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**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the House Subcommittee on Indian and Insular Affairs Oversight Hearing on,
“Economic Diversification to Create Prosperous Tribal Economies”**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Subcommittee on Indian and Insular Affairs (SIIA, or Subcommittee) with the following testimony for the record of the February 15, 2024 oversight hearing, “Economic Diversification to Create Prosperous Tribal Economies.” This hearing focused on the diversification of Tribal economies to expand services to Tribal citizens and build sustainable economic systems to benefit current and future generations. It also focused on how Tribal Nations have sought to develop our natural resources, unique Tribal-centric tourism opportunities, and establish Tribally chartered corporations to increase economic opportunities. USET SPF supports the efforts of Tribal Nations to exercise our sovereignty and self-determination to create viable and sustainable economic opportunities and job creation for our communities. However, many federal programs’ management and funding systems operate under an archaic model of paternalism that does not support Tribal Nation sovereignty and self-determination.

In addition to the focus of SIIA’s February 15, 2024 hearing, USET SPF offers several additional priorities that must also receive the same consideration from Congress and the Subcommittee to empower Tribal Nations to pursue efforts in Nation rebuilding. These include the removal of bureaucratic and legal barriers to Tribal Nations pursuing economic development, tax parity, support for the restoration of Tribal homelands, and the expansion of self-governance contracting and compacting across the federal government. These areas must be addressed to ensure that we have economic parity and equitable opportunities to pursue initiatives that support our economic growth and create jobs for our Tribal citizens. We also anticipate, and support, forthcoming guidance from the U.S. Department of the Treasury to clarify the tax status of Tribally chartered corporations (TCCs), which has been an issue that has long stifled the economic progress of our Tribal Nations and our further pursuits and priorities of Nation rebuilding. In addition to Treasury’s clarification of the tax status of TCCs we strongly recommend that Congress and SIIA explore other legal clarifications of the Internal Revenue Service’s (IRS) tax code to ensure legal permanency of the tax status of our TCCs. This issue is critically important and timely so that Tribal Nations can fully take advantage of the numerous tax credits authorized under the Inflation Reduction Act.

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.

Economic Development in Indian Country and the USET SPF Region

Prior to European contact, Tribal Nations, including USET SPF members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, along with rebuilding Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the U.S. tax code. All Tribal Nations, especially USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size-fits all approach in supporting Tribal Nations and businesses to pursue economic development initiatives to support our communities and engage in Nation rebuilding. With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied by burdens on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardship in our communities and are a remnant of paternalism that continues to exist today, despite an evolution away from past policies of termination and assimilation toward greater Tribal self-determination and self-governance.

In 2012, the Federal Reserve Board of Governors issued a report on, *Growing Economies in Indian Country*, that outlined eight issues as fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, still disproportionately contend with these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration.

Though this report is over a decade old, its relevancy today on the current state of economic challenges in Indian Country highlights the failures of the federal government in upholding its trust and treaty obligations to Tribal Nations. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment of the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital economic, social, health, and public safety services to our people. As it is for any other sovereign,

economic sovereignty is essential to our ability to be self-determining and self-sufficient. **While our economic success in no way diminishes or eliminates the United States' moral and legal trust and treaty obligations to Tribal Nations, it remains critical to our continued Nation rebuilding.** Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive. And when Tribal Nations and our citizens have economic success, surrounding communities and their citizens share in the benefits. This results in stronger Tribal Nations and a stronger America.

Ensure Tribal Nation Economic Parity

The federal government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties, and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside our borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our sovereign governmental status has hindered our efforts to rebuild and grow our economies.

USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations. These efforts included support in previous Congresses for the [Tribal Tax and Investment Reform Act](#). This bill specified the treatment of Tribal Nations as states with respect to bond issuance and modified the treatment of pension and employee benefit plans maintained by a Tribal Government. It also aimed to modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit. USET SPF continues to urge the Subcommittee to support similar legislative efforts in the 118th Congress to increase Tribal Nation economic parity.

Address Dual Taxation in Indian Country

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax non-citizens doing business in Indian Country, when other jurisdictions can tax those same non-citizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible. Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask SIIA to work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

Support Responsible Development in the Energy Sector

USET SPF member Tribal Nations, and our respective Tribal Lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. Our member Tribal Nations could benefit from the

unlocked potential of those energy resources and realize energy development goals, through appropriate Congressional action and investment in Indian Country; and further actions by the Administration, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs.

