



TRANSPORTATION RESEARCH

# CIRCULAR

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## Conference on Transportation Improvements

*Experiences Among Tribal, Local,  
State, and Federal Governments*

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TRANSPORTATION RESEARCH BOARD  
OF THE NATIONAL ACADEMIES

# Conference on Transportation Improvements

*Experiences Among Tribal, Local,  
State, and Federal Governments*

COMMITTEE ON HISTORIC AND ARCHEOLOGICAL PRESERVATION IN TRANSPORTATION (A1F05)  
SUBCOMMITTEE ON NATIVE AMERICAN ISSUES IN TRANSPORTATION

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## Introduction

Native American issues were brought to the Transportation Research Board's Historic Preservation Committee (A1F05) over 7 years ago. Traditional cultural properties are important to Native Americans, as are all aspects of transportation, including economic development, safety, right-of-way, sovereignty, jurisdiction, and training. The Subcommittee on Native American Issues in Transportation [A1F05(1)] was formed to facilitate discussion, research, and illustrations of best practices concerning transportation issues on tribal lands.

The Subcommittee on Native American Issues in Transportation resolved at the 1999 Transportation Research Board Annual Meeting to have a conference that focused on the complexity of broad transportation issues of importance for Native American nations. Nationally there appears to be a desire for effective governmental participation in transportation programs and projects affecting tribal government interests. How best to communicate, coordinate, and cooperate on mutual transportation issues and projects between tribal, local, state, and federal governments? Experience shows success in this field requires more than the good intentions of a few committed staff people. Many projects and programs fall short of their potential in their early outreach and coordination stage. The committee chose improving communication between governments as the topic for the conference.

The best practice cases as told by experienced transportation professionals and tribal leaders illustrate how to begin effective government-to-government relationships. These cases demonstrate that it is always more economical and efficient to include tribes in the planning and needs assessment at the outset of a new project. Professionals who go through this process of strengthening tribal-state or tribal-federal relationships feel that it is "the right thing to do" and is the spirit and letter of the law. Successful case studies demonstrate that the best way to involve other parties in project ideas and have a comfortable resolution is to first have an ongoing relationship between the non-tribal and tribal professional transportation staff. This relationship is not a project-by-project relationship, but a respectful long-term working relationship based on neighboring sovereign nations speaking to one another about mutual concerns. Speakers suggest that all sides are responsible for knowing their counterparts and developing this professional transportation relationship.

Tribal-state-federal relationships around transportation program management and operations issues are relatively recent phenomena. While the federal-state relationship has developed over the past 88 years with the formation of AASHTO and strong legislative and financial support, the presence of tribal officials in the dialogue has emerged only in the past 20 years with no clear national support, financial or institutional. Understandably this new paradigm for decision making and regional programming for transportation infrastructure must go through a growing stage. Some of the presentations contain strong statements, which naturally arise as participants in the "new paradigm" sort out their roles and learn to work effectively. These statements have not been removed, as they were part of the message and experiences the speaker wanted to convey. Actually, for transportation officials, we stand on the edge of a brave new frontier in program administration. Hopefully, through conferences like this, we can begin to assemble the appropriate strategies and policies to make the tri-partite relationship effective and ongoing.

## NEW MEXICO CASE STUDY

# **Tribal Coordination/Organization Assistance in the New Mexico Middle Rio Grande Long-Range Major Transportation Investment Study**

**EDMUND L. GONZALES**  
*ELG Engineering*

## **INTRODUCTION**

In November 1997 and as modified in July 2000, a contract between the New Mexico State Highway and Transportation Department (NMSHTD) and ELG Engineering was entered into in response to a successful solicitation to provide tribal coordination and organizational assistance. The scope of work and assistance was in three categories:

1. Inventory: Collect existing transportation data.
2. Outreach: Contact and meet with affected pueblos and tribes (initially 13; expanded to 20) by disseminating important information. Outreach activities included meeting with the All Indian Pueblo Council, the Eight Northern Indian Pueblos Council, and the Ten Southern Pueblos, along with separate meetings with Laguna Pueblo and Cañoncito (which is part of the Navajo Tribe).
3. Recommendation and Documentation: Interviews were conducted with individual pueblo and tribal leadership and staff to document major issues on socioeconomic concerns, transportation needs, and the proposed level of involvement and participation in the NMSHTD planning process, particularly the upcoming Long-Range Major Transportation Investment Study (LRMTIS). Pueblos and tribes were provided a letter from the Secretary of the NMSHTD explaining the LRMTIS and the importance of the participation by pueblos and tribes. With the letter was a copy of the scoping report and a corridor map and questionnaire.

Contact with each pueblo or tribe was made through Edmund L. Gonzales, a professional engineer and a member of the Pueblo of San Ildefonso. Each pueblo was contacted directly, and meetings were scheduled on-site at each pueblo or tribal office. In a large majority of the interviews, the governor, tribal councilmen, and staff were present. Each meeting followed a typical format that included introductions and a discussion of the purpose of the LRMTIS, including a short history of its development and key participants, the outreach process, and the importance of pueblo or tribe involvement.

Key points that were shared with each pueblo or tribe included the following.

- The purpose of the LRMTIS is to identify major travel corridors and transportation strategies as well as to study all levels of transportation systems, major routes, infrastructure, air quality, and other related systems.
- The NMSHTD has not coordinated well with tribal governments in either planning or project implementation in the past.

- The NMSHTD is committed to involving pueblos and tribes in the planning process from the beginning.
- The NMSHTD acknowledges that pueblos and tribes play a key role in the LRMTIS planning process and that land owned by pueblos and tribes within the corridor makes their participation essential.
- The corridor includes the Albuquerque and Santa Fe metropolitan areas; 7 counties, 14 affected pueblos, 2 national laboratories, 12 small cities, towns, or villages, and a number of governmental and quasi-governmental entities (such as the Bureau of Land Management and the Albuquerque Metropolitan Area Flood Control Authority).
- The corridor encompasses commuter sheds in the Albuquerque metropolitan area, the Santa Fe and Los Alamos area, and the Albuquerque to Santa Fe corridor.
- Although the LRMTIS corridor affects 14 pueblo tribes directly, the recommendations could also affect other Indian tribal governments.
- The LRMTIS could provide a blueprint for the future of transportation and urban expansion in New Mexico.
- The planning horizon for the LRMTIS is 20 years, with a 50-year conceptual projection.
- The LRMTIS is important and is the first of its kind in New Mexico, with a projected cost of \$3.0 million and a 3-year time frame.
- The NMSHTD is concerned about pueblo/tribal participation and continuity in transportation planning.
- The LRMTIS will bring together previous planning studies, strategies for working together, and a way to prioritize projects. It will also suggest mechanisms for financing.
- The NMSHTD wants to receive recommendations on how the planning process can be improved and to gain an understanding of the needs of the pueblos and tribes.
- The LRMTIS should help define new opportunities and recommend planning policies, cooperative projects, and agreements.
- Pueblos and tribes should tell the NMSHTD how they would like to be involved. However, the NMSHTD wants pueblos and tribes involved at all stages of the planning process.

Following the overview and comments by the NMSHTD representatives, pueblo and tribal leaders were asked to comment and respond. The following is a compilation of concerns, key issues, comments, and requests by pueblos and tribes. (See [Figure 1](#) at end of report for matrix information).

Pueblos and tribes indicated that, on the whole, the NMSHTD does not consult pueblos or tribes on an ongoing basis. Contact usually occurs when decisions and plans are near completion; tribes are asked only to comment on plans that have already been implemented.

- Pueblos and tribes outside the corridor study area requested that they be included in the planning process. Planning policies and LRMTIS recommendations could affect all pueblos and tribes.
- Pueblos and tribes are most interested in projects in the next 1 to 3 years, especially those associated with major socioeconomic initiatives. These initiatives may have a significant impact on large population centers, major interchanges, and other local transportation systems.

- All pueblos and tribes indicated a willingness to participate in the LRMTIS. Most of them noted, however, that they lacked the resources and funds to participate fully. The NMSHTD should consider providing reimbursement for pueblo and tribal representatives' time and expenses.

- The LRMTIS consultant team should provide an adequate degree of planning assistance to pueblos and tribes so that they can coordinate and document proposed transportation needs.

- Many of the pueblos and tribes have great interest in commuter services and support of the park-and-ride experiment in the U.S. 84/285 corridor. Some tribes with high tourist traffic think that mass transit options should be a vital part of any well-planned transportation strategy. For example, Acoma Pueblo receives over 150,000 visitors a year.

- Pueblos and tribes lack the technical staff and funds to conduct even small-scale transportation studies. In most cases, it is difficult for tribal governments to maintain staff for basic social programs. Pueblos and tribes rely on the Bureau of Indian Affairs (BIA) to provide planning services. Funds are limited, and competition is high. The BIA's most recent transportation-improvement plans were issued in 1992 and 1995. Some pueblos have used the 2% Intermodal Surface Transportation Efficiency Act of 1991 planning funds to make individual plans. It has been estimated by the BIA's Albuquerque Area Office that local pueblos and tribes would need in excess of \$1.0 million to conduct needed transportation updates.

- Pueblos and tribes continue to emphasize the need for state and local governments and agencies to treat pueblos and tribes as sovereign governments. They are recognized as such by the Constitution and Congress. Any relationship should be on a government-to-government basis.

- Pueblos and tribes consider their land base as small and limited, so they are not willing to give any more rights-of-way (ROWs) up without land-for-land compensation. The state cannot condemn tribal lands, so new approaches are necessary, such as the state trading some state public lands for new ROWs, especially public lands of cultural value to the tribes. Pueblos and tribes feel strongly that current land values do not compensate for the negative impact to the quality of life and encroachments on privacy caused by new roads and development.

- Pueblos and tribes suggest that the BIA's area offices and the BIA's technical staff be involved in the technical advisory groups during the LRMTIS.

- Pueblos and tribes request that briefings about the planning process be an integral part of the program LRMTIS.

- Pueblos and tribes have a concern with jurisdictional and legal issues that need resolution before any new ROWs are granted.

- Pueblos and tribes consider maintaining their quality of life and keeping the impact on the environment (such as on air quality) to a minimum as high priorities.

- Pueblos and tribes, on the whole, do not participate in the RPO process.

Transportation planning among the pueblos and tribes, the BIA, the Indian Reservation Roads (IRR), local communities, state government, and the FHWA/FTA federal agencies is not coordinated. In addition, the tribal governments feel that the process favors other governments over the tribes and that the funding of projects through the regional planning organizations (RPOs) and the IRR processes takes too long. A serious look at creating a coordinated planning mechanism is important.



FIGURE 1 Tribal Issues Matrix

NM Pueblo/Tribes LRMTIS Pueblo/Tribe																				
	<i>Consultation w/NMHTD</i>	<i>Transp. Planning Assist</i>	<i>Projects—1–3 year</i>	<i>Public Transportation</i>	<i>2% ISTEAE Planning</i>	<i>Tribal Sovereignty</i>	<i>R/W Easements</i>	<i>Land Acquisition</i>	<i>BIA Involvement</i>	<i>Jurisdiction/Legal</i>	<i>Cultural/Archeo Preservation</i>	<i>Quality of Life/Environmental</i>	<i>Coord. County, Local Gov., etc.</i>	<i>Coord. RPO, MPOs</i>	<i>WIPP</i>	<i>Funding/Revenue Sharing</i>	<i>Infrastructure</i>	<i>Gaming</i>	<i>Safety</i>	<i>Buffer Zones</i>
Acoma Pueblo	♦	♦	♦	♦		♦	♦	♦	♦	♦	♦	♦	♦	♦		♦		♦	♦	♦
Canoncito Reservation	♦	♦	♦	♦								♦	♦			♦		♦	♦	♦
Cochiti Pueblo	♦	♦				♦					♦	♦				♦		♦		♦
Isleta Pueblo	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦		♦		♦	♦	♦
Jemez Pueblo		♦	♦		♦	♦	♦				♦	♦	♦	♦		♦		♦	♦	♦
Laguna Pueblo	♦		♦	♦		♦					♦	♦				♦		♦	♦	♦
Nambe Pueblo		♦	♦	♦	♦	♦					♦	♦		♦	♦	♦		♦		♦
Picuris Pueblo	♦	♦		♦		♦					♦	♦		♦		♦		♦		♦
Pojoaque Pueblo	♦		♦	♦	♦	♦	♦	♦		♦	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦
San Felipe Pueblo	♦	♦				♦					♦	♦		♦		♦		♦	♦	♦
San Ildefonso Pueblo	♦	♦			♦	♦		♦			♦	♦	♦	♦	♦	♦	♦	♦	♦	♦
San Juan Pueblo	♦	♦	♦		♦	♦					♦	♦	♦	♦		♦		♦	♦	♦
Sandia Pueblo	♦	♦	♦	♦		♦		♦		♦	♦	♦	♦	♦		♦		♦	♦	♦
Santa Ana Pueblo	♦	♦	♦	♦		♦	♦	♦			♦	♦	♦	♦		♦		♦	♦	♦
Santa Clara Pueblo	♦	♦	♦			♦		♦			♦	♦	♦	♦	♦	♦		♦	♦	♦
Santo Domingo Pueblo		♦				♦					♦	♦				♦	♦	♦	♦	♦
Taos Pueblo	♦	♦			♦	♦		♦			♦	♦	♦			♦		♦	♦	♦
Tesuque Pueblo	♦	♦			♦	♦	♦			♦	♦	♦		♦	♦	♦		♦	♦	♦
Zia Pueblo	♦	♦		♦		♦	♦	♦			♦	♦				♦		♦	♦	
Zuni Pueblo	♦	♦			♦	♦				♦	♦	♦	♦			♦		♦		♦

NOTE: The Issues Matrix is a general indication of the pueblos/tribes initial response or comments during the interviews. This does not imply that the pueblos/tribes are not concerned with other issues not noted or not listed or not shared at this time.

