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April 11, 2008

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Re: Comments on the NCAI-ITA Joint Task Force on
Tribal Reauthorization White Paper

Dear Sirs and Madame:

On behalf of our Tribal Transportation Coalition clients, Assiniboine and Sioux Tribes of the Fort Peck Reservation, Confederated Tribes of the Colville Reservation, Fort Belknap Indian Community, Standing Rock Sioux Tribe, Three Affiliated Tribes of the Fort Berthold Reservation, Ramah Navajo Chapter, Oglala Sioux Nation of the Pine Ridge Reservation and the Eastern Shoshone Tribe, we write to comment on the NCAI-ITA Joint Task Force on Tribal Transportation's

“National Tribal Leadership Paper on Tribal Transportation Policy” (hereafter “White Paper”). Our Tribal Transportation Coalition was pleased to work with the National Congress of American Indians (NCAI) and the Intertribal Transportation Association (ITA) Task Force to develop the White Paper which sets out key legislative recommendations to improve Tribal Transportation programs in the surface highway bill that will succeed the Safe, Affordable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Pub. L. 109-59.

When Tribal Leaders across Indian Country come together to develop and unite behind a set of legislative proposals to improve transportation systems in Indian country, we have seen during our advocacy work on SAFETEA-LU that it carries more weight with Congress than when a single Tribe or small group of Tribes proposes amendments to national transportation legislation.

Our Tribal Transportation Coalition clients fully endorse the recommendations set out in the White Paper and commend the Task Force for working to craft the consensus positions that all Indian Country can unite behind. If Congress adopts the White Paper proposals it will place the Indian Reservation Roads (IRR) Program and related Tribal transportation programs on a sound footing which will permit Indian tribes to address the many transportation challenges facing Indian Country today.

In addition to the White Paper proposals, we request that the Task Force consider adopting the following additional legislative recommendations for advocacy before Congress during the reauthorization of SAFETEA-LU.

1. Direct Submission of Tribal Applications to FHWA for Public Lands Highway Discretionary Grants.

Any public road that provides access to or that is located within Federal lands, including Tribal lands is eligible for a Public Lands Highway Discretionary (PLH-D) grant. The Federal Highway Administration (FHWA) administers the PLH-D grant program on behalf of the Department of Transportation. FHWA interprets the statutory authority for the PLH-D Grant program to require that all applications for grants, including those submitted by Indian tribes for eligible IRR projects, must be submitted through the Tribe’s respective State transportation department. This requirement places an additional obstacle to a Tribe seeking a PLH-D grant, particularly when Congress has already earmarked funding for a Tribal project. Tribal PLH-D grant applications compete with State applications seeking these discretionary grants for Public Lands located in the State. It is also inconsistent with Tribal sovereignty to require Tribal transportation projects to be submitted through a State agency.

We recommend that the Task Force seek legislation to clarify that Indian tribes may submit a PLH-D grant application directly to FHWA without having to go through their State transportation department. As amended, 23 U.S.C. §202(b)(1) would read:

“(A) In general.—On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for that fiscal year for public lands highways among those States having unappropriated or unreserved public lands, on taxable Indian lands, or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States, or on application to the Secretary by any Federally recognized Indian tribe.

(B) Preference.—In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State or a Federally recognized Indian tribe with a reservation in a State that contains at least 3 percent of the total public land in the United States.”

Under SAFETEA-LU, many tribes have entered into IRR Program Agreements and Referenced Funding Agreements (RFAs) with FHWA for administration of the IRR Program. As for these Tribes, FHWA may award a PLH-D grant directly to the Tribe’s RFA, without having to transfer funds to a State transportation department and the Bureau of Indian Affairs for subsequent transfer to an Indian Tribe’s Indian Self-Determination Act (ISDA), P.L. 93-638, contract. With the amended language above, Tribes with ISDA contracts may choose to receive PLH-D grant award funds from FHWA without having those grant funds pass through State Transportation department or the BIA.

This amendment should also reduce the time between passage of a Congressional earmark or a FHWA determination to award a PLH-D grant to a particular Tribe, thereby saving valuable time and resources for all concerned.

2. Interest on Late Payment of IRR Program funds.

Since 2005, authority has existed in Title 23 which directs the Secretary of the Interior to distribute IRR Program funds to an eligible Indian Tribe “not later than 30 days after the date on which funds are made available to the Secretary” for the immediate use by such Tribe. To date, however, the BIA has not honored this requirement to promptly award IRR Program funds upon its receipt of IRR Program funding from FHWA. To our knowledge, no Tribe has yet brought a claim for interest

against the BIA under the Prompt Payment Act (31 U.S.C. 3901 et seq.) which is extended to Tribes carrying out an ISDA contract or agreement.

