may not exist within our current jurisdictional boundaries, Congress must uphold its trust and treaty obligations to protect areas that have cultural and sacred significance to our people. Many of us were forcibly removed from our traditional homelands and we were restricted access to these lands because we were confined to reservations or left without a sustainable land base or land base in general. Even in modern times, Tribal Nations continue to experience challenges and restrictions from the federal government in accessing these federal lands for cultural, medicinal, subsistence, and religious purposes. Due to the cultural importance of these lands to our lifeways, we remain concerned about the Committee's focus on fast tracking the NEPA permit approval process on federal lands and waters, which can have detrimental impacts to our cultural and natural resources and sacred sites located within these areas. The federal government has a moral, solemn, and legal obligation to ensure these areas are protected so that future generations of our peoples can continue our lifeways and cultural and religious observances. Federal efforts to streamline processes to advance the nation's energy infrastructure capabilities must not come at the expense of preserving and protecting our cultural heritage, sacred sites, and the public health of our people.

Concerns with Considering Legislation that Expedites the NEPA Review Process Absent Consultation with Tribal Nations

Since Congress has begun to raise issues with the costs and time constraints associated with finalizing NEPA reviews for permitting energy projects, USET SPF has been seriously concerned with the potential ramifications that the enactment of legislation streamlining the NEPA review process would have on our sacred sites, cultural and natural resources, and public health. While the NEPA review process may need to be reexamined on Tribal Lands for projects being pursued by Tribal Nations, USET SPF strongly opposes the streamlining of NEPA and other permitting review processes without early engagement and consultation with Tribal Nations. Just as the federal government has trust and treaty obligations to protect our cultural heritage and well-being, it also has obligations to empower us to exercise self-determination and utilize funds and other resources to protect what is important to us.

The resources available to Tribal Nations to fully participate in the NEPA review process have always been inadequate – yet another reminder of the federal government's failure to uphold its trust and treaty obligations to fully fund technical assistance and support for Tribal Nations. For instance, while funding for Tribal Historic Preservation Officers (THPOs) received an increase in Fiscal Year 2023 appropriations – after remaining stagnant for far too long – these funding levels are still insufficient to support the costly and time-consuming review of leases and permits for proposed infrastructure projects. This issue is further compounded due to enactment of the COVID-19 relief laws and the recent Bipartisan Infrastructure Law and Inflation Reduction Act that are making historic investments in infrastructure deployment. These investments are further exacerbating and straining the resources, personnel, and capacity of Tribal Nations to participate in and review NEPA permits within and outside of our jurisdictional boundaries.

Furthermore, it is important to note that in the instances that Tribal Nations have a THPO and/or a cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation

Tribes (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).

reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed 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 authorities. Additionally, these individuals and departmental staff may fulfill multiple roles within their Tribal government due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources 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, we urge Congress to uphold its trust and treaty obligations to Tribal Nations and allocate the appropriate funding for Tribal Nations to fully engage in the NEPA review process on infrastructure/energy projects being considered for leasing and development outside of our jurisdictional boundaries. This would benefit both the federal government and Tribal Nations by hastening review processes, limiting the potential for costly and lengthy litigation, and advancing the infrastructure/energy development initiatives. We will continue to oppose any legislative efforts until bill language respects Tribal Nation sovereignty and does not threaten environmental and cultural review processes on Tribal homelands and beyond.

Any Senate action to reform energy development as well as efforts to reform and streamline NEPA and other permitting processes, on federal lands and waters and such other lands and waters outside our Tribal jurisdictions, must receive input from Tribal Nations. We urge the Committee to engage Tribal Nations through meaningful consultation before any legislation is developed or considered in response to this hearing. Congress has trust and treaty obligations to ensure that any legislative overhaul to permitting for infrastructure/energy development projects is not enacted without Tribal consultation.

Concerns with Offshore Wind Development Without Proper Tribal Consultation, Compliance with NEPA, and Resources and Technical Assistance for Tribal Nations

Although the Committee's hearing to, "Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands", implies that it is focused on reforming the permitting process for infrastructure projects on federal lands, permitting projects in federal waters were also included in these discussions. The Committee must recognize that there are cultural, historical, and sacred sites that are now submerged but still carry immense sacred significance to our Tribal Nations. The continued planning and deployment of offshore wind energy projects without early and appropriate Tribal consultation has become an increasingly alarming issue throughout Indian Country. The recent, historic funding authorized by the Bipartisan Infrastructure Law and the Inflation Reduction Act have overwhelmed Tribal Nations and our Tribal departments and personnel responsible for reviewing NEPA permit applications for infrastructure projects. The aggressive pursuit of offshore wind development has led to decisions to streamline or outright ignore federal responsibilities to appropriately engage in consultation with Tribal Nations and hold non-Tribal developers accountable for Tribal engagement and coordination.

