INTERTRIBAL TRANSPORTATION ASSOCIATION (ITA)

To:

Senate Committee on Indian Affairs
Tribal Transportation Bill

July 16, 2019

Delivered via Email.
July 16, 2019

Senate Committee on Indian Affairs
628 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tribal Transportation Issues:

Senate Committee on Indian Affairs:

Thank you for this opportunity to submit these written comments and draft legislation.

On behalf of the Intertribal Transportation Association (ITA) and member tribes we formally submit the following.

We look forward to working with you and your staff to continue improving the quality of transportation infrastructure for the benefit of our Tribal members and our surrounding communities.

If there are any questions regarding this, please call me at 406-353-2447, or email at President.ITA1@gmail.com, questions can also be direct to Mr. Gerry Hope, Co-Chair, ITA Legislative Committee at gerry.hope@sitkattribe-nsn.gov or Mr. Carl Slater, Co-Chair, ITA Legislative Committee, Thank you.

Sincerely,

C. John Healy Sr., President,
Intertribal Transportation Association.
Attachments:

Cc:  Senator Jon Tester (D-MT).
     Brandon Ashley, Deputy Staff Director, Office of Senator John Hoeven (R-ND).
     Anthony Sedillo, Senate Committee on Indian Affairs.
     Brian Clifford, Senate Committee Environment & Public Works.
     Kenneth Martin, Senate Committee on Environment & Public Works.
     Tara Katuk Mac Lean Sweeney, Assistant Secretary of Indian Affairs,
     U.S. Department of the Interior, Bureau of Indian Affairs.
     Erin Kenley, Director, Office of Tribal Transportation, USDOT, Federal Lands Highway.
     Federal Highway Administration.
     Darryl LaCounte, Director, U.S. Department of the Interior, Bureau of Indian Affairs.
     LeRoy Gishi, Chief, Division of Transportation, U.S. Department of the Interior, Bureau
     of Indian Affairs.
     Tyler D. Scribner, Policy Analyst, National Congress of American Indians (NCAI).
     Intertribal Transportation Association (ITA) Executive Committee Members.
TITLE: Resolution of support for re-authorization of the FAST act and for increased funding of 1 billion dollars for the Tribal Transportation Program

WHEREAS, the Intertribal Transportation Association is recognized body of tribal interests for transportation and infrastructure;

WHEREAS, the Intertribal Transportation Association membership is the representative body of participating tribes;

WHEREAS, the Intertribal Transportation Committee recognizes that transportation infrastructure, including building and maintaining roads and bridges, is vital to the health, safety and welfare of all Indian reservations and Alaska Native Villages, and

WHEREAS, ITA recognizes that a majority of the transportation infrastructure are inadequate and unsafe for its members and residents, and

WHEREAS, according to the Center for Disease Control (CDC), motor vehicle crashes are the leading cause of death of Indian children, Native American infants are eight times more likely to die in a vehicle-related crash than non-Native infants, and motor vehicle crashes are the leading cause of unintentional injury for Native American adults; and

WHEREAS, the National Highway Traffic Safety Administration (NHTSA) has reported that 3 out of 4 deaths in motor vehicle crashes on reservations, the individuals were not wearing seat belts; and

WHEREAS, federal appropriations for the Tribal Transportation Program (TTP), Tribal Transit Program, BIA Indian Highway Safety Program, TTP Safety Grant program, and BIA Road Maintenance Program are wholly inadequate to address documented unmet tribal transportation infrastructure and highway safety needs; and

WHEREAS, these unmet needs perpetuate transportation barriers for American Indians and Alaska Natives, undermine the efforts by Tribal governments to address continuing disparities between the general population and Native communities as concerns access to higher education, public safety, health services and economic opportunity, and limit the ability of Tribal governments, as “public authorities,” to meaningfully collaborate with federal, State and other local governments regarding Tribal transportation infrastructure and safety needs; and