- Pueblos and tribes have provided some construction materials, such as water, sand, and gravel to contractors for local highway projects at minimal cost to the project lead agency or its contractor.
- Pueblos and tribes (especially the northern pueblos) expressed concern about the planning activities associated with the Waste Isolation Pilot Plant. The transportation of hazardous materials and the creation of emergency response teams are important.
- Pueblos and tribes are concerned with current formulas for funding transportation projects on Indian lands. Current funding formulas favor larger reservations with many miles of roads. Pueblos and small tribes feel that the formula should be amended to consider transportation projects that have a significant impact on economic development within the region.
- Pueblos and tribes are reevaluating major road, rail, and utility systems that affect their communities and are asking that realignments be considered.
- Pueblos and tribes indicate the need for the BIA, local governments, and the state of New Mexico to develop coordinated maintenance programs. In some instances, non-Indians rely on pueblos or tribes for assistance due to lack of a state or county response. For example, Pueblo of Picuris indicated receiving periodic requests for assistance from residents of Peñasco.
- Many pueblos and tribes are litigating cases that could affect reservation boundaries, sovereignty, infrastructure funding, and jurisdictional issues in transportation corridors throughout the study area.
- Pueblos and tribes have safety concerns about bicyclists and pedestrians on certain rural roads.
- Pueblos and tribes indicated a need for buffer zones where development occurs near the reservation, community, or cultural sites.
- Current pueblo and tribal economic initiatives and projects are generating many jobs; in most cases, a majority of employees are non-Indian. For example, Sandia Casino has 800 employees, of whom only 60 are from the Sandia Pueblo.
- Pueblos and tribes have large numbers of students who attend public schools in local communities. Safe transportation to such schools is important.

## SUMMARY

The responses and issues listed here are some of the pueblo and tribal concerns for consideration under the proposed LMRTIS in the long-range planning process. Pueblos and tribes should be fully involved in the long-range planning process; they have indicated a willingness to participate.

## NEW MEXICO CASE STUDY

# Improving Tribal/State Relationships for Transportation Infrastructure Planning and Development

**JAMES D. KOZAK**

*New Mexico State Highway and Transportation Department*

## INTRODUCTION

The unique status of Native American tribes as sovereign nations within the United States has required the New Mexico Highway and Transportation Department (NMSHTD) to reexamine and develop new long-range and short-range planning policies and processes.

## Current Situation

The NMSHTD recognized that the 22 tribal governments in the state traditionally had been involved primarily on a project-level basis. No significant activities had been undertaken to involve them in long-range and strategic planning for transportation infrastructure needs. Over the years, this limited-scope approach had left a policy vacuum for the state to work effectively with the tribes on a government-to-government relationship. The department sought a process to develop a framework from which to develop policies and processes to allow for meaningful involvement with the Native American governments.

## Approach

The department contracted for the services of a tribal leader who is also a registered consulting engineer to advise on tribal protocol procedures and assist in cataloging tribal transportation needs. Presentations were made to the tribal umbrella groups: the All Indian Pueblo Council (AIPC), representing the 19 pueblos of New Mexico, the Eight Northern Indian Pueblos Council (ENIPC), and the Southern Pueblos Agency. The department sought permission to visit the tribes individually and ask for their involvement in the planning process. The department was initially seeking visits with the 14 tribes included within a large study area. However, the response for planning involvement by the pueblos was overwhelmingly favorable and led to visits to all 19 pueblos in the state.

## Pre-Summit

A report was generated that detailed the current and future transportation needs of the tribes. This report, entitled *Tribal Coordination/Organization Assistance*, provided the department with the most current and best information on tribal transportation needs. This departmental outreach effort resulted in the ENIPC's approaching the governor of New Mexico and requesting a tribal/state summit on transportation issues. The governor asked that the NMSHTD Secretary, Pete K. Rahn, lead the effort to assist the tribes in coordinating and carrying out the summit. A Pre-Summit meeting was held, and the tribal representatives, along with the NMSHTD, the U.S. Department of Energy (DOE), the Bureau of Indian Affairs (BIA), FHWA, and the New Mexico State Land Office, used the report as a basis for developing issues for the summit. Twenty-six

areas of concern were garnered from the tribes. The Pre-Summit participants refined these issues into five general policy and process categories. Those areas are

1. Sovereignty and jurisdiction;
2. Communication, cooperation, and participation;
3. Funding;
4. Cultural preservation and environment; and
5. Safety.

Joint agreements were developed for the five areas identified in the Pre-Summit process:

1. Principles of Cooperation in Transportation Matters, which is the overarching document recognizing joint sovereignty;
2. Joint consultation, which details a tribal/departments negotiation process;
3. Land for Land, which offers land swaps as an alternative to right-of-way (ROW) purchases;
4. Cooperative planning, which includes the FHWA and the BIA to improve intergovernmental communications in project planning within the Indian Reservation Roads (IRR) and bridge programs;
5. Continuing study and action, a device designed to allow for the formation of action groups to address issues not covered by the agreements; and
6. Transportation Safety and Emergency Preparedness Principles and Policy, an agreement with the DOE on hazardous material (HAZMAT) spills on state highways on Native American ROWs. These draft agreements were the subject of the summit.

### **Tribal/State Summit**

The Tribal/State Summit was held October 14 and 15, 1999, in Santa Fe, New Mexico. The Tribal/State Transportation Summit sought to foster improved Native American government participation in the short-range and long-range planning for transportation infrastructure. Furthermore, the Summit was designed to set forth a framework within which policies and processes could be developed that would ensure better coordination between tribal governments, the state, and federal agencies. Inherent in the agreements mentioned above is mutual recognition of tribal/state sovereignty, government-to-government relationships, mutual respect, and open communications.

The development of improved relations is designed to be an ongoing process with commitment from all parties to forge effective relationships that will serve all citizens' transportation needs in an equitable fashion. A significant aspect is the effective use of planning processes for limited financial resources in a cooperative fashion and the improvement of transportation infrastructure in a spirit that recognizes unique social and cultural differences.

The Tribal/State Transportation Summit resulted in the most significant discussion to date with representatives from 17 tribes, the Lieutenant Governor, the Governor's Chief of Staff, the Secretary of the NMSHTD, the State Land Office, representatives from the State's congressional delegation, the BIA, DOE, and FHWA. Tribal representatives elected to take the agreements back to their leaders for further consideration. The department and the tribes now communicate with each other more fully and consistently about tribal/state issues.

The current benefit is the development of a solid foundation for intergovernmental transportation infrastructure planning and development between tribal governments and state and federal agencies. Future benefits will be a more effective use of limited federal, state, and local transportation funds to meet not only the travel needs of the public, but also the unique cultural values of Native American citizens.

### Where Are We Today?

The AIPC took the lead in passing a resolution to sign the agreement entitled “Continued Study and Action.” Signing by the Navajo Nation, as well as by the Jicarilla and Mescalero Apache tribes, followed. The agreement was also signed by the Governor of New Mexico, the Department’s Secretary, the Director of the Albuquerque BIA Area Office, the Director of the DOE Albuquerque Operations Office, FHWA’s New Mexico Division, and the New Mexico Attorney General.

This agreement led to a broad-based executive committee being established to facilitate the momentum of the summit effort. This group is composed of representatives from the Navajo Nation, the Mescalero and Jicarilla Apache Tribes, AIPC, ENIPC, FHWA, BIA, DOE, the New Mexico State Land Office, the New Mexico Office of Indian Affairs, and NMSHTD. This group offers a forum for diverse agencies that have a wide range of consultative and cooperative needs.

Currently, the group has recommended that three of the agreements involving the department and the tribes be incorporated into one agreement for the sake of expediency. This three-in-one agreement has been presented to AIPC, ENIPC, and the Southern agency. It will be considered at a future AIPC meeting in 2001 for signing by the 19 New Mexico pueblos. Efforts with this agreement are also underway with the Apache and Navajo tribes. Once this agreement is in place, it will allow for the development of joint working groups to resolve issues concerning maintenance, new construction for economic development, safety, ROW acquisition, the Statewide Transportation Improvement Program and the IRR’s planning coordination, environmental/archeology studies, and a host of other topics.

The remaining two agreements (the DOE/Tribal/State agreement for the HAZMAT and the “Land for Land”) will be dealt with in the near future.

### CONCLUSION

In spite of the organizational design mentioned above, each of the tribes must be dealt with on an individual basis. Umbrella agencies provide for good overall policy development, but implementation must be tailored to each entity. The actions stemming from the Tribal/State Summit are leading to the development of policies and processes to address significant problems in a mutually respectful fashion. Also, the agreements are leading to improved communications and cooperation between the NMSHTD and FHWA, DOE, and BIA.

## STATE PROJECT EXPERIENCES IN TRIBAL COORDINATION

### **Hoover Dam Bypass Project** *Perspectives on Government-to-Government Consultation: Presentation Notes*

**LARRY C. SMITH**  
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**RICHARD ARNOLD**  
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**DAVE RUPPERT**  
*National Parks Service Intermountain Region*

#### **FHWA'S PERSPECTIVE: CONSULTATION WITH NATIVE AMERICAN TRIBES** **Who Is Involved?**

- Project Management Team, the FHWA (lead);
- The Arizona Department of Transportation and the Nevada Department of Transportation (owners);
- The U.S. Bureau of Reclamation (BOR), National Park Service (land managers); and
- Partners: the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Environmental Protection Agency, the U.S. Coast Guard, the Arizona Game and Fish Department, the Nevada Division of Wildlife, and the Western Area Power Administration.

#### **Public and Local Governments**

- The Arizona State Historic Preservation Officer (SHPO), the Nevada SHPO, and
- Native American tribes.

#### **Purpose of and Need for the Project**

- Remove truck and through-traffic;
- Remove the U.S. 93 bottleneck;
- Improve safety and minimize accidents;
- Protect Hoover Dam facilities and the waters of the Colorado River; and
- Enhance visitors' experience.

## History

- 1989: BOR established the Project Management Team (PMT) Corridor studies.
- Three routes were studied in depth.
- 1993: BOR withdrew from the project.
- 1997: The project was resurrected by Arizona and Nevada.
- The FHWA's Central Federal Lands Highway Division was designated as the lead agency.
- September 1998: A draft Environmental Impact Statement (EIS) was released to the public.
- December 1998: Sugarloaf Mountain Route was presented as the preferred alternative.

## What Has Been Going On Since December 1998?

- Responded to over 1,000 comments on the EIS.
- Additional studies:
  - Archeology,
  - Financing,
  - Utilities,
  - Cultural sites,
  - Historical properties, and
  - Consultations.

Sugarloaf is the preferred alternative. This alternative is considered preferable on almost every criterion that was studied:

- The crossing is ¼ mi below the dam.
- The grade line is 250 ft above the dam.
- The bridge is 1,900-ft long.
- It provides a great site for an arch bridge.
- The cost estimate is \$198 million.

This alternative brings with it some interesting challenges, such as mitigating the visual and aesthetic impact on Hoover Dam. The preferred alternative is near Sugarloaf Mountain, an eligible Traditional Cultural Property. Sugarloaf was selected as the preferred alternative in late December 1998 based on comments received from the public and local, state, and federal agencies. This alternative is preferable because:

- It is the least expensive.
- It has the fewest environmental impacts.
- It has the best operational and safety features.
- It protects southern Nevada's drinking water.

## Key Points to Establishing and Maintaining Government-to-Government Consultation

- Respect tribal sovereignty.
- Make a reasonable and good-faith effort to identify affiliated tribes.

Government-to-government means that the consultation involves key agency decision makers. For the FHWA, this is the division engineer, who has been given broad delegation authorities. The government recognizes the special sovereignty of listed Native America tribes, which gives tribes a status that is different from that of the general public. We cast a broad net in our initial consultation efforts. Since then, the number of participants has diminished somewhat. We now work with perhaps 8 to 10 tribes.

Ben Pickyavit, a representative of the Kaibab band of the Southern Paiute, is providing presentations on American Indian culture to the entire FHWA office.

## FHWA Perspective on Consultation with Native American Tribes

Mechanisms used to achieve consultation success:

- Establish consultation group.
- Establish core group.
- Conduct on-site interviews.
- Consult on Eligibility of Properties (Section 106).
- Prepare a Programmatic Agreement.
- Plan for continued involvement.

Interviews are used to identify resources or properties that have special cultural significance for tribes affiliated with the project area. In an effort to determine what these properties or resources were, the agency funded and conducted an ethnographic study in the spring of 1996. After a review of this study by the Arizona and Nevada SHPOs, it was suggested that the project fund some additional ethnohistoric studies to provide a context for the first report. This ethnohistoric report was prepared, and, at the request of the tribes, additional on-site interviews were conducted.

This work resulted in a discussion of more long-term consultation goals. These included:

- Preparation of a programmatic agreement with the SHPOs, our partners, and the consulting tribes.
- A memorandum of understanding (MOU) covering continuing consultation with tribes throughout the life of the project.

## Consultation with Native American Tribes

Although consultation work takes time and can involve different cultural viewpoints, we tried to follow a few basic principles throughout the process:

- Listen and be honest at all times.
- Listen and admit that not everyone is familiar with the consultation process and that we are gaining experience as we go.



- Listen and let the process run its course without necessarily directing its course.
- Solutions to differences emerge through a process of mutual understanding.

