

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Rescinding Resolution No. 07-056 and Approving National Historic Preservation Act Section
106 Memorandum of Agreement (MOA) Among The U.S. Customs and Border Protection,
Bureau of Indian Affairs, The Tohono O'odham Nation and the State Historic
Preservation Officer Regarding Mitigation for Adverse Affects To Cultural
Resource Along the International Border on the Tohono O'odham Nation)

RESOLUTION NO. 07-175

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to "administer land**
2 **and other public property, and by law, ordinance or resolution...to manage, protect,**
3 **preserve and regulate the use of property, wildlife, land, air and natural resources**
4 **of the Tohono O'odham Nation" and the power to consult "appropriate federal**
5 **agencies regarding federal activities that affect the Tohono O'odham Nation"**
6 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(i)(2) and 1(j); and**
7 **WHEREAS, pursuant to Resolution 04-095, the Tohono O'odham Legislative Council did support**
8 **"the USBP's border vehicle barrier and all weather road construction proposal along**
9 **the entire International Boundary within the Nation's lands, and supports**
10 **Congressional appropriation for the project, " subject to several conditions,**
11 **including that " the design of the border vehicle barriers and the all- weather road**
12 **is subject to the approval of the Nation", and**
13 **WHEREAS, pursuant to Resolution 06-465, the Tohono O'odham Legislative Council did "reaffirm**
14 **its support for the USBP's border vehicle barrier and all-weather road construction**
15 **project along the International Boundary within the Nation's lands" and "approves**
16 **the use of 1) Bollard-style, corral (rail-on-rail), and /or temporary (Normandy) fencing**
17 **in the design and construction of the USBP's border vehicle barrier as appropriate**
18 **pending upon factors including the location of washes, archaeological sites,**
19 **mountainous areas and areas deemed biologically sensitive to the Nation, etc. and**
20 **2) cable and/or barbed wire fencing to augment the vehicle barrier to prevent cattle**
21 **rustling and keep undesirable livestock from entering the United States;" and**
22 **WHEREAS, the Chukut Kuk District pursuant to Resolutions No. 2003-18 and No 2003-57 and the**
23 **Gu Vo District, pursuant to Resolution No. GV03-80, previously expressed their**
24 **support for the border vehicle barrier and the all-weather road project as well as**
25 **preference for the "corral fence" or "rail-on-rail" design of the barrier; and**
26 **WHEREAS, the Chukut Kuk District pursuant to Resolution No. 2006-35 and the Gu Vo District**
27 **pursuant to Resolution No. GV03-80 as amended by Resolution No. GV06-082 have**
28 **expressed their support for the installation of a variety of barriers; and**

RESOLUTION NO. 07-175

(Rescinding Resolution No. 07-056 and Approving National Historic Preservation Act Section 106 Memorandum of Agreement (MOA) Among The U.S. Customs and Border Protection, Bureau of Indian Affairs, The Tohono O'odham Nation and the State Historic Preservation Officer Regarding Mitigation for Adverse Affects To Cultural Resources Along the International Border on the Tohono O'odham Nation)