WHEREAS, many of the FAST Act’s discretionary and competitive grant programs, such as the TIGER grant program and Nationally Significant Freight and Highway Projects program (INFRA), do not have Tribal set-asides to ensure that Indian tribes can favorably compete, and contain burdensome local match and other application requirements, such as cost-benefit analysis studies, that severely limit the benefits of such federal programs to Indian Country; and

WHEREAS, the Congress has long recognized that roads promote economic development and help Indian tribes provide vital governmental services, which are essential for healthy, vibrant and stable tribal communities; and
WHEREAS, the Intertribal Transportation Association, a coalition of Indian tribes and tribal advocates, in anticipation of the Administration and Congress introducing a multi-year infrastructure plan for the Nation that expands federal transportation programs serving Tribes, reduced burdensome regulations, improves BIA recordkeeping relating to rights-of-way, provides innovative financing tools for Tribes, and requests increased federal appropriations for tribal infrastructure, transit and safety needs in the sum of 1,000,000,000 as justified by the backlog of BIA maintenance and new projects;

WHEREAS, to address the disparities in infrastructure, equipment, and resources that exist between Indian tribes and States and local governments, Indian tribes, as public authorities, must advocate before Congress and the Administration for direct federal investments in the transportation programs and funds required to meet the needs of their Tribal citizens consistent with the federal government’s trust responsibilities to all the Indian Nations and peoples; and

WHEREAS, Intertribal Transportation Association, having seen the need and lack of funding as a critical impediment to begin to address the great unmet transportation infrastructure, transit and highway safety needs of Tribes.

NOW THEREFORE BE IT RESOLVED, that the Intertribal Transportation Authority does hereby declare its support for increased funding to the Tribal Transportation Program and to advocate to Congress and the Administration for its inclusion in a national infrastructure measure to remedy the ongoing unmet transportation, transit and highway safety needs of Indian Country;

ATTEST:

C. John Healy, Jr., President
Intertribal Transportation Association

Carl Slater, Secretary
Intertribal Transportation Association

CERTIFICATION:

We, the undersigned, as the Chair and the Secretary of the Intertribal Transportation Association, do hereby certify that the foregoing Resolution was duly presented and approved, at a convened General Membership Meeting of the Intertribal Transportation Association, which was held on the 12th of December, 2018 in Las Vegas, NV with a full quorum present.

DATE: January 16, 2019

Carl Slater, Secretary
Intertribal Transportation Association
INTERTRIBAL TRANSPORTATION ASSOCIATION (ITA)

116TH CONGRESS
1ST SESSION

S. __________

To enhance tribal transportation infrastructure and tribal transit.

_____________________

IN THE SENATE OF THE UNITED STATES

June 26, 2019

Mr. __________ introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To enhance tribal transportation infrastructure and tribal transit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

SHORT TITLE. —This Act may be cited as the “Tribal Transportation Infrastructure and Tribal Transit Investment Act of 2020”.

TABLE OF CONTENTS. —The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I – TRIBAL TRANSPORTATION INFRASTRUCTURE AND TRIBAL TRANSIT PROGRAMS

SUBTITLE A

July 2, 2019
TITLE I – TRIBAL TRANSPORTATION INFRASTRUCTURE INVESTMENTS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.
(a) IN GENERAL—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) TRIBAL TRANSPORTATION PROGRAM. — For the tribal transportation program under section 202 of title 23, United States Code—

(i) $555,000,000 for fiscal year 2021;
(ii) $605,000,000 for fiscal year 2022;
(iii) $655,000,000 for fiscal year 2023;
(iv) $705,000,000 for fiscal year 2024; and
(v) $755,000,000 for fiscal year 2025.

(2) TRIBAL TRANSPORTATION FACILITY BRIDGES PROGRAM—
For the tribal transportation facility bridges program under section 202 of title 23, United States Code, as further amended herein—

(i) $75,000,000 for fiscal years 2021 through 2025;

Provided, however, that for purposes of section 201 of title 23, funds made available under the tribal transportation facility bridges program shall be considered part of the tribal transportation program.