Tribal Nations are contending with the impacts of the deployment of offshore wind energy projects 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 projects. Though these issues have the potential to impact Tribal Nations across the United States, several of these projects are currently under construction and affected USET SPF member Tribal Nations have been engaged with BOEM to avoid adverse impacts. Let it be strongly emphasized that USET SPF is not opposed to renewable energy development, especially when those projects are being pursued and initiated by Tribal Nations. The issue

we have is when non-Tribal entities and agencies of the federal government do not properly engage and consult with Tribal Nations when these projects are occurring outside of our jurisdictional boundaries and threatening our cultural, environmental, and natural resources and sacred sites.

BOEM is currently considering additional offshore wind project proposals and several Tribal Nations, both within and outside the USET SPF region, continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, and aquatic life. The development of these projects is moving forward without necessary avoidance and mitigation measures or impact aid to Tribal Nations. In recognition of these concerns, USET SPF 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.² USET SPF has been engaged with BOEM and the other agencies within DOI regarding ongoing concerns with offshore wind development absent Tribal consultation. Any type of offshore development that is outside of Tribal Nations' jurisdictional boundaries must require Tribal engagement and consultation prior to the issuance of any new offshore leases.

We understand that the Biden Administration has a goal of deploying 30 gigawatts of offshore wind electricity generation by 2030. However, this development, as well as the continued development of oil and gas on the Outer Continental Shelf, must not occur at the expense of destroying our sacred sites, cultural, natural, and environmental resources, and aquatic wildlife. Consistent with the Administration's commitment to Indian Country and "the whole of government" approach, the process must provide full mitigation through the completion of comprehensive and transparent procedures to appropriately protect Tribal Nation religious, cultural, environmental, and sovereign interests. We believe that the Administration's goals of developing clean energy and increasing Tribal co-management opportunities can and must be harmonized. Indeed, Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied³ and our cultural heritage is preserved. We are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the Administration's offshore wind deployment goals.

The federal government must uphold its trust and treaty obligations by ensuring it, and non-Tribal developers of these projects, engage and consult with Tribal Nations early in the process when considering awarding a lease for development of these projects. Similarly, in the event our cultural and sacred sites and cultural lifeways are disrupted, disturbed, and otherwise adversely impacted, the federal government as well as the non-Tribal developer must be held accountable and provide mitigation measures, impact aid, and other necessary resources to Tribal Nations. Tribal Nations have already sacrificed too much in the way of land loss, the destruction of our communities, cultural heritages, and sacred sites, and the exploitation of our natural resources.

Conclusion

USET SPF strongly supports a robust and strengthened national energy infrastructure, including clean energy infrastructure build-out on federal lands to reach Indian Country and beyond. However, energy development must not occur at the expense of Tribal consultation and our sacred sites, lifeways, or the well-being of the natural environment of these areas. Federal lands were established to preserve and

² USET SPF partner organizations, the National Congress of American Indians and the Affiliated Tribes of Northwest Indians, share these concerns and have passed similar resolutions.

³ USET was instrumental in the creation of the Federal Communications Commissions' (FCC) Tower Construction Notification System that provides for expedited cultural reviews of cell phone tower siting, as well as a [best practices agreement](#) between member Tribal Nations, the FCC, and project proponents.

protect the natural environment and the wildlife within its boundaries. Furthermore, federal waters should receive the same protections by ensuring that our submerged cultural and sacred sites are protected from degradation. As the Committee moves forward in considering any further legislative action to develop the nation's energy resources and/or revise and streamline NEPA and other federal permitting review processes on federal lands and waters, we strongly urge you to consider its implications to Tribal Nations and engage in early and appropriate outreach and consultation with us prior to the introduction of legislation. Further, the federal government must ensure that any inland or offshore development on federal lands and waters does not harm our inland and submerged cultural and sacred sites and that any development includes avoidance and mitigation measures, as well as impact aid for Tribal Nations, comparable with that extended to other units of government, since the development of these projects will inevitably disturb or disrupt these areas. Although a private entity may receive a license or permit to proceed with inland or offshore development, it is still the responsibility of the federal government to uphold its solemn trust and treaty obligations to protect our cultural and sacred sites, the public health of our communities, and the lifeways of our people.