

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Limited Waiver of Sovereign Immunity to Allow the Tohono O'odham Nation to be sued
in Federal District Court Regarding Compliance with the National Environmental
Protection Act in Carrying Out HUD Grants and Designating and Authorizing the
Chairman of the Tohono O'odham Nation as the Nation's Certifying Officer for
Purposes of NAHASDA and Other Housing Programs)

RESOLUTION NO. 16-037

1 **WHEREAS, the Constitution of the Tohono O'odham Nation ("Nation") vests the Legislative**
2 **Council with the power to enact laws "to promote, protect and provide for public**
3 **health, peace, morals, education and general welfare of the Tohono O'odham**
4 **Nation and its members" (Constitution, Article VI, Section 1(c)(2)); and**

5 **WHEREAS, the Legislative Council established the Tohono O'odham Ki:Ki Association**
6 **("TOKA") as a separate tribal entity in accordance with Article VI of the**
7 **Constitution of the Tohono O'odham Nation and pursuant to Legislative Council**
8 **Ordinance No. 98-03, as amended (TOKA Ordinance No. 98-03, 18 Tohono**
9 **O'odham Code Chapter 1); and**

10 **WHEREAS, the TOKA is (1) designated as the Nation's "Tribally Designated Housing Entity"**
11 **("TDHE") in accordance with the Native American Housing Assistance and Self-**
12 **Determination Act of 1996, 25 U.S.C. §4101, et seq., P.L. 104-330, 110 Stat. 4106**
13 **("NAHASDA") to implement the Nation's Indian Housing Plan under NAHASDA's**
14 **Indian Housing Block Grant ("IHBG") Program, and (2) established for the**
15 **primary purpose of providing well constructed and affordable homes for the**
16 **members, as well as maintaining the current assisted stock of home ownership**
17 **and rental homes (TOKA Ordinance Statement of Purpose and Article I.1.); and**

18 **WHEREAS the Nation and each of the Nation's Districts are desirous of undertaking**
19 **community development activities; and**

20 **WHEREAS, the Tohono O'odham Legislative Council acknowledges that housing is an**
21 **integral part of community development of the Nation and its Districts and that**
22 **all of the Nation's and each of its District's community members should have**
23 **access to safe and affordable housing; and**

24 **WHEREAS, pursuant to 24 CFR Part 58, the United States Department of Housing and Urban**
25 **Development ("HUD") Environmental Review requirements require an**
26 **authorized tribal official to execute HUD Form 7015.15 "Request for Release of**
27 **Funds and Certification" which consents to suit in Federal District Court**

RESOLUTION NO. 16-037

(Limited Waiver of Sovereign Immunity to Allow the Tohono O'odham Nation to be sued in Federal District Court Regarding Compliance with the National Environmental Protection Act in Carrying Out HUD Grants and Designating and Authorizing the Chairman of the Tohono O'odham Nation as the Nation's Certifying Officer for Purposes of NAHASDA and Other Housing Programs)

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1 regarding compliance with the National Environmental Protection Act ("NEPA")
2 in carrying out HUD grants; and

3 **WHEREAS, TOKA, as a recipient of federal and from time to time, state funds, in order to**
4 **receive draw-downs on such federal and/or state funds for project**
5 **implementation, (1) a certifying tribal official for the Nation must execute HUD**
6 **Form 7015.15 "Request for Release of Funds and Certification;" and (2) TOKA**
7 **must comply with NAHASDA and other program guidelines and federal statutes**
8 **and regulations; including but not limited to, those related to the federal**
9 **government's NEPA review/assessment process applicable to the use and**
10 **expenditure of federal grant funds for low-income housing projects (24 CFR 50**
11 **and 24 CFR 85); and**

12 **WHEREAS, pursuant to TOLC Resolution 14-251, the TOLC designated and authorized the**
13 **TOKA Executive Director as the Nation's "Certifying Officer" for and on behalf of**
14 **the Nation to (1) certify the TOKA's satisfaction of and compliance with the**
15 **TOKA's responsibilities in relation to the federal government's NEPA**
16 **environmental review process applicable to the TOKA'S receipt, use and**
17 **expenditure of (a) federal and state housing grant funds; (b) proceeds of**
18 **federally guaranteed loan programs; and (c) financing proceeds from federal**
19 **and/or state low-income tax credit programs; (2) execute any documents**
20 **required or as may be reasonably necessary to implement the intent of TOLC**
21 **Resolution 14-251, including HUD Form 7015.15 "Request for Release of Funds**
22 **and Certification" for federal and state housing funds; and (3) consent to and**
23 **accept on behalf of TOKA, the jurisdiction of the federal courts for the limited**
24 **purpose of enforcing federal regulatory responsibilities arising from and**
25 **compliance with the federal government's environmental review/assessment**
26 **process related and applicable to TOKA'S receipt, use and expenditure of federal**
27 **and state housing funds; and**

28 **WHEREAS, HUD has informed TOKA of its position that (1) the Nation is the actual recipient**
29 **of the Nation's NAHASDA funds allocated to the Nation even though the Nation**