While current law may expose the BIA to liability for interest or delay damages, we believe an express interest penalty may provide an even stronger inducement for prompt payments to Tribes.

To encourage BIA to disburse IRR Program funds to Tribes within the 30-day deadline, we recommend that 23 U.S.C § 202(d)(2)(E) be amended to provide an interest penalty against the BIA for late payments of IRR Program funds once such funds are transferred to the BIA from FHWA.

As amended, 23 U.S.C. §202(d)(2)(E) would read:

“(E) Transferred funds.—

(i) In general.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program. In the event that the Secretary of the Interior fails to distribute the funds to an eligible Indian tribe within 30 days after the date on which funds are made available to the Secretary of the Interior, notwithstanding any other provision of law, the Indian tribe shall be entitled to the award of interest on such funds, with interest calculated from the 31st day after the date on which funds are made available to the Secretary of the Interior until the date the funds are received by the Tribe, with the rate of interest established by the Secretary of the Treasury, and published in the Federal Register from time to time that is in effect on the date the Indian tribe’s right to interest under this subsection accrues.”

We believe that the proposed amendment to SAFETEA-LU will provide Indian tribes carrying out IRR Programs and projects under contracts and agreements with the BIA and the Office of Self-Governance (OSG) a right to interest damages from the Secretary of the Interior on the 31st day after the BIA’s receipt of IRR Program funds from FHWA.

3. Clarifying the On-Going Validity of FHWA-Tribal IRR Program Agreements Under the Indian Self-Determination Act, P.L. 93-638.

In the last three years, nearly a dozen Indian tribes have opted to contract directly with FHWA to assume the Secretary of the Interior’s duties for administration of the IRR Program. During the negotiation of these FHWA IRR Program Agreements, Tribes

took the position that these Agreements, and their Referenced Funding Agreements (RFAs), are entered into in “accordance with the Indian Self-Determination and Education Assistance Act,” as amended, and that the ISDA fully applies to them. This is consistent with SAFETEA-LU’s amendment of 23 U.S.C. § 202(d) creating direct contracts and agreements between Tribes and FHWA. These agreements and RFAs are operating smoothly and have enabled Tribes to assume the duties of the Secretary of the Interior for the IRR Program and to carry out day-to-day administration, planning, design and construction activities for eligible IRR Program projects and activities.

As noted in the White Paper, FHWA and the Department of Transportation in general, takes the position that the Secretary of Transportation does not have present ability to enter into ISDA contracts and agreements with Tribes for the administration and operation of IRR Program or other Transportation Department programs serving Indian tribes.

We recommend that any legislation put forward by Tribes to extend the provisions of the ISDA to the programs and activities of the Department of Transportation for which Indian Tribes are eligible recipients, must protect, and not place in jeopardy or make invalid, FHWA IRR Program Agreements and Referenced Funding Agreements now in effect between FHWA and Tribes.

We further assume that there will be a period of time, following enactment of the next highway reauthorization bill, when the Department of Transportation will need to work with Tribes to develop regulations to implement the statutory changes to Title 23 through a negotiated rulemaking procedure. It will be especially important that during this “interim” period -- between enactment of new legislation and the implementation of final regulations by the Department of Transportation -- that Indian Tribes retain the ability to utilize and renew executed FHWA Program Agreements and RFAs to continue operating IRR Program and related FHWA grant programs without having to wait for new regulations to be issued by FHWA.

4. Increasing the IRR Program to Augment Road Maintenance Funding for Tribes.

The White Paper eloquently addresses the great harm done to Indian communities resulting from the failure of the Department of the Interior to request adequate funding for the BIA Road Maintenance Program. The great loss of life and injuries suffered annually by Native American men, women, and children traveling and walking along Indian Reservation Roads, gives ample testimony to the worsening conditions that are caused in part by poor maintenance.

In light of the President's FY 2009 budget submission to Congress earlier this year, and other Congressional funding priorities, it is clear that the Interior Department, the Office of Management and Budget, and Congress are not likely to increase funding for the BIA Road Maintenance Program at the level requested by Indian tribes and as recommended in the White Paper by FY 2009. At best, the BIA Road Maintenance Program budget for FY 2009 will likely be at the 2008 enacted level of \$26 million. As a result, the second option advocated in the White Paper - the request to Congress to authorize an additional \$100 million annually for the IRR Program to augment the shortfalls in the BIA Road Maintenance Program - appears to be the most viable means to assure that Tribal governments have access to additional funds to supplement BIA Road Maintenance Program funds.