USET SPF has established its energy priorities, as follows:

- **Tribal self-determination** and control of natural resources and energy assets, to make conservation and development decisions to preserve Tribal sovereignty, protect Tribal assets, and to achieve economic independence, creation of jobs, and improvement of Tribal citizens' standard of living.
- **Tribal capacity building** effort involving multiple federal agencies, universities, and the private sector.
- **Reform core federal programs**, expertise, and funding to support Tribal energy resource development and market access.
- **Remove barriers to the deployment of Tribal energy resources**, such as bureaucratic processes, insufficient access to financial incentives, and interconnection and transmission on power grid.

We remain concerned, however, with ongoing efforts to streamline energy development by bypassing requirements under the National Environmental Policy Act (NEPA). We do not oppose conventional or renewable energy development, and many of USET SPF's member Tribal Nations pursue these activities. However, such development occurring outside of Tribal Nation jurisdictional boundaries must not come at the expense of our cultural resources and natural environments or Tribal consultation. Tribal Nations have already experienced immense land loss, theft, and the destruction and desecration of our cultural and environmental resources and aboriginal homelands. We should not be subjected to such actions again in order to further a domestic energy policy agenda.

In addition to our concerns with scaling back NEPA provisions, several USET SPF member Tribal Nations have had to contend with federal agencies failing to properly consult with Tribal Nations on proposed energy projects. This includes wind energy development projects under the oversight of the Bureau of Ocean Management that have been proposed for construction, and some of which are currently undergoing construction, on the Outer Continental Shelf. Several of our member Tribal Nations were not properly consulted about the permitting of these wind energy project sites and have not received the resources and technical assistance required to properly and adequately review environmental, geological, and other assessments related to these projects. Furthermore, funding remains stagnant and inadequate for Tribal Historic Preservation Officers (THPOs) to conduct reviews of proposed projects in order to appropriately ascertain the potential cultural and environmental impacts. We continue to urge the Subcommittee to support increased funding for THPOs and ensure that efforts to streamline environmental review process are not implemented at the expense of the destruction of our cultural resources, sites, and natural environments.

Clarify the Tax Status of TCCs and Recognize that the Tax Exempt Status of Sec. 17 Corporations Cannot be the Sole Alternative or Solution for Tribal Nations

As mentioned by the witnesses testifying before SIIA during the February 15, 2024 hearing, the uncertainty regarding the tax status of TCCs is a major federal policy barrier faced by Tribal Nations as we seek to rebuild our economies and generate our own governmental revenues. As we stated in our 2022 USET SPF publication, "[Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan](#)":

"Historic and modern federal policies have created barriers and inequities for Tribal Nations' attempts to rebuild and grow our own economies, as well as generate our own government revenues. Today's federal economic policies continue to fail to support Tribal Nations' modern efforts to revitalize our economies. The hampering of Tribal Nations' abilities to generate Tribal government revenues has compounded the harms done by the United States' failure to fully fund its trust and treaty obligations..."²

Most Tribal Nations in the United States continue to endure a long history of asset deprivation, colonization, forced removal, war, loss of our homelands, and restricted access to traditional lands and resources, which has pushed Tribal Nations "into a near-assetless state for at least a century."³ The many consequences of this sustained economic deprivation persist to this day. They manifest themselves in the form of obstacles to economic development that include, but are not limited to, insufficient access to capital; lack of small business capacity; insufficient workforce development, financial management training, and business education; regulatory constraints on land held in trust and land designated as restricted use (prohibiting such land from being used as collateral or as property subject to Tribal taxes); and underdeveloped physical infrastructure.⁴ Some Tribal Nations have succeeded in producing economic growth and improved per capita incomes in the past few decades by employing self-determined economic development approaches. Even so, estimates indicate that at current rates of growth the per capita income of Tribal citizens will not achieve parity with the rest of the United States for at least four more decades.

The result of depressed economies has a circular effect. Without the ability to stimulate economic growth, diversify economic activities, and generate revenues to fund governmental programs and services, Tribal Nations lack the resources to invest in building the essential physical and human infrastructure necessary to attract the capital investment needed for Tribal economies to compete in the regional, national, and global marketplace. By clarifying the tax status of TCCs, the federal government would take a critical step in reversing some of the harms caused by its failure to adopt economic growth policies that enable Tribal Nations to create conditions to build our economies on a broader scale. Clarification of the tax status of TCCs is also critically important and timely so that we can fully take advantage of the recent tax credits authorized by the Inflation Reduction Act.

