



# USET

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Shoba Sivaprasad Wadhia  
Officer for Civil Rights and Civil Liberties  
Department of Homeland Security  
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Trae Watkins  
Chief Readiness Support Officer  
Department of Homeland Security  
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Dear Officers Wadhia and Watkins:

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultations held by the Department of Homeland Security (DHS) on its draft Environmental Justice Strategic Plan (EJ Strategic Plan). USET SPF previously participated in the January 2024 virtual listening sessions on DHS's Request for Information (RFI) on, "DHS Activities and Advancing Environmental Justice (Docket ID No. DHS-2023-0048)", and submitted [comments](#) to DHS on February 16, 2024 in response to the RFI. While we appreciate DHS hosting Tribal consultations on its draft EJ Strategic Plan, we are disappointed that several of our previous recommendations submitted in response to the RFI have not been included in the current draft. In addition, the current DHS draft is broad and incorporates Tribal Nations with other "public interests" or "public entities", which disrespects our inherent sovereignty, as well as our unique legal status and political relationship with the United States as Tribal Nations that differentiates us from racial, ethnic, or public interest groups. Therefore, our comments focus on the questions posed by DHS in its June 11, 2024 Dear Tribal Leader Letter and reemphasize our previous comments submitted in response to the initial RFI.

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 Responses to DHS on Questions Posed in its Dear Tribal Leader Letter**

We remind DHS that it has federal trust and treaty obligations to Tribal Nations to protect and advance our sovereignty and self-determination for the well-being of our communities and citizens. While Tribal Nations certainly have specific EJ concerns, we strongly emphasize to DHS that recognizing us under the EJ moniker does not absolve it of its unique moral and legally binding trust and treaty obligations. Further, we recognize that the words ‘disadvantaged’, ‘marginalized’, and ‘underserved’, as well as racially identifiable terms, have been used broadly across the federal government to identify areas eligible for federal programs and services to address EJ issues and concerns. While USET SPF appreciates the Administration’s EJ initiatives, we do not support the use of these terms to reference Tribal Nations. Tribal Nations must be recognized by our unique legal and political status as sovereign governments and prioritized to receive EJ funds and services from the federal government in fulfillment of its trust and treaty obligations. Therefore, there must be a clear distinction and understanding that Tribal Nations exist as more than a racial, disenfranchised, or a public interest group in DHS’s draft EJ Strategic Plan. We have a political, legally established diplomatic relationship with the U.S. federal government that is rooted in the U.S. Constitution, treaties, statutes, Executive Orders, and upheld in rulings by the federal judiciary. Therefore, the U.S. has moral and legal trust and treaty obligations to fully fund its programs and services to support our efforts in Nation rebuilding and sustainability, which goes far beyond any EJ interests it has with other entities or communities. This includes recognizing our sovereignty and empowering us to appropriately address the EJ concerns affecting our Tribal homelands, cultural lifeways, and citizens, especially in response to the ever-increasing harmful effects of climate change.

DHS must recognize that our inherent sovereignty and legal, political status as Tribal Nations—which extends to the citizens of our Nations—differentiates us from any racial, ethnic, or public interest group. Therefore, USET SPF offers the following responses to the questions posed by DHS in its June 11, 2024 Dear Tribal Leader Letter regarding its draft EJ Strategic Plan—

### **1. How can DHS ensure that the final DHS EJ Strategic Plan adequately addresses the specific environmental justice concerns and priorities of Tribal Nations?**

The current draft EJ Strategic Plan is broad and seemingly incorporates Tribal Nations and our citizens into a public interest group rather than appropriately identifying us by our unique legal and political identity and status as sovereign governments. While DHS references Tribal consultation and the incorporation of Indigenous Knowledge into DHS decision-making under Sec. V, Goal 2, Objective 2.2, and a timeline of public engagement and Tribal consultation conducted under Sec. VI to develop the draft EJ Strategic Plan, there is nothing throughout the current draft that distinctly separates us from being identified as a public interest group. Although DHS has personnel whose function is specifically focused on interacting with Tribal Nations—such as DHS’s Tribal Liaisons—it is a fair assumption that most DHS personnel and contracted employees and entities have little to no understanding of the diplomatic, Nation-to-Nation relationship that exists between the federal government and Tribal Nations.

