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*Transmitted Electronically
To fema-tribal@fema.dhs.gov*

November 30, 2023

Victoria Salinas
Senior Official Performing the Duties of Deputy
Administrator, Resilience
Federal Emergency Management Agency
U.S. Department of Homeland Security
300 7th St SW
Washington, DC 20024

Dear Administrator Salinas,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Federal Emergency Management Agency's (FEMA) proposal to update its 2017 Tribal Mitigation Plan Review Guide (Tribal Mitigation Guide). We appreciate FEMA's efforts to revisit and update its 2017 Tribal Mitigation Guide, recognizing that since it was last updated, Congress has authorized new grant programs and updated strategies, such as the FEMA Strategic Plan and the FEMA National Tribal Strategy. Throughout 2023, USET SPF has submitted several comments to FEMA on its undertakings to update various guidance documents the agency uses to educate its personnel and inform Tribal Nations on emergency preparedness and response undertakings. In recognition of these efforts, and as FEMA proceeds with revising and finalizing these various guidance documents, it is imperative that FEMA ensure that any finalized revisions of these guidance documents complement, rather than conflict, with each other, as well as uphold the agency's trust and treaty obligations to Tribal Nations. USET SPF's comments recommend that FEMA provide the necessary funding and technical assistance for Tribal Nations to develop a Tribal Mitigation Plan as well as exercise deference to Tribal Nations when reviewing Tribal Mitigation Plans.

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 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).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Throughout 2023, FEMA has initiated Tribal consultations and comment periods to update various guidance documents developed by the agency. These have included updates to FEMA's Draft Post-Disaster Guide for Local Officials and FEMA's Tribal Declarations Guidance. The agency also issued Requests for Information on implementation of the Infrastructure Investment and Jobs Act's Build America Buy America provisions ([P.L.117-58](#)) and the Community Disaster Resilience Zones Act of 2022 ([P.L. 117-255](#)). All these efforts are inextricably linked to the emergency preparedness and response efforts exercised by Tribal Nations. While Tribal Nation mitigation planning can be seen as the initial step in preparation for natural disasters and emergency events, especially in recognition of the ongoing harmful effects of climate change, FEMA must view Tribal mitigation planning and the ensuing response efforts associated with those plans through a holistic lens. Therefore, an integral part of accomplishing FEMA's mission and to uphold its trust and treaty obligations to Tribal Nations, FEMA must be proactive in facilitating Tribal Nation access to its emergency and disaster preparedness and response programs. This can be accomplished by incorporating Tribal Nation input and recommendations on how the agency can remove barriers to access, streamlining application and reporting requirements, providing Tribal Nations with up-front resources, and rescinding prohibitive cost-match requirements for FEMA programs.

FEMA Must Provide Resources to Assist Tribal Nations in Developing a Tribal Mitigation Plan

A primary and persistent issue that has prevented Tribal Nations from conducting effective emergency preparedness and response efforts has been the lack of federal funding and technical assistance. Tribal Nations continue to experience the greatest disparity in federal funding and technical assistance when compared to state and local governments. This is the direct result of the federal government's chronic failure to uphold its trust and treaty obligations to fully fund programs and services for Tribal Nations, including in the areas of critical infrastructure. The dilapidated status of our infrastructure has made these systems more vulnerable and prone to either contributing to the emergency response following a natural disaster or are the direct asset(s) that triggers an emergency response event.

In recognition of this chronic underfunding, USET SPF has called for increased funding for Tribal Nations to address the persistent failure of the federal government to uphold its trust and treaty obligations. These have included several policy communications such as [USET SPF Resolution No. 2019 SPF:021](#), "Calling Upon Congress and the Department of Homeland Security to Ensure Necessary Funding and Flexibility for Tribal Nations' Homeland Security and Emergency Management Departments", and, [USET SPF Resolution No. 2023 SPF:011](#), "Support for the Establishment of a Tribal Resiliency Program at the Department of Homeland Security." [USET SPF Resolution No. 2019 SPF:021](#) calls upon the Department of Homeland Security (DHS), "to offer a full complement of agency programs, to provide greater access and equitable, baseline funding to Tribal Nations across those agency programs." [USET SPF Resolution No. 2023 SPF:011](#) requests the creation of a Tribal Resiliency Program at DHS to address the chronic failure of the federal government to fully allocate the necessary resources to appropriately support Tribal Nations for future emergency and disaster response scenarios.