Tribal governments are different than other governments in the federal system in that we do not have a significant tax base. Given the United States' failure to fully fund its trust and treaty obligations, and reflecting Tribal Nations' commitment to self-determination, it is essential that Tribal governments generate revenues for programs and services by establishing corporations, limited liability companies, and other business structures to engage in economic development. Although these Tribally owned entities function like commercial enterprises in the marketplace, their purpose is to generate revenues to enable program and service delivery to Tribal citizens.

Tribal Nations require new and authoritative tax guidance that supports and promotes our sovereign authority, assists us in providing for our Tribal citizens, and helps us restore our economies. Tribal Nations should no longer be treated differently than state and local governments that regularly engage in business activities to fund their citizen programs and services (such as golf facilities, convention facilities, tourism,

² United South and Eastern Tribes Sovereignty Protection Fund, *Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan*, 2022. <https://www.usetinc.org/wp-content/uploads/2022/11/USET-SPF-Marshall-Plan-for-Tribal-Nations.pdf>.

³ *Id.*, quoting Native Nations Inst., *Access to Capital and Credit in Native Communities* 5 (2016), https://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf.

⁴ BD. of Governors., Fed. Rsv., *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships* 3 (2012), <https://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf>.

etc.), which the IRS deems exempt. Indeed, the unique government-to-government and trust relationship that Tribal Nations have with the federal government demands that the solution not limit, in any way, but rather expand the tax exemption for Tribal economic activity.

IRS guidance, to date, as it relates to Tribal government businesses has recognized exempt status only in limited and confining circumstances. In Revenue Ruling 81-295, the IRS ruled that Section 17 corporations shared the immunity from federal income tax enjoyed by Indian tribes themselves. That ruling was reiterated in Revenue Ruling 94-16, though in the ruling, the IRS also determined that a Tribally owned corporation chartered under state law was not exempt from federal corporate income tax. For Section 17 corporations, both rulings essentially applied the reasoning set out in the 1996 Treasury Regulation § 301.7701-1(a)(3), which provides that "[a]n entity formed under local law is not always recognized as a separate entity for federal tax purposes . . . tribes incorporated under Section 17 of the Indian Reorganization Act . . . are not recognized as separate entities for federal tax purposes." This reasoning is sound, and it should apply to TCCs that serve Tribal purposes; TCCs should not be treated as separate entities from the Tribal government for tax purposes.

The IRS appeared to recognize this logic when, after the 1994 revenue ruling, it issued several private letter rulings concerning Tribally owned and chartered corporations, concluding, in each case, based on several factors, that they were "integral parts" of the Tribal governments that created them, notwithstanding their separate corporate status, and were thus entitled to share in each Tribal government's tax immunity. For example, in IRS. Priv. Ltr. Rul. 200148020 (November 30, 2001), the IRS concluded that a Tribally chartered college was an integral part of the Indian tribe that created it. The ruling looked to "the Indian tribe's . . . degree of control over the enterprise and the Indian tribe's . . . financial commitment to the enterprise." It identified eight factors that it viewed as pertinent to its determination: (1) the Indian tribe's power to appoint and remove directors; (2) Tribal representation on the board; (3) Tribal action to establish the entity to conduct business on Tribal land, and Tribal control over its activities; (4) Tribal power to terminate the entity; (5) the Indian tribe having the sole proprietary interest in the entity; (6) the entity's obligation to remit profits to the Indian tribe; (7) the entity's obligation to submit financial reports to the Indian tribe; and (8) Tribal control over audits of the entity.⁵

The IRS, however, declared a moratorium on private letter rulings raising the "integral part" test in 2007. This moratorium has prevented Tribal governments from ensuring that a TCC is not considered a separate taxable entity. That said, USET SPF does not advocate for the resurrection of the integral part test for evaluating the tax status of TCCs. The integral part test is cumbersome and results in disparate and uneven results, and it does not go far enough to provide the certainty that Tribal governments require to secure revenue for the benefit of our citizenry. Tribal Nations require a categorical rule as to the tax status of TCCs, and not a case-by-case determination. Without a categorical rule, there will be continuing uncertainty over the tax status of TCCs, which negatively impacts the ability of Tribal Nations to plan for and realize economic development opportunities.

