

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Consenting to Grants of Easement for Rights-of-Way across Nation's lands for the
United States Customs and Border Protection's Integrated Fixed Tower Project)

RESOLUTION NO. 19-088

1 **WHEREAS,** **"The unallotted lands of the Tohono O'odham Nation and all lands hereafter**
2 **acquired by the nation, or held for the use of the nation or its members, are a**
3 **valuable public resource and shall be held as national lands forever. Control and**
4 **management thereof are vested in the Tohono O'odham Council, which may**
5 **enact laws governing the use, assignment, permit, lease or other disposition of**
6 **lands, interests in land and resources of the nation consistent with Federal law."**
7 **(Constitution of the Tohono O'odham Nation, Article XVI, Section 1); and**

8 **WHEREAS,** **the Legislative Council has a duty "to manage, protect, preserve and regulate the**
9 **use of the property, wildlife, land, air and natural resources (including surface**
10 **and ground waters) of the Tohono O'odham Nation" and to "administer land and**
11 **other public property, and by law, ordinance or resolution . . . to prevent the sale,**
12 **disposition, lease, use or encumbrance of Tohono O'odham national lands,**
13 **interests in lands, rights-of-way, or other public resources when such sale,**
14 **disposition, lease, use or encumbrance will, in the opinion of the Tohono**
15 **O'odham Council, be injurious to the best interests of the Tohono O'odham**
16 **Nation as a whole" (Constitution, Article VI, Section 1(i)(1) and (2)); and**

17 **WHEREAS,** **uses of unallotted national lands by federal agencies must be approved by**
18 **Legislative Council resolution, Nation's law, or a lease or other agreement**
19 **authorized or approved by the Legislative Council, and the Council is accordingly**
20 **empowered to "consult, negotiate and conclude agreements and contracts on**
21 **behalf of the Tohono O'odham Nation" with federal agencies and to consult with**
22 **"appropriate federal agencies regarding federal activities that affect the Tohono**
23 **O'odham Nation" (Constitution, Article VI, Section 1(f) and (j)); and**

24 **WHEREAS,** **when federal agencies propose uses of national lands, the Legislative Council**
25 **strongly supports consultation with affected members, communities, and**
26 **districts before the Council considers approving any proposed use; and**

27 **WHEREAS,** **unlike national forests, wilderness areas, and other federal lands on the**
28 **international boundary dividing the United States and Mexico, the Nation's**
29 **reservation is not public land, and the Nation has a duty to ensure that tribal**
30 **members' interests and the Nation's jurisdiction to perform its constitutional**
31 **obligations are protected; and**

32 **WHEREAS,** **the duty to protect Nation's lands, its jurisdiction, and members' interests,**
33 **including in the Nation's dealings with the United States Customs and Border**
34 **Protection ("CBP"), is consistent with the Department of Homeland Security's**

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1 Tribal Consultation Policy in which, "The United States recognizes the right of
2 Federally-recognized Indian Tribes ("Indian Tribes") to self-government. Indian
3 Tribes exercise inherent sovereign powers over their members and territories."

4 DHS Tribal Consultation Policy, I.A.; and

5 **WHEREAS,** the Tucson Sector of the United States Border Patrol, as part of CBP of the
6 Department of Homeland Security, is responsible for securing the border along
7 the international boundary with Mexico ("International Boundary"), including
8 the areas on the Nation's lands; and

9 **WHEREAS,** CBP has proposed to construct an Integrated Fixed Tower ("IFT") system on the
10 Nation and has requested that the Nation consent to grants of easement for rights
11 of way for IFT tower sites and related roadways; and

12 **WHEREAS,** pursuant to Resolution Nos. 12-121 and 13-142, the Legislative Council authorized
13 CBP to conduct initial site visits and pre-development activities; and

14 **WHEREAS,** by Resolution No. 15-479, the Legislative Council gave its preliminary support to
15 the IFT Project subject to the following five conditions being met:

- 16 1. CBP's completion of environmental, cultural and other requirements
17 identified by the Nation's Cultural Affairs, Planning, Realty, Roads, and
18 Wildlife and Vegetation Management staff (the "IFT Conditions");
- 19 2. the Nation's final evaluation of the IFT project;
- 20 3. negotiation and approval of compensation for related rights-of-way for
21 the IFT project;
- 22 4. the approval and execution of a written agreement between the Nation
23 and CBP that will protect the Nation's lands, its jurisdiction, and
24 members' interests; and
- 25 5. a resolution granting the Nation's consent for a grant of easement for
26 rights-of-way for the IFT project; and

27 **WHEREAS,** the five conditions of support listed in Resolution No. 15-479 have been met or will
28 be met with the approval of this Resolution; and

29 **WHEREAS,** the Domestic Affairs, Cultural Preservation and Agricultural and Natural
30 Resources Committees have reviewed the following documents relating to the
31 grants of easement for rights-of-way for the IFT project and recommend their
32 approval:

- 33 1. Grant of Easement for Right-of-Way for TCA-AJO-0450 Tower Site and
34 associated Access Road, Approach Road, and Temporary Construction
35 Easement.

