

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing United States Customs and Border Protection to Perform Emergency
Maintenance and Repair Work on "Border Fence Road" and "Traditional Northern
Road" for an Additional Six Months Subject to Best Management
Practices and Conditions)**

RESOLUTION NO. 17-114

1 **WHEREAS, the Tohono O'odham Nation ("Nation") is a sovereign, federally recognized**
2 **Indian tribe organized pursuant to its Constitution adopted in accordance with**
3 **Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25**
4 **U.S.C. § 476); and**

5 **WHEREAS, the unallotted lands of the Tohono O'odham Nation "are a valuable public**
6 **resource and shall be held as national lands forever" (Constitution of the**
7 **Tohono O'odham Nation, Article XVI, Section 1); and**

8 **WHEREAS, the Nation's Legislative Council is vested with control and management thereof**
9 **and uses of unallotted national lands must be approved by Legislative Council**
10 **resolution, Nation's law, or a lease or other agreement authorized or approved**
11 **by the Legislative Council (Constitution, Article VI, Section 1(f) and (j)); and**

12 **WHEREAS, the duty to protect Nation's lands and resources, and its sovereignty and**
13 **jurisdiction, including in the Nation's dealings with the United States Customs**
14 **and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"),**
15 **and other agencies within the United States Department of Homeland Security**
16 **("DHS") operating on the Nation's boundary with Mexico, is consistent with the**
17 **DHS Tribal Consultation Policy in which, "The United States recognizes the right**
18 **of Federally-recognized Indian Tribes ("Indian Tribes") to self-government.**
19 **Indian Tribes exercise inherent sovereign powers over their members and**
20 **territories." DHS Tribal Consultation Policy, I.A.; and**

21 **WHEREAS, unlike national forests, wilderness areas, and other federal lands on the**
22 **international boundary dividing the United States and Mexico, the Nation's**
23 **reservation is not public land, it is reserved for the benefit of the Nation and its**
24 **members, and the Nation has a duty to ensure that tribal members' rights and**
25 **the Nation's sovereignty are protected; and**

26 **WHEREAS, in 1854 the United States created an international boundary with Mexico that**
27 **cuts through Tohono O'odham lands and that forms the 62-mile southern**
28 **boundary of the Tohono O'odham Nation's main reservation; and**

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1 **WHEREAS,** in 1907 President Theodore Roosevelt issued a Presidential Proclamation which
2 reserved a sixty-foot strip of land north of the international boundary (the
3 "Roosevelt Reservation") to be "kept free from obstruction as a protection
4 against the smuggling of goods between the United States" and Mexico
5 (Presidential Proclamation 758, 35 Stat. 2136 (May 27, 1907)); and

6 **WHEREAS,** the Tucson Sector of the United States Border Patrol ("USBP"), as part of
7 Customs and Border Protection ("CBP") of the Department of Homeland
8 Security, is responsible for securing the border along the International
9 Boundary with Mexico ("International Boundary"), including the areas in and
10 around the Nation's lands; and

11 **WHEREAS,** in 2004 the Nation authorized USBP to construct enforcement barriers and an
12 improved road that runs in proximity to the International Boundary both within
13 and outside the sixty-foot Roosevelt Reservation, which was referred to in
14 Resolution No. 04-095 as the "All-Weather Road" and which USBP agreed to
15 maintain (Resolution No. 04-095, as amended by Resolution No. 14-518); and

16 **WHEREAS,** prior to construction of the improved road along the enforcement barrier, a
17 road existed in proximity to the border, that is primarily just outside and north
18 of the Roosevelt Reservation; and

19 **WHEREAS,** by Resolution No. 14-472 and Resolution No. 14-518, the Nation agreed to
20 designate the improved road along the enforcement barrier as the "Border
21 Fence Road," and the pre-existing road to the north as the "Traditional Northern
22 Road," and those portions of the road where the Border Fence Road overlaps the
23 Traditional Northern Road as the Border Fence Road; and

24 **WHEREAS,** CBP uses both the Border Fence Road and the Traditional Northern Road to
25 patrol the international boundary; and

26 **WHEREAS,** CBP has performed a survey of the Traditional Northern Road for the purpose of
27 defining all portions of road existing outside and north of the Roosevelt
28 Reservation as described in Exhibit 1, the 70-page HDR Engineering, Inc. legal
29 description dated 5-19-14, and in Exhibit 2, the 13-page HDR Engineering, Inc.

