



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

January 2, 2025

Keith Turi
Associate Administrator
Office of Response and Recovery
Federal Emergency Management Agency
Department of Homeland Security
500 C St. SW
Washington, DC 20472

Re: USET SPF Comments to FEMA on its Tribal Declarations Interim Guidance, Docket ID No. FEMA-2024-0035-0001

Dear Associate Administrator Turi,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Federal Emergency Management Agency's (FEMA) updated 2024 Tribal Declarations Interim Guidance (Interim Guidance). Throughout 2023, FEMA held Tribal consultations and listening sessions with Tribal Nations to gather initial feedback to update its 2017 Tribal Declarations Pilot Guidance. During these efforts, USET SPF expressed appreciation for FEMA's initiative to consult with Tribal Nations to update the 2017 Guidance since the 2020 outbreak of the COVID-19 Public Health Emergency re-emphasized FEMA deficiencies to promptly and appropriately award vital emergency response funds to Tribal Nations affected by the pandemic. During this public health emergency, Tribal Nations struggled with obtaining the necessary emergency assistance required to appropriately respond to the pandemic due to burdensome application requirements and issues with cost-share and dollar damage thresholds to obtain critical FEMA resources. USET SPF generally supports the proposed updates to its Interim Guidance as they advance the ability of Tribal Nations to obtain FEMA resources to respond to, mitigate, and prepare for emergency and disaster events.

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

General Support for FEMA's Interim Guidance and Additional Recommendations

In recognition that Tribal Nations are the first, and often only, responders to disasters and emergency events occurring in our communities, FEMA developed the Tribal Declarations Guidance in 2017. The development of this Guidance followed passage of the Sandy Recovery Improvement Act of 2013, which amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §§ 5121 et seq.) to provide federally recognized Tribal Nations the option to directly request a Presidential emergency or major disaster declaration. Following the outbreak of the COVID-19 Public Health Emergency in 2020, it became evident that Tribal Nations still lacked the ability to fully access and utilize FEMA resources to appropriately respond to emergency events within our communities. Further, as the effects of climate change have led to an increase in natural disaster events resulting in increased response and recovery costs, the policy barriers that prohibit or burden Tribal Nations from accessing critical FEMA resources must be addressed.

For these reasons, we appreciate FEMA's efforts and support the updates to its 2017 Tribal Declarations Guidance in response to these emergency and disaster events to ensure that Tribal Nations will have greater access to FEMA resources for response and recovery efforts as well as the necessary resources to plan for and mitigate future emergency and disaster events. While we recognize that the removal of certain policies that prohibit Tribal Nations from fully accessing and leveraging FEMA resources requires Congressional action, we anticipate that FEMA will rely on the record of evidence provided by Tribal Nations to address these issues and relay them to Congress in its annual budget requests and whenever Congress requests technical assistance from FEMA on the development of legislative proposals.

USET SPF generally supports the following updates to FEMA's Interim Guidance and provides additional recommendations to improve FEMA program and service delivery to Tribal Nations for emergency and disaster planning, mitigation, and response and recovery—

- **Support for reducing the minimum damage amount for Public Assistance (PA) disaster Declaration requests from \$250,000 to \$100,000.** The \$250,000 minimum damage threshold required for determining eligibility for Tribal Nations to receive a Presidential disaster Declaration and PA program funds has been a longstanding issue for Tribal Nations. This minimum damage threshold has been used by FEMA when reviewing a Tribal Nation's request for a major disaster Declaration prior to FEMA's recommendation to the President on whether to grant or deny the request. While USET SPF asserts that this practice is unacceptable when a Tribal Nation is experiencing an emergency and requesting federal assistance to appropriately respond to these situations, we support FEMA's decision to lower the minimum damage threshold amount for PA from \$250,000 to \$100,000. There have been scenarios where damage to critical infrastructure did not meet the \$250,000 threshold and Tribal Nations have also reported FEMA's difficulty in assigning value to harm caused to our cultural sites.

In addition to lowering the minimum damage threshold to \$100,000, USET SPF recommends that FEMA focus on Tribal determinations for assessing damage and associated costs for impacts to critical infrastructure as well as areas/structures of cultural significance when seeking PA resources. This Tribal determination should include anything that is connected to a Tribal community's lifeline, lifeways, and governance, such as, but not limited to, roads, water and wastewater, electricity, telecommunications, cultural/heritage centers, cultural assets, and community/governmental service facilities (especially those that could provide space to house displaced Tribal citizens or items from our cultural centers/museums).