Including more references to Tribal Nations throughout DHS’s EJ Strategic Plan, as well as the well-established legal foundation that recognizes our inherent sovereignty and status among the American family of governments, is important to ensure that DHS staff and contractors relying on the Plan for guidance can grasp an understanding of this unique relationship. There are also several references throughout the current draft EJ Strategic Plan regarding training for DHS personnel on sustainability and environmental, civil rights, and civil liberties, and yet again there is no mention of Tribal Nations and our unique diplomatic relationship with the federal government. As part of its EJ Strategic Plan, all DHS employees and contractors must be required to receive education and training on Tribal sovereignty and U.S.-Tribal Nation relations. Before DHS and its

agencies can effectively implement processes that appropriately consider Tribal Nation EJ concerns, DHS and its employees and contractors must receive comprehensive training on working with and communicating effectively and appropriately with Tribal Nations. Effective and transparent communication, as well as a clear understanding of the federal government's trust and treaty obligations to Tribal Nations, are essential, core components that should influence and guide DHS EJ decision-making processes.

The lack of education and understanding regarding the U.S.'s trust and treaty obligations has and continues to contribute to federal failures to properly consult with Tribal Nations. Therefore, USET SPF has long recommended mandatory training on U.S.-Tribal Nation relations and the trust obligation for all federal employees, which must also extend to hired DHS contractors. DHS must require its employees to receive training to become knowledgeable of the federal government's obligations to promote Tribal sovereignty and self-determination, regardless of the level their position has in direct interaction with Tribal Nations. This training should be designed in consultation with Tribal Nations and updated and revised as appropriate. Further, when DHS and its agencies hire third-party contractors to assist in any DHS activities or actions, these contracted employees should also be required to be knowledgeable of the federal government's trust and treaty obligations to Tribal Nations. This is an essential component and requirement for working with Tribal Nations to address our EJ priorities and should be emphasized in DHS's EJ Strategic Plan.

**2. Are there any key elements or strategies missing from the attached draft Plan that should be included to better support environmental justice initiatives with Tribal Nations?**

In addition to training DHS personnel and contractors on U.S.-Tribal Nation relations, several items are missing from the current draft of DHS's EJ Strategic Plan. These include the importance of providing critical funding and technical support for Tribal Nations to address our EJ concerns as well as the protection of sensitive Indigenous Knowledge divulged during consultation or other engagements between Tribal Nations and DHS.

USET SPF offers the following recommendations regarding these important matters that must be incorporated into DHS's EJ Strategic Plan:

- **DHS must provide full funding and technical support for Tribal Nations to address our EJ priorities.** In recognition of its trust and treaty obligations to Tribal Nations, DHS must offer the full complement of the Department's 15 Operational and Support Components to provide greater access and equitable, baseline funding to Tribal Nations across its programs. Therefore, for DHS to appropriately address environmental and natural disaster concerns affecting Tribal Lands and our citizens, Tribal Nations must receive direct, unfettered full funding and technical support 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, DHS must identify the necessary resources and personnel that can appropriately assist 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 an environmental/natural disaster or emergency event. These principles must be incorporated into all DHS EJ activities and actions to assist Tribal Nations in addressing our EJ concerns. The prioritization of funding and technical

assistance to Tribal Nations to address our EJ concerns must become a prominent pillar of DHS's EJ Strategic Plan. This will be critical to guiding DHS personnel to develop creative solutions to assist Tribal Nations in addressing our EJ priorities should Congress continue to fail in upholding its trust and treaty obligations to fully fund programs and services for Tribal Nations. These actions would also be consistent with [Executive Order 14112](#) (E.O. 14112), "Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." Under E.O. 14112, President Biden has directed the federal government to, "better acknowledge and engage with Tribal Nations as respected and vital self-governing sovereigns", by, "[providing] Tribal Nations with the flexibility to improve economic growth, address the specific needs of [our] communities, and realize [our] vision for [our] future." The Executive Order further states that the Administration must improve Nation-to-Nation relations with Tribal Nations by reducing administrative burdens and administer funding, "in a manner that provides Tribal Nations with the greatest possible autonomy to address the specific needs of [our] people."

