

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Supporting Completion of the Vehicle Barrier Project, Reaffirming Opposition to  
the Department of Homeland Security Secretary's Waiver Authority and Opposing  
Noncompliance with Environmental, Cultural Protection, and Other Laws)**

**RESOLUTION NO. 08-705**

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

8 **WHEREAS, Customs and Border Protection ("CBP") is responsible for enforcing homeland**  
9 **security within the United States of America, including the Tohono O'odham Nation**  
10 **("Nation") lands along the international boundary with Mexico; and**

11 **WHEREAS, the Tohono O'odham Legislative Council approved of CBP's construction of a**  
12 **permanent vehicle barrier along the entire international boundary within the**  
13 **Nation's lands, subject to conditions outlined in Resolution No. 04-095; and**

14 **WHEREAS, one of the conditions outlined in Resolution No. 04-095 requires that the CBP**  
15 **"perform cultural resource clearance and fully comply with the National**  
16 **Environmental Policy Act"; and**

17 **WHEREAS, the final environmental assessment, prepared in accordance with the National**  
18 **Environmental Policy Act, by CBP "for the Installation of Permanent Vehicle Barriers**  
19 **on the Tohono O'odham Nation" was issued on October 2006; and**

20 **WHEREAS, the Tohono O'odham Nation's initial support for vehicle barriers was predicated on**  
21 **the adverse economic effects, increased property damage, violent crime, and**  
22 **harassment of members of the Nation from increased illegal immigration traffic and**  
23 **drug smuggling, and to protect the safety and well-being of the Nation's members**  
24 **(Resolution No. 04-095); and**

25 **WHEREAS, the Nation's support for vehicle barriers was conditioned on observance of and**  
26 **adherence to the legal protections afforded by the National Environmental Policy Act,**  
27 **the Endangered Species Act, the Federal Water Pollution Control Act, the National**  
28 **Historic Preservation Act, and the Migratory Bird Treaty Act, and additional laws; and**

29 **WHEREAS, on April 1, 2008, the Department of Homeland Security Secretary ("Secretary"), with**

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1 authority from Section 102(c) of the Illegal Immigration Reform and Immigrant  
2 Responsibility Act ("IIRIRA"), waived specified and unspecified laws and regulations  
3 protecting endangered species, archeological, and other environmental and cultural  
4 sites; and

5 **WHEREAS, Customs and Border Protection presented the Domestic Affairs, Natural Resources,**  
6 **and Cultural Preservation Committees with a "final" version of the Environmental**  
7 **Stewardship Plan ("ESP") to assess the environmental and cultural consequences of**  
8 **vehicle barrier construction at the international border in three separate areas, DV-**  
9 **2, DV-3B, and DV-4C; and**

10 **WHEREAS, the "final" version of the ESP presented to the Domestic Affairs, Natural Resources,**  
11 **and Cultural Preservation Committees did not incorporate any substantial changes**  
12 **formally suggested by the Nation's Natural Resources Department; and**

13 **WHEREAS, the ESP is not grounded in any federal law or regulation, lacks environmental,**  
14 **endangered species, and archeological legal protections, and arises from the**  
15 **Secretary's 102(c) waiver; and**

16 **WHEREAS, support for the ESP would be contradictory to the Nation's opposition to the**  
17 **Secretary's wide-ranging authority to waive all legal protections in order to construct**  
18 **the vehicle barrier (Resolution No. 08-062).**

19 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council reaffirms its**  
20 **support for the continued construction of a vehicle barrier to protect the safety and**  
21 **well-being of its members, subject to the following conditions:**

22 **(1) that CBP and its contractors consult and coordinate with the Nation's Cultural**  
23 **Affairs Office, Wildlife and Vegetation Management Program, and Water**  
24 **Resources Department to avoid damage to cultural sites or interruption of**  
25 **traditional ceremonies or celebrations, damage to biological resources, or**  
26 **adverse impacts from surface waters;**

27 **(2) that CBP and its contractors respect the Nation's members' human and civil**  
28 **rights and respond in a timely manner to concerns regarding these issues;**

29 **(3) that CBP and its contractors construct the vehicle barriers in a manner that**

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1                   **minimizes any environmental impacts by avoiding the destruction of vegetation,**  
2                   **littering, or otherwise injuring the Nation's lands, and in accordance with the**  
3                   **National Environmental Policy Act; and**  
4                   **(4) that CBP and its contractors comply with all laws waived by the Department of**  
5                   **Homeland Security Secretary.**