We recommend that the Task Force be clear when advocating before Congress that these additional funds (above the \$500 million sought for the IRR Program beginning in FY 2010), should not be a separate Tribal road maintenance program funded from the Highway Trust Fund, that would in all likelihood require the issuance of regulations and be subject to a separate obligation limitation deduction. While by no means an easy task, we believe it would be easier to request that Congress appropriate an additional \$100 million each year to the IRR Program allocation. With the existing authority under 23 U.S.C. § 204(c) that permits Tribes, at their discretion, to use up to 25 percent of their IRR Program funding for maintenance purposes, every Indian tribe eligible for IRR Program funding would receive a share of the \$100 million increase to its annual IRR Program allocation. If Tribes seek further flexibility to use IRR Program funds for maintenance purposes, the Task Force may also consider requesting that Congress increase the percentage limit of the use for these funds to 35 or 50 percent.

5. Clarifying Minimum Funding

The Task Force has recommended as a consensus position of its members that every Indian tribes eligible for IRR Program funds receive not less than a minimum funding allocation of \$50,000 to ensure that all Tribes have the ability to build their transportation capacity. Our firm does not take a position concerning this issue other than that we are pleased that the Task Force reached a consensus recommendation to put forth in the highway reauthorization bill.

In providing directions to legislative drafters, however, we believe it is important for the Task Force to provide clear instructions as to how the IRR Program formula is to calculate the minimum funding level. This is important for two reasons. First, the Task Force should agree upon the process by which BIADOT determines whether an Indian Tribe falls below the base funding amount. Second, the manner by which the BIA runs the formula to determine which Tribes will receive additional funding to bring them up to the minimum funding level, and how the BIA corrects the initial IRR Program allocation,

must not be so cumbersome that it delays the allocation of IRR Program funds to every Tribe.

The Task Force will need to be clear in their instructions to legislative drafters how the minimum funding level is initially calculated to determination whether an Indian Tribe requires additional IRR Program funds to bring it up to the minimum funding level amount. The Task Force should confirm among its members whether the initial calculation of a Tribe's IRR Program award amount is determined by adding the Tribe's IRR Program allocation under the Tribal Transportation Allocation Methodology (TTAM), which includes the RNDF calculation (50% CTC + 30% VMT + 20% Population), the Tribe's Population Adjustment Factor (PAF), and the Tribe's share of 2% planning funds, but does not include discretionary High Priority Project (HPP) funds which a Tribe may receive under the IRR Program.

By being clear in its instructions, the Task Force will ensure that the IRR Program operates smoothly and efficiently and remains responsive to all Tribes.

6. Improving Emergency Relief

We propose an amendment to section 125(e) of title 23 to improve the provision of emergency relief funds to Tribes by adding to the end of that section the following:

“Notwithstanding any other provision of law, policy or guideline, including threshold levels for determining eligibility for assistance under this section, Indian tribal governments may submit applications for emergency relief funding for the repair or reconstruction of Tribal transportation facilities directly to the Secretary of Transportation. The Secretary shall process Tribal applications in the same manner as applications from federal agencies are processed. The Secretary shall develop criteria for Tribal emergency relief funding applications under this subsection pursuant to regulations issued in accordance with section ___ of this Act.”

This amendment is intended to streamline emergency relief efforts in Indian Country and strengthen the government-to-government relationship by permitting Indian Tribes to submit emergency relief applications without going through the Interior Department and without having to meet additional Interior Department imposed damage threshold levels before being eligible for Emergency Relief for Federally Owned (ERFO) roads assistance.

7. Improving Rights-of-Way in Indian Country

During the IRR program negotiated rulemaking sessions, BIA officials were reluctant to change existing regulations concerning rights-of-way over Indian lands. At present, 25 C.F.R. Part 169 primarily sets out procedures by which third parties, such as railroads, utilities, and state or local governments obtain rights-of-way over Tribal lands. Many of the requirements of part 169 are not applicable to Indian Tribes securing rights-of-way for transportation systems on their own reservations. Some Indian Tribes have independent federal statutory authority to grant rights-of-way across their reservations without Secretarial approval under part 169. *See, e.g.*, 64 Stat. 442, as amended, 75 Stat. 499, sec.2.

