RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL (Requesting that the Bureau of Indian Affairs Initiate Proceedings to Cancel the Kitt Peak Lease)

RESOLUTION NO. <u>05-130</u>

1	WHEREAS,	the National Science Foundation has subleased land within the Kitt Peak lease
2		entered into on October 24, 1958 to the Smithsonian Institution Astrophysical
3		Observatory for the purpose of construction of a new facility called the Very
4		Energetic Radiation Imaging Telescoping Array System ("VERITAS"); and
5	WHEREAS,	the Smithsonian Institution and the National Science Foundation have begun
6		${\bf construction}\ of\ the\ VERITAS\ facility\ without\ complying\ with\ the\ requirements\ of$
7		Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f as
8		amended, and 36 CFR Part 800), which deals with identification of traditional
9		cultural properties, including sacred sites, prior to construction of federal
10		${\bf under} takings, followed \ by \ consultation \ with \ the \ State \ Historic \ Preservation \ Of fice$
11		and the Indian tribe on whose land the proposed project is located, regarding
12		possiblestepswhichcanbetakentoavoid, lessenormitigateanyadverseimpacts
13		on the traditional cultural property; and
14	WHEREAS,	the SmithsonianInstitutionandtheNationalScienceFoundationhavealsofailed
15		to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., and comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., and comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., and comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act of 1969 (42 U.S.C. 4321 et seq., and comply act comply act act
16		as amended) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
17	WHEREAS,	$these \ failures \ to \ comply \ are \ violations \ of \ federal \ law \ and \ are \ therefore \ a \ breach \ of$
18		the Tohono O'odham Nation's lease to the National Science Foundation, in
19		particular paragraph 13 on unlawful conduct, which states that "Lessee shall not
20		use or permit the use of any portion of the leased premises for any unlawful
21		purpose whatsoever"; and
22	WHEREAS,	this breach of the lease subjects the lease to cancellation by the Bureau of Indian
23		Affairs under the provisions of 25 CFR Part 162; and
24	WHEREAS,	the Bureau of Indian Affairs notified the National Science Foundation of the
25		possible cancellation of the lease by letter dated February 11, 2005; and
26	WHEREAS,	the Tohono O'odham Nation, by letters dated December 22, 2004 and January 27,
27		2005 requested that the National Science Foundation halt construction on the
28		VERITAS project for 60 days and complete the consultation and review process
29		mandated by the National Historic Preservation Act, the Endangered Species Act
30		and the National Environmental Policy Act; and
31	WHEREAS,	the ArizonaStateHistoricPreservationOffice, by lettersdatedDecember17, 2004,
32		and February 2, 2005, supported the Tohono O'odham Nation, recommended that

	RESOLUTION (Requesting the Page 2 of 3	NO. <u>05-130</u> hat the Bureau of Indian Affairs Initiate Proceedings to Cancel the Kitt Peak Lease)
1		the National Science Foundation stop construction in order to come into
2		compliance with the federal laws, and requested that the Arizona State Historic
3		Preservation Office be given an opportunity to review and comment on the impact
4		of the federal undertaking; and
5	WHEREAS,	the Schuk Toak District Council, at a special meeting on March 7, 2005, supported
6		requesting that the Bureau of Indian Affairs move forward with termination of the
7		Kitt Peak lease; and
8	WHEREAS,	the Legislative Council previously passed Resolution No. 05-102 which took the
9		position that construction on the VERITAS project should be halted and actions
10		should be taken to revise or withdraw the 1958 lease to the National Science
11		Foundation.
12	NOW, THERE	FORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:
13		1. Objects to the unlawful conduct that has caused a breach of the Kitt Peak
14		lease to occur, and finds that the National Science Foundation appears to be
15		unwilling to cure the breach, and therefore the Nation hereby requests that
16		the Bureau of Indian Affairs initiate proceedings to cancel the Kitt Peak lease
17		under the provisions of 25 CFR Part 162.
18		${\bf 2.} {\bf ContinuestotakethepositionthatconstructionoftheVERITASprojectshould}$
19		be permanently halted, as earlier expressed in Resolution No. 05-102.
20		3. Urges all federal and state agencies, including the Bureau of Indian Affairs,
21		the Arizona State Historic Preservation Office, and the Advisory Council on
22		Historic Preservation, to do all within their power to permanently halt
23		construction of the VERITAS project.
24 25 26 27 28 29 30	of MARCH 20 AGAINST; -0- Section 1 (i) of Tohono O'Od	g Resolution was passed by the Tohono O'Odham Legislative Council on the <u>09th Day 05</u> at a meeting at which a quorum was present with a vote of <u>2,196.8</u> FOR; <u>432.9</u> NOT VOTING; and <u>[03] ABSENT</u> , pursuant to the powers vested in the Council by of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the lham Nation on January 18, 1986; and approved by the Acting Deputy Assistant dian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June tat. 984).
31 32 33 34 35 36 37 38 39		TOHONO O'ODHAM LEGISLATIVE COUNCIL Jesus au man Isidro Lopez, Legislative Chairman 15 day of