(3) NATIONALLY SIGNIFICANT FEDERAL LANDS AND TRIBAL PROJECTS PROGRAM— For the nationally significant federal lands and tribal projects program under section 1123 of the FAST Act, Pub. L. 114-94, as further amended herein—

(i) $100,000,000 for fiscal years 2021 through 2025.

(4) TRIBAL HIGH PRIORITY PROJECTS PROGRAM— For the tribal high priority projects program established under section 105 of this Act—

(i) $45,000,000 for fiscal year 2021;

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(ii) $50,000,000 for fiscal year 2022;
(iii) $55,000,000 for fiscal year 2023;
(iv) $60,000,000 for fiscal year 2024; and
(v) $65,000,000 for fiscal year 2025.

(5) NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM— For
the national tribal asset management program established under
section 106 of this Act—

(6) $85,000,000 for fiscal year 2021;
(7) $95,000,000 for fiscal year 2022;
(8) $105,000,000 for fiscal year 2023;
(9) $115,000,000 for fiscal year 2024; and
(10) $125,000,000 for fiscal year 2025.

(b) TRIBAL TRANSIT PROGRAM— The following sums are authorized
to be appropriated out of the Highway Trust Fund from the Mass
Transit Account:

(1) For the tribal transit program under section 5311(c)(1)(A) of title
49, United States Code—

(i) $30,000,000 for fiscal year 2021;
(ii) $35,000,000 for fiscal year 2022;
(iii) $40,000,000 for fiscal year 2023;
(iv) $45,000,000 for fiscal year 2024; and
(v) $50,000,000 for fiscal year 2025;

(2) For the tribal transit program under section 5311(c)(1)(B) of title
49, United States Code—

(i) $55,000,000 for fiscal year 2021;
(ii) $60,000,000 for fiscal year 2022;
(iii) $65,000,000 for fiscal year 2023;
(iv) $70,000,000 for fiscal year 2024; and
(v) $75,000,000 for fiscal year 2025.
SEC. 102. NATIONAL TRIBAL INFRASTRUCTURE INVESTMENTS.

(a) IN GENERAL— In addition to funds made available from any other source to carry out transportation and mass transit programs for Indian Tribes, and to make national investments in tribal transportation infrastructure, the following sum are appropriated:

(1) TRIBAL TRANSPORTATION Program— To supplement the Tribal Transportation Program under section 202 of title 23, United States Code, there are appropriated out of the Highway Trust Fund (other than the Mass Transit Account), $555,000,000 for fiscal year 2021, $605,000,000 for fiscal year 2022, $655,000,000 for fiscal year 2023, $705,000,000 for fiscal year 2024, and $755,000,000 for fiscal year 2025, for eligible projects listed on a Tribal Transportation Improvement Program approved by the Federal Highway Administration, for investments in transportation infrastructure at American Indian reservations and at Alaska Native Tribes, to remain available for a period of 3 fiscal years following the fiscal year for which the amounts are appropriated: Provided further, That 18 months following the enactment of this Act, to ensure the prompt use of the amount provided for investments at American Indian reservations and Alaska Native Tribes, the Secretary of Transportation and the Secretary of Interior shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated: Provided further, That up to 3 percent of the funding provided herein may be used by the Secretary and the Secretary of the Interior, as appropriate, for program management and oversight and project-related administrative expenses: Provided further, That funds made available under this heading shall be administered as if apportioned under chapter 2 of title 23, United States Code: Provided further, That the Federal share payable on account of any project or activity carried out with funds made available under this heading under chapter 2 of title 23, United States Code, shall be 100 percent of the total cost thereof: Provided further, That funding provided
under this heading shall be in addition to any and all funds provided for fiscal years 2021 through 2025: Provided further, That that amount made available under this heading shall not be subject to any limitation on obligations for the Tribal Transportation Program set forth in any Act.