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1 **"Record of Survey Tohono O'odham Nation/International Border All-Weather**
2 **Road" map dated 01/2014, both of which are incorporated by this reference; and**

3 **WHEREAS, CBP is in the process of seeking a right-of-way for the Traditional Northern**
4 **Road, but current road conditions require a temporary authorization for**
5 **emergency road improvement work; and**

6 **WHEREAS, by Resolution No. 14-472, the Legislative Council approved a proposal by CBP for**
7 **emergency repair and maintenance of the Border Fence Road and Traditional**
8 **Northern Road for a six-month period that expired on May 4, 2015, and by**
9 **Resolution No. 15-478 extended the repair and maintenance authority until June**
10 **14, 2016, and by Resolution No. 16-283 extended the repair and maintenance**
11 **authority for an additional six months until January 18, 2017; and**

12 **WHEREAS, the Domestic Affairs, Cultural Preservation, and Agricultural and Natural**
13 **Resources Committees recommend that the Nation extend the emergency repair**
14 **and maintenance authority granted to CBP by Resolution No. 14-472, Resolution**
15 **No. 15-478, and Resolution No. 16-283 for an additional six months; provided**
16 **that CBP comply with best management practices and conditions set by the**
17 **Nation.**

18 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it**
19 **authorizes CBP to perform emergency repair and maintenance of the Border**
20 **Fence Road and Traditional Northern Road for an additional six months until**
21 **September 15, 2017; provided that:**

- 22 **1. CBP shall comply with the attached Best Management Practices**
23 **developed for the (unpublished) Final Environmental Assessment For**
24 **Integrated Fixed Towers On The Tohono O'odham Nation In The Ajo And**
25 **Casa Grande Stations' Areas Of Responsibility U.S. Border Patrol Tucson**
26 **Sector, Arizona U.S. Customs And Border Protection Department Of**
27 **Homeland Security Washington, D.C (IFT Final Environmental**
28 **Assessment), which are incorporated by this reference.**
29

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- 1 2. **Use.** CBP will not interfere with the use of the Border Fence Road and
- 2 **Traditional Northern Road by Nation's members, and employees, and**
- 3 **agents except as necessary to conduct maintenance and repairs.**
- 4 3. **Indian preference.** To the extent permitted by federal procurement
- 5 **statutes and regulations, CBP and its contractors and agents shall provide**
- 6 **Indian preference in accordance with 13 Tohono O'odham Code Chapter 1**
- 7 **- Tribal Employment Rights.**
- 8 4. **Continuing tribal jurisdiction.** CBP's use, maintenance, and repair will not
- 9 **diminish to any extent, with respect to the portions of the Border Fence**
- 10 **Road and Traditional Northern Road that are outside of the Roosevelt**
- 11 **Reservation, the following:**
- 12 (A) **The Nation's jurisdiction over the land subject to, and any person**
- 13 **or activity within the Border Fence Road and Traditional Northern**
- 14 **Road;**
- 15 (B) **The power of the Nation to tax the land, any improvements on the**
- 16 **land, or any person or activity within the Border Fence Road and**
- 17 **Traditional Northern Road;**
- 18 (C) **The Nation's authority to enforce tribal law of general or**
- 19 **particular application on the land subject to and within the**
- 20 **Border Fence Road and Traditional Northern Road;**
- 21 (D) **The Nation's inherent sovereign power to exercise civil**
- 22 **jurisdiction over nonmembers on Indian land; or**
- 23 (E) **The character of the land in or near the Border Fence Road and**
- 24 **Traditional Northern Road as Indian country under 18 U.S.C. 1151.**