Although USET SPF fully supports FEMA's decision to lower the minimum damage threshold for the PA program, requiring our communities to endure a minimum dollar damage threshold to our cultural/sacred sites and critical infrastructure prior to receiving PA program funds does not uphold FEMA's trust and treaty obligations to protect and safeguard our communities. These funds must be made available upon request from Tribal Nations to protect our citizens, public health, items of cultural significance, sacred sites, and critical infrastructure. If Tribal Nations have made the determination that PA program funds are required to respond to a natural disaster or emergency event—especially those occurring in real time—then FEMA must promptly award PA program funds to Tribal Nations. Instead of requiring Tribal Nations to meet a baseline minimum dollar damage threshold to request PA funds, USET SPF strongly recommends that FEMA waive or strike this minimum dollar threshold requirement for Tribal Nations seeking PA Program support through a disaster Declaration. USET SPF urges FEMA to support Administrative or legislative solutions that will waive the minimum dollar threshold requirements.

- **Support for the 98% cost-share adjustment for the PA program when PA actual total obligations are greater than or equal to \$200,000.** In its Interim Guidance, FEMA has adjusted the federal cost-share for the PA program to 98% when federal costs are greater than or equal to \$196,000 and Tribal costs are greater than or equal to \$4,000. Lowering the Tribal cost-share for the PA program to 2% is a notable and progressive step forward to increasing access to FEMA PA resources. USET SPF supports this decision as well as FEMA's stated intention in the Interim Guidance that it will automatically recommend to the President a 98% federal cost-share adjustment for the PA program when total obligations reach or exceed \$200,000.

However, we recognize that the final decision on granting a 98% federal cost-share will be contingent on the President's determination. While the 98% federal cost-share is not guaranteed, we urge FEMA to support Tribal Nation efforts to obtain a 100% federal cost-share for FEMA PA resources as a matter of upholding its trust and treaty obligations to support Tribal sovereignty and self-determination to protect our communities from emergency and natural disaster events. Obtaining a 100% federal cost-share for FEMA PA is essential since there is still a 25% federal cost-share when PA totals are between the \$100,000 damage threshold and less than \$200,000.

Further, FEMA must work toward a simplified waiver process for eliminating (through legislation or otherwise) any Tribal cost-share requirement for receiving PA. This action is strongly supported by USET SPF member Tribal Nations through [USET SPF Resolution No. 2021 SPF:001](#), "Urging the Removal of Stafford Act Non-Federal Match Requirements and Streamlining of Tribal Emergency Declaration Requests." Adopted on July 23, 2021, the Resolution, "calls upon the Department of Homeland Security and [FEMA] to immediately eliminate any agency-imposed non-federal match requirement for Tribal Nations to receive federal assistance, which includes any existing or proposed regulations, policies, grant applications, or other guiding documents."

- **Support for extending the deadline for Tribal Nations to develop a Hazard Mitigation Plan.** Currently, FEMA requires Tribal governments to have approved and adopted Hazard Mitigation Plans to be eligible for certain types of disaster assistance and funding for mitigation projects. Under these Plans, Tribal governments identify natural disaster risks and vulnerabilities that are common in our areas and upon identification of these risks we develop these Plans to provide long-term strategies for protecting people and property from these events. Hazard Mitigation Plans are an essential disaster preparation tool to properly prepare for damages from disaster events as well as support reconstruction efforts. In the Interim Guidance, FEMA requires that Tribal Nations receiving PA resources for permanent work under Categories C through G following a disaster

Declaration (permanent work such as roads, bridges, buildings, utilities, recreational areas, etc.) must have a Tribal Hazard Mitigation Plan. FEMA has decided to extend the deadline for submitting a Tribal Hazard Mitigation Plan from 30 days to 90 days from the date of Tribal Nations receiving a disaster Declaration. USET SPF supports this extension as it provides Tribal Nations with additional time to develop a Tribal Hazard Mitigation Plan to utilize PA Categories C through G resources to increase mitigation efforts and build infrastructure resiliency for future disaster events.

USET SPF also supports that Tribal Hazard Mitigation Plans for PA eligible mitigation projects can also include, but are not limited to, traditional ecological knowledge, traditional Tribal practices, or nature-based solutions when the design reduces the risk of future damages.

- **Support for FEMA technical assistance and training to assist Tribal Nations in the development of administrative requirements needed to receive Stafford Act funding.** USET SPF appreciates the explicit outline of technical assistance and resources FEMA may provide Tribal Nations in the Interim Guidance. Prior to receiving federal financial assistance, FEMA requires Tribal Nations to produce and update various. These plans, outlined in Table 4 of the Interim Guidance, can be substantial burdens, especially during an emergency event. Tribal Nations must develop disaster specific PA Administrative Plans for each declared emergency or major disaster. In addition, FEMA strongly recommends annual PA Administrative Plan submission and requires Tribal Hazard Mitigation Plans be updated and resubmitted every five years. FEMA must also ensure that it is providing the necessary technical assistance and resources to Tribal Nations upon request so that these plans do not create critical delays in responding to emergencies and they appropriately address the ever-changing factors impacting disaster preparedness.

