



# USET

SOVEREIGNTY PROTECTION FUND

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September 15, 2023

Anne Bink  
Associate Administrator  
Office of Response and Recovery  
Federal Emergency Management Agency  
Department of Homeland Security  
301 7<sup>th</sup> St. SW  
Washington, DC 20407

Dear Associate Administrator Bink,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Tribal consultations to improve its 2017 Tribal Declarations Guidance. Several Tribal consultations were hosted throughout 2023 to gather feedback on how to improve the Presidential disaster declaration process for Tribal Nations and ensure access to vital resources from FEMA during and after disasters in Indian Country. We appreciate FEMA's efforts to consult with Tribal Nations to update the 2017 Tribal Declarations Guidance, especially since the 2020 outbreak of the COVID-19 Public Health Emergency re-emphasized FEMA deficiencies in promptly and appropriately awarding vital emergency response funds to Tribal Nations. USET SPF's comments stress persistent issues requiring Tribal Nations to provide a cost-share to receive FEMA Public Assistance, meet a dollar damage threshold to obtain Public Assistance, burdensome application requirements, and holding state and local governments accountable for sharing resources and coordinating with Tribal Nations during emergency response efforts.

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*

## **FEMA Must Waive the 25 Percent Cost-Share for Public Assistance and Provide Tribal Nations with Up-Front Resources**

Unlike state and local governments, Tribal Nations have a legally established Nation-to-Nation diplomatic relationship with the federal government. This relationship was established by the U.S. Constitution, treaties, federal statutes, and has been upheld in decisions by the judiciary. Therefore, in recognition and acknowledgement of its trust and treaty obligations, FEMA must work toward a simplified waiver process for and eliminating (through legislation or otherwise) the 25 percent cost-share requirement for Tribal Nations receiving Public Assistance. This action is strongly supported by the Tribal Nation members of USET SPF, which adopted [USET SPF Resolution No. 2021 SPF:001](#), "Urging the Removal of Stafford Act Non-Federal Match Requirements and Streamlining of Tribal Emergency Declaration Requests." Adopted on July 23, 2021, the Resolution, "calls upon the Department of Homeland Security and the Federal Emergency Management Agency to immediately eliminate any agency-imposed non-federal match requirement for Tribal Nations to receive federal assistance, which includes any existing or proposed regulations, policies, grant applications, or other guiding documents."

Further, the FEMA review process for major disaster or emergency declaration requests lacks transparency, which makes it nearly impossible for Tribal Nations to successfully appeal a denial. FEMA has an obligation to inform Tribal Nations regarding the review and decision-making processes on a Tribal declaration request. This is especially important since FEMA is the sole federal authority that reviews these requests and provides a recommendation to the President on whether a declaration should be granted.

In addition, it is important to note that these Public Assistance funds are also provided to Tribal Nations through a reimbursement process. This does not honor the federal government's trust and treaty obligations, nor does it appropriately support Tribal Nation efforts to respond to natural and emergency disasters appropriately and effectively in real-time. Unlike other governments, Tribal Nations do not have substantial tax bases that we may access in times of emergency. While numerous COVID-19 relief and infrastructure laws have been enacted by Congress to assist with the nation's recovery from the pandemic, these investments do not account for the federal government's centuries-long chronic underfunding of resources and services to Indian Country. FEMA must provide Tribal Nations with up-front Public Assistance resources, instead of relying on reimbursement processes.