### **FHWA's Expectations and Goals**

It is important in any consultation process to have a mutual set of expectations and goals. In this project, it was felt that consultation:

- Created a process to add value to the project, rather than simply comply with regulations.
- Developed a trust and team atmosphere wherein win-win solutions were mutually sought.
- Considered all differences and/or influencing factors collectively rather than independently.

### **Outcomes and Deliverables**

- Develop a project specific MOU to provide a process for continuing consultation.
- Formalize a mutual working relationship.
- Designate government-to-government representatives.

The FHWA, as the lead agency, desired to see that the project complied with regulations and that it continued with the fewest possible conflicts. A project-specific MOU for consultation was important to achieve these outcomes. The project will take several years to complete, so the MOU can serve to provide a consistency in consultation in the face of the changes in project and tribal personnel. The MOU would accomplish the following:

- Identify a process for continued consultation for the remainder of the project.
- Formalize a method for working together.
- Designate specific individuals who will serve to maintain government-to-government relationships.

A recommendation for a Traditional Cultural Property Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP), SHPOs, and participating entities would include:

- A project-specific plan for eligibility, effects, and treatment of properties.
- The formation of a design advisory panel with American Indian participation.

A programmatic agreement between the ACHP, the SHPOs, and participating entities would provide an overall simplification of the Section 106 process throughout the project. A project-specific plan for eligibility involves a determination of effects and treatment of properties. This process includes the formation of a design advisory panel with Native American participation. Tribal participation will ensure that mitigation measures are considered at important points in the design and construction process. In our case, this also includes a

recommendation or a determination of eligibility for traditional cultural properties (those properties identified by affiliated tribal members as significant).

### **FHWA's Perspective on Consultation Benefits**

- Ensure all perspectives are considered.
- Provide the opportunity to most effectively mitigate any environmental impact and avoid sensitive features.
- Bring a unique perspective to the delivery team by involving American Indian tribes.
- Develop a structure for working together rather than in opposition.
- Many benefits derive from effective consultation work. These benefits include, but are not limited to, the fact that consultation:
  - Ensures that all perspectives are considered;
  - Provides an opportunity to most effectively mitigate any impact and avoid sensitive features;
  - Adds a valuable resource (American Indian tribes) with unique perspective to the delivery team; and
  - Provides an identifiable structure for working together rather than in opposition.

This structure also identifies a mutually agreeable scope to consultation efforts, an important factor when both tribal and agency resources are limited.

### **AMERICAN INDIAN PERSPECTIVES**

#### **When Should Tribes Become Involved in Projects?**

- 1989: Bureau of Reclamation established the PMT.
- Corridor studies were accomplished and three routes were studied in depth.
- 1993: BOR withdrew from the project
- 1997: The project was resurrected by Arizona and Nevada and the FHWA's Central Federal Lands Highway Division was designated as the lead agency.
- 1998: Tribes first became involved in the Hoover Dam Bypass.
- September 1998: A draft EIS was released to the public.
- December 1998: The Sugarloaf Mountain Route was presented as the preferred alternative.

### **Challenges of Tribal Involvement**

- Becoming familiar with the project.
- Changing agency personnel as a result of turnover.
- Educating agencies regarding consultation.
- Establishing mutual trust.
- Managing intertribal and intratribal relationships.
- Sharing large amounts of information.
- Communicating cultural significance (which may require a cultural broker).

## Benefits

- Communication of cultural values.
- A new process for tribal involvement.
- Protection of properties long held important.
- Education of Indians and non-Indians.
- Positive long-term partnerships with agencies.
- Full implementation of laws and regulations.

## Costs

- Sensitive information must be revealed.
- Personnel must engage in consultation.
- More funding support is needed for consultation.
- Personnel in federal agencies must be educated.
- Commitment must be made to new partnerships with agencies.

## Basic Mechanics to Achieve Successful Consultation

- Large consultation meetings,
- Core group sessions,
- Designation of a tribal spokesperson,
- Involvement of elders,
- Executive sessions, and
- Tribal government concurrence.

## ETHNOGRAPHIC PERSPECTIVE ON CONSULTATION WITH AMERICAN INDIAN TRIBES

### Why Consult?

It is the law.

### Authorities and Mandates

- National Historic Preservation Act (106 Requirements) (1966): Requires agencies to consult with tribes on cultural issues when a federal undertaking occurs. Consultation is not strictly defined.
- American Indian Religious Freedom Act (1978): Reaffirms religious rights for American Indians. Agencies instructed to examine their own policies to determine whether there is a conflict. Asserts Indian access to resources on federal lands that are deemed necessary for traditional religious practices.
- Native American Graves Protection and Repatriation Act (1990): A consultation law, the NAGPRA requires consultation on all matters related to the discovery of American Indian human remains, sacred objects, objects of cultural patrimony, or funerary objects.

- Secretarial Order 3175 (Trust Resources) (1993): Heads of bureaus and governmental offices are to be aware of the effects that their plans, projects, programs, or activities have on Indian trust resources.
- Government-to-Government Memorandum (1994)
- Executive Order 13007 (Indian Sacred Sites) (1996): Agencies are to accommodate access to ceremonial use of Indian sacred sites by practitioners to avoid affecting the physical integrity of such sites.
- Secretarial Order 3206 (Federal Trust Responsibilities and the ESA) (1997): Governmental departments will take into consideration the effects of their actions on Indian use of listed species.
- Executive Order 13084 (Coordination with Tribes) (1998): This established regular and meaningful consultation and collaboration with tribes in matters related to the development of regulations.

### What Is Ethnography?

Ethnography describes a collection of methodologies for the study and recordation of cultural behavior. The term derives from the Greek root *ethnos*, which refers to “nation, caste, or tribe.” It also refers to “customs or behavior.” *Graphy* or *graphia* refers to “writing or describing.” Thus, ethnography is simply a systematic method (or a collection of methods) used to describe cultural behavior, beliefs, or customs that define unique cultural groups.

### What Do Ethnographers Do?

They provide descriptions and documentation of research- contract management and use this documentation in the EIS planning and impact analysis. They consider culturally different views of resources. They satisfy regulations (106 mandates) and facilitate consultation.

These descriptions, usually attained through research, are important because they provide the documentation needed to determine whether federal actions have significant effects on cultural behaviors or beliefs. The government is required to assess the effects of its actions on archeological sites, historic buildings, and historic landscapes. The impact on living cultural values and behavior is equally as important. Ethnography provides the necessary documentation to allow for a determination of the effects necessary to meet the requirements of the National Environmental Policy Act, the NAGPRA, and the American Indian Religious Freedom Act.

### Ethnographers

- Conduct research;
- Prepare research documentation;
- Conduct impact analysis;
- Facilitate consultation; and
- Provide a means to consider other cultural perspectives.

### Fulfilling These Mandates Means Answering Important Questions:

- What lands are culturally affiliated with tribes?
- What is a sacred site, and where is it?

- What are traditional uses of resources?
- What are trust resources?
- How are tribal cultural sites affected, and how can these effects be mitigated?

There are implied questions buried in the various laws, regulations, and executive or departmental orders mentioned above. These include:

- Which tribe or tribes are affiliated with the land involved in the undertaking?
- What is a sacred site? Where is it? What attributes characterize it as sacred?
- Are there traditional uses of resources involved? What resources? How many? How often?
- What is a trust resource?
- How does the planned federal action affect or impose limitations on traditional activities or access to places or resources?
- How can these effects be mitigated?

These questions are not answered in planning or project meetings within the confines of the agencies. These are questions that can only be answered through a combination of research work and on-site interviews with affected tribes. In all cases, these questions can be approached only through consultation with the tribes involved.

### Hoover Dam Bypass Example

- Ethnographic research with affiliated tribes;
- Consultation with affiliated tribes;
- Tribal involvement in documentation;
- Identification and nomination of significant properties;
- Tribal involvement in projection activities;
- Research with affiliated tribes;
- A commitment to ongoing consultation through the project;
- Full tribal involvement in research and documentation; and
- Tribal involvement as members of project teams.

The Hoover Dam Bypass Project provides an excellent example of tribal involvement. Although initial consultation with the affected tribes took place late in the project planning, the following have been accomplished relatively quickly. All solutions involve consultation, research, and documentation.

### Ethnographic Perspective

#### *Agency Benefits*

- Full compliance with all laws, regulations, executive orders;
- Preservation and protection of important resources;
- New understanding of the diversity of resource values; and
- Positive partnerships with American Indian tribes.

*Costs*

- Additional compliance work necessary;
- Additional funding needed for consultation;
- Additional contract management for any new research; and
- Additional need for new skills in the work force.

## NAVAJO NATION/ARIZONA DOT COOPERATION

### **Native American Transportation Issues in Arizona** *Coordination of State and Tribal Transportation Issues*

**JEFF SWAN**

*Arizona Department of Transportation*

**N**ative American transportation policy has traditionally focused on the tribal/federal governmental relationships. The relationships between the tribes and the state of Arizona have not played a major role until the recent introduction of the new transportation acts and the emphasis on regional transportation planning for both the tribes and the states. The states have always had a presence on tribal lands wherever there are major highways because in most cases, the state maintains Interstate, primary, and some secondary roadways. Arizona has been working with the 21 tribes in the state on various transportation issues, with successes in areas such as coordinated environmental clearance efforts, joint funding of some projects, and the use of local labor by highway contractors. Arizona and the tribes in Arizona have also had their share of policy conflicts and failures in cooperation on transportation issues, which have resulted from the ongoing debate over tribal/state sovereignty, intergovernmental agreements, coordination of regional planning efforts, right-of-way (ROW) acquisition and maintenance, and coordination of the reporting of traffic and accident data. Arizona, in cooperation with FHWA, is developing an outreach program to make sure that tribes in Arizona have a greater opportunity to participate in the programming and development of the Arizona transportation program.

#### **INTRODUCTION**

With the continued devolution of federal programs to the states, including transportation programs and funding, there is a new challenge to the states and Native American tribes to find ways to develop cooperative efforts to meet growing transportation demands. The Arizona Department of Transportation (ADOT) is reaching out to the tribes in Arizona to meet this challenge.

#### **Indian Reservations in Arizona**

Indian lands comprise approximately 28% of Arizona's total land area. Most major highways in Arizona pass through Indian lands. The estimated Native American population in Arizona varies from 10% to 15% of the total state population. While not a large portion of the population, the Native Americans do have an influence on transportation issues as Arizona grows.

#### **ADOT**

ADOT is set up to focus on the planning, construction, maintenance, and regulatory functions of Arizona's surface transportation. The Motor Vehicle Division licenses drivers and vehicles and collects revenue from vehicular-related taxes. The Intermodal Transportation Division (ITD) is focused on the design, construction, and maintenance of the state's highway system. The Transportation Planning Division is responsible for the planning functions of the entire department.

## District Organization

Within the ITD, there are 10 districts, which have the responsibility for the construction and maintenance responsibilities of the state's highway system. Each district is responsible for highways in a geographical section of the state, including state highways on Indian lands. The district administration is led by the district engineer, whose primary responsibility is working with the various constituencies within his or her area of responsibility, one of which is Native American tribes. Most issues that are of concern to the tribes will involve this individual. Issues may include highway improvements, operational issues, and funding of improvements.

## STATE/TRIBAL ISSUES

### Sovereignty

The continuing issue of state versus tribal sovereignty colors the efforts that the ADOT and the Arizona tribes are trying to address.

### *State Versus Tribal Legal Systems*

The effect of the sovereignty conflict is evident in how the ADOT and the tribes address issues that concern their respective judicial systems. There is a continuing challenge in determining jurisdiction and then having the other party recognize that jurisdiction. Whenever sovereignty may be an issue, the ADOT and the tribe in question have looked for ways to avoid a conflict.

The sovereignty issue is addressed at the local level in various ways because there is still conflict and disagreement about sovereignty at the executive levels of both the state and the tribes. Informal agreements are being negotiated with individual tribes and agencies within tribes concerning local issues. Examples are listed below, in general, agreements trade services without the exchange of funds. If funds are being exchanged, one party will cap its amount of funding to avoid any future conflict that may end up in state or tribal courts.

Any resolution of the sovereignty conflict may have to be done legislatively by the state and the tribes. The ADOT and other state agencies have avoided testing the different laws with some success by using federal court decisions to structure their efforts on Indian lands. An example is the fuel-tax compacts with the tribes, especially with the Navajo Nation. The state fuel tax is not being collected from fuel sold on the Navajo Nation reservation lands, although the Nation is now collecting an equivalent amount for use by the Nation.

### *Contractual Relationships*

In Arizona having the state and the tribes enter into contractual relationships, especially when funding is involved, is challenging. Under state law, if the ADOT enters into a contract involving an exchange of funds and there is a conflict or disagreement, state law requires that the ADOT use arbitration. If the results of the arbitration are to be appealed, the case then goes to the state Superior Court. Tribal laws, in most cases, do not recognize state court for such disputes.

### Government-to-Government Relationships

Government-to-government relationships are especially difficult for the ADOT and the tribes. In many cases, the tribes continue to insist that their government-to-government relationship is with the federal government and that all dealings should be with the federal government. With the continued effort by Congress to devolve some federal programs to the states, the government-to-government relationship between the state and tribal governments must be addressed.



Addressing government-to-government relationships is needed for binding intergovernmental agreements (IGAs) which can be executed between the ADOT and the tribes. The ADOT enters into IGAs as a way to assign binding responsibilities for funding, operations, improvements, and maintenance actions between the ADOT and another party. A typical IGA would be used to operate a traffic signal system jointly with the ADOT operating the system and the community paying the costs of electrical power. As mentioned earlier, the mediation of disputes needs to be addressed.