In the instance of a real-time disaster or emergency and in the absence of a Tribal Nation having a PA Administrative Plan, FEMA must ensure that any administrative barriers or hurdles are removed so that Tribal Nations quickly receive PA funds to respond to these events. While providing Tribal Nations with technical assistance is essential, it is ultimately at the whim of FEMA availability. USET SPF encourages FEMA to remove unnecessary, burdensome requirements to access FEMA programs and resources so that Tribal Nations can effectively respond to emergency and disaster events affecting our communities and citizens.

- **Support for FEMA clarifying that Tribal Nations may define who is a “Tribal community member” eligible for Individual Assistance (IA) during a disaster Declaration.** In the Interim Guidance, FEMA has confirmed that Tribal Nations have the inherent sovereign authority to determine who is a “Tribal community member” eligible to receive IA resources following a disaster Declaration. Under Appendix B of the Interim Guidance, FEMA has defined “Tribal community member” as, “anyone designated by the Tribal Nation, including but not limited to, tribal members, tribal citizens, tribal descendants, tribal employees, non-tribal members, or non-Natives.” The recognition of the inherent sovereign authority of Tribal Nations to determine who should be eligible to receive IA resources following a disaster Declaration upholds federal trust and treaty obligations and complies with Executive Order (EO) 14112. In addition, USET SPF applauds FEMA’s decision to reference EO 14112 under Chapter 1, Sec. 2 of the Interim Guidance as the basis for updating this definition as well as referencing EO 14112 as the basis for all updates to its new Interim Guidance.
- **Support for FEMA’s definition of “Tribal Nation Lands” to ensure broad service and emergency response delivery in preparation for or following an emergency or disaster**

event. USET SPF supports FEMA's decision to adopt a broad definition of "Tribal Nation Lands" under Appendix B of the Interim Guidance. This expanded definition of "Tribal Nation Lands" includes, "reservations, lands held in trust by the United States government for the Tribal Nation (trust land), dependent Indian communities, Tribal service areas, pueblo lands, ceded Tribal Nation lands, treaty lands, and for individual tribal members (allotted land), service areas, as well as land owned by the Tribal Nation or tribal community members (fee simple land)." USET SPF also appreciates FEMA's inclusion in this definition that, "this is not an exhaustive list of all tribal land types", leaving room for interpretation in the future if a Tribal Nation wishes to assert further interpretations of what constitutes "Tribal Nation Lands.

- **Support for Verbal Declaration requests from Tribal Nations.** Under Chapter 5, Sec. 1.3.4, FEMA has confirmed that—while rare—verbal requests for a disaster Declaration are permitted for events that are catastrophic or near catastrophic in nature when a written request from a Tribal Chief Executive is impractical due to the event. FEMA has stated that, following a Tribal Chief Executive's verbal request for a Declaration, the Regional Administrator will consult with the Tribal Chief Executive and complete the Regional Administrator's checklist for a verbal request for an emergency or expedited major disaster. During the consultations, the Regional Administrator is directed to obtain and record the information and commitments required to process a Declaration request under the Stafford Act. USET SPF supports FEMA's confirmation of the use of verbal Declaration requests from Tribal Nations when a catastrophic or near catastrophic event occurs that could prohibit or prolong the drafting of a written Declaration request submission to FEMA. Expediting this process through verbal communication is an effective measure to ensure that the appropriate resources are made available to respond appropriately and effectively in a timely manner during these situations.
- **Support for extending various deadlines to better reflect Tribal Nations' needs during disasters.** USET SPF applauds FEMA's decision in the Interim Guidance to extend the request for a major disaster declaration from 30 to 60 days; the request for PA or any add-ons from 30 to 60 days; and the request for an appeal to the denial of a declaration request from 30 to 60 days. These extensions provide the necessary flexibility and increased accessibility for Tribal Nations to better manage both the immediate impacts of disasters, and the longer-term planning needed to secure assistance.

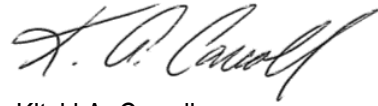
Conclusion

As we continue to pursue our efforts in Nation rebuilding and prepare for increasing natural disasters due to climate change, FEMA must take all actions necessary to fully support and provide services to Tribal Nations. This means reevaluating how FEMA reviews Tribal Nation Declaration requests and how Public Assistance and other FEMA resources are awarded to Tribal Nations. FEMA's initiative to update the 2017 Tribal Declarations Pilot Guidance is critical to implement lessons learned from the COVID-19 Public Health Emergency and streamline and improve the award process of these critical resources to Tribal Nations, especially in response to the ever-changing effects of climate change and its repercussions on our communities and citizens. USET SPF also supports and appreciates the inclusion of the directives of Executive Order 14112 as the basis for updating FEMA's Interim Guidance. Although we recognize that some policy barriers remain that preclude Tribal Nations from leveraging FEMA resources to the maximum extent possible and will require Congressional action, we anticipate that FEMA will support these efforts as a matter of upholding its trust and treaty obligations to Tribal Nations. We look forward to our continued engagement and collaboration to address these outstanding issues moving forward. 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,

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