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1 has a separate TDHE; (2) the Nation still is the Responsible Entity for the
2 oversight and other responsibilities, as a federally-recognized Tribe, with
3 respect to federal grant funds and compliance with the federal government's
4 NEPA review/assessment and compliance process and that such oversight and
5 responsibilities cannot be delegated to TOKA, as the Nation's TDHE; and (3) thus,
6 the Chairman or other formally authorized member of a Tribe's governing body
7 must assume the role of Certifying Officer/Responsible Federal Official for the
8 Responsible Entity for NEPA review/assessment and compliance purposes; and

9 **WHEREAS,**

10 it is in the best interests of the Nation that in order to be in compliance with the
11 Nation's oversight and other responsibilities, as a federally-recognized Tribe,
12 with respect to federal grant funds and compliance with the federal
13 government's NEPA review/assessment and compliance process, to (1) repeal
14 TOLC Resolution 14-251; (2) designate, approve and authorize the Nation's
15 Chairman as the Certifying Officer for the TOKA with respect to federal and state
16 grant funds and compliance with the federal government's NEPA
17 review/assessment and compliance requirements; and (3) consent to and accept
18 on behalf of the Nation, the jurisdiction of the federal courts if an action is
19 brought to enforce the TOKA's responsibilities and compliance in relation to the
20 federal NEPA review/assessment and compliance process.

21 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council,
22 notwithstanding any contrary provision of TOKA Ordinance 98-03, hereby

- 23 1. repeals TOLC Resolution 14-251;
- 24 2. designates and authorizes the Chairman of the Tohono O'odham Nation
25 as the "Certifying Officer," as that term is defined in 24 CFR § 58.2(a)(2),
26 for and on behalf of the TOKA, to:
 - 27 A. consent to and accept on behalf of the TOKA, the jurisdiction of
28 the federal courts for the limited purpose of enforcement of the
29 federal regulatory responsibilities arising from and compliance
 with the federal government's NEPA review/assessment process

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and compliance requirements related and applicable to TOKA's receipt, use and expenditure of federal and state grant funds;

B. and certify the TOKA's satisfaction of and compliance with the TOKA's responsibilities in relation to the federal government's NEPA review/assessment process and compliance requirements environmental review process applicable to the TOKA's receipt, use and expenditure of federal and state housing grant funds; and

3. execute any documents required or necessary as may be reasonably necessary to implement the intent of this resolution, including the execution of HUD Form 7015.15 "Request for Release of Funds and Certification".

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 29TH day of JANUARY, 2016 at a meeting at which a quorum was present with a vote of 3,021.4 FOR; -0- AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c)(2) 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

1 day of February, 2016

ATTEST:


Evonne Wilson, Legislative Secretary

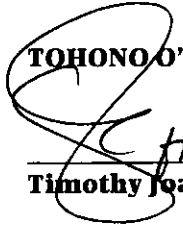
1 day of January, 2016

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 1 day of January, 2016 at 11:27 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.

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

APPROVED

on the 2 day of February, 2016

DISAPPROVED

at 9:48 o'clock, a.m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 2 day of

January, 2016, at 10:00 o'clock, a.m.



Evonne Wilson, Legislative Secretary

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ACTION: LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW THE TOHONO O'ODHAM NATION TO BE SUED IN FEDERAL DISTRICT COURT REGARDING COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL PROTECTION ACT IN CARRYING OUT HUD GRANTS AND DESIGNATING AND AUTHORIZING THE CHAIRMAN OF THE TOHONO O'ODHAM NATION AS THE NATION'S CERTIFYING OFFICER FOR PURPOSES OF NAHASDA AND OTHER HOUSING PROGRAMS

Moved: COUNCILMAN BILLMAN LOPEZ

Second: COUNCILWOMAN LORETTA LEWIS

DATE: JANUARY 29, 2016

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (Roberta E. Harvey)	183.60	X			
	2. VERNON J. SMITH (Gloria Zazueta)	183.60	X			
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marlakay K. 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			
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.30	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	125.30	X			
HICKIWAN 205.8	1. LOUIS R. LOPEZ (Shirley Molina)	102.90	X			X
	2. SANDRA ORTEGA ()	102.90	X			
PISINEMO 219.9	1. CHESTER ANTONE ()	109.95	X			
	2. MONICA K. MORGAN ()	109.95	X			
SAN LUCY 226.5	1. DIANA MANUEL ()	113.25	X			
	2. JANA MONTANA (Gloria Ramirez)	113.25	X			
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III ()	114.30	X			X
	2. RACHEAL VILSON-STONER (Olivia Villegas-Liston)	114.30	X			
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. ()	90.30	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.30	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER ()	256.75	X			
SIF OIDAK 231.6	1. LUCINDA ALLEN (Absent) (Nicholas Jose) (Present)	115.80	X			X
	2. MARY LOPEZ ()	115.80	X			
TOTAL		3,021.4	3,021.4	-0-	-0-	[03]