### **Cost-Sharing, Project, and Operations**

There is a need for joint funding and shared project and maintenance costs whenever these would be beneficial to both the ADOT and the tribes. Joint funding of major improvements to the transportation system would result in addressing the greater needs of both parties. The limitations that exist at this time include differing programming processes, lack of knowledge about the availability of funding, and the previously mentioned government-to-government relationships.

### **ROW**

The sovereignty issue has a direct impact on the issue of highway ROWs and ADOT's ability to maintain or construct improvements. A ROW is defined by what is needed to properly construct and maintain, in perpetuity, a highway improvement. There is a major investment in constructing improvements, along with a continuing need for maintaining those improvements. Without an adequate ROW and the ability to act independently on items within the right of way, ADOT faces an assumption of liabilities for the traveling public. The tribes feel that any grant of ROW threatens their sovereignty and land base.

### **Project Clearances**

Obtaining project clearances to construct roadway improvements is a continuing issue for ADOT and the tribes. The Bureau of Indian Affairs (BIA) has particular requirements and interpretations of the various environmental and historic preservation rules and laws that differ from those of the FHWA, to which the ADOT is subject. In some cases, tribal interests will differ from the BIA's and the FHWA's interpretations of the applicable rules and regulations. At times, the ADOT will be placed in the position of facilitator to address and resolve these differences. Tribes, BIA, FHWA, the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Environmental Protection Agency, and the U.S. Army Corps of Engineers all have interests that differ from the tribes', yet the ADOT must resolve these issues to construct roadway improvements that benefit local people, as well as those who traverse Indian lands.

### **Construction Contract Administration**

Once the improvement project is cleared, advertised, and awarded by the ADOT, new challenges arise for the successful contractor and the ADOT. Tribal taxation is not consistent within Arizona's different tribes. Some tribes tax the gross contract amount as bid, while others include the adjusted contract amounts. Varying taxes involve tribal employment-preference programs. The Indian preference can wreak havoc on some projects because each tribe administers the program to meet its own needs. Contractors look for the consistent administration of laws and regulations. Contractors prepare their contract bids based on how the administration of laws and regulations will occur. If there is an inconsistency between the tribes in the administration of the

laws and regulations, then the contractors will bid higher prices to make sure that these inconsistencies can be accommodated. If more than one tribe is involved in a project, the inconsistency in the administration of laws and regulations between the tribes will adversely affect the project. There is also a basic conflict between state law, specifically in how the state enforces equal employment and how the tribes address the equal-employment issue, which needs to be addressed on every project. Contractor licensing is required by the state of Arizona to work on the ADOT projects, but this may or may not be required by a tribe. Tribes may also direct their various construction business enterprises not to be state-licensed, in which case they cannot be used on the ADOT projects as prime contractors or as subcontractors.

To make sure that projects are constructed at the most economical prices requires that contractors have material sources near the project and a stable work force to draw upon. Material sites such as aggregate and borrow pits may exist on most Indian lands but are encumbered by environmental regulations, rendering the sites as impractical. Therefore, on reservation lands, fewer projects are undertaken, and projects are more expensive.

The ADOT requires contractors to meet certain materials and workmanship quality goals. A stable work force is necessary to accomplish these goals. On Indian lands, this goal is difficult to accomplish, as people will work only until family issues arise or cultural events occur that demand attention. The employee will put these issues first, and then return to work at a later date. This happens frequently over a 3- to 8-week period, which means that the contractor continually needs to train new employees. This increases the contractor's costs and normally results in lower-quality work than what the ADOT expects. To produce the quality of work that the ADOT is looking for and will pay for, the contractor needs to be able to maintain an experienced and stable work force.

### **Maintenance and Operations**

Once projects are constructed, maintenance and operation functions need to be performed by the ADOT. Maintenance involves taking care of the roadway itself, along with maintaining roadside features from the pavement edge to the ROW fence. Operations involve keeping traffic moving during adverse weather and keeping the traveling public reasonably well informed about what to expect on their trips.

The ADOT must hire qualified employees, receive environmental and historic preservation clearances to perform routine work, obtain local material to perform work, and share the cost for operating streetlights and traffic signals. Many of the maintenance issues are similar to the construction issues, with the exception of streetlights and traffic signals. The ADOT's policy is that because the need for streetlights and traffic signals is usually a result of localized growth and economic activity, the community should share in the cost of constructing and operating those systems. The sovereignty issue again becomes preeminent in these situations. It is difficult to resolve cost-sharing issues.

### **ADOT/Tribal Successes**

The successes have been limited, but include some significant steps in solidifying the ADOT/tribal partnerships. The ADOT and the Navajo Nation DOT have an informal agreement to work together to obtain environmental clearances for hazardous material sites. The Navajo Nation Chapters identify areas that could be used as material sites, and the ADOT does the geotechnical analysis work. The Navajo Nation DOT does the environmental clearances.

The White Mountain Apache Tribe has lent money to the ADOT for improvements on SR 73 between White River and Hondah. The ADOT will repay the tribe with interest. This loan comes with a guarantee of future repayment. The projects requested by the tribe could not be done as quickly without the tribe's lending the funds to the ADOT. The ADOT funds are limited and normally programmed over a 5-year period. Only projects that fit that process will be funded.

The Gila River Reservation reached an agreement with the ADOT on sharing the costs of designing and constructing a roadway through Gila River lands, with the reservation taking over maintenance of the facility upon completion. The Hualapai Tribe was granted public lands discretionary dollars to address its access road to the Grand Canyon through ADOT and FHWA.

The Cocopah Tribe has joined the Yuma Metropolitan Planning Organization and has taken an active role in determining highway-improvement projects in the Yuma area.

### Continuing with the ADOT/Tribal Issues

The ADOT and the tribes still have not worked out all the details of establishing contractual relationships between the two groups, which has resulted in wasted opportunities to construct projects on reservation lands. Operational expenses still need to be shared. Project clearances are still an issue, as ADOT, tribal, and BIA requirements add as much as 36 months to the project-development process.

The tribes need to get involved in the programming process. The ADOT district engineers have the responsibility of proposing projects for their respective districts, but they need help from the tribes in educating the district engineers on what is needed on reservation lands. Part of the programming effort involves input and support from the various councils of government (COGs). Tribes must participate in the COGs on tribal projects.

### CONCLUSION

A concentrated effort is needed to address the following continuing issues to make sure that tribal transportation needs are addressed or at least that the tribes can compete with other interests in Arizona.

The programming of future improvement projects on state highways is critical to making improvements on reservations. The district engineers make the initial requests for most projects and need accident, traffic, and other data to justify their requests. Unfortunately, information from Indian lands, especially about accidents, is consistently missing from data files. The districts champion the development process for district projects and can help champion projects on Indian lands as well.

Employment of Native Americans on tribal lands is a critical issue during construction projects. One issue is using local employees vs. using a broader definition that includes all Native Americans. The need for a stable work force for the contractor needs to be considered as well.

State and tribal sovereignty issues continue to frame the discussions that are held between the ADOT and individual tribes. Specific definitions are needed concerning what both the ADOT and the tribes want to do in specific situations so that neither sacrifices its sovereignty.

Environmental clearances, along with reviews of cultural resources and historic preservation, need to be addressed to make sure that projects are constructed when promised and with the facility promised. Some improvement has been made in this area, but the ADOT had to make major concessions to obtain and implement the agreements.

Permitting new rights of way is critical. New highway improvements involve more land than was originally set aside for existing highways. An effort is needed to address the fact that tribes do not want to give up land for ROWs, yet the ADOT needs these ROWs to make improvements to the highway. The ADOT, which invests \$1 to \$2 million dollars per mile in construction monies, wants to use the ROWs for as long as the highway facility exists.

Elected officials of the tribes must be informed that although many feel they should operate on the level of the governor and the State Legislature, the real work and change comes through the district engineers and their staffs. The district engineer represents the ADOT, the governor, and the State Legislature regarding transportation issues.

Finally, the BIA role needs to be better delineated. The Statewide Transportation Improvement Program required by the FHWA should reflect the state and the BIA projects on Indian lands. Taking this step indicates that the BIA and the ADOT are coordinating efforts for the required work.

The ADOT/tribal relationships in the area of transportation have improved over the last 10 years, but there is still room for improvement on all fronts. An effort is underway, sponsored by ADOT and FHWA, to educate tribal officials on the planning and programming processes that are used by ADOT. Other efforts by ADOT and the district engineers will be forthcoming, but there is a continuing need for the tribes to cooperate with ADOT so that their transportation needs on the state highways are addressed. ADOT is aware of the need for cooperation and the need to reach out for tribal input, but the tribes need to leave the door open and respond to ADOT's outreach efforts.

## NAVAJO NATIONA/ARIZONA DOT COOPERATION

### The Indian Outreach Program

ERMALINDA GENE

*Arizona Department of Transportation*

The Indian Outreach Program at the Arizona Department of Transportation (ADOT) is operated out of the Civil Rights Office under the Disadvantaged Business Enterprise (DBE) Program. FHWA has a supportive services program, which has provided funding for states with Native American governments to create this type of program. The ADOT used that funding to hire a staff person to find Native American-owned businesses and to assist these businesses in getting certified under the DBE program. The goal is to increase contracting opportunities on federal-aid projects.

At first, the position required networking with economic development offices on different reservations. At one time, we had 62 Native American business enterprises, in many different fields, in the DBE program. These enterprises also had a few contracts in the hundreds of thousands of dollars. This was good, but we had the goal of increasing participation, not only the number of businesses in the program, but also the dollar amount of their contracts.

Out in the field, I uncovered many issues faced by Indian contractors. First, tribal economic development offices have different laws and requirements that often hinder rather than help, and often they do not have the capacity to assist in locating contractors. Second, the process of getting businesses started on the reservation is often slow and it involves many other issues. Third, I began getting involved in tribal issues such as rights-of-way, funding, transit, the level of participation with state agencies, trust, and employment. The project goal to increase the participation of Native American contractors in the DBE program also had to include increasing the involvement of tribal governments in all aspects of the transportation process and economic development.

Although the primary goal of projects was still to find Indian-owned businesses on reservations to participate in the DBE program with the ADOT, other issues had to be dealt with for projects to be successful. To deal with these issues and work with the transportation processes, I had to educate myself about other tribal processes. The competitors are non-Native American contractors with a wide range of construction-related businesses. Their strengths were in their infrastructure, location, and way of doing business. They did not have many weaknesses, except that they were not familiar with how tribes operate. The most effective way to increase participation was to go out to the business and perform a business assessment, then provide the training to overcome that weakness. FHWA's Indian Outreach funds could also be utilized to provide support from outside vendors, such as the National Center for Indian Economic Development, under contract. The National Center conducted workshops and conferences for networking and business training.

We recently reevaluated and restructured the program to meet new needs. We offer direct supportive services and one-on-one assistance and training. We are still networking, as well as going into homes and offices. The current total number of businesses has fallen to 29 contractors, but they are all construction-related. These businesses are in trucking, traffic control, paving,

rebar, materials, communications, and fiber optics. Last quarter, the Native American DBEs had the highest dollar amount of DBE subcontracts for any minority group—almost \$4 million dollars.

The state is now focusing on establishing relationships with tribes. The ADOT/Tribal Strategic Partnering Team is one such effort. Its goals include identifying the level of participation tribes want in working with the state and getting agreements from each tribe. We still have much work to do. At the same time we are making progress by ensuring that tribal governments are aware of how the transportation systems work and what options they might have before making agreements that may hinder them or ADOT later.

## KEYNOTE LUNCHEON SPEAKER

### The Need for Tribal Participation in Transportation Policy

**MICHAEL E. MARCHAND**

*Confederated Tribes of the Colville Reservation*

#### ISTEA AUTHORIZATION OF FOUR REGIONAL TRIBAL CENTERS

I want to talk about my first technical program, the Long-Term Assistance Program (LTAP). Initially, there were four tribal centers set up out of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) authorization. One center was in the Northwest, and the three others were in different regions. The first task was to let tribes know about the ISTEA. Federal dollars are out there. Some tribes do not know anything about ISTEA funding. The Bureau of Indian Affairs (BIA) has planned and built roads for them. The BIA would come in each year and tell the tribal councils, "Here is what we think your road projects should be," and the tribe passed a resolution. A lot of tribes operated that way, and a few still do.

With the ISTEA, the 638-contract process really started to take off. As one of the technical assistance centers, we were supposed to train tribes about 638 contracting. The LTAP centers got in a lot of trouble with some of the BIA people over this. They said, "You are trying to put us all out of work." I said, "No, we are not; we are trying to do our LTAP contracts. It says right here, point number 6, to do 638-contract training." And they said, "You are going to contract us off the tribes, and I am a BIA guy. I will be out of work."

We went through a lot of changes. Many people were upset, probably due to poor communication. I think that we are all trying to do the same thing, but every state and every tribe is different.

#### ESTABLISHING STATE/TRIBAL TIES

In the state of Washington, we have a governor, Ruth Gardner, who wanted to work with tribes. I think we set up one of the first government-to-government memoranda between the state and the tribe. There was a lot of pretty good language in this document. This was subsequently adopted by several other states and was adopted by a couple of the presidents. It was brought up with the Clinton administration also, but I think it started in Washington State.

The policy of tribes' recognizing the state and vice versa began. Then came the time to establish policy of who and where we are, and how we talk to each other. Protocol became the next stage of policy: how you find each other, how you shake hands, and how you say hello. They are probably largely still in that stage.