(2) TRIBAL TRANSPORTATION FACILITY BRIDGES PROGRAM— To supplement funds made available from any other source to carry out the Tribal Transportation Facility Bridges Program under section 202(d) of title 23, United States Code, there are appropriated $75,000,000 for each fiscal years 2021 through 2025, out of the Highway Trust Fund (other than the Mass Transit Account), to remain available for a period of 3 fiscal years following the fiscal year for which the amounts are appropriated, for eligible projects for the tribal transportation facility bridges program under section 202(d) of title 23, United States Code, to carry out any planning, design, engineering, preconstruction, construction and inspection of new or replacement tribal transportation facility bridges, to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing composition; or to implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts; Provided further, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall be, at the option of the recipient, up to 100 percent of the total cost thereof: Provided further, That that amount made available under this heading shall not be subject to any limitation on obligations for the tribal transportation facility bridge program set forth in any Act; Provided further, that except as otherwise provided herein, the funds provided under this heading shall be distributed in accordance with section 202(d) of title 23: Provided further, That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2021 through 2025 in any other Act for Tribal Transportation Facility Bridges and shall not affect

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the distribution of funds provided for the Tribal Transportation Facility Bridge program in any other Act.

(3) NATIONALLY SIGNIFICANT FEDERAL LANDS AND TRIBAL PROJECTS PROGRAM— To supplement funds made available from any other sources for the nationally significant federal lands and tribal projects program, there are appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $100,000,000 for fiscal years 2021 through 2025.

(4) TRIBAL HIGH PRIORITY PROJECTS PROGRAM— To supplement funds made available from any other sources for the tribal high priority projects program, there are appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(i) $45,000,000 for fiscal year 2021;
(ii) $50,000,000 for fiscal year 2022;
(iii) $55,000,000 for fiscal year 2023;
(iv) $60,000,000 for fiscal year 2024; and
(v) $65,000,000 for fiscal year 2025.

(5) NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM— To supplement funds made available from any other sources for the national tribal asset management program, there are appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(i) $85,000,000 for fiscal year 2021;
(ii) $95,000,000 for fiscal year 2022;
(iii) $105,000,000 for fiscal year 2023;
(iv) $115,000,000 for fiscal year 2024; and
(v) $125,000,000 for fiscal year 2025.

(6) TRIBAL TRANSIT PROGRAM— (a) To supplement funds made available from any other sources for the tribal transit program under section 5311(c)(1)(A) of title 49, United States Code, there are appropriated out of the Highway Trust Fund (Mass Transit Account):

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(vi) $30,000,000 for fiscal year 2021;
(vii) $35,000,000 for fiscal year 2022;
(viii) $40,000,000 for fiscal year 2023;
(ix) $45,000,000 for fiscal year 2024; and
(x) $50,000,000 for fiscal year 2025; and
(b) For the tribal transit program under section 5311(c)(1)(B) of title 49, United States Code—
(vi) $55,000,000 for fiscal year 2021;
(vii) $60,000,000 for fiscal year 2022;
(viii) $65,000,000 for fiscal year 2023;
(ix) $70,000,000 for fiscal year 2024; and
(x) $75,000,000 for fiscal year 2025.

