RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Supporting United States Customs and Border Protection's Integrated Fixed
Tower Project on Nation's Lands)

RESOLUTION NO. 15-479

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

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

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

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

WHEREAS, unlike national forests, wilderness areas, and other federal lands on the
international boundary dividing the United States and Mexico (“International
Boundary”), the Nation’s reservation is not public land, and the Nation has a
duty to ensure that tribal members' interests and the Nation's jurisdiction to perform its constitutional obligations are protected; and

WHEREAS, the duty to protect Nation's lands, its jurisdiction, and members' interests, including in the Nation's dealings with the United States Customs and Border Protection ("CBP"), is consistent with the Department of Homeland Security's Tribal Consultation Policy in which, "The United States recognizes the right of Federally-recognized Indian Tribes ("Indian Tribes") to self-government. Indian Tribes exercise inherent sovereign powers over their members and territories." (DHS Tribal Consultation Policy, I.A.); and

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

WHEREAS, CBP has proposed to construct an Integrated Fixed Tower ("IFT") system on the Nation to provide long-range, persistent surveillance enabling CBP personnel to detect, track, identify, and classify illegal entries through a series of integrated sensors and tower-based surveillance equipment, and CBP has requested that the Nation consent to a grant of easement for rights of way for IFT tower sites and related roadways; and

WHEREAS, previously issued waivers of environmental laws, graves and human remains protections, and other laws issued by the Secretary of the Department of Homeland Security pursuant to section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, do not apply to the construction and operation of the IFT system, which remains subject to applicable federal and Nation's environmental, cultural resources, realty, and other applicable laws and regulations; and

WHEREAS, the Legislative Council has authorized CBP to conduct initial site visits and pre-development activities for the IFT program (Resolution No. 12-121, Resolution No. 13-142) and has authorized the construction, maintenance, and a grant of easement for a right of way for the portions of the Traditional Northern Road
and Border Fence Road lying outside of the 60-foot Roosevelt Reservation which
CBP uses to patrol the International Boundary and which provide access to
proposed IFT roads and sites (Resolutions No. 04-095, No. 14-472 and No. 14-518);
and
WHEREAS, CBP is currently finalizing IFT construction design documents, preparing a
biological assessment, drafting an environmental assessment for the Nation's
input and for public comment, will seek a concurrence letter or biological
opinion from the United States Fish and Wildlife Service, and is completing
other pre-development requirements necessary for obtaining the Nation's final
consent for the IFT grant of easement; and
WHEREAS, the Nation's Cultural Affairs, Planning, Realty, Roads, and Wildlife and
Vegetation Management staff have identified remaining environmental,
cultural, and other requirements (collectively, "IFT Conditions") CBP must
complete before the Nation's provides its consent to a grant of easement for
rights of way for the IFT project; and
WHEREAS, the IFT Conditions have been reviewed by the Domestic Affairs and Agricultural
and Natural Resources Committees, which recommend that the Nation support
the IFT project subject to completion of the necessary conditions and the
Nation's final consent to a grant of easement for rights of way within a
subsequent resolution.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council supports the
IFT Project on the Nation's lands, subject to
1. CBP's completion of the IFT Conditions;
2. the Nation's final evaluation of the IFT project;
3. negotiation and approval of compensation for related rights of way for the
   IFT project;
4. the approval and execution of a written agreement between the Nation and
   CBP that will protect Nation's lands, its jurisdiction, and members' interests;
   and
5. a resolution granting the Nation's consent for a grant of easement for rights
   of way for the IFT project.
RESOLUTION NO. 15-479
(Supporting United States Customs and Border Protection's Integrated Fixed Tower Project on Nation's Lands)
Page 4 of 5

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 08TH day of DECEMBER, 2015 at a meeting at which a quorum was present with a vote of 1,852 FOR; 1,168.95 AGAINST; 0- NOT VOTING; and 03 ABSENT, pursuant to the powers vested in the Council by Article VI, Sections 1 (f), 1(i), and 1(j) and 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

14 day of December, 2015

ATTEST:

Evonne Wilson, Legislative Secretary

14 day of December, 2015

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 14th day of December, 2015 at 4:30 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 16th day of December, 2015

[ ] DISAPPROVED

at 2:50 o'clock, P.M.

EDWARD D. MANUEL, CHAIRMAN

TOHONO O'ODHAM NATION
RESOLUTION NO. 15-479
(Supporting United States Customs and Border Protection's Integrated Fixed Tower Project on Nation's Lands)
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Returned to the Legislative Secretary on the \underline{16} day of
\underline{January}, 2015, at \underline{3:12} o'clock, \underline{p.m.}

Evonne Wilson, Legislative Secretary
RESOLUTION NO. 15-479

**ACTION:** SUPPORTING UNITED STATES CUSTOMS AND BORDER PROTECTION'S INTEGRATED FIXED TOWER PROJECT ON NATION'S LANDS

**MOVED:** COUNCILWOMAN ETHEL GARCIA

**SECOND:** COUNCILMAN BILLMAN LOPEZ

**DATE:** DECEMBER 08, 2015

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