6 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council does not accept the ESP**  
7                   **as a legally sufficient document from which to base decisions regarding construction**  
8                   **of the project.**

9 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council continues to oppose the**  
10                   **Department of Homeland Security Secretary's waiver authority from Section 102(c)**  
11                   **of the Illegal Immigration Reform and Immigrant Responsibility Act and supports its**  
12                   **repeal by the United States Congress.**

13 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05<sup>TH</sup>. Day**  
14 **of DECEMBER, 2008 at a meeting at which a quorum was present with a vote of 1,979.95 FOR; 554.55**  
15 **AGAINST; -0- NOT VOTING; and [08] ABSENT, pursuant to the powers vested in the Council by**  
16 **Section 1 (i)(2) and (j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by**  
17 **the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**  
18 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**  
19 **18, 1934 (48 Stat. 984).**

20  
21 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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24   
25 **Verlon M. Jose, Legislative Chairman**  
26  
27 10<sup>th</sup> day of December, 2008

28 **ATTEST:**

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32 **Lucille Lopez, Acting Legislative Secretary**

33  
34 15 day of December, 2008.

35  
36 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**  
37 **Nation on the 11<sup>th</sup> day of December, 2008 at 9:30 o'clock, a .M.,**  
38 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**  
39 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**  
40 **submittal.**

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

  
\_\_\_\_\_  
**Verlon M. Jose, Legislative Chairman**

**APPROVED**

on the 15 day of December, 2008

**DISAPPROVED**

at 8:25 o'clock, A.M.

  
\_\_\_\_\_  
**NED NORRIS, JR., CHAIRMAN**  
**TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 15 day of

December, 2008, at 8:50 o'clock, A.M.

  
\_\_\_\_\_  
**Lucille Lopez, Acting Legislative Secretary**

**ACTION: SUPPORTING COMPLETION OF THE VEHICLE BARRIER PROJECT, REAFFIRMING OPPOSITION TO THE DEPARTMENT OF HOMELAND SECURITY SECRETARY'S WAIVER AUTHORITY AND OPPOSING NONCOMPLIANCE WITH ENVIRONMENTAL, CULTURAL PROTECTION, AND OTHER LAWS**

**MOVED: COUNCILWOMAN EVELYN JUAN MANUEL**

**SECOND: COUNCILMAN TIMOTHY JOAQUIN**

**DATE: DECEMBER 05, 2008**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> <b>316.9</b>	1. FRANCES MIGUEL ( <i>Absent</i> ) (Roberta Harvey)( <i>Present</i> )	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			X
<b>CHUKUT KUK</b> <b>264.8</b>	1. ETHEL GARCIA ( )	132.40		X		
	2. VERLON M. JOSE ( )	132.40		X		
<b>GU ACHI</b> <b>227.9</b>	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ( )	113.95	X			X
<b>GU VO</b> <b>199.2</b>	1. GRACE MANUEL ( )	99.60		X		
	2. RAYMOND VICTOR ( )	99.60		X		X
<b>HICKIWAN</b> <b>172.0</b>	1. MICHELLE ORTEGA ( )	86.00	X			X
	2. SANDRA ORTEGA ( )	86.00	X			
<b>PISINEMO</b> <b>182.4</b>	1. CHESTER ANTONE (Tony Murrietta)	91.20	X			X
	2. GERALD FAYUANT ( )	91.20	X			
<b>SAN LUCY</b> <b>181.1</b>	1. LORRAINE EILER ( )	90.55	X			
	2. GLORIA RAMIREZ ( )	90.55		X		
<b>SAN XAVIER</b> <b>196.5</b>	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			X
<b>SCHUK TOAK</b> <b>154.6</b>	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			X
<b>SELLS</b> <b>444.7</b>	1. KIMBERLY LISTO ( )	222.35	X			
	2. EVELYN B. JUAN MANUEL ( )	222.35	X			
<b>SIF OIDAK</b> <b>194.4</b>	1. WAVALENE ROMERO ( )	97.20	X			
	2. MARY LOPEZ ( )	97.20	X			X
<b>TOTAL</b>		<b>2,534.5</b>	<b>1,979.95</b>	<b>554.55</b>	<b>-0-</b>	<b>[08]</b>

**\*\*PASSED VOTES**