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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Environment and Public Works Hearing on “Improving the Federal Environmental Review and Permitting Processes”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Environment and Public Works Committee (Committee) with the following testimony for the record of the February 19, 2025 hearing on, “Improving the Federal Environmental Review and Permitting Processes.” During the hearing, witnesses testified, and Senators agreed, that there was a significant need to reform the federal environmental review and permitting processes. While USET SPF agrees that reform is needed to support infrastructure deployment on and off Tribal Lands by removing cumbersome and bureaucratic barriers that hinder such construction activities, an entire overhaul of these processes must be conducted in a responsible manner.

The deployment of new infrastructure projects by streamlining the federal environmental review and permitting processes remains 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 have serious concerns regarding changes to the National Environmental Policy Act (NEPA), especially with an abridged review process, since the federal government is already failing to uphold its current process. Reforming these processes absent Tribal consultation and involvement would further threaten our inherent sovereignty, cultural and sacred sites and public health and lifeways of our communities. Prompt and early consultation is required with Tribal Nations when these reviews and permits include areas that would affect Tribal Lands and interests, both within our jurisdictional boundaries as well as on our traditional homelands that currently exist outside of these boundaries. Tribal Nations must also be empowered to efficiently conduct these reviews and permitting activities by receiving the necessary appropriations from Congress, technical assistance from relevant federal agencies, and support to connect with external utility services (e.g., the energy grid, broadband backhaul, water infrastructure, etc.) when we pursue infrastructure deployment on our homelands.

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 Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Tribal Consultation Must Be a Paramount Requirement in Any Reform to Environmental and Permitting Review Processes

The U.S. has long engaged in a nation-to-nation, sovereign-to-sovereign relationship with Tribal Nations. It has also assumed an ongoing solemn, legal duty to Tribal Nations to ensure the protection of Tribal and individual Native lands, assets, resources, and treaty and trust recognized rights. These obligations are, in part, embedded in statutes that fund essential programs and services for Tribal communities, funding that is legally required, regardless of political priorities. While we strongly support robust and strengthened national infrastructure, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, cultural resources, or public health.

Prior to introducing legislation, it is imperative that the Committee consult with Tribal Nations as it gathers comments on changes to the federal environmental review and permitting process and as it drafts related legislation. In recognition of our nation-to-nation relationship and federal trust and treaty obligations, the U.S. must consult with Tribal Nations on federal actions affecting us. Further, legislation should also direct agencies that are directly deploying or funding infrastructure projects to conduct prompt and early consultation on program activities prior to permit submission and development of deployment plans or construction activities. Bringing Tribal Nations in at the project development process/stage will ensure an abbreviated permitting process and limit litigation risk. While USET SPF fully supports the improvement of environmental review and permitting processes across the nation, it cannot occur at the expense of Tribal sovereignty or the federal government's trust and treaty obligations to Tribal Nations to safeguard our communities and cultural and natural resources.

Though USET SPF acknowledges the necessity to expand needed infrastructure throughout our homelands and beyond, we assert that the construction and expansion of infrastructure development must not be accomplished by curtailing or undermining existing Tribal review processes. Laws governing these review processes include NEPA, the National Historic Preservation Act (NHPA), and the Native American Graves Protection and Repatriation Act (NAGPRA). Requirements under these laws, particularly Section 106 of the NHPA, ensure that Tribal sacred sites are identified and protected, in fulfillment of the federal government's trust and treaty obligations. When these reviews are conducted properly and promptly, all parties to the permitting process benefit and projects are expedited. We urge the Committee and Congress to ensure Tribal Nations have not only a seat at the table but a meaningful voice in federal decisions that may affect our rights and interests. One important way to amplify Tribal voices is by mandating that Tribal Nations are required signatories on memoranda of agreement and programmatic agreements resulting from NHPA Section 106 review processes.

Fully Fund and Provide Technical Assistance to Tribal Nations to Effectively Participate in Environmental Review and Permitting Processes

As part of our inherent sovereignty, Tribal Nations have oversight and authority for environmental and permitting reviews on Tribal Lands. However, project proposals and construction occurring on our traditional homelands located outside of our jurisdictional boundaries often proceed with limited to no coordination with Tribal Nations, which can lead to irreparable harm to our sacred sites and other areas of cultural/historical significance, as well as critical natural resources, such as nearby waterways, which are essential for our communities. While we agree that the NEPA review process needs 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 on our traditional lands outside our jurisdictional boundaries without early engagement and clear and uniform 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 Tribal Nations through federal funding. For instance, while funding for 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 assessments, leases, and permits for proposed infrastructure projects. This issue has been further compounded due to the enactment of COVID-19 relief laws, the Bipartisan Infrastructure Law, and the Inflation Reduction Act, which made historic investments in infrastructure deployment. While necessary, these investments further exacerbated and strained the resources, personnel, and capacity of Tribal Nations to effectively participate in and review NEPA permits within and outside of our jurisdictional boundaries. Providing sufficient resources for Tribal Nations to adequately participate in the NEPA review process, as well as consultation activities, will ultimately amount to abbreviated permitting timelines.