We recommend that the Task Force support an amendment to Title 23 that requires that the Secretary of Transportation and the Secretary of the Interior to develop criteria for rights-of-way agreements and corridor management policies which Indian Tribes and tribal organizations may use to facilitate transportation infrastructure on their respective reservations through Negotiated Rulemaking with affected Indian Tribes, as follows:

Section 202(d) of title 23, United States Code, is amended by inserting at the end thereof the following:

"(6) Rights-of-way and Corridor Management Policies.-Notwithstanding any other law or regulation, an Indian Tribe or tribal organization shall not be subject to the requirements in Part 169 of Title 25, Code of Federal Regulations, when carrying out an IRR Program project pursuant to a contract or agreement under P.L. 93-638, as amended, or an agreement under paragraph (d)(5) herein. The Secretary shall establish criteria for right-of-way agreements and corridor management policies developed by an Indian Tribe or tribal organization under this subsection pursuant to regulations issued in accordance with section ___ of this Act."

It has been the experience of many of our Tribal clients that the BIA has maintained poor records of right-of-way documents, or did not record right-of-way grants by Tribal allottees or non-Indians for existing BIA system routes. As Tribes seek to improve BIA system roads and bridges located on their lands, they are discovering that they must often re-survey roads and in some cases, pay to establish valid rights-of-way before proceeding with an IRR Program project. If the BIA were to negotiate new right-of-way and corridor management regulations with Tribes to govern how Tribal governments may utilize Tribal lands to improve transportation systems, it would facilitate IRR Program projects throughout Indian country.

8. Removing Earlier Provisions Relating to the Surface Transportation Program (STP).

Many of our Tribal Transportation Coalition clients are pleased that the Task Force has deleted a potentially controversial provision from the White Paper that concerned making Indian Tribes eligible recipients of Surface Transportation Program (STP) funding. Under 23 U.S.C. 133(c), STP funds are prohibited from being used on roads that are classified as local roads, rural minor collectors, or which are roads that fall under the jurisdiction of the BIA or a Tribal government. Our Tribal clients fully support the expansion of Federal transportation programs to include Tribal governments, so that Indian tribes may tap into additional Federal appropriations to augment IRR Program dollars. However, as noted above, Tribal unity is paramount to ensure future transportation successes. Proponents of the STP language, which was included in previous Task Force legislative proposals were not aware that some Indian tribes might see too close a connection between the STP proposal and the on-going IRR Program Coordinating Committee efforts to reach agreement among Tribes, the BIA and FHWA concerning the interpretation and implementation of IRR Program formula regulations.

When Tribes act in concert, they are in the best position to effect positive change to Federal transportation policies. For that reason, the Task Force's removal of potentially objectionable text from the White Paper was the best course of action to take.

9. Facilitating the Award of Transportation Department Funds for IRR Program Routes

Due to the wording of Section 202(d)(3) of Title 23, the Department of Transportation takes the position that they are unable to award all Transportation Department funds available for an Indian Tribe's use on eligible IRR Program routes and bridges through an FHWA-Tribal IRR Program Agreement and Referenced Funding Agreement (RFA). Transportation Department officials cite the phrase "under this chapter [Chapter 2] and section 125(e) [emergency relief]" as a limitation which restricts their discretion to award other Transportation Department funds (such as Tribal safety and Transit funds) to a Tribe's FHWA-Tribal IRR Program Agreement and RFA.

We recommend that section 202(d)(3) of Title 23 be amended to enable an Indian tribe to consolidate all Transportation Department funding, regardless of which DOT administration funds the program, under a single FHWA-Tribal IRR Program Agreement and RFA. Using one funding document for the Tribe's receipt of all eligible Transportation Department funds, will facilitate the Tribe's receipt, expenditure, and accountability for such funds rather than using more cumbersome funding agreements, not suitable for use by Tribes, which in some cases require the Indian Tribe to obtain the funds from their respective States. Developing funding documents and agreements that

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respect and honor Tribal sovereignty and self-determination will better ensure that Indian tribes apply and compete for a broad array of Transportation Department funds which can improve transportation facilities and save lives in Indian country.

Thank you for affording us this opportunity to submit additional comments concerning the Task Force's White Paper.