DHS, and by association FEMA, must offer the full complement of departmental programs to provide greater access and equitable, baseline funding to Tribal Nations across those programs. Tribal Nations must be funded directly to build, sustain, and improve our capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards and disaster situations. In lieu of federal appropriations authorized by Congress, FEMA must identify resources and personnel that can appropriately assist Tribal Nations in developing and executing a Tribal Mitigation Plan. This investment by FEMA is necessary to

uphold and fulfill its trust and treaty obligations to Tribal Nations. An essential foundation of federal trust and treaty obligations to Tribal Nations is the duty to ensure that we receive the appropriate resources and assistance when preparing for, responding to, and recovering from a disaster or emergency event.

FEMA Must Defer to Tribal Nations When Reviewing Tribal Mitigation Plans and Remove Barriers for Tribal Nations to Develop Enhanced Tribal Mitigation Plans

In reviewing Tribal Mitigation Plans, FEMA must defer to the expertise of Tribal Nations and those associated with developing those plans, which includes both the preparers and the comment contributors that assisted in developing the document. Review of Tribal Mitigation Plans must not be overly prescriptive, and FEMA personnel—including contractors—must acknowledge that the natural disaster and emergency events Tribal Nations prepare for and may experience are unique and must be reviewed on a case-by-case basis. FEMA personnel and contractors should not be quick to dictate what constitutes an appropriate Tribal Mitigation Plan, especially when those plans are developed based on the input from our Tribal communities. Tribal Nations are the sole authorities in determining what constitutes appropriate mitigation planning because we have first-hand experience with and understand the natural disaster and emergency events that our communities experience. This also applies to the persistent, harmful effects that our communities have witnessed because of climate change. As the stewards and caretakers of our lands, we are the ones best positioned to determine how these changes are affecting our communities now and into the future.

Further, and in recognition of the ongoing harmful effects of climate change, FEMA must make a concerted effort to broaden its approach in reviewing the listing of specific types of emergencies, disasters, and risks in Tribal Mitigation Plans. Following the unprecedented outbreak of the COVID-19 public health emergency, some Tribal Nations were unable to make an emergency declaration request to gain access to the National Stockpile to support COVID-19 response and relief efforts. This was, in large part, due to the absence of including such a public health emergency in Tribal Mitigation Plans and FEMA's strict interpretation of these plans when determining eligibility for an emergency declaration. In retrospect, FEMA has chalked this up as a "lesson learned" and has stated such in some Tribal consultations held throughout this year. However, to ensure that this does not occur again, and in recognition of new extreme weather event occurrence due to climate change, FEMA must reevaluate and revise how it conducts review and interpretation of Tribal Mitigation Plans. This should be reflected in the Tribal Mitigation Guide, especially under Sec. 2.2 Element B. Hazard Identification and Risk Assessment.

Additionally, while FEMA has stated that no Tribal Nations have an approved Enhanced Tribal Mitigation Plan yet, FEMA must also ensure that any future review of these enhanced plans is not prescriptive as well. However, FEMA must recognize that there are several issues with the regulations at [44 CFR Section 201.5](#), and referenced in the 2017 Tribal Mitigation Guide under Sec. 3.3 Enhanced Element H., that could be preventing Tribal Nations from pursuing Enhanced Tribal Mitigation Plans. Two such examples include the requirement that a Tribal Nation must provide Tribal planning grants as well as the requirement that a Tribal Nation must provide a portion of the non-federal match of the Hazard Mitigation Grant Program. These two items are problematic when Tribal Nations are chronically underfunded for emergency preparedness and response efforts compared to state and local governments. Imposing these requirements on Tribal Nations does not uphold trust and treaty obligations, regardless of a Tribal Nation's capacity to support and conduct emergency preparedness and response activities. FEMA must reevaluate and revise these requirements, and appropriately fund Tribal Nation emergency management programs, to ensure Tribal Nations have equitable opportunity to develop and implement Enhanced Tribal Mitigation Plans.

Conclusion

As we continue to pursue our efforts in Nation rebuilding and prepare for increasing natural disasters due to climate change, FEMA must ensure that Tribal Nations have the appropriate and necessary resources to plan for and mitigate these occurrences. This means reevaluating how FEMA reviews Tribal Nation Mitigation Plans and how FEMA resources are allocated to support Tribal Nations in developing these plans. In revising its 2017 Tribal Mitigation Guide, FEMA must reaffirm its commitment to building a strong and lasting partnership with Tribal Nations. This can be accomplished by reinforcing its trust and treaty obligations to fully fund and support our efforts to effectively plan for and protect our communities and the public safety and health of our citizens. We appreciate FEMA's decision to gather feedback from Tribal Nations on its 2017 Tribal Mitigation Guide 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 or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director