We remind the Committee that Tribal participation in these programs and activities can be successful if they are funded by Congress at the appropriate levels to ensure that we can hire the necessary qualified Tribal Historic Preservation Officers (THPOs), engineers, planners, and other personnel required to effectively participate in these environmental and permitting reviews. In addition, a great example of successful inclusion of Tribal Nations in environmental review and permitting is the FAST-41 Permitting Dashboard, which offers a clear and concise permitting tracking platform. Additionally, the Federal Communications Commission’s antenna and tower siting system (also known as the Antenna Structure Registration (ASR) System) is another great example of how to expedite permitting by allowing Tribal Nations to denote our general areas of interest, ensuring we are included early in the project development process and avoid unnecessary delays prior to the submission of a permit.

Further, any reduction in federal agencies’ permitting staff will greatly impact the capacity of Tribal Nations to participate in environmental and permitting reviews. These federal personnel are essential for authorizing the award of critical resources necessary to participate in these reviews or issue authorization or approval for the finalization of an environmental review or permit. These reviews require specific technical expertise and knowledge that Tribal Nations may not have in-house and thus rely on federal agencies to provide as part of trust and treaty obligations. Without these resources, Tribal consultation during the environmental review and permitting process amounts to an unfunded mandate, as we are not provided with the necessary resources and assistance to effectively participate in the processes.

In addition, 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, historic preservation, and permitting reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed available capacity and resources. Reviews 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.

Further, with the issuance of [Executive Order \(EO\) 14154](#), “Unleashing American Energy”, the Council on Environmental Quality (CEQ) has been directed by the Administration to provide guidance on implementing

NEPA while also rescinding CEQ's NEPA regulations found at [40 CFR 155](#) *et seq.* The EO also directs agencies to, "undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule." Agencies must now go through their respective consultation process with Tribal Nations on any amendments to their environmental review or permitting processes. Since participating in these review processes is already a burdensome, time consuming, and costly effort for Tribal Nations, we must navigate each agency's review processes to fulfill these requirements. This effort exacerbates already limited Tribal Nation resources to fully participate in these reviews since NEPA regulations are already inconsistent across federal agencies.

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 environmental review and permitting processes on infrastructure 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 United States' infrastructure development priorities. While we support responsible consideration of environmental and permitting reforms, USET SPF will continue to oppose any legislative efforts until legislation respects Tribal Nation sovereignty and does not threaten environmental review and permitting processes on Tribal homelands and beyond.

Any Senate action to reform and streamline NEPA and other permitting processes, on federal lands and such other lands outside our Tribal jurisdictions, must receive input from Tribal Nations. Again, we remind and urge the Committee to engage Tribal Nations through meaningful consultation before any legislation is developed or considered in response to the February 19, 2025 hearing on these issues. Congress has trust and treaty obligations to ensure that any legislative overhaul to environmental review and permitting for infrastructure projects is not enacted without Tribal consultation. Further, we remind the Committee that Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied² and our cultural heritage is preserved. Thus, we are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the deployment of critical infrastructure nationwide.

Conclusion

USET SPF acknowledges the need to modernize federal environmental review and permitting processes. Critical infrastructure projects have long been needed in Indian Country and continue to face uncertainty, delays, and associated increased costs. We acknowledge that there is a need for a consistent and streamlined environmental review and permitting process in Indian Country. Therefore, agencies must carry out NEPA consistently per the statute and Congress is positioned at an opportune time to guide federal agencies on how these efforts can be conducted appropriately in consultation and partnership with Tribal Nations. USET SPF remains committed to protecting vital Tribal historic, cultural, and environmental reviews, as well as Tribal consultation requirements, as streamlined federal permitting processes are being considered. This includes working toward a model that seeks Tribal Nation consent for federal action in recognition of our inherent sovereign equality.

² 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. Available at <https://docs.fcc.gov/public/attachments/DOC-253516A2.pdf>.