

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Affirming the Rights of the Allotted Landowners to Consent and Fair
Compensation for Rights-of-Way on Allotted Lands)**

RESOLUTION NO. 25-212

- 1 **WHEREAS,** the "sovereign powers, authority and jurisdiction of the Tohono O'odham Nation
2 and of its government shall extend to all lands within the boundaries of the
3 Tohono O'odham Nation" and the "sovereign powers, authority and jurisdiction
4 of the Tohono O'odham Nation and its government shall extend to all persons and
5 activities carried on within the boundaries of the Tohono O'odham Nation
6 consistent with federal law" (Constitution of the Tohono O'odham Nation, Article
7 I, Section 1 and 2); and
- 8 **WHEREAS,** the Nation's Constitution vests the Legislative Council with the authority to
9 consult "with Federal, State and local governments and other Indian tribes or
10 their departments, agencies, or political subdivisions, or with private persons or
11 organizations" and "with the Congress of the United States and appropriate
12 federal agencies regarding federal activities that affect the Tohono O'odham
13 Nation" (Constitution, Article VI, Section I(f) and I(j)); and
- 14 **WHEREAS,** the United States has a unique legal and trust relationship with federally
15 recognized Indian tribes and their members, including allottees holding
16 interests in trust and restricted lands; and
- 17 **WHEREAS,** the General Allotment Act of February 8, 1887 (the "Dawes Act") and additional
18 federal laws created a system of individual land allotments on Indian
19 reservations, resulting in allotted land ownership that is subject to federal
20 oversight and trust responsibilities; provided that allotments in trust or
21 restricted status remain Indian country and subject to tribal law; and
- 22 **WHEREAS,** the United States allotted land on the Nation's San Xavier Indian Reservation, and
23 the Nation's Constitution recognizes, "All allotted lands, including heirship
24 lands, and all improvements thereon shall continue to be held by their present
25 owners under existing laws." (Constitution, Article XVI, Section 2); and
- 26 **WHEREAS,** 25 C.F.R. Part 169 governs the process for issuing rights-of-way over and across
27 allotted tribal lands and individually owned Indian lands, and is "intended to
28 support tribal self-determination and self-governance by acknowledging and
29 incorporating tribal law and policies in processing a request for a right-of-way
30 across tribal lands and defer to the maximum extent possible to Indian
31 landowner decisions regarding their Indian land." 25 C.F.R. § 169.1; and
32

RESOLUTION NO. 25-212

(Affirming the Rights of the Allotted Landowners to Consent and Fair Compensation for Rights-of-Way on Allotted Lands)

Page 2 of 4

1 **WHEREAS** 25 U.S.C.A. § 324 and § 325 establish that the consent of the landowners is a
2 fundamental precondition for the granting of rights-of-way, except as otherwise
3 provided by law; and allotment landowners are entitled to just and fair
4 compensation for the use of their land for rights-of-way and associated purposes;
5 and

6 **WHEREAS,** as a local district government, the San Xavier District cannot consent to rights-of-
7 way across allotted tribal or individually owned Indian lands or exercise the
8 Nation's authorities regarding land; 25 C.F.R. Part 169; *San Xavier District*
9 *Council; Nunez v. Francisco*, 1 TOR3d 49 (Trial Ct., Feb. 1, 1988)); and

10 **WHEREAS,** protecting landowners' power of consent and the guarantee of fair compensation
11 are essential to upholding the property rights, economic security, and dignity of
12 allottees and their heirs; and

13 **WHEREAS,** there remain ongoing challenges, confusion, and at times violations regarding
14 the application of consent and compensation requirements, leading to the need
15 for clear reaffirmation and guidance; and

16 **WHEREAS,** the Agricultural and Natural Resources Committee recommends that the
17 Legislative Council affirm allotted landowners' rights as guaranteed under the
18 Nation's laws and federal law and regulations; and

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

- 20 (1) affirms the rights of allotted landowners, as stated in federal law and 25
21 C.F.R. Part 169, to grant or withhold consent to any proposed right-of-way
22 across their lands, except in those limited circumstances expressly
23 authorized by federal law where consent may be waived;
- 24 (2) affirms that allottees and their heirs are entitled to receive fair
25 compensation for any right-of-way granted, the amount of which shall reflect
26 fair market value;
- 27 (3) urges all federal, state and local governments and their officials,
28 departments, agencies, or political subdivisions, and private persons or
29 organizations to uphold these rights in the request, approval, compensation,
30 and administration of rights-of-way over allotted lands in compliance with
31 applicable laws and regulations;
- 32 (4) recognizes that, unless waived by the landowners or otherwise authorized by
33 law, compensation for rights-of-way shall not be less than the fair market
34 value of the land interest affected, and further affirms that landowners have

the right to obtain independent appraisals and to negotiate compensation terms;