Some things are moving ahead and getting better. I believe that this interaction will be easy. Washington has this document in place and a knowledgeable governor. Other states are different. They are organized differently. Staff may want to work with tribes, but it had never happened before. The bureaucrats had no method or form that says how to work with tribes, so they were lost. When I visited the one state department of transportation (DOT), the DOT people said, "We know there are Indians in our state, and we know that the ISTEA says we are supposed to be talking to Indians, but we do not know where they are. Can you help us find them?"



These are nice people, but institutionally, they just had not evolved. The systems of the state DOT and the tribal federal system were drawn up separately. They had not talked to each other. I finally said to one planner, "Here is one tribe, and here are the names of its councilmen. They will be glad to see you." Then I went to Oregon on a trip.

I came back and talked to him later. I said, "Well, how did it go?" He said, "I am not sure. I went to that tribe, but I felt really nervous." And I said, "Why?" He said, "I felt like a real minority. I went to the reservation, and all the people I saw were Indians." Here is this nice old guy who is about ready to retire. He added, "I got used to that. I got used to everyone looking at me." And everywhere he went, the Indians would look at him. He went to eat, and everyone watched him eat. When he went to the restroom, everyone watched him go to the restroom. He said, "I really felt like an ET!"

I told him, "Now you know how we feel. When we go to the state capital, that's how we feel sometimes." He said, "Well, I found the office. I went into the office, and I think it might have been one of the council people's offices. There was a big picture on the wall." I said, "Yeah?" He replied, "It was a picture of Custer's last stand." Then I started getting worried. And he said, "Are all tribes like this? Is it safe for me to go out there?"

Yet people are moving ahead. It starts off with everyone being nervous. It is hard to talk to Indians and non-Indians because when we talk about the Indians, they already know about all this, and they will be bored. And vice versa. A lot of changes have happened fast in Indian country, and each tribe has a different history.

## HISTORICAL CONTACTS BETWEEN INDIANS AND NON-INDIANS

Some tribes met the Spaniards about 500 years ago, but some tribes' contacts have been more recent. Even within tribes, there are differences. I come from the Northwest, and we are probably one of the last areas to be civilized. I live by the upper Columbia River, above Vancouver Dam, on a reservation about the size of the state of Connecticut, 2,100 mi<sup>2</sup>. We did not have a lot of contact with the outside world. The Hudson Bay Company came and built a fort. We burned it down. Nobody came around for quite a while. Washington Governor Stevens in 1855 called on all the tribes for a treaty negotiation. He said, "You will be there, and you will sign this treaty." The soldiers were there.

Our tribe was isolated, and we did not really know who Governor Stevens was or what a White guy was. Our chief laughed. He said, "We have been here forever. Who is going to make us come and sign this treaty?" Our people never went and signed the treaty. There are a lot of treaties in the Northwest that tribes never did sign.

We did have contact with the non-Indians eventually. Gold was discovered. Lands and farmlands were stolen. This happened all across the United States. From 1870 to 1970, once we were put on the reservation, little changed. (The Colville Confederated Tribes Reservation was created in 1872 by Presidential Executive Order.) We did not get a lot of development. The population did not change a whole lot. The houses had not changed. There was not a lot of the growth that was happening all around us. I was born in 1953, but since 1953, and probably up to until the first grade, I never saw a White guy.

I lived in the sticks even in my reservation. My people are nomadic. My family still is. I grew up as a kid who lived in tents. I just thought everyone lived in tents. My grandmother picked huckleberries, and we would be up in the beautiful mountains picking huckleberries for months. We did not have a calendar or a clock. Our clock was the weather, the seasons. In spring, my family picked roots. The salmon would come and we would be on the Columbia



River living in a fishing camp. We had camps everywhere. Throughout the year, we moved to different camps. Everywhere I went, all my relatives were there, my cousins and my uncles. I thought that is what the world was. From the time I was 1 to 7 years old, all I ever saw was Indians. I thought they were all my relations because they were the only people I ever saw.

When I was five, I saw a light bulb for the first time. We had this old house, and the BIA came and put in one light bulb in the middle of the whole cabin. We all looked at it. "That is pretty good," we thought. "A light bulb." We did not have TVs or that kind of stuff.

One day, I looked out in the front yard and saw a Volkswagen. Somebody was snoring in a pup tent. My mom and my grandparents were council people, so they knew White people. They flew around the country, but they kept us isolated. I think it was on purpose, to keep us in the old way of living. He snored really loudly. I asked my mom, "Who is that?"

She said, "That's the White guy." The Indian word for White guy is *suappe*. *Suappe* means that your head is upside down. The first White people in our area were bald, and they had beards, so we say *suappe*, but what we are telling you is that you are human, but your head is upside down. And upside down in a lot of ways other than that, too.

The anthropologist studied us. He followed us around, and he talked to us. We told these big whopper stories to him all the time. They are probably copied in someone's dissertation now. But reservation life has changed a lot. In 1964, they put a highway through the reservation. Prior to that, we had a winding old dirt road. My grandpa was chairman of our tribe, and I think he had the first car in our part of the state. We drove this old car up and down these winding mountain roads, but we did not see many visitors. In the 1960s, they put U.S. Highway 97 through the reservation. It used to go around the reservation, but they straightened the road by putting it right through the reservation. That is like putting a freeway through there. And so it seemed that the aliens came to town. ET landed, and everything changed fast.

### U.S. Indian Policy: Termination

From 1953 until prior to 1970, the federal policy was termination. Eisenhower became president and Congress was Republican. The policy was basically to rub out Indians. They wanted to liquidate our reservation. They wanted us to sell the reservations for pennies on the dollar. They wanted to give all the Indians a bus ticket and send us to San Francisco, Minneapolis, or some other big city. They wanted to train Indians to be White, I guess.

They also had given franchises to churches in the 1800s. A church would get a license from the government stating that this will be its franchise area. In our area, we had the Roman Catholic Church. Other tribes had different Christian groups that were given franchises. I was put in Catholic boarding schools. We went to church 29 times a day, I think. I still have calluses on my knees. I know the whole mass backwards and forwards in Latin.

I always had a knack for the White man's standardized tests. I could do those tests in my sleep. I scored in the 99th percentile on the SATs. The BIA came and said, "Michael, we noticed your test scores are too high for an Indian." They thought I was cheating. And so they said, "You have to take this test over again." Everybody watched me take the test. I passed again. They did not know how I achieved this, but they knew I achieved it, so they finally gave up and said, "You should go to boarding school because the local schools do not have anything to offer you." I was sent to boarding school. Unlike most Indians, who were sent to a BIA boarding school, I was sent to a private school in New Hampshire. I learned a valuable skill: that I could be late for class and put a tie on at the same time. Many Indians went through the same thing. Maybe they did not go to New Hampshire, but they went to other BIA schools. Their whole life, they have been

trained not to be Indian, that they needed to get a skill and move off the reservation and out-of-state. They got offers of a thousand dollars to move somewhere and get a job.

### Growth Since the End of the Termination Policy

My reservation, back in the 1970s, had a lot of resources but we only had 10 employees. We just had just a skeleton staff, and the termination policy had stopped. Self-determination became the new thing. We started developing the tribe and its resources. Basically, we had a pristine reservation. It had all the things I like. We have hunting, fishing, and open spaces. In the Northwest, open spaces are real important for our traditions, culture, and religion, traditions such as a vision quest or hunting. These things take a lot of space. In the 1970s, we started taking control of our government. We took more control of our resources and started development. We did not have any businesses. Except for the 10 tribal employees, everyone else was out of work, or they were working in migrant agricultural labor jobs. People would travel to California, riding trains, to work in the San Joaquin Valley. Tribal members held the jobs that Hispanic people have now.

We had resources at Colville. Colville had trees, and we started developing to where we are today. We have a tribal corporation. We have a couple thousand employees. We have about a dozen businesses, with tourism, marinas, casinos, a sawmill, and grocery stores. Our tribal government is also growing. There are about a thousand employees in the tribal government. We have a big group of our own tribal bureaucrats now. We have our own tribal lawyers and lobbyists in Washington, D.C., but we have business people too. Things have grown so fast that it scares me because I still think about the first light bulb I ever saw.

Now we fly around the country, going to our corporate board meetings, and I think we have more attorneys working for us now than we have tribal members. We have 8,000 tribal members, and we must have 10,000 attorneys. But that is just the way it is in Indian country. We are developing programs and businesses, and there is no precedent. Lawyers are now at our side overseeing the development. Nothing is easy.

### LAND USE PLANNING

For me, the backbone for development is transportation systems, resources, and labor. You have to have all these ingredients, but the real backbone for everything is the transportation system. Many tribes are lucky: they have a system that is useable. Other tribes maybe have some of their needs met, although probably most do not. If you have the world's most beautiful tourist resort spot in the world, it is not going to do you a lot of good if you cannot get a road to it or if you have tribal allotments scattered over a 1,000 mi<sup>2</sup>. If you cannot dig the roads and get anyone to work, that will not help you. Roads are critical. This is where the Transportation Equity Act for the 21st Century (TEA-21) comes in.

Most tribes are still relatively undeveloped, so most tribes still do not have their infrastructure in place. We have a real opportunity as tribes to do things right. The tribes really need to spend some time figuring out what they want. I was raised with everyone saying, "We need more jobs, we need more businesses, and we need to make more money." I have spent most of my life doing that, and I know how to do that. I have started multimillion-dollar businesses. We have these things going, and we are figuring out how to do those things, but we need to step back and ask, "Where is this all taking us? Where do we really want to go?" I do not think that we have done enough of that kind of thing; at least our tribe has not.

I like to hunt and fish. I was raised out in the sticks, and I like those things. Every time we start a business, we might create 100 new jobs. The employees have to live somewhere. Their kids have to go to school somewhere. They have to shop somewhere. Where are they going to go? If you are as lucky as we have been, you have a pretty good-size reservation. We have a 1½ million acres. A lot of tribes do not have that much land. A few tribes are bigger. We are in the middle. We have to start planning: Where do we want the development to go? Where should it go? What lands do we need to protect just to protect our own sanity? I need to have lots of space to hunt elk and deer and to fish. We need to protect the places where we pick berries and gather roots. The elders know where everything is, where traditional activities took place. Tribes need to have a plan in place. We need to start documenting these things, the things our elders look after. They grew up in those traditions. We need to figure out where and how to compile and store that knowledge so that we can communicate with engineers, the BIA, and the outside world.

## JURISDICTION

The recent park decisions make tribal jurisdiction even more important. Jurisdiction is the main question for many tribes. Some tribes are lucky; they own 100% of their land. Warm Springs owns 99.9% of its land. Many other tribes have land in checkerboard situations. We used to own about half our land, but in the last 20 years, we have been buying land, so we now own three-fourths of our land. Every tribe is different. Who regulates non-Indians on the fee land? This is a real problem. It has been in court; the Brendale [versus Yakima Indian Nation] decision came in a few years ago. Since then, more adverse rulings have been given regarding rights-of-way crossing Indian reservations. We keep losing more rights every year.

Basically, the law says that we have to document and prove that we have a significant tribal interest at stake. If this is proven, then we will have a good chance to win tribal jurisdiction in court. The best way to do that is to have plans in place. We need to have community meetings. We need to document the people's wishes, goals, and objectives. We need to do resource inventories and to document our holdings. What is the community's goal? What is important to the community? What is a significant interest? That is basically a comprehensive land-management plan. Most tribes do not have a comprehensive land-management plan. Few do. You need to have one to assert and maintain your jurisdiction. That is what the law says right now.

Under the Brendale case, we had to show that we had a significant economic interest, a significant cultural interest, and significant health and general welfare interests. We need to document these interests and prove them by documenting them. Tribes need this documentation, but this need is not being met.

There are a few tribes further ahead than others. We have had a land use planning document for 20 years. It is continually being updated. I only know of a handful of tribes that are doing that right now. To do the land use plan, tribes need to know where they want their businesses. What kind of businesses do they want to be in? What's sacred to the tribe? Before jumping into memorandums of agreement with your county and state, you need to sit down and say, "What do we want as a tribe?" We will spend probably 10 years arguing about that. What do we want? We have started to document that.

## WHAT DO TRIBES WANT?

After deciding what we want as a tribe, questions arose, such as, “Where do we want development to begin?” Should we restrict development to where it has already been done? There are pristine mountains and pristine lakes. We want to protect them, so we will not allow development in those areas. We have some roads we would like to change. The government put a road in through one of our sacred valleys. We have a canyon like that in Colville called Coyote Canyon. On top of the rock cliff there’s a natural formation in the shape of a big coyote. The coyote is a real important keeper of the Northwest. In all of our creation stories, myths, and our religions, coyote is right in the middle, making things happen. All the elders were against the road placement in the 1950s through the sacred valley. But it was put in over their objections. Now we say, “Why not take that road out and move it somewhere else?” We need to do things like that.

Everything goes back to planning. We need to find alternate routes. I do not want you to think that we are anywhere close to being there yet, but we are starting to be aware that there is a need to plan. All the things that are used against us, such as educational and federal policy, we as Indians can start reversing [these policies] so that they become tools for our benefit. Schools were used to erase our culture, but we can use schools to bring our culture back. We need to do that across the board.

## TEA-21

This process has been going on for a little over a year now. The ISTEA told communities, states, and tribes that we need to start looking at intermodal transportation. Gradually, the BIA has accepted that. We are not there yet, either. In the last decade, FHWA has started to change. Officials in that department are starting to say, “Maybe we don’t need a bigger road. Maybe we need to figure alternative ways of moving people.” They are looking at transit and different types or modes of transportation. The BIA is mostly still [constructing] roads, but they are getting smarter. Maybe next time. The authorization basically came up with a formula to distribute the funds. A committee was set, made up of federal and tribal people to come up with a formula, update the regulations, and get this policy change implemented. This has been a difficult process.