Sincerely,

/s/James E. Glaze

James E. Glaze
Jennifer Thomas
Matthew S. Jaffe

AK-CHIN INDIAN COMMUNITY

Community Government

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April 8, 2008

NCAI-ITA Joint Task Force on Transportation
c/o National Congress of American Indians
1301 Connecticut Ave NW, Suite 200
Washington D.C. 20036

Dear Task Force Members:

My name is Delia M. Carlyle, and I am Chairman of the Ak-Chin Indian Community, which is located southeast of Phoenix in Arizona. The Ak-Chin Indian Community is comprised of more than 800 members. Our reservation includes slightly less than 22,000 acres of land. This letter provides comments on the National Tribal Leadership Paper on Tribal Transportation Policy (the "White Paper").

The White Paper addresses many of the most pressing issues facing tribes concerning transportation and road matters. If the Community were to prepare individual comments, our comments would be very similar to those prepared by the Task Force. That said there are a few points raised in the White Paper that should be elaborated upon.

First, the Community fully supports the recommendation to establish a minimum IRR funding level; however, it should be clearly noted that the \$50,000 base funding level proposed by the White Paper is a minimal level. It is our understanding that the minimum funding recommendation was developed as a compromise, made in the spirit of cooperation, which is based on available budget (or lack thereof). From the Community's perspective, the proposed base level is insufficient. Further, we do not see in the White Paper that the proposed minimum funding level makes any accommodations for inflation or that the number is tied in any way to actual need.

Through a Self-Determination Compact, the Community receives just slightly more than the recommended base level of funding for Road Maintenance. Even though the Community has less than 50 IRR miles within the reservation, \$50,000 is not enough to appropriately maintain these small distances. In fact, very little of this amount is actually used toward road maintenance and most of this funding is eaten up by administrative costs. We are the perfect example that \$50,000 is not enough even when very little IRR mileage is involved. In fact, we would argue that mileage takes into account only one of the many factors that should be examined to determine an appropriate funding level.

Our Community has experienced a dramatic increase - what we refer to as "hyper-growth" - in the surrounding, non-Indian population. Often, drivers from outside our Community will short cut through our small Community rather than driving around us. As a result, our roads sustain an extraordinary impact and depreciate at a rate that is greater than what can be reflected in funding calculations that only account for the number of IRR miles and tribal population. The White Paper must more completely explain that (1) the minimum funding level requested is based on a NCAI resolution passed in 2006, and not current or future projected maintenance costs or needs; (2) any funding minimum level requested for 2009 is applicable to 2009 only and minimum funding levels for subsequent years should be increased to keep up with industry specific inflation; and (3) the proposed minimum funding level does not address the individual needs of tribes but, instead, was created to afford all tribes with some relief for their transportation needs.

Second, the Community fully supports the recommendation that the Indian Self-Determination Act, as amended, be further amended to enable the Secretary of the Department of Transportation ("Secretary") to be authorized to enter into Self-Determination contracts and compacts with tribes. As the White Paper notes, the bureaucracy imposed upon tribes, which receive grants from Departments outside of Self-Determination contracts and compacts, often prohibits tribes from applying for much needed funding. The Community has a very small finance department that, when fully staffed, has no more than 11 staffers inclusive of administrative assistants. In addition to added cost, it is nearly impossible for such a small staff to administer and manage multiple grants that have different financial management processes and reporting requirements. Accordingly, the Community is prevented from applying for much needed funding because the administrative burden cannot be met. Enabling the Secretary to enter into Self-Determination contracts or compacts will allow tribes to more easily comply with the Single Audit Act. Considering that all entities that receive federal funding must provide a single audit to the government, it only makes sense that any funding awarded to tribes, whether through the Department of Transportation or any other agency, be awarded through a Self-Determination contract or compact.

In conclusion, the Community would like to reiterate its general support for the White Paper. Further, through these additional comments, the Community has shared additional anecdotal evidence that not only supports the White Paper, but also makes arguments to expand upon the recommendations and positions provided in the White Paper. On behalf of my Community, I thank you for your consideration and I welcome the opportunity to discuss further the Community's roads and transportation needs.

Sincerely,



Delia M. Carlyle, Chairman
Ak-Chin Indian Community

THE HOPI TRIBE



Benjamin H. Nuvansa
Chairman

Todd Honyama, Sr.
Vice-Chairman

Hopi Tribe Transportation Concerns

- Funding for roads maintenance should not be cut, but should be increased.
- At least half of the discretionary funds awarded to states should be earmarked for Tribes. Tribes have not had an opportunity to access the discretionary fund in the past.
- Indian Reservation Roads construction funding should be increased substantially.