- (5) calls on the Bureau of Indian Affairs, other federal, state, and county agencies and other entities seeking rights-of-way to provide full, clear, and timely notice to allottees and their heirs, to ensure meaningful consultation, and to obtain informed, voluntary, and documented consent before proceeding with any right-of-way application or approval process;
- (6) urges that all proceedings related to rights-of-way on allotted lands be conducted transparently, with genuine respect for the decision-making authority of landowners, and that all communication be made available in accessible formats and languages as needed;
- (7) insists that no right-of-way shall be authorized, granted, or renewed over allotted land without compliance with all requirements for consent and compensation as provided under 25 C.F.R. Part 169 and applicable law, and any such action taken in violation of these requirements shall be deemed void;
- (8) calls for regular review and enforcement of the rights enshrined in 25 C.F.R. Part 169, including but not limited to audit mechanisms, reporting of violations, and recourse for affected landowners; and
- (9) encourages allotment landowners to seek legal and financial counsel in the evaluation of right-of-way requests and compensation offers, and calls on federal agencies to supply adequate resources to support landowner education and capacity building in these matters.

BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that nothing in this resolution shall be construed to diminish or abrogate the Nation's authority or any rights of individual Indian landowners or the Nation as an allotted landowner under tribal or federal law.

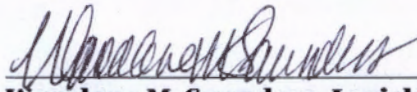
The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH day of JULY, 2025 at a meeting at which a quorum was present with a vote of 2,073.3 FOR; 1,247.8 AGAINST; [03] NOT VOTING; and -0- ABSENT, pursuant to the powers vested in the Council by Article 1 Section 1 and 2; Article VI, Section 1(f), 1(j); Article XVI, Section 2 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).

RESOLUTION NO. 25-212

(Affirming the Rights of the Allotted Landowners to Consent and Fair Compensation for Rights-of-Way on Allotted Lands)

Page 4 of 4

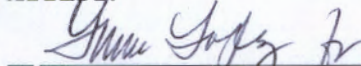
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Wavalene M. Saunders, Legislative Chairwoman

28 day of July, 2025

ATTEST:

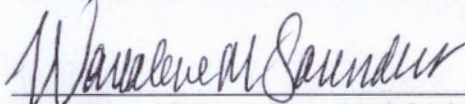


Evonne Wilson, Legislative Secretary

25 day of July, 2025

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 28 day of July, 2025 at 3:40 o'clock, p.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.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



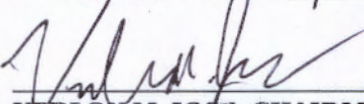
Wavalene M. Saunders, Legislative Chairwoman

☒ APPROVED

on the 30 day of July, 2025

☐ DISAPPROVED

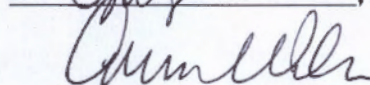
at 12:43 o'clock, p.m.



VERLON M. JOSE, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 30 day of

July, 2025, at 1:03 o'clock, p.m.



Evonne Wilson, Legislative Secretary

ACTION: AFFIRMING THE RIGHTS OF THE ALLOTTED LANDOWNERS TO CONSENT AND FAIR COMPENSATION FOR RIGHTS-OF-WAY ON ALLOTTED LANDS**MOVED: COUNCILWOMAN EVELYN JUAN MANUEL****SECOND: COUNCILWOMAN JANET B. ELEANDO****DATE: JULY 24, 2025**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 251.2	1. WAVALENE M. SAUNDERS (Mary Lopez) 2. FRANCIS HOMEWYTEWA ()	125.6 125.6		X X		
SELLS 565.7	1. JANET B. ELEANDO () 2. EVELYN JUAN MANUEL (Juan Buendia)	282.85 282.85	X X			
SCHUK TOAK 195.3	1. THEORIA CAMPILLO (Rebecca Ann Valentine) 2. DELISA M. RAMON (Quintin C. Lopez)	97.65 97.65	X X			
SAN XAVIER 249.8	1. DANIEL L.A. PRESTON III () 2. JANICE FELIX ()	124.9 124.9		X X	X	
SAN LUCY 266.3	1. GLORIA M. RAMIREZ (Lorraine M. Eiler) 2. ROGER MANUEL (Christina Andrews)	133.15 133.15	X X		X	
PISINEMO 240.3	1. PAMELA J. BENAVIDEZ (Nora J. Ruelas) 2. NAOMI MONTE (Edward D. Manuel)	120.15 120.15		X X		
HICKIWAN 222.9	1. LOUIS R. LOPEZ (Loretta A. Ortega) 2. DELMA M. GARCIA ()	111.45 111.45	X X			
GU VO 279.6	1. LESLIE LUNA () 2. BENNETT CHEWING (Grace Manuel)	139.8 139.8	X X			
GU ACHI 289.2	1. JEROME F. JOAQUIN (Gloria Johnson) 2. LUCIUS E. LOPEZ (Victoria A. Hobbs)	144.6 144.6	X	X		
CHUKUT KUK 361.9	1. MARLAKAY HENRY () 2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	180.95 180.95		X X	X	
BABOQUIVARI 398.9	1. JESSE NAVARRO (Alberta J. Ray) 2. NED NORRIS, JR (Leander Mase)	199.45 199.45	X X			
TOTAL		3,321.1	2,073.3	1,247.8	[03]	-0-