Page 2 of 5

- 1 **WHEREAS, the Tohono O'odham and their ancestors, the Archaic Period peoples and the**
2 **Hohokam have inhabited Southern Arizona since time immemorial; and**
- 3 **WHEREAS, the Tohono O'odham Nation recognizes the need to protect, preserve and manage**
4 **cultural resources on its lands; and**
- 5 **WHEREAS, the Tohono O'odham Legislative Council passed the Archaeological Resource**
6 **Protection Ordinance (06-84) in 1984 for "the protection and preservation of**
7 **archaeological resources historically associated with traditional or sacred values**
8 **and beliefs important to the O'odham, and of the physical site, location or context in**
9 **which archaeological resources are found" and directs in Section 3(c) that "the**
10 **Chairman is hereby designated as the official to receive notification of any**
11 **archaeological permit applications or of any archaeological or environmental**
12 **impact or activities required to be given to the Papago Tribe pursuant to Federal Acts**
13 **or regulations promulgated pursuant thereto," and in Section 3(d) defines Federal**
14 **Acts has including the "Act of October 15, 1966, as amended, the National Historic**
15 **Preservation Act of 1966" (16 U.S.C. 470 a-t; 36 CFR Part 800); and**
- 16 **WHEREAS, the U.S. Customs and Border Protection (USCBP) proposes to install permanent**
17 **vehicle barriers along the International Border between the United States and**
18 **Mexico, spanning the southern boundary of the Tohono O'odham Nation and that the**
19 **USCBP has conducted cultural resource surveys of 650 acres that will be impacted**
20 **by the project and have determined the Area of Potential Effect (APE) to include a 20-**
21 **foot wide corridor that is adjacent and parallel to the International Border for the**
22 **installation of 50 miles of vehicle barriers, 70 miles of existing border road and 11**
23 **miles of existing access roads, 35 miles of primitive 2-track trails, 0.5 miles of**
24 **temporary construction vehicle turn around locations, and 0.2 miles of permanent**
25 **vehicle turn around locations; and**
- 26 **WHEREAS, USCBP has determined that the installation of the permanent vehicle barrier will**
27 **have an adverse effect on ten historic properties eligible for listing on the National**
28 **Register of Historic Places (NRHP) (SON C:2:47 (ASM), SON C:3:10 (ASM), SON C:7:14**
29 **(ASM), SON C:8:24 (ASM), SON C:8:7 (ASM), SON C:8:33 (ASM), SON C:8:34 (ASM), AZ**
30 **DD:6:26 (ASM), AZ DD:6:25 (ASM) and AZ DD:6:29 (ASM) and has consulted with the**

RESOLUTION NO. 07-175

(Rescinding Resolution No. 07-056 and Approving National Historic Preservation Act Section 106 Memorandum of Agreement (MOA) Among The U.S. Customs and Border Protection, Bureau of Indian Affairs, The Tohono O'odham Nation and the State Historic Preservation Officer Regarding Mitigation for Adverse Affects To Cultural Resources Along the International Border on the Tohono O'odham Nation)

Page 3 of 5

1 **Tohono O'odham Nation and Arizona State Historic Preservation Office (SHPO)**
2 **pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended**
3 **(NHPA) (16 U.S.C. 470f et seq.) and its implementing regulations (36 C.F.R. Part 800);**
4 **and**

5 **WHEREAS, in order to mitigate the adverse effect on these ten archaeological sites, an Historic**
6 **Property Treatment Plan (HPTP) was developed by Gulf South and Northland**
7 **Research (archaeological contractors for the USCBP). The Tohono O'odham Nation**
8 **has been provided with copies of the HPTP and this plan has been reviewed, edited**
9 **and approved by the Cultural Affairs Office of the Tohono O'odham Nation; and**

10 **WHEREAS, the Memorandum of Agreement (MOA) between the Tohono O'odham Nation, USCBP,**
11 **SHPO and the Bureau of Indian Affairs that authorizes the implementation of the**
12 **HPTP has been reviewed, edited and approved by the Attorney General's Office of the**
13 **Tohono O'odham Nation; and**

14 **WHEREAS, the MOA was previously approved by the Legislative Council, pursuant to Resolution**
15 **No. 07-056, the MOA has since been modified, with agreement of all parties, by**
16 **deleting the sentence regarding the Secretary of Homeland Security's authority to**
17 **waive legal requirements to ensure expeditious construction of barriers and roads**
18 **under P.L. 109-13 § 102 and adding language previously recommended by the Office**
19 **of Attorney General and accepted by the Cultural Affairs Office but not incorporated**
20 **into the MOA.**

21 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council does hereby:**

- 22 **1. Rescind Resolution No. 07-056.**
23 **2. Approves the Memorandum of Agreement substantially in the form attached**
24 **hereto and authorizes the implementation of the Historic Properties Treatment**
25 **Plan to mitigate the adverse effect on ten archaeological sites (located within**
26 **USCBP vehicle barrier fence construction project) pursuant to Section 106 of the**
27 **National Historic Preservation Act and authorizes and directs the Chairwoman**
28 **of the Tohono O'odham Nation to sign the MOA.**

