



INTERTRIBAL TRANSPORTATION ASSOCIATION (ITA)

Attention: NPT Transportation Program

Mary Beth Frank Clark

P.O. Box 365, Lapwai, ID 83540

ITA Executive Team

President

Mary Beth Frank Clark
marybethf@nezperce.org
O: 208-621-3682

Vice President

Gerry Hope
gerry.hope@sitkatribenon.gov
O: 907-747-5910

Treasure

Sara Yockey
sara@vassan.org
C: 907-617-9970

Secretary

Jonah Begay
jbegay@navajodot.org

Regional Representatives

Region I: Great Plains

Vacant
Alt: Vacant

Region II: Southwest

Vacant
Alt: Vacant

Region III: Southern Plains

Lorrain McCurtain
lorraine.mccurtain@wichitatribes.com
Alt: Vacant

Region IV: Rocky Mountain

Vacant
Alt: Vacant

Region V: Eastern

Barak Myers
barakmyers@gmail.com
Alt: Vacant

Region VI: Alaska

William (Bill) Willard
wwillard@wca-t.com
Alt: Brian Winnestaffer
bwinnestaffer@chickaloon-nsn.gov

Region VII: Midwest

Ben Conners, Sr
roadsmar@badriver-nsn.gov
Alt: Vacant

Region VIII: Eastern Oklahoma

Stephaney Lambert
slambert@ttown.org
Alt: Richard Dunn
Dunn2138@gmail.com

Region IX: Navajo

Garret Silversmith
gsilversmith@navajodot.org
Alt: Jonah Begay
jbegay@navajodot.org

Region X: Western

Vacant
Alt: Vacant

Region XI: Northwest

Kim Stube
kstube@cowlitz.org
Alt: Chris Grewell
Chris.Grewell@elwha.org

Region XII: Pacific

Vacant
Alt: Vacant

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Office of Governmental Affairs
U.S. Department of Transportation
Attn: Director, Milo Booth, Rm. W-83
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Email: tribalaffairs@dot.gov

RE: Intertribal Transportation Association (ITA) comment on US DOT's Tribal Consultation

Dear Mr. Booth,

I am pleased to offer comment in response to U.S. Department of Transportation's (DOT) Deputy Assistant Secretary – Tribal Affairs, Arlando Teller's letter soliciting comment regarding Tribal Consultation, dated February 28th.

First, it is a welcome sight to receive your letter, and from President Biden who delivered the Executive Order (EO), to develop/improve a working relationship between the Department and its administrations. ITA is encouraged to revisit and improve the relationship between the DOT as in previous efforts as in EO 13175 of November 9, 2000 and Presidential Memorandum on Tribal Consultation of November 5, 2009(74, FR 57879).

With that in mind, please receive the following comments:

In an attached *undated* letter sent to Tribes by the DOT, there were good diamond bulleted points and definitions. Beginning with definitions, Intertribal Transportation Association (ITA), encourages adding the term "Tribal Citizens", in addition to "tribal member". Please add Tribal Citizen in the definitions section. As a note, ITA notices the National Congress of American Indians (NCAI), as well as other Tribes and Tribal organizations, have changed those who are enrolled to their respective Tribes as Tribal Citizens.

The undated DOT letter, in its overall content is good - for your convenience it accompanies this letter (titled: U.S. Department of Transportation Tribal Consultation Plan) – as it will be used as a guide for comment here. While this undated letter, presumably was written several years ago, as newly created items such as the Tribal Self-

Governance Program in the DOT are missing. However, this letter does have important areas that deserve revisiting and implementing. One overall observation, the Goals and Actions are okay, however updating and refreshing will help.

Some refreshing and updating in the "Foster meaningful government-to-government relations" section should include implementing and maintaining the Tribal Self-Governance Program that appropriately meets the day-to-day operation for both Tribes and the DOT that is adequately staffed - in all levels which include 1) elevating the Tribal Affairs Deputy Assistant Secretary to Assistant Secretary, 2) establishing and maintaining a Tribal Self-Governance Office and 3) establishing and maintaining a Tribal Self-Governance Advisory Committee.

Some sections that need refreshing include the following: in the "Ensure the USDOT's uniform and effective delivery of tribal programs throughout the country" section, in the first diamond bullet, rewrite to read "Ensure all USDOT's Modal Administrations are consistent with, and follow, this plan". On the fourth diamond bullet, rewrite to read "Develop a training program for USDOT employees regarding Tribes, the sovereignty of Tribal governments, *the Tribal Self-Governance Program*, and the unique government-to-government relationship between Tribes, the USDOT, and the Federal Government".

In the "Assist in implementing tribal infrastructure projects" section, rewrite the first diamond bullet to read "Build capacity of Tribes and staff in the USDOT-on-USDOT Programs, processes and procedures, the *Tribal Self-Governance Program*, *Tribal Transportation Program*, Tribal Transit Program". Add this diamond bullet item to read "Strengthen safety in American Indian/Alaska Native communities by developing, instituting, and maintaining a uniform motor vehicle and pedestrian crash data system from State, County, Borough, municipal police, BIA and Tribal law enforcement, and other first responders to motor vehicle accidents in American Indian/Alaska Native communities". Add this diamond bullet item to read "Include, and invite recommendations from Tribal governments, to USDOT plans of implementing new programs, such as Climate Change programs or new programs in the USDOT".

In the "Assist tribal members in developing transportation capacity", rewrite to read "Assist *Tribal Citizens/members and USDOT staff* in developing transportation and infrastructure capacities by". And, in the first diamond bullet, rewrite to read "Increase internships for American Indians/Alaska Natives at the USDOT through programs and outreach to high schools, Tribal Colleges, trade schools, community colleges and universities".

In the "Assist efforts to coordinate national tribal infrastructure policy and programs with the Federal government by", rewrite to read "Assist effort to coordinate national *Tribal* infrastructure policy and programs within the Federal government by". And rewrite the diamond bullet which would read "Working with other departments, agencies and administrations, such as the Indian Health Service, Bureau of Indian Affairs, Federal Emergency Management Agency, Department of Defense, and profit and nonprofit companies/organizations to coordinate Federal Tribal infrastructure programs and

incorporating livability principles as adopted by departments, such as the Department's Sustainability Partnership with the U.S. Department of Housing and Urban Development, the U.S. Environmental Protection Agency and other departments/agencies that are appropriate to Tribal projects.

In "6. Accountability", this will likely need to freshen up to reflect President Biden (currently refers to President Obama and the date states February 3, 2010), however the overall concept is well intended. The problem was, in this plan there was not much follow through by the Administrations within the DOT. For example, was there a "Designated Official" who submitted "...to the Director of OMB a progress report on the status of each action included in this plan, together with any proposed updates to this plan, within 270 days."? There needs to be accountability that is realistic, yet a plan that will be accountable, with a department official who will be responsible to give the report to the Secretary and Tribes. This report must be submitted to the President of the United States.

Finally, it is critically important to add the DOT will conduct negotiated rulemaking when agreed upon, or where appropriate, that adds to the consultation process. One example of an important item to have as a negotiated rulemaking is addressing the funding formula in both the Tribal Transportation Program and Tribal Transit Program.

With these important updates and "refreshers" to the existing U.S. Department of Transportation Tribal Consultation Plan, there would be improvements to Tribal Consultation for both the U.S. DOT and Tribes.

Thank you for this opportunity to submit comment, as this is the first step toward improved consultation. If you have any questions or comments please contact me; MaryBeth Frank Clark, President - ITA email; marybethf@nezperce.org or phone 208-621-3682.

Respectfully,


MaryBeth Frank Clark, ITA President