## Funding

The basic problem is that there is not enough money. No matter how you split the formula, it will not be fair, and it will not be enough. That is what we are involved in now. Some tribes are still in the mode of trying to get more funding. I understand that. But a lot of the tribes are changing. They say, “Right now, the TEA-21 only serves about a third of the tribes; two-thirds of the tribes get nothing.” To lobby for more money and get what we need, we need to figure out a way to mobilize all 557 tribes. The tribes are agreeing to the concept that we need to get a little bit of this money down to the tribes that are getting nothing. Let them get involved in planning. Let them start to learn about how the federal highway money works. The intent is that with the next authorization, instead of having just a dozen tribes lobbying Congress, we would like to have hundreds of tribes lobbying Congress.

## Need for Data

The other big change we need is data. What are our real needs? We still do not have a good handle on what the actual road needs for tribes are. This gets back to planning. We need to get

more money down to the tribes to do the planning. Let them collect their own data. Let them determine what their needs are. Where do they want to go? What kind of life do they want? Tribal transportation needs can be taken to Congress collectively as a powerful message. Why just kill each other over a few crumbs, which is what I think the plan was for some of the people. We are trying to get tribes to work together, talk to each other, and get mobilized. Tribes are going to get what they want.

### Getting Started

Tribes need at least a part-time planner to get started. That's where many tribes are right now. Supposedly, the [Negotiated Rulemaking] Committee was to be done this month. We have met several deadlines. I do not think it is ever going to happen, but we are establishing a couple of formulas, big tribes in one formula and small tribes in another one. Most of us agree that we need to increase the capacity for all the tribes to fit into this tent. Thank you for your attention.

## ARIZONA CASE STUDY

# Improving Tribal Participation in the Statewide Transportation-Planning Process

MARY LYNN TISCHER

*Arizona Department of Transportation*

The Arizona Department of Transportation's (ADOT's) vision for improving tribal participation in the statewide transportation planning process and obtaining broader contact with tribal representatives throughout the department.

ADOT's vision: "The standard of excellence for transportation systems and services."

ADOT's mission: "To provide a safe and efficient transportation system, together with the means of revenue collection and licensing for Arizona."

## IMPROVING TRIBAL PARTICIPATION IN THE STATEWIDE TRANSPORTATION-PLANNING PROCESS

The ADOT Transportation Planning Division (TPD) has the vision of "Conducting a progressive effort for developing and implementing strategies to improve tribal coordination and communication in the statewide transportation planning process."

With regard to tribal relations, the following are 10 strategies developed and initiated by the ADOT to improve planning coordination and to increase tribal communication between the Arizona Indian tribes and department officials.

1. Conduct an ongoing effort to communicate and/or meet with tribal officials, councils of government (COGs), and/or metropolitan planning organizations' (MPOs) representatives, the ADOT district engineers, as well as various local, state, and federal agencies to identify tribal transportation concerns, issues, and needs. The ADOT planning staff conducts an ongoing process to communicate and/or meet with tribal transportation contacts and leaders, the COG/MPO planners, and the ADOT district engineers to discuss and identify tribal transportation concerns, issues, and needs. This process involves documenting the discussions for future reference and/or follow-up. Additionally, within the past several months, the ADOT has conducted several surveys to gather information to be used for improved coordination. One survey was conducted among tribal contacts to identify needs in understanding state and federal processes that can be addressed through statewide regional workshops or training. Also, the ADOT has conducted a survey among the COGs and MPOs to identify current voting status and participation levels of the tribes in their planning and programming processes. A third survey has been conducted among the district engineers to solicit input regarding improvement in district-level involvement and communication with the tribes.

2. Disseminate information on identified tribal transportation concerns, issues, and needs to key officials and ADOT representatives and recommend coordination strategies. Concerns, issues, and needs are documented for incorporation into project reports. Pertinent information is also distributed to key officials and representatives of the ADOT relative to projects that require tribal coordination and consultation follow-up. One major example is the

Governor's Transportation Vision 21 Task Force Project. On February 9, 1999, Governor Hull of Arizona established the Governor's Transportation Vision Task Force to evaluate current practices, resources, and infrastructures, and to recommend and prioritize the goals, funding, and specific plans that will establish a vision for transportation in Arizona for the 21st century. This project will result in the development of a final report to be submitted to the governor prior to December 31, 2001. The report shall contain consensus findings and the recommendations of the Task Force. In this regard, a report had been prepared and distributed to the Task Force members to provide information on the status of tribal transportation needs and how they relate to the Bureau of Indian Affairs (BIA), COGs, MPOs, and other planning organizations. In addition, the ADOT is working with the project consultants to carry out tribal coordination efforts for the review of current tribal plans and studies, as well as to review a transportation-project database to identify project needs and costs for Arizona tribal communities.

3. Attend and participate in various tribal-specific and public forums to promote and implement state/tribal coordination efforts. ADOT's staff attends meetings, workshops, and conferences conducted by various local, state, and federal agencies to report on ADOT's strategies for tribal interaction. Several examples of these forums include:

- The Indian Nations and the state of Arizona: Legislation Day, held each January;
- The COG/MPO quarterly planner's meetings and ADOT's district office meetings;
- The Governor's Transportation Vision 21 Task Force Committee meetings/public forums;
- The Inter Tribal Council of Arizona: Transportation Working Group monthly meetings;
- The November 1998 Intertribal Transportation Association: Albuquerque Regional Tribal Transportation Town Hall, titled "Uniting Voices and Visions in Indian Country";
- The Arizona Commission of Indian Affairs: quarterly commissioners' meetings;
- The June 1999 Arizona Commission of Indian Affairs: Arizona Indian Town Hall on "Redefining Tribal/State Relations for the New Millennium";
- The Colorado State University Tribal Technical Assistance Program Workshops titled "Tribal Transportation Planning Procedures and Guidelines" held in Flagstaff on August 30-31, 1999, for the BIA Navajo Regional Office and in Phoenix on November 9-10, 1999, for the BIA Western Regional Office; and
- The February 2000 Western Association of State Highway Transportation Officials' "Conference on Best Practices in Statewide Planning and the Statewide Transportation Improvement Program".

4. Disseminate state and federal transportation program and project information to tribal officials and representatives. ADOT is working to update its October 1993 document titled "Highway Financing in Arizona: A Primer on Federal and State Highway Financing in Arizona." This revised document would include identification of state and federal funding programs, along with their eligibility requirements and funding cycles. It will be distributed to all Arizona tribal governments and will also be made available through various forums sponsored by ADOT. Additionally, requests from tribal representatives for program and project information are coordinated through the various ADOT divisions, sections, and district offices. Requests received through ADOT-TPD are researched, and information is compiled and forwarded to the tribe. In some cases, meetings are conducted with tribal representatives to provide presentations or to address project-specific concerns.

5. Conduct reviews and make recommendations on updates to the current ADOT-TPD planning processes, procedures, and policies to incorporate tribal coordination. ADOT's



planning processes, procedures, and policies need to be reviewed to address consultation, cooperation, and coordination with the Arizona tribes. Specific reference to tribal governments should occur where applicable. Also, other Arizona state agencies have tribal consultation policies in place; those policies will need to be reviewed and taken into consideration during the ADOT policy-update process. The following ADOT documents are targeted for review under this strategy: the ADOT Action Plan for State and Federal Projects, the ADOT Project Development Process Manual, the ADOT Arizona State Consultative Planning Process Report, and the Governor's Transportation Vision 21 Task Force Final Report.

6. Conduct a review of the ADOT's plans, studies, and reports to address tribal concerns, issues, and needs. Similar to the previous discussion is a strategy to carry out the ongoing review of ADOT's planning-project studies and reports. Documents, such as corridor studies, small-area transportation studies, and special-transportation-project plans and reports, are reviewed to ensure that tribal concerns, issues, and needs are addressed with regard to the results from the project's tribal consultation efforts.

7. Maintain communication and sharing of planning data with the Arizona tribes and tribal-related agencies. Communication with the tribes and tribal-related agencies is an ongoing effort conducted on a day-to-day and project-by-project basis. The process of information sharing within the ADOT allows for improved communications when conducted between tribal governments and the various ADOT divisions, sections, and district offices. In addition, the ADOT receives and responds to requests for planning data. When necessary, requests are coordinated through the various ADOT divisions, sections, and district offices. Requests received through the ADOT-TPD are researched, and information is compiled and forwarded to the tribe along with pertinent contact information. In some cases, presentations are conducted for tribal representatives to review planning processes and procedures.

8. Maintain a current electronic database of tribal and tribal-related agency contacts. ADOT-TPD maintains an electronic database of tribal transportation-planning contacts, tribal leaders, and tribal-related agency contacts. Efforts are made to monitor and update information on changes in staff, addresses, telephone/fax numbers, e-mail addresses, and website addresses. This database is made available to the various ADOT divisions, sections, and district offices, as well as to various state offices and local government agencies upon request.

9. Designate an ADOT-TPD Tribal Coordinator to act as a planning contact for the tribes and to provide assistance to the tribes and tribal-related agencies. In April 1999, Don Sneed, an ADOT-TPD planner, was designated to work as the TPD's tribal coordinator. In addition to providing coordinating assistance to the tribes, tribal-related agencies, and other ADOT divisions, sections and groups, the position holds the responsibility for overseeing implementation of the strategies previously identified. As the tribal coordinator, Sneed represents the ADOT's Director, Mary Peters, at the quarterly meetings of the Arizona Commission of Indian Affairs. Peters is one of several Ex-Officio Members on the Commission. Sneed also represents the ADOT-TPD at meetings of the Inter Tribal Council of Arizona's Transportation Working Group and the Intertribal Transportation Association. At these meetings, he provides or arranges for reports on ADOT's tribal coordination activities and ongoing planning processes. He is also involved in an ongoing effort to meet with ADOT district engineers and Arizona tribes to discuss and compile additional information on local tribal transportation concerns at the district level.

10. Provide for the establishment and support of the ADOT Tribal Strategic Partnering Team (ATSPT) to undertake a supportive role in the development of strategies to improve the



ADOT/tribal transportation coordination. The ADOT-ATSPT is a tribal coordination effort established in June 1999 through the efforts of ADOT-TPD, ADOT Civil Rights Office, and ADOT Partnering Section. The ATSPT's purpose is to bring together representatives from state, tribal, federal and local agencies to discuss tribal-related transportation issues and to develop interagency forums through which these issues can be addressed. Thus far, ATSPT is comprised of representatives from several Arizona Indian tribes, ADOT, FHWA, the Inter Tribal Council of Arizona, the Arizona Commission of Indian Affairs, the BIA Western Regional Office, and the Tribal Technical Assistance Program.

Tribal concerns and issues identified through the ATSPT include financing transportation improvements; improving coordination with state, federal, and local agencies; understanding programs and processes; and improving tribal participation in these programs and processes. The ATSPT is currently planning to conduct several regional tribal transportation workshops geared toward addressing these concerns. The purpose of the workshops is to foster a greater interaction and coordination among the tribes, COGs/MPOs, and ADOT.

Further information on ADOT's tribal coordination strategies can be obtained by contacting Don Sneed, Planner/Tribal Coordinator, Arizona Department of Transportation, Transportation Planning Division, 206 South 17th Avenue, MD 310B, Phoenix, Arizona, 85007; Phone: (602) 712-8140; Fax: (602) 256-7563; E-mail: [dsneed@dot.state.az.us](mailto:dsneed@dot.state.az.us).

## ARIZONA CASE STUDY

### **Tribal Strategic Partnering Team in Arizona's Planning and Programming Processes**

**DONALD R. SNEED, SR.**  
*Arizona Department of Transportation*

**T**he Arizona's Department of Transportation (ADOT's) transportation planning process, including allocation of resources, project identification, project prioritization, and details of the different levels of tribal input required in the ADOT project-development process.

#### **BACKGROUND**

The state of Arizona has a land base of 113,642 mi<sup>2</sup> and a population of approximately 4.5 million. Almost 3 million people live within Maricopa County. The Arizona State Highway system includes 6,619 route miles and 17,370 land miles of roadway. There are also 3,945 bridges on the system. About 70% of the system's roadways are situated within rural areas, while the remaining 30% are in urban areas. Approximately 17%, or 1,200 route miles, of the State Highway System traverse tribal reservation land. There are 21 federally recognized Indian tribes in Arizona. Only one, the San Juan Southern Paiute Tribe, does not currently have a reservation land base. Indian reservations in Arizona encompass approximately 27,736,000 acres, 28% of Arizona's land base. Also, although headquartered in New Mexico, the Pueblo of Zuni has approximately 12,000 acres of reservation land located in eastern Arizona.

Arizona Indian tribes include the Ak-Chin Indian Community, the Cocopah Indian Tribe, the Colorado River Indian Tribes, the Fort McDowell Yavapai Nation, the Fort Mojave Indian Tribe, the Fort Yuma Quechan Indian Tribe, the Gila River Indian Community, the Havasupai Tribe, the Hopi Tribe, the Hualapai Tribe, the Kaibab Band of Paiute Indians, the Navajo Nation, the Pascua Yaqui Tribe, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the San Juan Southern Paiute Tribe, the Tohono O'odham Nation, the Tonto Apache Tribe, the White Mount Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe.

#### **ARIZONA COUNCILS OF GOVERNMENT AND METROPOLITAN PLANNING ORGANIZATIONS**

By executive order, Arizona is divided into planning and development districts to pursue comprehensive planning on a regional basis. In Arizona, these districts include four rural Council of Governments (COGs), including the Central Arizona Association of Governments, the Northern Arizona Council of Governments, the Southern Arizona Governments Organization, and the Western Arizona Council of Governments. There are also four metropolitan planning organizations (MPOs), which include the Flagstaff Metropolitan Planning Organization, the Maricopa Association of Governments (MAG), the Pima Association of Governments, and the Yuma Metropolitan Planning Organization (YMPO).