	RESOLUTION NO. <u>05-130</u> (Requesting that the Bureau of Indian Affairs Initiate Proceedings to Cancel the Kitt Peak Lease)
	Page 3 of 3
1	ATTEST:
2	
3	SMMW Styles
4	Lucille Lopez, Acting Legislative Secretary
5	15 ¹¹ day of <u>Manh</u> , 2005.
6	day of $//M/$, 2005.
7 8	
9	Said Resolution was submitted for approval to the office of the Chairman of the Tohono
10	O'Odham Nation on the/5 day of// Week, 2005 at _3:58 o'clock,M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
11	upon his approval or upon his failure to either approve or disapprove it within 48 hours of
12	submittal.
13	
14	TOHONO O'ODHAM LEGISLATIVE COUNCIL
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16	1 Jeling Mi Danin
17	for Isidro Lopez, Legislative Chairman
18	\mathcal{C}
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20	17
21	[APPROVED on the 17 day of MMM, 2005
22 23	[] DISAPPROVED at 12'.(72 o'clock, 1/2 .M.
24	
25 26	/ / / LIVE AND BUILD AND AND AND AND AND AND AND AND AND AN
27	VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
28	TOHONO O'ODHAM NATION
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33	Returned to the Legislative Secretary on the day of
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38	Juni Fore
39	Lucille Lopez, Acting Legislative Secretary
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ACTION: REQUESTING THAT THE BUREAU OF INDIAN AFFAIRS INITIATE PROCEEDINGS TO CANCEL THE KITT

PEAK LEASE

MOVED: COUNCILWOMAN FRANCES CONDE

SECOND: COUNCILWOMAN PHYLLIS JUAN

DATE: MARCH 09, 2005

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 192.6	ISIDRO LOPEZ (Nicholas Jose) DARLENE ANDREW (Rita Martinez)	96.30 96.30	Х	x		
SELLS 465.6	1. DENNIS E. JOSE () 2. EVELYN JUAN	232.80	x x			x
SCHUK TOAK 176.1	1. FRANCES B. CONDE () 2. PHYLLIS JUAN	88.05 88.05	x x			
SAN XAVIER 215.4	FELICIA NUÑEZ (Olivia Liston-Villegas) DENNIS RAMON (Eleanor Hunter)	107.70 107.70	x x			
SAN LUCY 166.3	1. JOHN W. LAWSON, SR. () 2. GLORIA RAMIREZ ()	83.15 83.15		x x		
PISINEMO 175.4	1. BARBARA SALVICIO () 2. PATRICIA CRUZ ()	87.70 87.70	x x			
HICKIWAN 170.3	1. DELMA GARCIA (Mary E. Sam) 2. SANDRA ORTEGA ()	85.15 85.15		x x		x
GU VO 191.4	1. RAYMOND VICTOR () 2. MICHAEL FLORES (Willard Manuel)	95.70 95.70	X X			
GU ACHI 253.6	TIMOTHY L. JOAQUIN (Jonas Robles) JEROME JOAQUIN (Roberta Picard)	126.80 126.80	x x			
CHUKUT KUK 258.9	KENNETH WILLIAMS (Juanita Homer) VERLON M. JOSE (David Garcia)	129.45 129.45	x x			x
BABOQUIVARI 364.1	1. FRANCES MIGUEL (Lucilda Norris-Valenzula) 2. FRANCES G. ANTONE ()	182.05 182. 05	X X			
	TOTAL	2,629.7	2,196.8	432.9	-0-	[03]