Furthermore, Tribal Nations must receive direct funding allocations and parity with state governments for all DHS grant programs so that we may fully address our EJ priorities. Tribal Nations and Tribal emergency management organizations have consistently had limited access to direct funding from DHS since current funding mechanisms require Tribal Nations and our emergency management organizations to seek these funds through state governments. While USET SPF does not support the award and allocation of federal funds through grant-making processes, especially those that are structured under a competitive grant model, the current structure of grant-making at DHS must be altered to ensure Tribal Nations receive direct assistance to address our EJ concerns and priorities. State governments should not be allowed to dictate whether Tribal Nations receive DHS grants, funds, and services. Current emergency management funding mechanisms and grant eligibility guidelines disregard Tribal sovereignty and self-determination. The correlating effect of this disregard is the continued and glaring funding disparities and eligibility restrictions for Tribal Nations—when compared to states—across an array of DHS grant programs.

- **The use and integration of Indigenous Knowledge (IK) is referenced in the draft EJ Strategic Plan but there is no explanation on how DHS will proceed to collect, protect, and use IK when engaging Tribal Nations on EJ matters.** USET SPF strongly emphasizes that this exchange of IK and its use in DHS EJ decision-making must be protected from Freedom of Information Act (FOIA) Requests. First and foremost, during DHS's engagement with Tribal Nations on EJ matters, the exchange of IK and other sensitive Tribal cultural information is likely to occur. Therefore, as part of DHS's EJ Strategic Plan, it must distinctly express how DHS personnel will actively work with Tribal Nations to determine what sensitive information should be redacted from public dissemination and protected from FOIA requests. Further, DHS must inform Tribal Nations when FOIA requests are made to access our sensitive information from these EJ engagements and let us determine whether such requests should be withheld or redacted. Similarly, DHS must inform Tribal Nations when it receives these requests, what entity is requesting information, and the information being requested. Tribal Leaders, Tribal Historic Preservation Officers (THPOs), and other individuals we expressly identify, such as our recognized cultural/spiritual leaders, should be recognized as the sole authorities to determine what IK and cultural information should be withheld or redacted from public

dissemination. We, as sovereign Tribal Nations, must always be the sole and final arbiters in identifying what constitutes IK and cultural information and whether we decide to share this sensitive information—not the federal government. The lack of language expressing this in the draft EJ Strategic Plan is concerning, especially since the use and integration of IK is mentioned in the current draft.

To better understand FOIA protocols, USET SPF recommends that DHS review the November 2022 White House Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy's (OSTP), "[Guidance Memorandum for Federal Departments and Agencies on Indigenous Knowledge](#)" (Guidance on IK). CEQ and OSTP's 2022 Guidance on IK instructs federal agencies to, "...consult with Federal agency legal counsel regarding the agency's obligations under the Freedom of Information Act and other public disclosure laws, and legal authorities that may apply to inclusion of Indigenous Knowledge." Since the issuance of the Guidance on IK, several federal agencies have initiated consultation with Tribal Nations to develop agency-specific IK Guidance.

Additionally, USET SPF has noticed that some federal agencies have started including written disclaimers in Dear Tribal Leader Letters announcing scheduled Tribal consultations and verbal disclaimers during a consultation session stating, "please note that information shared during this consultation may be subject to disclosure under the [FOIA]." Until Congress amends FOIA to protect sensitive IK and cultural information from public disclosure, we strongly encourage DHS to specifically identify and reference its obligations under FOIA in its EJ Strategic Plan. DHS personnel must be directed to provide written and verbal disclaimers during a consultation session, or any other interaction with Tribal Nations that may include or result in the transmission of IK. Therefore, we strongly recommend that DHS incorporate this guidance in its EJ Strategic Plan to ensure that DHS personnel are aware of legal issues, such as FOIA, when engaging Tribal Nations on EJ matters.

Further, USET SPF strongly urges DHS to include language in its EJ Strategic Plan that if its personnel receive IK (verbally, written, or otherwise) from Tribal Nations, then it should not be shared with other federal agencies in the absence of express Tribal Nation consent. We also stress inclusion of language in the EJ Strategic Plan that if DHS receives an inquiry or request for this sensitive Knowledge, then it should inform the respective Tribal Nation of the nature of the request, such as what is being requested, for what purpose, and how it will be used. As always, Tribal Nations should be the sole authorities regarding whether this information should be shared or withheld. In addition, DHS should include language in its EJ Strategic Plan that its personnel must work with Tribal Leaders to ensure that the recording, taking of notes, or direct transcription of a consultation, or other engagement, by machine or other methods does not create a record of sensitive IK and cultural information that could potentially be disseminated to or accessed by the public. During consultation and engagement sessions, we should be notified of any recording and transcription methods being used. Furthermore, DHS must adhere to any objections to the recording or transcription of any IK or cultural information divulged during EJ consultation proceedings and other communications. DHS must also ensure that its EJ Strategic Plan acknowledges that Tribal Nation requests for the redaction of sensitive IK and cultural information should be allowed to be stated verbally during consultation sessions and in any follow-up written, or otherwise documented, materials submitted to DHS following an EJ consultation or engagement proceeding.