Some Indian reservations overlap into two or more COGs and/or MPOs, which can affect tribal planning efforts. According to a recent ADOT Transportation Planning Department (TPD)

survey conducted among the COGs/MPOs, the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community are full-voting members in the MAG Regional Council, and the Cocopah Tribe is a full-voting member of the YMPO. Several of the other tribes vote or participate in a limited capacity in the COGs/MPOs, while others do not participate at all.

### **Arizona Transportation Board**

Arizona is divided into six transportation districts. The State Transportation Board consists of seven members appointed by the governor. There is one member from each district and one from the state at large. The board has the authority to prioritize individual highway and airport projects and award all highway contracts. The board district boundaries also overlap several of the Indian reservation boundaries.

### **ADOT's Engineering Districts**

Arizona is divided into nine engineering districts, with each represented by a district engineer. The districts are involved in the initial identification of highway needs, construction, and the operation and maintenance of highway facilities. The Phoenix area has one construction district and one maintenance district. Several of the engineering district boundaries overlap Indian reservation boundaries.

### **ARIZONA STATE TRANSPORTATION PLAN**

The current Arizona State Transportation Plan was completed in 1994. It serves as the centerpiece of Arizona's multimodal transportation-planning process, covering all modes, including highway, rail, transit, pipeline, bicycle, and pedestrian. The plan is a policy document that provides a framework of goals, objectives, and strategies to guide transportation decisions. While state system-level planning continues, ADOT transportation-planning process has shifted emphasis from the transportation system as a whole toward specific multimodal transportation corridors of statewide significance. The 1994 Arizona State Transportation Plan identified 33 corridors of statewide significance. Among the 33 corridors, 14 high-priority corridors have been identified. Since 1996, corridor-profile-analysis studies have been completed or are underway for each of the corridors. The deficiencies, needs, and investment opportunities of surface-transportation facilities in these corridors are being or have been investigated through the corridor-profile-study program.

### **ADOT's Statewide Transportation Planning Process**

The Arizona State Transportation Plan guides the current statewide transportation-planning process. Many studies and plans that have helped to form the basis of the development of the State Transportation Plan, including the Statewide Needs Assessment Study, the State Rail Plan, the State Bicycle Plan, the State Transit Plan, and the State Highway System Plan. Each of these documents has incorporated extensive public-involvement processes. The State Transportation Plan also emphasizes the need to carry out small-area transportation studies and corridor-profile-analysis studies. High-priority projects identified through these types of studies can then be forwarded to the State Priority Programming Process and, if approved, on to the State Transportation Improvement Program and the State 5-Year Highway Construction Program.

## State Priority Programming Process

There are two major elements under the priority-programming process: the State Transportation Board Guiding Policies and Project Identification.

### *State Transportation Board Guiding Policies*

The statutory power to prioritize individual highway and airport projects lies with the State Transportation Board. The Priority Planning Advisory Committee, whose members are appointed by the ADOT director, assists the Transportation Board in setting priorities. The committee is guided by a number of policies established by the board. Current policies address commitments to the following: the state highway system, federal aid used to full advantage, a high value placed on engineering-program categories, criteria for prioritizing projects, joint-sponsorship criteria, interstate funding, controlled-access systems, transportation-systems management, non-Interstate-system rest areas, non-Interstate-system landscaping, and Interstate-system rest areas.

### *Project Identification*

The highway-construction program is a product of input from citizens, local governments, planning organizations, chambers of commerce, the business community, and ADOT's professionals. ADOT planners and engineers identify highway needs using a number of technical measures. These include information from the ADOT Pavement Management System, traffic counts and projections, truck studies, accident studies, corridor-profile studies, small-area transportation studies, and the State Highway Plan.

Potential projects must compete for funding and programming with other highway projects. After reviewing potential projects, the Priority Planning Advisory Committee recommends projects for detailed exploration, which is also known as scoping. A scoping study is an overview of issues and concerns related to the project. The list of scoping projects is coordinated and developed with input from the district engineers and the COGs/MPOs. After approval by the Transportation Board, listed projects are scheduled for a scoping study. After project issues and concerns have been studied through the scoping study, the project is put into a project pool for programming. Projects are then prioritized using several criteria. These include the significance of the route; route continuity; cost effectiveness, measured by the project cost per motorist served; and recommendations of the district engineers.

The highest-ranked projects for each program category are then considered for inclusion in the 5-year construction program, to the extent that funding is available. After release by the Transportation Board, a tentative 5-year program is distributed throughout the state to local elected officials, tribal governments, transportation agencies, and other interested parties. Also, public hearings are held statewide on the tentative program. The final version of the 5-year program is approved by the State Transportation Board by June 30th of each year and then forwarded to the governor of Arizona. As previously mentioned, the state is in the process of developing its new 20-year Long-Range Transportation Plan. In relation to this, the Priority Programming Process is changing and evolving to be more performance-measurement-oriented. There will also be more collaboration in identifying needs.

## ADOT'S TRIBAL STRATEGIC PARTNERING TEAM

The ADOT Tribal Strategic Partnering Team (ATSPT) is a tribal coordination effort that was established in June 1999 through the efforts of ADOT-TPD, ADOT Civil Rights Office, and the

ADOT Partnering Section. The ATSPT's purpose is to bring together representatives from state, tribal, federal, and local agencies to discuss tribal-related transportation issues and to develop interagency forums through which those issues can be addressed. The ATSPT has developed the following vision: "Understanding of all partners' laws and/or policies by all parties with free flowing communication and dialogue among all partners." The ATSPT meets quarterly, with meeting discussions documented and distributed to participating agency and tribal representatives and to key officials within the ADOT and the COGs/MPOs.

The ATSPT's participating agencies include: ADOT Civil Rights Section, ADOT Globe District, ADOT Holbrook District, ADOT Partnering Section, ADOT-TPD Advance Planning Team, ADOT-TPD Air Quality Policy/Local Programs Team, ADOT Environmental Planning Section, the Arizona Commission of Indian Affairs, the Bureau of Indian Affairs' (BIA's) Western Regional Office, the Colorado State University's Tribal Technical Assistance Program, FHWA, and the Inter Tribal Council of Arizona, Inc. Tribal participation in the ATSPT has included the Colorado River Indian Tribes, the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation. Transportation liaisons and/or contacts have also been identified for all other Arizona tribes.

The ATSPT has developed three major goals to guide the efforts of the team:

- Goal 1: Develop strategic partnering and planning processes tailored for the ADOT, tribal governments, and other partners.
- Goal 2: Promote meaningful state and tribal government relationships through the establishment of an ongoing network of partners to include active and committed core team members, key liaisons/contacts, and partner groups.
- Goal 3: Establish an education process and training to understand and honor different meeting approaches and requirements to promote understandable, user-friendly, and mutually agreed-upon documents; and to address misconceptions, policy, structure, and leveraging strategies.

Additionally, the ATSPT has identified the following components of the strategic partnering process. These components include specific concerns and key issues to be considered and/or addressed through the ATSPT. They include

### Education

Background and history of Indian communities for ADOT's staff; cultures (Indian and non-Indian); the Transportation Equity Act for the 21st Century (TEA-21) Planning Processes; and intergovernmental agreements.

### Issues

Indian preference (no preference in contracting); local preference (labor); tribal perceptions of ADOT; that traditional tribal corridors and current corridors are basically the same; unrecognized diversity of tribes (different needs); and danger of generalizing (true perspective of smaller communities).

## Partnering Practice

Building partnerships; educating in partnering principles and practices; and identifying shared values.

## Understanding

Government-to-government relationship versus state-to-state; legalities (namely the legal relationship with the federal government); the TEA-21 Process (COG/MPO voting requirements; currently few tribes are voting members; a written process to include all partners); the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA (Established in 1991, it requires states to include tribes in the Transportation Improvement Program)].

## Coordination

Processes include communication with each tribal chairperson, president, or governor. Liaisons must know with whom to coordinate within tribal governments and must keep updated on changes within governmental structure. The Inter Tribal Council of Arizona (ITCA) is a good model for tribal coordination and distribution of information. The ITCA Transportation Working Group provides input and strategies from tribes. The ITCA membership includes all but the Navajo Nation and the San Juan Southern Paiute Tribe. (There are no contracts with them.) Other coordinating agencies include the Arizona Commission of Indian Affairs, BIA, the Intertribal Transportation Association, FHWA, and FTA.

## ADOT's Policies

Recognize only agencies or groups created within. Maintain relationships with the COGs and the MPOs. Keep informed of changes to the ADOT's policies and processes. Provide technical assistance through the Tribal Technical Assistance Program to review all processes with tribes. Use the Local Technical Assistance Program to review state programs that affect Arizona and its Indian tribes.

## Roles

Define the ATSP role; identify representatives from each Indian community as members, contacts, or liaisons.

## RECOMMENDATIONS TO INCREASE ARIZONA TRIBAL PARTICIPATION IN ADOT'S TRANSPORTATION-PLANNING AND PROGRAMMING PROCESSES

- Communicate with regional ADOT district engineer(s) on transportation issues;
- Participate in the COG/MPO planning process;
- Participate in statewide planning efforts (for example, the Governor's Transportation Vision 21 Task Force Project and the CANAMEX Corridor Study);
- Participate in the development of state transportation-planning studies and reports;
- Respond to requests for input and review of the statewide planning documents;
- Attend State Transportation Board Regional Meetings to voice concerns, issues, and needs;
- Participate in the Tribal-State Legislation Day held in Phoenix each January;

- Participate in the ADOT Tribal Strategic Partnering Team; and
- Use the ADOT-TPD as a point of contact for transportation planning efforts

For further information, contact Donald R. Sneed, Planner/Tribal Coordinator, Arizona Department of Transportation, Transportation Planning Division, 206 South 17th Avenue, MD 310B, Phoenix, Arizona 85007; Phone: (602) 712-8140; Fax: (602) 256-7563; E-mail: [dsneed@dot.state.az.us](mailto:dsneed@dot.state.az.us).

## ARIZONA CASE STUDY

### Tribal Capacity and the Transportation Working Group

**Esther Corbett**

*Inter-Tribal Council of Arizona, Inc.*

#### INTRODUCTION

The Inter-Tribal Council of Arizona (ITCA), established in the 1950s, is an association of 19 of the 21 tribes in Arizona. Membership consists of the highest elected officials from each tribe. Our corporate arm includes approximately 50 professionals and paraprofessionals, who assist the tribes with program development in the fields of health care, the environment, human services, and, most recently, housing and transportation. Because we are newcomers to the transportation field, I think that we are able to see certain problems that other people might not see. When Ron Hall asked me to identify the greatest challenge that small- and medium-sized tribes face, one thought came to my mind: tribal capacity.

#### TRIBAL CAPACITY

Sam Johns, Navajo Nation Department of Transportation (DOT), has mentioned many different issues. We appreciate what the Navajo Nation, as a large tribe, has accomplished in policymaking and the legislative process. Navajos comment, and their voices are heard. But for small and medium-sized tribes, the situation is different. We have neither the funds nor the capacity to participate in governmental processes to the same extent that the Navajo Nation does. Without adequate capacity and funding, we are unable to attend many important meetings and conferences. We are unable to make some vital comments. Basically, it is impossible for us to maintain sufficient visibility. As long as we remain unseen at conferences and meetings, people will assume that transportation is not a priority for us. On the contrary, we are extremely interested. However, most tribes in Arizona must utilize their tribal leaders, who are already inundated with a wide variety of other duties, as their transportation contacts. Some tribes must rely on a half-time planner, who may have a variety of responsibilities in addition to transportation. There are a few tribes that are fortunate to have either a tribal council roads committee or a natural resources committee to guide the tribe on road and transit issues. In addition to the Navajo Nation, which has a DOT, the only other tribe in Arizona to have established a transportation department is the Gila River Indian Community. Obviously, capacity is an issue that we will have to overcome.

If there is one message that I could relay to the regional planning organizations, FHWA, FTA, and state DOTs, it is that we are trying. We are using our limited resources as best we can. Likewise, the range of the ITCA transportation capabilities is restricted. For example, the ITCA hired me in 1998 to coordinate a transit project, which was expanded to include highway infrastructure. Recently, I have also been assigned to coordinate a philanthropy project. I split my time between two separate fields, so it is impossible for me to view and act upon every transportation notice by summarizing and forwarding the information to 55-plus tribes. The Bureau of Indian Affairs (BIA) Western Regional Office service area is structured to cover three states; the ITCA is coordinating the sharing of information with tribes in Utah, Nevada, and Arizona. Our



limited resources hinder our coordination efforts; the mailings are expensive, so we are struggling to identify a more efficient method for dispersing information.

## COMMUNICATION AND COORDINATION

The director of the Western Regional Office and ITCA met to determine an effective way to send short-term notices to the tribes. Faxes are not always efficient, and we have yet to identify which tribes have e-mail capacity. When we receive transportation notices, the senders often want an immediate response, but because we lack sufficient communication technology and staff, we miss a lot of opportunities. For us to progress, we must establish more effective means of communication. Last year, the ITCA, in partnership with the Arizona DOT (ADOT), the Arizona Division of FHWA, and the Hualapai Tribe, applied for a Transportation and Community Preservation System grant to institute a remote-conferencing system. As of yet, we have not been notified whether our application has been funded. But we are confident that if we are able to establish the remote-conferencing system, we can enhance communication.