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- 1 2. **Grant of Easement for Right-of-Way for TCA-AJO-0448 Tower Site and**
- 2 **associated Access Road, Approach Road, and Temporary Construction**
- 3 **Easement.**
- 4 3. **Grant of Easement for Right-of-Way for TCA-AJO-0446 Tower Site and**
- 5 **associated Access Road, Approach Road, and Temporary Construction**
- 6 **Easement.**
- 7 4. **Grant of Easement for Right-of-Way for TCA-CAG-0442 Tower Site and**
- 8 **associated Access Road, Approach Road, and Temporary Construction**
- 9 **Easement.**
- 10 5. **Grant of Easement for Right-of-Way for TCA-CAG-0440 Tower Site and**
- 11 **associated Access Road, Approach Road, and Temporary Construction**
- 12 **Easement.**
- 13 6. **Grant of Easement for Right-of-Way for TCA-CAG-0438 Tower Site and**
- 14 **associated Access Road, Approach Road, and Temporary Construction**
- 15 **Easement.**
- 16 7. **Grant of Easement for Right-of-Way for TCA-CAG-0436 Tower Site and**
- 17 **associated Access Road, Approach Road, and Temporary Construction**
- 18 **Easement.**
- 19 8. **Grant of Easement for Right-of-Way for TCA-CAG-0434 Tower Site and**
- 20 **associated Access Road, Approach Road, and Temporary Construction**
- 21 **Easement.**
- 22 9. **Grant of Easement for Right-of-Way for TCA-CAG-0430 Tower Site and**
- 23 **associated Access Road, Approach Road, and Temporary Construction**
- 24 **Easement.**
- 25 10. **Grant of Easement for Right-of-Way for TCA-CAG-0444 Tower Site and**
- 26 **associated Access Road, Approach Road, and Temporary Construction**
- 27 **Easement.**
- 28 11. **Grant of Easement for Right-of-Way for Portions of the Traditional**
- 29 **Northern Road.**
- 30 12. **Grant of Easement for Right-of-Way for Low Water Crossings**
- 31 13. **The Agreement between the Tohono O'odham Nation and United States**
- 32 **Customs and Border Protection for Conditions for Grants of Easement for**
- 33 **Right-of-Way for Integrated Fixed Tower Project, Access and Approach**
- 34 **Roads, Low Water Crossings and Traditional Northern Road.**
- 35 14. **The Right-Of-Way Compensation Agreement between the U.S. Department**
- 36 **of Homeland Security/Customs and Border Protection and the Tohono**

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O'odham Nation for Integrated Fixed Tower sites, approach roads, access roads, the Traditional Northern Road and Low Water Crossings.

NOW, THEREFORE, BE IT RESOLVED that the Legislative Council consents to the following grants of easement for rights-of-way by the U.S. Bureau of Indian Affairs to the U.S. Department of Homeland Security/Customs and Border Protection for the IFT project, subject to the finalization and signing by all parties of the documents and agreements attached to or incorporated by this reference in the following grants of easement for rights-of-way:

- 1. Grant of Easement for Right-of-Way for TCA-AJO-0450 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 2. Grant of Easement for Right-of-Way for TCA-AJO-0448 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 3. Grant of Easement for Right-of-Way for TCA-AJO-0446 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 4. Grant of Easement for Right-of-Way for TCA-CAG-0442 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 5. Grant of Easement for Right-of-Way for TCA-CAG-0440 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 6. Grant of Easement for Right-of-Way for TCA-CAG-0438 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 7. Grant of Easement for Right-of-Way for TCA-CAG-0436 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 8. Grant of Easement for Right-of-Way for TCA-CAG-0434 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**
- 9. Grant of Easement for Right-of-Way for TCA-CAG-0430 Tower Site and associated Access Road, Approach Road, and Temporary Construction Easement.**

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1 **10. Grant of Easement for Right-of-Way for TCA-CAG-0444 Tower Site and**
2 **associated Access Road, Approach Road, and Temporary Construction**
3 **Easement.**

4 **11. Grant of Easement for Right-of-Way for Portions of the Traditional Northern**
5 **Road.**