In addition, the tax-exempt status of Section 17 corporations does not provide Tribal governments with a productive vehicle for economic development. Although Revenue Rulings 81-295 and 94-16 and Treasury Regulations § 301.7701-1(a)(1)(3) provide clarity on the tax consequences for Section 17 corporations,

⁵ See also I.R.S. Priv. Ltr. Rul. 200112013 (March 23, 2001); I.R.S. Priv. Ltr. Rul. 200409033 (February 27, 2004); I.R.S. Priv. Ltr. Rul. 199909013 (March 5, 1999) (in which the IRS upheld the "integral part" status of an enterprise created by a Tribal government for the purpose of managing Tribal property and acting as the Tribal government's business arm, on the grounds of the Tribal government's power to remove directors and terminate the existence of the enterprise, the Tribal government's substantial financial stake in the enterprise, and the substantial rights to its profits, and the absence of any private ownership of the enterprise).

these federally chartered entities lack the flexibility and agility needed when Tribal Nations seek to seize economic opportunities. The process of adopting and amending the charters of federally chartered Section 17 corporations is cumbersome, time consuming and often precludes Tribal Nations from nimbly capturing economic opportunities. Further, the structural limitations of Section 17 corporations are a barrier to economic development in many instances. For example, under the terms of 25 U.S.C. § 5124, a Section 17 corporation may not lease Tribal Land (to a third party) for a period longer than 25 years. That limitation frequently prevents Section 17 corporations from being able to profitably develop Tribal Lands for commercial purposes, as sublessees often insist on much longer lease terms to justify substantial investments in improvements.

We submit there is sound and sufficient legal authority and reasoning to align the tax treatment of TCCs with that of Section 17 corporations. The legal and policy underpinnings for exempting economic development corporations from tax under 26 U.S.C. § 501(c)(3) may also provide a rationale for exempting TCCs from tax. Further, there is constitutional and treaty support for exempting Tribal government economic development activity from taxation. More to the point, the sovereign authority of Tribal Nations to engage in whatever business necessary to provide for our citizens should not be undermined by either the lack of Treasury guidance or issuance of restrictive guidance. Further, outside of the context of Tribally chartered entities, the IRS has long recognized that sole proprietorships, partnerships, S-corporations, and limited liability companies are not to be taxed at the business entity level. Instead, these businesses possess “pass through” tax treatment and are taxed at the ownership level. The same principle should apply to Tribally chartered entities and Congress and SIIA should direct the IRS to adopt and implement this principle.

Tribal governments have become increasingly sophisticated in the structuring of business operations and transactions. Some Tribal governments have created not just corporations and limited liability companies, but general codes allowing the general public to obtain such a corporate entity for purchase.⁶ Other Tribal governments have utilized Section 17 corporations in conjunction with TCCs, with Tribal entities as subsidiaries, and others have utilized Tribally chartered entities as pooled investment instruments with non-Indians to share equity participation and corresponding economic benefit. Policy must favor maximum flexibility and support for Tribal Nations through the utilization of Tribally chartered entities.

We strongly urge that Congress and SIIA direct Treasury and IRS to uphold its trust and treaty obligations and align the tax treatment of our TCCs in a manner that empowers and supports the advancement of our economic development priorities. Tribal Nations have established TCCs for the sole purpose of rebuilding our Tribal economies and advancing our economic priorities for Nation rebuilding to support the economic and social well-being of our citizens and communities. Although USET SPF anticipates the issuance of forthcoming guidance from Treasury on the tax status of TCCs, we encourage Congress and SIIA to explore additional legal opportunities to establish permanence in clarifying the tax status of TCCs.

Support the Restoration of Tribal Homelands and Enact a ‘Carcieri Fix’

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government’s economy. This is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government’s objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-

⁶ See e.g., MILLE LACS BAND STATUTES ANNOTATED, Title 16 Corporations, § 1102 (“One or more natural persons of full age may act as incorporators of a corporation by filing with the Commissioner articles of incorporation for the corporation.”).

determining Tribal governments, which fundamentally includes the restoration of lands to all federally recognized Tribal Nations, as well as the legal defense of these land acquisitions.

No Tribal Nation should remain landless. All Tribal Nations, whatever their historical circumstances, need and deserve a stable, sufficient land base—a homeland—to support robust Tribal self-government, cultural preservation, and economic development. The federal government must ensure that every Tribal Nation has the ability to restore its homelands, regardless of the concerns of other units of government, private citizens, or other interests. This is a necessary function of the U.S. government in delivering upon its trust and treaty obligations to Tribal Nations and regaining a land base is essential to the exercise of Tribal self-governance. Jurisdiction over territory is a bedrock principle of sovereignty, and Tribal Nations must exercise such jurisdiction in order to fully implement the inherent sovereignty we possess. While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands without federal government interference and oversight, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government has a trust responsibility and obligation to Tribal Nations in the restoration and management of trust lands. With this in mind, it is vital that the land-into-trust process be available to and applied equally to all federally recognized Tribal Nations. This parity is central to the federal government's legal and moral obligations to all of Indian Country.