25 **BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that this resolution does

26 **not approve the proposed Integrated Fixed Towers project, consent to any**

27 **easement or right-of-way, or adopt or approve the IFT Final Environmental**

28 **Assessment.**

29

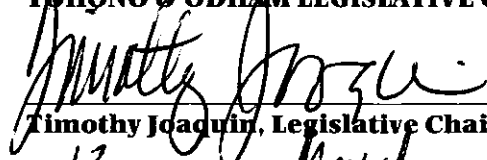
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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09TH day of MARCH, 2017 at a meeting at which a quorum was present with a vote of 2,815.6 FOR; -0- AGAINST; -0- NOT VOTING; and 205.8[08] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c)(2),(f)and(j); Article XVI, Section 1 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
13 day of March, 2017

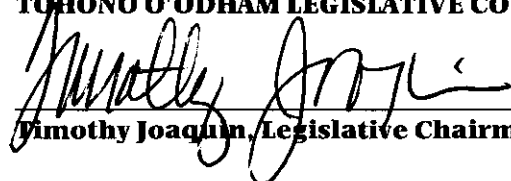
ATTEST:



Evonne Wilson, Legislative Secretary
13 day of March, 2017

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 13 day of March, 2017 at 10:14 o'clock, a.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 14 day of March, 2017

DISAPPROVED

at 6:43 o'clock, p.m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 15 day of
March, 2017, at 9:45 o'clock, a.m.

Evonne Wilson
Evonne Wilson, Legislative Secretary

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ACTION: AUTHORIZING UNITED STATES CUSTOMS AND BORDER PROTECTION TO PERFORM EMERGENCY MAINTENANCE AND REPAIR WORK ON "BORDER FENCE ROAD" AND "TRADITIONAL NORTHERN ROAD" FOR AN ADDITIONAL SIX MONTHS SUBJECT TO BEST MANAGEMENT PRACTICES AND CONDITIONS

Moved: COUNCILWOMAN ETHEL GARCIA

SECOND: COUNCILMAN BILLMAN LOPEZ

DATE: MARCH 09, 2017

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (Roberta E. Harvey)	183.60	X			X
	2. VERNON J. SMITH (Gloria Zazueta)	183.60	X			
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marla Kay Henry)	166.05	X			
	2. BILLMAN LOPEZ (Patricia Vicenti)	166.05	X			
GUACHI 265.0	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	132.50	X			
	2. LORETTA LEWIS ()	132.50	X			X
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.30	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	125.30	X			X
HICKIWAN 205.8	1. LOUIS R. LOPEZ (Shirley Molina)	102.90				X
	2. SANDRA ORTEGA ()	102.90				X
PISINEMO 219.9	1. CHESTER ANTONE (<i>Absent</i>) (Caroline D. Garcia) (<i>Present</i>)	109.95	X			
	2. MONICA K. MORGAN ()	109.95	X			X
SAN LUCY 226.5	1. DIANA MANUEL (Lorraine Eiler)	113.25	X			
	2. JANA MONTANA (Gloria Ramirez)	113.25	X			
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III (Felicia Nunez)	114.3	X			
	2. RACHEAL VILSON-STONER (<i>Absent</i>) (Olivia Villegas-Liston) (<i>Present</i>)	114.3	X			X
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. ()	90.3	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.3	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER (<i>Absent</i>) (Idaleen Reyes) (<i>Present</i>)	256.75	X			
SIF OIDAK 231.6	1. LUCINDA ALLEN ()	115.80	X			
	2. MARY LOPEZ ()	115.80	X			X
TOTAL		3,021.4	2,815.6	-0-	-0-	205.8 [08]