29
30

RESOLUTION NO. 07-175

(Rescinding Resolution No. 07-056 and Approving National Historic Preservation Act Section 106 Memorandum of Agreement (MOA) Among The U.S. Customs and Border Protection, Bureau of Indian Affairs, The Tohono O'odham Nation and the State Historic Preservation Officer Regarding Mitigation for Adverse Affects To Cultural Resources Along the International Border on the Tohono O'odham Nation)

Page 4 of 5

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND. Day of MARCH, 2007 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0- AGAINST; -0- NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by Section 1 (d)(2)&(3) of Article VI 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



Verlon M. Jose, Legislative Chairman

23 day of March, 2007

ATTEST:



Lucille Lopez, Acting Legislative Secretary

22 day of March, 2007.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 23 day of March, 2007 at 5:01 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



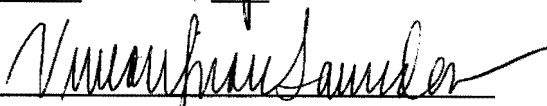
Verlon M. Jose, Legislative Chairman

APPROVED

on the 25 day of March, 2007

DISAPPROVED

at 7:25 o'clock, P.M.



VIVIAN JUAN-SAUNDERS, CHAIRWOMAN

TOHONO O'ODHAM NATION

RESOLUTION NO. 07-175

(Rescinding Resolution No. 07-056 and Approving National Historic Preservation Act Section 106 Memorandum of Agreement (MOA) Among The U.S. Customs and Border Protection, Bureau of Indian Affairs, The Tohono O'odham Nation and the State Historic Preservation Officer Regarding Mitigation for Adverse Affects To Cultural Resources Along the International Border on the Tohono O'odham Nation)

Page 5 of 5

1 Returned to the Legislative Secretary on the 26 day of

2
3 March, 2007, at 11:23 o'clock, A.M.

4
5 Gumie Lopez
6 **Lucille Lopez, Acting Legislative Secretary**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

ACTION: RESCINDING RESOLUTION NO. 07-056 AND APPROVING NATIONAL HISTORIC PRESERVATION ACT SECTION 106 MEMORANDUM OF AGREEMENT (MOA) AMONG THE U.S. CUSTOMS AND BORDER PROTECTION, BUREAU OF INDIAN AFFAIRS, THE TOHONO O'ODHAM NATION AND THE STATE HISTORIC PRESERVATION OFFICER REGARDING MITIGATION FOR ADVERSE AFFECTS TO CULTURAL RESOURCES ALONG THE INTERNATIONAL BORDER ON THE TOHONO O'ODHAM NATION

MOVED: COUNCILWOMAN EVELYN JUAN MANUEL

SECOND: COUNCILMAN TIMOTHY JOAQUIN

DATE: MARCH 22, 2007

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (<i>Absent</i>) (Vernon J. Smith) (<i>Present</i>)	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			
	2. VERLON M. JOSE (David Garcia)	129.35	X			
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	110.80	X			X
GU VO 193.1	1. RAYMOND VICTOR ()	96.55	X			
	2. MICHAEL FLORES (Grace Manuel)	96.55	X			
HICKIWAN 167.4	1. SHIRLEY SANTOS-MOLINA ()	83.70	X			
	2. SANDRA ORTEGA ()	83.70	X			X
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90	X			
	2. GERALD FAYUANT ()	85.90	X			
SAN LUCY 169.0	1. LORRAINE EILER ()	84.50	X			
	2. GLORIA RAMIREZ ()	84.50	X			
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45	X			X
	2. PHYLLIS JUAN ()	73.45	X			
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50	X			
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50	X			
SIF Oidak 186.7	1. WAVALENE ROMERO (Isidro Lopez)	93.35	X			X
	2. DARLENE ANDREW (Rita Wilson)	93.35	X			
TOTAL		2,440.80	2,440.80	-0-	-0-	[05]

****PASSED VOTES**