As Congress (and other branches of the federal government) approaches the restoration of Tribal homelands, USET SPF continues to repeat that this basic correction is simply that. It returns us to the status quo prior to 2009—a rigorous process for the acquisition of trust land for **ALL** federally recognized Tribal Nations. This long overdue fix does not confer any additional benefits or supersede any existing law, nor is it about anything other than the rightful restoration of Tribal homelands. USET SPF continues to call upon Congress to enact a fix to the 2009 Supreme Court decision in *Carcieri v. Salazar*. For too long, this decision has impeded our ability to rightfully restore our land bases and pursue Nation rebuilding efforts. Congress must enact legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary of the Interior has authority to take land into trust for all federally recognized Tribal Nations.

Support the Expansion of ISDEAA Contracting and Compacting Across the Federal Government for Tribal Nations

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services.

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the federal government would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. It would empower Tribal Nations to administer federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. It is time for Congress to enact legislation

that expands our self-governance capabilities across the federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations

For generations, the federal government—despite abiding trust and treaty obligations—has substantially under-invested in Indian Country’s infrastructure and engaged in hostile actions against Tribal Nations to destroy our Tribal economies and undermine our efforts to pursue Nation rebuilding. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure access. Much like the U.S. investment in the rebuilding of European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the U.S. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the U.S. should make this strategic investment domestically. We strongly encourage and recommend that SIIA, and Congress as a whole, review USET SPF’s 2022 publication, “[Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan](#)”, and enact legislation that upholds the federal government’s trust and treaty obligations, advances Tribal self-determination, and supports our Nation rebuilding efforts.

Congress and SIIA Must Incorporate the Directives of E.O. 14112 into Legislation

USET SPF stresses to Congress and the Subcommittee that legislative efforts must be pursued to incorporate the directives of [Executive Order 14112](#), “Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.” This will support our inherent sovereignty and self-determination to advance economic growth, pursue Nation rebuilding, and directly address the specific economic, social, and public health priorities of our citizens. The current service model of federal funding allocation, administration, and oversight remains a paternalistic, pre-self-determination era mechanism that stifles the proper management and use of federal resources in Indian affairs. In order to usher in a new era of Tribal self-determination, federal laws and regulations must be rescinded or revised to truly advance our sovereign efforts to pursue economic development and Nation rebuilding for the improved economic, social, and public health of our communities. **We remind Congress and the Subcommittee, however, that no level of economic success attained by Tribal Nations diminishes or eliminates the United States’ moral and legal trust and treaty obligations to fully fund Tribal programs and services.**

Conclusion

The diversification of Tribal economies to create increased economic opportunities for Indian Country must take into consideration several issues and priorities to support Tribal Nation rebuilding efforts. The historic and ongoing injustices that have contributed to economic insecurity in Indian Country are symptomatic of the larger issues we face as Tribal Nations. Development and implementation of policies and programs that recognize and uphold our inherent sovereignty and fulfill trust and treaty obligations are necessary to alleviate economic hardship, rebuild Tribal Nations, and improve the quality of life for our citizens and communities. Congress and the Subcommittee must continue to support and fully fund federal programs and services that encourage economic sovereignty through tax parity, responsible energy development, clarification of the tax status of TCCs, the restoration of Tribal homelands, expansion of self-governance contracting and compacting across all federal programs, and enactment of a Marshall Plan for Tribal Nations. Further, we strongly urge Congress and the Subcommittee to incorporate into legislation the directives of [Executive Order 14112](#), “Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.” This will ensure that all federal economic development dollars available to Tribal Nations have the greatest degree

of flexibility in uses and reduced administrative burdens to support our self-determined efforts to advance economic growth, pursue Nation rebuilding, and address the specific economic, social, and public health priorities of our citizens. We welcome the opportunity to collaborate with the Subcommittee on economic policies that better honor federal trust and treaty obligations and uphold our inherent sovereignty to pursue our Nation rebuilding priorities to support economic opportunities for our Tribal Nations and citizens. 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