SEC. 103. TRIBAL TRANSIT PROGRAM AMENDMENTS.
Section 5311(c)(1) of title 49, United States Code, is amended—
in subsection (A) by striking the period at the end of the sentence, inserting a semi-colon, and adding the following: “; provided that before distributing funds on a competitive basis under this subsection, the Secretary shall ensure that an American Indian/Alaska Native Tribe that received a public transportation grant under section 3013(c) of Pub. L. 109-59 during fiscal years 2006 through 2012, receives not less than the highest amount awarded to the Indian tribe for equipment purchases, maintenance, operating or any other transit-related costs received under section 3013(c) of Pub. L. 109-59 if, by operation of the formula allocation in section (j) herein, the American Indian/Alaska Native Tribe’s formula grant award falls below an award previously made to the Indian tribe under section 3013(c) of Pub. L. 109-59.”.
SEC. 104. NATIONALLY SIGNIFICANT FEDERAL LANDS AND
TRIBAL PROJECTS PROGRAM AMENDMENTS.
(a)(1) Section 1123 of the Fixing America’s Surface Transportation Act,
follows—
in subparagraph (c)(3) of the section by striking the period at the end and
inserting the following: “; except that for a Tribal transportation project, listed
on the National Tribal Transportation Facility Inventory, a project shall be
eligible under this section if it has an estimated cost, based on the results of
preliminary engineering, equal to or exceeding $3,000,000, with priority
consideration given to projects with an estimated cost equal to or exceeding
$5,000,000; and notwithstanding subparagraph (c)(2) or (d)(2) herein, a Tribal
transportation project may include costs for advance planning development
elements, including but not limited to, planning, design, engineering and
environmental requirements under the National Environmental Policy Act of
1969. Such sums shall remain available for a period of three fiscal years
following the fiscal year for which the amounts are appropriated.”; and

SEC. 105. TRIBAL HIGH PRIORITY PROJECTS PROGRAM.
(a) Section 202 of title 23 United States Code is amended to add a new
paragraph (g) to read:
“(g) TRIBAL HIGH PRIORITY PROJECTS PROGRAM. —
“(1) There is established a high priority projects program to permit any
American Indian/Alaska Native Tribe to finance a high priority project.
“(a) DEFINITIONS. —In this section:
“(1) LIST.—The term ‘list’ means the funding priority list developed under
subsection (c)(5).
“(2) PROGRAM.—The term ‘program’ means the Tribal High Priority Projects program established under subsection (b)(1).

“(3) PROJECT.—The term ‘project’ means a project provided funds under the program.

“(b) PROGRAM.—

“(1) IN GENERAL.—The Secretary of Transportation shall use amounts made available under this section to carry out a Tribal High Priority Projects program under which funds shall be provided to eligible applicants in accordance with this section.

“(2) ELIGIBLE APPLICANTS.—Applicants eligible for program funds under this section include—

“(A) an Indian tribe whose annual allocation of funding under section 202 of title 23, United States Code, is insufficient to complete the highest priority project of the American Indian/Alaska Native Tribe;

“(B) a governmental subdivision of an Indian tribe—

“(i) that is authorized to administer the funding of the American Indian/Alaska Native Tribe under section 202 of title 23, United States Code; and

“(ii) for which the annual allocation under that section is insufficient to complete the highest priority project of the Indian tribe; or

“(C) any Indian tribe that has an emergency or disaster with respect to a transportation facility included on the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code.

“(c) PROJECT APPLICATIONS; FUNDING.—

“(1) IN GENERAL.—To apply for funds under this section, an eligible applicant shall submit to the Department of Transportation or the Department of Interior an application that includes—

“(A) project scope of work, including deliverables, budget, and timeline;

“(B) the amount of funds requested;

“(C) project information addressing—

“(i) the ranking criteria identified in paragraph (3); or

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“(ii) the nature of the emergency or disaster;
“(D) documentation that the project meets the definition of a tribal transportation
facility and is included in the national inventory of tribal transportation facilities
under section 202(b)(1) of title 23, United States Code;
“(E) documentation of official tribal action requesting the project;
“(F) documentation from the Indian tribe providing authority for the Secretary or
the Secretary of the Interior to place the project on a transportation improvement
program if the project is selected and approved.
“(2) LIMITATION ON APPLICATIONS.—An applicant for funds under the
program may only have 1 application for assistance under this section pending at
any 1 time, including any emergency or disaster application.
“(3) APPLICATION RANKING.—
“(A) IN GENERAL.—The Secretary and the Secretary of the Interior shall
determine the eligibility of, and fund, program applications, subject to the
availability of funds.
“(B) RANKING CRITERIA.—The project ranking criteria for applications under
this section shall include—
“(i) by a tribe whose annual allocation is insufficient to complete its highest
priority project;
“(ii) by a government subdivision of a tribe that is authorized to administer the
tribe’s TTP Program funding and whose annual allocation is insufficient to
complete its highest priority project;
“(iii) eligible applicants may have only one TPPHPP application pending at any
time;
“(iv) TPPHPP funds cannot be used for transportation planning, research or
routine maintenance activities.
“(4) FUNDING PRIORITY LIST.—
“(A) IN GENERAL.—The Secretary and the Secretary of the Interior shall jointly
produce a funding priority list that ranks the projects approved for funding under
the program.