To all:

At the end of Section I under Key Recommendations, the White Paper makes reference to ..."the proportion of IRR Program roads and bridges on the national highway system. "National Highway System" should be capitalized in the White Paper, but there should also be concurrence on how we want to make the argument. Speaking for the Skokomish Tribe, we would have no argument with the statement as written, but there may be some tribal nations that have IRR routes, but that have no routes that are part of the National Highway System as defined by Congress. I am not sure how easy it would be to get at, but we may also want to include the actual percentage of the IRR Inventory that is made up of NHS routes.

The National Highway System was identified by Congress through the National Highway Designation Act of 1995. The FHWA website providing summary information on SAFETEA-LU and located at

(<http://www.google.com/search?hl=en&q=SAFETEA-LU+NHS+miles&btnG=Search>) describes the National Highway System as:

"... a 163,000-mile system of significant rural and urban roads serving major population centers, international border crossings, intermodal transportation facilities, and major travel destinations. It includes the Interstate System, other urban and rural principal arterials, highways that provide motor vehicle access between the NHS and major intermodal transportation facilities, the defense strategic highway network, and strategic highway network connectors."

See the following link which includes a map and additional links to the NHS within each state and provides a good description of the NHS. <http://www.fhwa.dot.gov/hep10/nhs/>

The IRR Inventory for the Skokomish Reservation includes two bridges and nearly 15 miles of US Hwy 101, an NHS route, running through and providing access to the Reservation. This route accounted for 48% of the Tribe's Cost to Construct in the 2007 formula allocation and four of the ten projects included on the FY 2008 Tribal Transportation Improvement Program for the Skokomish Indian Tribe involve intersection work with US Hwy 101. This NHS route obviously provides a vital transportation link for the Skokomish Indian Tribe and to the nine other tribal nations of the Olympic Peninsula as well as other tribes in Californian, Oregon, and Washington. However there has been some advocacy within the Bureau of Indian Affairs as well as debate by the IRR Coordinating Committee to exclude such routes from the IRR Inventory. We at Skokomish applaud the efforts of the NCAI/ITA Joint Task Force in recognizing the important contribution that IRR routes make to the nation's economy, defense, and mobility as components of the National Highway System.

David G. Frey

Construction Planning Manager

Skokomish Indian Tribe

Department of Community Development

N. 80 Tribal Center Road Skokomish Nation, WA 98584 Phone (360) 877-2018 ext. 252 FAX (360) 877-5943 Cell (360) 490-6334

Hello all,

I have been reviewing the White Paper in a little more detail and will have a few more comments for the Task Force this week. Since the White Paper will be distributed at TRB shortly, I wanted to provide a little more commentary on the Tribal Technical Assistance Program. (TTAP) The proposal to increase funding for TTAP to \$2.5 million represents a modest funding increase unless those funds are matched with IRR funds, as they have been since the inception of the Program. Under SAFETEA-LU, seven TTAP Centers were authorized to receive at total of \$1.96 million in combined FHWA-OPCD and IRR funds (which are distributed from FHWA-FLHD). If the number of Centers were increased to 12 as proposed, this would result in a drop in funding per Center from \$280,000 under SAFETEA-LU to \$208,333 without matching provided by IRR. With dollar for dollar matching by IRR each of 12 centers would receive \$416,667, a rather healthy increase in funding. I recommend that in the reauthorization legislation drafted, we are very clear about not only the amount of funding for TTAP, but where it will be coming from.

TTAP funding has been flat under SAFETEA-LU, with the exception of 2006 when Centers were advised they could expend an additional \$30,000 that was subsequently reversed by an equal reduction in 2007. There was also an additional funding reduction of \$3,333 in 2006 for TTAP. Without a funding increase since 2002, TTAP Centers have been incurring higher costs for operating expenses - especially for travel to provide technical assistance and training. My understanding of the 11-year funding history for TTAP is as follows:

<u>Year</u>	<u>FHWA-OPCD</u>	<u>FLH/BIA-IRR</u>	<u>Total Funding</u>
1998 200,000	\$ 100,000	\$ 100,000	\$
1999 200,000	\$ 100,000	\$ 100,000	\$
2000 230,000	\$ 115,000	\$ 115,000	\$
2001 250,000	\$ 125,000	\$ 125,000	\$
2002 280,000	\$ 140,000	\$ 140,000	\$
2003 280,000	\$ 140,000	\$ 140,000	\$
2004 280,000	\$ 140,000	\$ 140,000	\$
2005 280,000	\$ 140,000	\$ 140,000	\$

2006	\$ 170,000	\$ 136,667	\$
306,667			
2007	\$ 110,000	\$ 140,000	\$
250,000			
2008	\$ 140,000	\$ 140,000	\$
280,000			

TTAP and LTAP Centers may receive additional funds for course fees and separate grant programs. All amounts are after any limitation on obligations is applied to FHWA Programs.