## **Requiring that a Minimum Dollar Damage Threshold Be Reached Prior to the Award of Public Assistance Does Not Uphold FEMA's Trust and Treaty Obligations**

Under the Tribal Declarations Guidance, FEMA is responsible for reviewing a Tribal Nation's request for a major disaster declaration before making its recommendation to the President on whether to grant or deny the request. As currently stated in the Guidance, FEMA will only review a Tribal Nation declaration request if it has determined that the Tribal Nation has sustained at least \$250,000 in estimated eligible Public Assistance damage or costs. This practice is unacceptable when a Tribal Nation is experiencing an emergency and requesting federal assistance to appropriately respond to these situations. There are scenarios where damage to critical Tribal infrastructure does not meet this threshold and Tribal Nations also report FEMA's difficulty in assigning value to harm caused to our cultural sites. An alternative would be to strike the minimum \$250,000 requirement and instead focus on impacts to critical infrastructure. This could include anything that is connected to a Tribal community's lifeline, lifeways, and governance, such as roads, water and wastewater, electricity, telecommunications, cultural/heritage centers, and community/governmental service facilities (especially those that could provide space to house displaced Tribal citizens or items from our cultural centers/museums). Requiring our communities to endure a minimum dollar damage to our cultural/sacred sites and critical infrastructure prior to receiving Public

Assistance funds does not uphold FEMA's trust and treaty obligations. These funds must be made available upon request from Tribal Nations to protect our citizens, public health, items of cultural significance, sacred sites, and critical infrastructure. If Tribal Nations have made the determination that Public Assistance is required to respond to a natural disaster or emergency event, especially those occurring in real time, then FEMA must promptly award Public Assistance funds to Tribal Nations. Instead of requiring Tribal Nations to meet a baseline minimum dollar damage threshold to request Public Assistance funds, USET SPF strongly recommends that FEMA consult with Tribal Nations to identify alternative eligibility criteria to receive Public Assistance funds.

### **Remove Burdensome Application Requirements and Ensure Uniform Common Practices Across All FEMA Regions**

Another barrier to Tribal Nation access to FEMA programs and services are the burdensome application requirements and inconsistent practices within the different FEMA regions. For instance, the Tribal Declarations Guidance requires Tribal Nations to execute a Public Assistance Administrative Plan prior to receiving Public Assistance funds, even if we receive a Presidential declaration. While FEMA has spent several years working directly with states to set up those plans, FEMA has not invested the time and resources necessary to provide the same technical assistance to Tribal Nations.

In addition, it appears that some FEMA regions have not required the plan to be completed before sending Tribal Nations funding, while other regions have not been flexible to Tribal Nation funding and service requests during an emergency. This lack of uniform guidance and practice throughout the FEMA regions has created unnecessary constraints on Tribal Nations and has led to the delay of vital funds and services being delivered to Indian Country for emergency response efforts. These activities do not uphold the federal government's trust and treaty obligations to Tribal Nations and create critical delays in responding to emergencies.

USET SPF strongly urges that FEMA invest the necessary resources to appropriately train and provide technical assistance to Tribal Nations to develop these Public Assistance Administrative Plans. However, in the instance of a real-time disaster or emergency and in the absence of a Tribal Nation having a Public Assistance Administrative Plan, FEMA must ensure that any administrative barriers or hurdles are removed so that Tribal Nations quickly receive Public Assistance funds to respond to these events. Further, USET SPF strongly urges FEMA to, in consultation with Tribal Nations, create uniform procedures for its regions in their engagement and coordination with Tribal Nations and to remove unnecessary, burdensome requirements to access FEMA programs and resources.

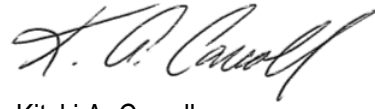
### **Conclusion**

As we continue to pursue our efforts in Nation rebuilding and prepare for increasing natural disasters due to climate change, FEMA must take all actions necessary to fully support and provide services to Tribal Nations. This means reevaluating how FEMA reviews Tribal Nation declaration requests and how Public Assistance and other FEMA resources are awarded to Tribal Nations. FEMA is at a critical juncture to implement lessons learned from the COVID-19 Public Health Emergency and streamline and improve the award process of these critical resources to Tribal Nations. We appreciate FEMA's decision to gather feedback from Tribal Nations on its 2017 Tribal Declarations Guidance and look forward to continued dialogue with you 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](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis  
President

A handwritten signature in black ink, appearing to read 'Kitcki A. Carroll', written in a cursive style.

Kitcki A. Carroll  
Executive Director