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“(B) LIMITATION.—The number of projects on the list shall be limited by the amount of funding made available.
“(5) TIMELINE.—The Secretary and the Secretary of the Interior shall—
“(A) require applications for funding no sooner than 60 days after funding is made available pursuant to subsection (a);
“(B) notify all applicants and Regions in writing of acceptance of applications;
“(C) rank all accepted applications, develop the funding priority list, and return unaccepted applications to the applicant with an explanation of deficiencies;
“(D) notify all accepted applicants of the projects included on the funding priority list no later than 180 days after the application deadline has passed pursuant to subparagraph (A); and
“(E) distribute funds to successful applicants.

SEC. 106. NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM.

(a) IN GENERAL. —Section 201(c)(5) of Title 23, United States Code, is amended to add a new subparagraph (A) to read as follows:

“(A) NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM.
“(1) ESTABLISHMENT. —The Secretary in cooperation with the Secretary of the Interior shall establish and implement a national tribal asset management program under this section.
“(2) PURPOSES.—The purpose of the national tribal asset management program shall be—
“(a) to provide support for the condition and performance of tribal transportation facilities and systems;
“(b) to ensure that investment of federal and tribal funds in transportation facility construction are directed to support progress toward

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the achievement of performance targets consistent with 23 U.S.C. § 119
National highway performance program and established in an asset
management plan of a Tribe for the tribal transportation system.
“(3) ELIGIBLE FACILITIES.—Except as provided in subsection
(4), to be eligible for funding apportioned under this section, a facility shall
be located on the national tribal transportation facility inventory as defined
in § 202(b)(1) and must have been previously constructed with or eligible
for construction using federal or tribal transportation funds.
“(4) ELIGIBLE PROJECTS. —Funds apportioned to a Tribe to
carry out the tribal transportation asset management program may be
obligated only for a project on an eligible facility that is—
“(1)(A) a project or part of a program of projects supporting
progress toward the achievement of national tribal transportation
performance goals for improving infrastructure condition, safety,
mobility, or freight movement on a tribal transportation facility
listed on the national tribal transportation facility inventory; and
“(B) consistent with the tribe’s long-range transportation plan; and
“(2) for 1 or more of the following purposes:
“(A) Resurfacing (including sealing, application of dust
palliatives, replacement of original surface materials and subsurface materials
such as culverts), restoration, preservation or operational improvements of
segments of the tribe’s transportation system.
“(B) Preservation, and protection (including scour countermeasures, seismic
retrofits, impact protection measures, security countermeasures, and protection

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against extreme events) of bridges on the National Bridge Inventory and part of a tribe’s national tribal transportation facility inventory.

“(C) Training of personnel to assure correct implementation of preservation measures.

“(5) APPLICABLE LAWS AND REGULATIONS.—Notwithstanding any other law or regulation, a tribal government shall not be subject to the laws, regulations or other requirements applicable to state transportation departments under the Federal-Aid Highway System, except to the extent such laws and regulations are expressly made applicable to contracts, compacts or government-to-government agreements entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Tribal Transportation Self-Governance Program, or contracts and agreements pursuant to sections 202(a)(2)(B) and 202(b)(6) and (7), as amended. Unless expressly agreed to by the participating Indian tribe, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department of Transportation, except 25 C.F.R. Part 170, or regulations promulgated under section 207(n) of title 23, United States Code.