The other significant issue in regard to TTAP relates to oversight of the Program. The Task Force did a good job in outlining the problems associated with multiple agencies in two different federal departments vying for control over the program and to the exclusion of any tribal oversight of the Program. It may be difficult to exclude BIA or the FLHD as long as a portion of TTAP funding is perceived by those agencies as passing through their purview. Congress should make it absolutely clear that funds for TTAP come off of the top of FHWA authorizations and appropriations to be used for professional development for tribes. If these professional development dollars can be firewalled from the IRR Program, justifications for external agency control and concerns within some tribal circles regarding this takedown from much too-limited IRR dollars could be put to rest. To provide funding at the current level to TTAP with no IRR contribution and increasing the number of centers to twelve would require an authorization of \$3.36 million after any limitation of obligations. The FHWA-OCPD should also be specifically tasked with sole oversight of TTAP in consultation with tribal governments. Presuming a \$5.0 million authorization for TTAP with a 90% limitation, each center would be provided with annual funding of \$375,000, a modest increase for inflation over the \$280,000 they have received for the past seven years.

Another alternative that we might want to consider would be to phase in the increase in Centers from seven to twelve over the authorization period. This could work as follows:

Make an initial authorization of \$2.5 million in Year 1

Add one new Center and \$500,000 to the program in each of Years 2 through 6.

This would result in 12 Centers in Year 6 and a \$5.0 million authorization for that year.

Following the reasoning of the earlier example with a 90% limitation and no matching by the IRR Program, each of the seven Centers would receive a net increase from \$280,000 to about \$321,429 in Year 1. Then in each subsequent year, each Center would receive a small funding increase to \$337,500; \$350,000; \$360,000; \$368,000; and \$375,000 in Year 6 as in the prior example.

Hope this helps. I will have comments on a few other sections in the coming week.

David

Thanks Howard,

Nice work everyone! I am not going to be at TRB next week. I had authorization to go, but in order to get my feet more on the ground here; I decided to skip next week. I am planning on being a regular at TRB meetings in the future though. In fine tuning the document and developing specific legislative proposals, it is imperative to get it out to the broader tribal leader audience. In that vein, I plan to distribute it on the 22nd at the ATNI Transportation Committee meeting. As proposed by Jim, I think we should retain the draft heading for now.

Howard – on the transit comments, unless I've missed something in the past six months, \$10 million was the funding level for 2007 with \$12 million coming in 2008 (less 2% rescission?), and \$15 million in 2009 for a total of about \$45 million during this authorization (2006 was \$7.92 million). Planning was limited to \$25,000 per planning grant with no more than 15% of each year's available funding awarded to planning grants. In 2006, only about 40 planning proposals were submitted for about \$1 million total. I do not know what the outcome was for the 2007 application process. The remaining 85% of the funding goes for startup (limited to at most 25% of available funding) and implementation (at least 60% of available funding with any unused planning or startup allocations used for implementation).

One question – what is the “4/10/08 comment period?” Are we still on a timeline to refine the White Paper by the June 1 – 4 NCAI Mid-Year Conference in Reno? I expect that ATNI will want to prepare formal comments on the White Paper coming out of the ATNI Mid-Year Conference on May 12th – 15th. Please, let me know if this is consistent with the Task Force timeline.

David G. Frey

Construction Planning Manager

Skokomish Indian Tribe

Howard and others,

think it would be helpful to include a TTAP discussion on the next call. Having seen first hand how the Program works, I think there potentially is considerable bang for the buck by expanding the program. If we can get this program fully authorized without the need for matching funds from IRR, it would help alleviate concerns about diverting IRR funds away from tribes. It will also help to get some of those "other hands out of the pot" in regard to federal oversight, and to incorporate tribal oversight of the program. The priorities that the tribes see for their training needs are not necessarily the same priorities that BIA or Federal Lands would designate. It would seem to make the most sense to have oversight provided by the federal agency, FHWA-OPCD, dealing most directly with transportation training and technical assistance.

David G. Frey

Construction Planning Manager

Skokomish Indian Tribe

Hello all,

I've made some suggested edits (attached) to the cover letter. We may want to also tweak the draft resolution, but that can wait until after the conference call.