**3. What steps can we take to enhance the Tribal consultation process with Tribal Nations to continue to garner input on the DHS EJ Program and address Tribal environmental justice concerns?**

In addition to thoroughly incorporating language in the EJ Strategic Plan regarding DHS's responsibilities to engage in Tribal consultation on EJ matters with Tribal Nations, Tribal consultation conducted by DHS on EJ matters must be early, ongoing, and with advance notice and sufficient response timelines. One of the guiding principles of [Executive Order 13175](#) (E.O. 13175), "Consultation and Coordination with Indian Tribal Governments", is to establish regular, meaningful consultation and collaboration with Tribal Nations in developing and implementing federal policies. However, like other federal departments and agencies, DHS has often unilaterally conducted its own internal review of proposed policies and actions, which frequently results in a finding of no impact on Tribal Nations and, therefore, results in irreparable, yet avoidable, harm to our Nations, lands, lifeways, and the well-being of our communities and citizens.

This fails to recognize and adhere to the federal government's trust and treaty obligations to Tribal Nations. Rather, consultation and collaboration must recognize Tribal Nations as equal sovereigns. Therefore, Tribal Nations must always be engaged at the earliest stages of DHS decision-making processes on EJ matters. In addition, our authority to initiate consultation in response to DHS EJ activities and/or actions (or proposed EJ activities and/or actions) must be recognized and honored. In addition to E.O. 13175, on November 30, 2022, President Biden issued a, ["Memorandum on Uniform Standards for Tribal Consultation"](#), which established certain parameters for how agencies should conduct and engage in Tribal consultation. This Memorandum expressly recognizes and acknowledges our authority and right to self-govern as inherently sovereign Nations, reaffirms and strengthens the principles of E.O. 13175, and reenforces that federal agencies must pursue consultation with Tribal Nations in a meaningful and respectful way. This includes directives for how agencies should initiate, provide notice for, conduct, record, and report on Tribal consultations. This Memorandum must also become part of DHS's EJ Strategic Plan to guide its consultation and collaboration efforts with Tribal Nations so that we may appropriately and meaningfully achieve our EJ goals and priorities. Coupled with the directives of E.O. 14112 (as mentioned in our comments responding to DHS'S question #2), DHS must actively engage in direct consultation with Tribal Nations to determine how it can best support our sovereign authorities and efforts to address our EJ issues and concerns. This language must be reflected in DHS's EJ Strategic Plan.

**Conclusion**

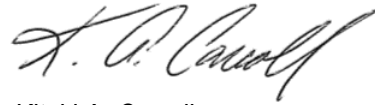
Throughout our comments we've provided DHS recommendations to recognize our inherent sovereignty, uphold the principles of meaningful consultation and engagement, and protect our Indigenous Knowledge, and other sensitive cultural information. The current EJ Strategic Plan is too broad because it does not appropriately address how it will engage directly with Tribal Nations on EJ matters. Further, as stated throughout our comments, Tribal Nations are not akin to the "public", or racial and ethnic groups, and incorporating us under these groups does not uphold and recognize our unique, political, and inherent sovereignty as Tribal Nations. Further work must be done to refine the current draft EJ Strategic Plan to explicitly recognize the diplomatic, Nation-to-Nation relationship that exists between Tribal Nations, which does not exist for public interest or racial and ethnic groups. Moreover, the current draft EJ Strategic Plan must provide a thorough explanation regarding the legal foundation and precedent that has established recognize our inherent sovereign status within the American family of governments. This is critically important so that DHS personnel relying on guidance from DHS's EJ Strategic Plan understand the trust and treaty obligations the federal government has to Tribal Nations and our citizens. We look forward to our

continued work together to address these issues, especially in the areas utilizing EJ funds and services to protect and preserve our Tribal homelands by supporting the public safety, health, and well-being of our citizens from the increasingly harmful effects of climate change. 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 'K. Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis  
President

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

Kitcki A. Carroll  
Executive Director