6 **12. Grant of Easement for Right-of-Way for Low Water Crossings.**

7 **BE IT FURTHER RESOLVED that the Legislative Council approves the "Agreement between the**
8 **Tohono O'odham Nation and United States Customs and Border Protection for**
9 **Conditions for Grants of Easement for Right-of-Way for Integrated Fixed Tower**
10 **Project, Access and Approach Roads, Low Water Crossings and Traditional**
11 **Northern Road" in substantially the form attached and authorizes the Chairman**
12 **of the Nation to execute it and any related documents reasonably necessary to**
13 **carry out the intent of this Resolution.**

14 **BE IT FURTHER RESOLVED that the Legislative Council approves the "Right-Of-Way**
15 **Compensation Agreement between the U.S. Department of Homeland**
16 **Security/Customs and Border Protection and the Tohono O'odham Nation for**
17 **Integrated Fixed Tower sites, approach roads, access roads, the Traditional**
18 **Northern Road and Low Water Crossings" in substantially the form attached and**
19 **authorizes the Chairman of the Nation to execute it and any related documents**
20 **reasonably necessary to carry out the intent of this Resolution.**

21 **BE IT FURTHER RESOLVED that the compensation received from U.S. Department of Homeland**
22 **Security/Customs and Border Protection for the rights-of-way shall be**
23 **distributed as follows: Fifty percent (50%) to the Nation and fifty percent (50%) to**
24 **be divided between the Chukut Kuk and Gu Vo Districts based on the percentage**
25 **of the total acreage of the rights-of-way approved through this Resolution present**
26 **in each District, as determined by the Nation's Office of Real Estate Management**
27 **Program.**

28 **BE IT FINALLY RESOLVED that, pursuant to 25 C.F.R. §169.110, the Legislative Council:**

- 29 **(1) finds that the compensation agreed to in the "Right-Of-Way Compensation**
30 **Agreement between the U.S. Department of Homeland Security/Customs**
31 **and Border Protection and the Tohono O'odham Nation for Integrated**
32 **Fixed Tower sites, approach roads, access roads, the Traditional Northern**
33 **Road and Low Water Crossings" is satisfactory to the Tohono O'odham**
34 **Nation;**
- 35 **(2) waives valuation by the Bureau of Indian Affairs; and**

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(3) determines that accepting the agreed-upon compensation and waiving valuation is in the Nation's best interest.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND day of MARCH, 2019 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0- AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(f) 1(i) and 1(j); Article XVI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

25 day of March, 2019

ATTEST:


Evonne Wilson, Legislative Secretary

25 day of March, 2019

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 25 day of March, 2019 at 2:23 o'clock, P.m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

APPROVED

on the 25 day of March, 2019

DISAPPROVED

at 4:26 o'clock, P.m.

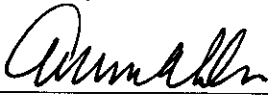

EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

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1 Returned to the Legislative Secretary on the 25 day of
2 March, 2019, at 4:42 o'clock, P.m.
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7 **Evonne Wilson, Legislative Secretary**

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ACTION: CONSENTING TO GRANTS OF EASEMENT FOR RIGHTS-OF-WAY ACROSS NATION'S LANDS FOR THE UNITED STATES CUSTOMS AND BORDER PROTECTION'S INTEGRATED FIXED TOWER PROJECT

Moved: COUNCILWOMAN GLORIA RAMIREZ

Second: COUNCILWOMAN LUCINDA J. ALLEN

DATE: MARCH 22, 2019

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ () 2. LUCINDA ALLEN (Yolonda Garcia)	117.9 117.9	X X			
SELLS 527.2	1. ARTHUR WILSON (Evelyn Juan Manuel) 2. ADRIANNE TILLER ()	263.6 263.6	X X			X
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. <i>(Absent)</i> (Teresa F. Donahue) <i>(Present)</i> 2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85 92.85	X X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez) 2. JANICE FELIX (Adam Andrews)	116.15 116.15	X X			X
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel) 2. GLORIA RAMIREZ (Lorraine Eiler)	115.55 115.55	X X			
PISINEMO 225.9	1. CHESTER ANTONE <i>(Absent)</i> (Caroline D. Garcia) <i>(Present)</i> 2. MONICA K. MORGAN ()	112.95 112.95	X X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ <i>(Absent)</i> (Shirley Molina) <i>(Present)</i> 2. SANDRA D. ORTEGA ()	104.5 104.5	X X			
GU VO 256.9	1. GRACE MANUEL () 2. DALLAS LEWIS (Nacho Flores)	128.45 128.45	X X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson) 2. LORETTA LEWIS (Victoria Hobbs)	135.45 135.45	X X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (Patricia Antone) 2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85 168.85	X X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL <i>(Absent)</i> (Roberta E. Harvey) <i>(Present)</i> 2. LEANDER MASE (Francine Schooling)	186.05 186.05	X X			X
TOTAL		3,084.6	3,084.6	-0-	-0-	[03]