I have also attached two resolutions adopted by ATNI last week at their Winter Conference. One deals with proposed funding and oversight of TTAP. Resolution #08-35 supports the broad policy objectives under development by the Task Force, recommends a regional approach for FHWA/Tribal oversight of TTAP, and proposes modifying the white paper in regard to funding for TTAP. The other resolution (#08-34) makes a clear statement regarding the National Highway System routes included as IRR routes and in determining funding formula allocations. Inclusion of such routes provides a very strong argument for increased funding for the IRR Program.

David G. Frey

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Comments from Hopi Chairman Nuvamsa (4/05/08)

I finally had a chance to read the White Paper. It not only reads well, but it covers the major points we need to address. How do we increase BIA Road Maintenance funding – that is the big question in my opinion. The more the BIA cuts in Roads Mtc the deeper we have to dig into our construction dollars to offset the maintenance needs. This is not good because we also need the critical construction dollars. Do we include a Road Maintenance component in the new reauthorization? Otherwise, I'm in support of the White Paper. Incidentally, I am Chairman of the Hopi Tribe.

Ben H. Nuvamsa

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Comments: From Tim Ramirez (4/02/08)

I'm the Public Works Director of my Tribe the Prairie Band Potawatomi, former Road & Bridge Director (25 years). As co-chair

Along with John Healy on the IRRPCC Road Maintenance Task Force it reads well, I like the funding levels you're seeking. The only comment I got is on the second page of the cover letter it states "urging the BIA to seek full funding for its Road Maintenance Program". This approach does not get anywhere with them, as part of the Department of Interior they are given a budget to meet and it is where to cut..... It is best to go after a standalone line item in the New Highway Authorization like the Bridge Program. I got these realizations in speaking with the TPA (Tribal Priority Allocation) budget people in the Interior Building. As you can see that is proposed to be cut by 50%, by them. We requested audience with TPA Budget Committee and never heard from them. Your work is good going to Tribal leaders; I'm just an Army Ant.

Working Discussion Draft
Recommendations for SAFETEA-LU Reauthorization

- **Raise the federal gas tax and overall transit funding**
- **Increase funding for the Federal Transit Administration's Section 5310 program**, the major transit program for seniors and persons with disabilities. Congress provided **\$133.5 million** in funding for this program by the sixth year of the last reauthorization. This was a step in the right direction but significant new funds (***develop specific request***) need to be authorized to offset the estimated \$1 billion per year in unmet transportation needs that exist for seniors in this country.
- **New Freedom program (from \$92.5 million to xxx million) and incentives for state DOTs to be involved**
- **Direct significant new funding to the National Center on Senior Transportation** in order to award a larger number of community seed grants to demonstrate creative, unduplicated and effective solutions to increasing mobility for older adults. (***Determine amount and related seed grants it would provide for based on 2008 demo grant data***) These demonstration grants will help provide communities with the resources and assistance to start addressing the mobility needs of a rapidly growing senior population.
- **Planning and coordination (incentive program for state systems change activities to meet the new planning and coordination requirements)**
- **Expand Section 5310 operating assistance from a seven state pilot program to a nationwide basis.** Congress should allow states to have more flexibility in their use of Section 5310 funds by allowing those funds to be utilized for operating expenses as well as capital expenditures. This change, which Congress initiated on a demonstration basis under SAFETEA-LU, would make the Section 5310 program consistent with other federal transportation programs and would allow nonprofits to not only obtain new vans and buses but to ensure that they are operational with funding available to pay for preventive maintenance, insurance, gasoline, and driver salaries.
- **Establish an effective mechanism for States to submit to the Federal Transit Administration information relating to the utilization of the Section 5310 program and other formula grants** by providers and the consumers they serve, including the names of organizations receiving funding, the equipment or services made available through the program, the number of clients served, and any available information relating to unmet transit needs of the senior population and persons with disabilities.
- **Increase the ability of non-profit agencies to recruit and retain volunteer drivers for their programs by excluding mileage reimbursements from taxable income** at the same rate as businesses and increasing the charitable deduction that can be claimed by volunteer drivers who are not reimbursed for their expenses. (***Consider including Transit Service Corps for seniors proposal from previous recommendations***)
- **Mobility management (establish line-item specifically for funding mobility management initiatives)**
- **Livable communities (support concepts of the Complete the Streets initiative)**
- **Senior transportation and emergency preparedness, disaster response (evacuation) and recovery**

As of 2/7/08

- **Program dedicated to older driver safety initiatives (*establish federal/state matching program through NHTSA and FHA to promote state and local older driver safety programs*)**
- **Other ideas.**