

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Supporting Repeal of Secure Fence Act and Requiring DHS Secretary to Consult and Coordinate with Tribes in Jointly Developing a Border Strategy for Tribal Lands along the United States' International Borders)

RESOLUTION NO. 08-062

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 the property, wildlife, land, air and natural resources**
4 **(including surface and ground waters) of the Tohono O'odham Nation" and the power**
5 **to consult "appropriate federal agencies regarding federal activities that affect the**
6 **Tohono O'odham Nation" (Constitution of the Tohono O'odham Nation, Article VI,**
7 **Section 1(i)(2) and 1(j)); and**

8 **WHEREAS, in response to the 9-11 attacks, the federal government has pursued an aggressive**
9 **homeland security plan, a key component of which is to secure the United States'**
10 **international borders; and**

11 **WHEREAS, such planning has focused on the border with Mexico, as demonstrated by the**
12 **enactment of the Secure Fence Act of 2006, Public Law 109-367, which mandates the**
13 **Department of Homeland Security ("DHS") to construct over 700 miles of two-layer**
14 **reinforced fencing in California, Arizona, New Mexico and Texas, including fencing**
15 **across tribal lands and tribal historic and culturally sensitive sites; and**

16 **WHEREAS, as has been the case with other homeland security initiatives and in violation of tribal**
17 **consultation mandated by Executive Order 13175, Indian tribes have not been**
18 **consulted on the implementation of the Secure Fence Act; and**

19 **WHEREAS, in its January 2008 responses to the tribal comments on the REAL ID Act Final Rule, the**
20 **DHS stated that "DHS does not believe that the tribal consultation obligations**
21 **required by Executive Order 13175 were triggered in this rulemaking" despite the fact**
22 **that the DHS refuses to recognize official tribal identification for REAL ID purposes**
23 **and such ID may ultimately be required to cross U.S. land borders (Minimum**
24 **Standards for Driver's Licenses and Identification Cards Acceptable by Federal**
25 **Agencies for Official Purposes 73 Fed. Reg. 5271 (Jan. 29, 2008)); and**

26 **WHEREAS, the lack of consultation and coordination with Indian tribes and tribal law**
27 **enforcement agencies is a continuation of outdated and discredited policies that**
28 **resulted in the creation of the existing international boundary with Mexico in 1854**
29 **without the consent or involvement of Indian tribes on the border; and**

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1 **WHEREAS, the border now divides many tribal communities, separates tribal members from**
2 **cultural sites and ceremonies, and blocks access to much needed health care,**
3 **housing, transportation and other governmental services; and**

4 **WHEREAS, recently, the DHS Secretary has asserted authority under Section 102 of the REAL ID**
5 **Act to waive all applicable federal, state, and tribal laws in the construction of the**
6 **fencing without any judicial review of these waivers; and**

7 **WHEREAS, building border fencing without environmental, endangered species, archeological,**
8 **or other protections found in such laws will result in the disturbance or destruction**
9 **of numerous tribal archeological and sacred sites, human remains, wildlife, water,**
10 **and natural resources; and**

11 **WHEREAS, in addition to tribal concerns, many non-Indian border communities oppose the**
12 **implementation of the Secure Fence Act, the resulting takings of private lands, and the**
13 **construction of the fence itself; and**

14 **WHEREAS, in recognition of the many flaws in the Secure Fence Act and its implementation by**
15 **DHS, Congressman Raul Grijalva has introduced H.R. 2593, a bill to repeal the Act; and**

16 **WHEREAS, on January 18, 2008, the Inter Tribal Council of Arizona enacted a resolution**
17 **supporting the Act's repeal and also supporting DHS consultation with Indian tribes**
18 **on a border strategy for tribal lands (ITCA Resolution 0801).**

19 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Nation supports H.R. 2593 and other**
20 **legislation that would**

- 21 **(1) repeal the Secure Fence Act;**
22 **(2) repeal the DHS Secretary's authority to waive federal, state, and tribal laws;**
23 **(3) require the DHS Secretary to consult and coordinate with tribal officials in jointly**
24 **developing a border strategy for tribal lands along the United States' international**
25 **borders with Mexico and Canada; and**
26 **(4) mandate meaningful and timely consultation and coordination with tribes in**
27 **jointly developing a border strategy for tribal lands along the United States'**
28 **international borders with Mexico and Canada.**

29 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and directs its**
30 **delegation to the National Congress of American Indians ("NCAI") 2008 Executive**
31 **Council Winter Session to submit this resolution to the NCAI for its approval.**

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1 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 07TH. Day
2 of FEBRUARY, 2008 at a meeting at which a quorum was present with a vote of 2,534.5 FOR; -0-
3 AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by
4 Section 1 (i)(2) and 1(j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by
5 the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
6 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
7 18, 1934 (48 Stat. 984).
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TOHONO O'ODHAM LEGISLATIVE COUNCIL

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12 _____
13 Verlon M. Jose, Legislative Chairman
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15 8 day of February, 2008
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17 ATTEST:

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20 _____
21 Lucille Lopez, Acting Legislative Secretary
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23 07 day of February, 2008.
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25 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham
26 Nation on the 8 day of February, 2008 at 12:17 o'clock, p..M.,
27 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
28 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
29 submittal.
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31 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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35 Verlon M. Jose, Legislative Chairman
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39 APPROVED on the 8 day of February, 2008
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41 DISAPPROVED at 4:55 o'clock, p..M.
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46 NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 08 day of

May, 2008, at 5:07 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: SUPPORTING REPEAL OF SECURE FENCE ACT AND REQUIRING DHS SECRETARY TO CONSULT AND COORDINATE WITH TRIBES IN JOINTLY DEVELOPING A BORDER STRATEGY FOR TRIBAL LANDS ALONG THE UNITED STATES' INTERNATIONAL BORDERS

MOVED: COUNCILMAN TIMOTHY JOAQUIN

SECOND: COUNCILWOMAN CYNTHIA MANUEL

DATE: FEBRUARY 07, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			
CHUKUT KUK 264.8	1. ETHEL GARCIA ** ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ()	113.95	X			
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			X
	2. MICHAEL FLORES ()	99.60	X			
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE ()	91.20	X			
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55	X			
	2. GLORIA RAMIREZ ()	90.55	X			
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
SCHUK TOAK 154.6	1. FRANCES B. CONDE <i>(Absent)</i> (Frederick Jose) <i>(Present)</i>	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
SELLS 444.7	1. KIMBERLY LISTO ()	222.35	X			
	2. EVELYN B. JUAN MANUEL ()	222.35	X			X
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			
TOTAL		2,534.5	2,534.5	-0-	-0-	[02]

**PASSED VOTES