In 1998, the ITCA established its Transportation Working Group to provide a forum for the tribes to address mutual transportation issues. The BIA Western Regional Office has offered to provide the tribes in this service area travel funds to attend the working-group meetings and other planning meetings. The funds for travel assistance are deducted from the annual 2% planning funds allocated to the Western Regional Office. When tribes accept travel assistance, they limit the funds to participate in other planning functions, a real catch-22. If we want to increase the tribes' awareness of transportation programming, then we need to provide assistance for them to attend transportation meetings. On the other hand, if the tribes spend planning funds to travel, then other pressing planning matters might not be addressed. A case in point is that, annually, the BIA Western Regional office can fund planning activities for only approximately 5 of the 55-plus tribes in their service area.

## TRANSPORTATION WORKING GROUP

Two major events prompted the ITCA to establish the Transportation Working Group. First, ITCA received a small grant from the Arizona Department of Economic Security to address welfare reform and transit. Second, tribes requested a formal audit of the Western Regional Office Roads Department so that they would know how their money was being spent on transportation.

Initially, the Transportation Working Group was composed of only the tribes in Arizona, and we met on an as-needed basis. However, two transportation review processes, one at the state level and the other at the federal level, prompted us to convene monthly meetings to discuss mutual issues. When the Negotiated Rulemaking Process for the Indian Reservation Roads (IRR) program was initiated, we felt that it was important for us to be informed and to address the committee with a consolidated voice from within the Western Region. We started trying to coordinate with the tribes of Utah and Nevada. Simultaneously, along with the IRR Negotiated Rulemaking Process, Arizona's Governor Hull established a Vision 21 Task Force, which was designed to study long-range transportation planning in Arizona for the next 20 years. At first, tribes were not included on the task force, so the ITCA requested, through the governor's office, that tribal representation be added. In response, Governor Hull appointed a task force representative from the Navajo Nation and a representative from ITCA. Although the working group was initially established for the tribes, we soon realized that we needed to partner with ADOT, BIA, FHWA, and the Tribal Technical Assistance Program to coordinate sharing information with the tribes.

In the beginning, we struggled to understand many aspects of the IRR program. What was the funding cycle? In what forms and through what streams did the funding come? We began getting involved in some of the national conferences and met Sam Johns and Paulson Chaco (from the Navajo Nation), as well as other people who had a bit more transportation experience than we did. Serving on the IRR Negotiated Rulemaking Committee and subcommittees exposed the small- and medium-sized tribes to IRR programming. Sam said, “Even the small tribes are saying, ‘There’s not enough money to go around’.” He was right. If we want to build tribal capacity, we have to have more funds. The state process is competitive. The federal process is competitive. The IRR process is competitive. An IRR funding formula is based on both the cost of the improvement and population size, but both these factors change with time, and adjustments need to be maintained, so that small- and medium-sized tribes are provided all available funding. In the Western Region, approximately 3,600 mi of roads exist that we are unable to maintain. We actually have to let a road deteriorate before we can construct a new one because of inadequate maintenance funding.

### CURRENT CONCERNS

I am really concerned about the transit opportunities for tribes. Transit is an eligible activity of the IRR program, but if you ask most of the human-services people in the tribal departments, they do not know that the IRR funds are available for transit facilities. They do not know how to apply. Partly, that is because it is still being worked out in the IRR Negotiated Rulemaking process. But once the procedures and rules are established, how are they going to be disseminated? What outreach will be provided to the tribal communities?

Some of the tribes in Arizona participate in federal transit programs, such as 5310, 5311 for the elderly and disabled, and the rural public transit, but funding for such programs is limited. Three tribes in Arizona participate in the Rural Public Transportation Program (5311). There is more tribal involvement in the Elderly and Persons with Disabilities Transportation Program (5310). The tribes are receiving only limited funds to purchase vans, and there is little coordination of funding. The Access to Jobs and Reverse Commute program became available in Arizona. Although the FTA has announced and encourages coordination and the leveraging of funds in its pamphlets and handbooks, the tribes still need a lot of technical assistance and outreach to help them understand how to get involved.

I think that the ITCA’s major role is to ask questions about how tribes can gain access to the programming and funding processes. Why do they work the way they do? Why not create new solutions and innovative ways to approach tribal involvement?

### STEPPING TOWARDS THE GOAL

As a transportation-project coordinator, I am responsible for monitoring, reviewing, and commenting on initiatives, legislation, regulations, and policies. When I see the Federal Register notices, such as those that came out for statewide planning, intelligent transportation systems, and the National Environmental Policy Act of 1969, the ITCA notifies the tribes via a cover letter to the Federal Register notice and encourages their input.

Each year, the Arizona legislature convenes a “State Legislative and Indian Nations Day” in January. Last year, for the first time, a tribal transportation component was included on the agenda. State Legislative and Indian Nations Day provides tribal leaders and legislators the opportunity to come together, to listen, and to reach out on topics important to the tribes.

As the ITCA addresses transportation policy and encourages more tribal involvement in programming, the process requires the ITCA and the tribes to coordinate. Right now, most of our work consists of networking, sharing information, and coordinating the Transportation Working Group activities. In some situations, the ITCA will coordinate transportation activities with the tribal social services, education, housing, law enforcement, economic development, natural resources, cultural resources, and employment development departments because we recognize that the transportation network has an impact in many fields. It is a system for connecting services and people.

Sometimes the transportation staff gets involved in the task of policies, statutes, and regulations, but in doing so, we forget that there is a mother out there who is trying to get to her job activity or that there are children who need to be taken to child care. We forget that a logging road may become dangerous and need safety upgrades quickly. Research studies have demonstrated that rural areas need sidewalks or trails to protect people. All of these things affect individuals, and as the ITCA is getting involved, we are trying to remember that at the end of a policy decision, at the end of the IRR Negotiated Rulemaking, at the end of the governor's task force review, individuals are being affected. It is easy to get caught up in thinking, "This is the way we have always done things; this is the only way it works." We emphasize the lack of services, outreach, and technical assistance, but I think that we need to remember that coordination and collaboration require time, resources, patience, and understanding. We need to realize that this will not happen overnight, but we can certainly begin the process.

## CONCLUSION

There are a lot of nonprofit and grass-roots organizations across the country that have been advocating public involvement in transportation processes. Some of these groups were deeply involved in designing the Transportation Equity Act for the 21st Century so that public involvement would be emphasized. But I do not think this public involvement is always as inclusive of tribes as it needs to be. Insufficient outreach requires tribes to find information on their own and to use their limited resources to get to meetings. To facilitate coordination, transportation agencies might consider utilizing tribal organizations, even though they are not regularly mentioned in transportation regulations and policies. We can provide a forum for state agencies. We can provide a forum for internal departments to get together to discuss mutual issues. I think that the role of tribal organizations is overlooked, yet this structure can disseminate information and can enhance coordination and collaboration.

When addressing tribal transportation, we are trying to provide access for transit people to the Transportation Working Group, as well as to the IRR program. This IRR title suggests an emphasis on roads rather than on the tribal human-service workers who are invited to participate. They wonder how their work fits in with roads. I think that part of the title should be changed to incorporate other activities besides road construction and road planning. The transit people need to be given an opportunity to become involved. Be sure to share information with these organizations so that they feel included and can begin to understand this complicated transportation system. Basically, we want to get the word out that there are other ways in which we can begin to collaborate. We are certainly availing ourselves of any of the collaborative efforts that are being done regionally, nationally, and locally.

## ARIZONA CASE STUDY

### **Tribal Consultation from the Historic Preservation Perspective**

**BETTINA H. ROSENBERG**

*Arizona Department of Transportation*

#### **THE PROCESS WE USE**

I work for the Arizona Department of Transportation's (ADOT's) Environmental Planning Group in the Historic Preservation Section. I have been there for 20 years, and I have seen a lot of changes. Working with the Transportation Planning Division is something good and new for us, and we are depending upon it to get the information out promptly. We work on particular projects and with specific issues.

We are developing a pretty good process and protocol. We have a good relationship with both the Arizona State Historic Preservation Office (SHPO) and the Arizona Division of FHWA. They have helped us in getting this process off the ground.

The tribal consultation that we do is primarily related to projects and specifically follows the National Environment Policy Act of 1969 and the National Historic Preservation Act. We have requirements for all federal undertakings that follow the revised regulations, 36CFR800, which became available last year. We conduct all of our formal federal consultations under these regulations. FHWA does the government-to-government consultation.

For state projects, there is a State Historic Preservation Act. The SHPO recommends that tribal consultation be done, but there is no legal requirement for this in Arizona. The ADOT consults tribes. Recently, we were cited as a good example of how to conduct tribal consultation on the state level, even in cases in which the law does not mandate it.

The other area in which we do tribal consultation is not based on any law, but is based on an ADOT standard specification regarding material sources. A specification in the ADOT rulebook says that tribal consultation will be done for all material sources, regardless of their land status, whether the land is private, state, federal, or an ADOT pit. I think that this system is working well and that the tribes have been pretty happy that we have initiated this. Prior to the new regulations last year, we had primarily done consultation with tribes over the years regarding the treatment and disposition of human remains. Federal land managers handle the Native American Graves Protection and Repatriation Act; we at the ADOT do not. There is a state burial law, passed in 1990, that covers both state and private land; for this, we work with the Arizona State Museum.

#### **OUR CONTACT WITH ALL 21 FEDERAL TRIBES IN ARIZONA**

The Arizona State Museum established a procedure for making contacts and created a series of maps that we have used as our starting point for contacting tribes. The museum asked the tribes to identify their areas of cultural affinity and aboriginal use areas. Using those maps, we established which tribes to contact for what kinds of projects.

Last August (1999) we sent two letters to all 21 federal tribes in Arizona, plus the Pueblo of Zuni. One letter was from the ADOT and the other from the FHWA; we sent them to identified historic preservation individuals: the president, governor, or chairman of the tribe, and

planners. We explained what our processes are—the state and federal processes. We asked who should be contacted when we need to initiate consultation. We suggested meetings. We sought replies on types of projects desired by the tribes for further consultation. These letters resulted not only from the new federal regulations, but also from something that we had been working on for months.

We have had, since that time, four face-to-face meetings with four different tribes. We received five letters; one included a map showing an area of concern that has never been shared before. We shared that information with the Arizona State Museum; the staff there was pleased. We received several phone calls about these issues. We are planning to send these letters out again to try to initiate more meetings.

### **OUR TIME FRAME FOR REPLIES: 30 DAYS**

On specific federal projects, the FHWA sends letters (which we write) to all the tribes. For state projects, we send them out directly. We select recipients for the letters based on experience or input from the tribes. I think that we have set up a pretty good process of who will receive letters. If we never heard from any particular tribe about our request for input, we would still send a letter seeking a reply. We ask for a reply within 30 days. We make phone calls for a follow-up. Often, we do not hear back. Certain projects have tight time frames, particularly material-sources projects.

Let's suppose that a private contractor is developing a source for a particular construction project and that it needed information immediately, yet these sources are not identified until a project is going to construction. We really stick to the 30-day time frame. However, if we have initiated consultation with a tribe for a long-term planning project, the 30-day time frame is not that critical. We do try to accommodate any input that is received beyond the 30 days. If we know that there is a critical area of concern, we will make the phone calls and do follow-ups on those projects. On occasion, we will be told, "This area is of interest to us. We would like to go with our historic preservation person or with some of the elders." When asked, we do conduct field visits.

As I said, long-term planning projects work best. For short-term projects, getting replies can be difficult. Our agencies are schedule-driven; I do not know how we are going to change that. One of our most difficult projects right now is one in which we did not finish our archeological field work, and the project is under construction. It is an ugly and difficult situation. Getting the cooperation of the contractor, the agency districts, and everyone else is imperative.

Sometimes we get replies to our letters from tribes. The Hopi Tribe replies to every single letter within 10 days. Sometimes, we get a huge stack of letters. I am pleased about that.

There are cases that require formal consultation that has to be done by law or regulation guidance. For many other cases, the informal relationship that we have developed with a lot of the tribes seems to be the best. The phone calls between tribal–historic preservation offices and our office are frequent; they are honest and open. Once those individuals have been identified, the consultations really work well. Once we know the people to contact at the tribe, they know whom to contact at ADOT. There are four of us on the ADOT Historic Preservation Team. As I said, the Hopi have their own Historic Preservation Office. We also have a good working relationship with Salt River-Pima Maricopa Indian Community. One of our projects is right across from the reservation. If someone needs to be there promptly, for example, if a burial is

found, they are out right away. We have a good working relationship with the other tribes in Arizona, too.

The tie here is that these groups have historic preservation offices and individuals identified with whom to work. That makes the consultation process much easier. Many of the tribes that we do not hear from are ones that do not have specific historic preservation staff. They are overwhelmed with the letters they receive from us. We understand their concerns and realize that this is something that needs to be worked out on a national level, not just on a state level.

We have identified many of the people we need to work with. We know who they are; they know who we are. It is not a project-by-project issue. We look at this involvement more broadly. Someone from one of the tribal historic preservation offices will call us and ask us questions about other issues; and I am finding that that is where we have succeeded. It starts with the official formal consultation and the identification of whom to work with. Although communications have become more open, difficulties remain; for example, our scheduling is a problem.

### **WHY WE ARE SUCCEEDING**

Arizona is a huge state with many tribes; we also have a lot of federal land. However, I think that we have succeeded because we had the experience prior to some of the legal requirements that were placed on us. We were feeling our way around in the earlier years. I think that we have come a long way. We do have a long way to go, but, as I said, it really does make a difference to work with transportation planners who are ahead of us in the learning curve before we work on specific projects.



## ARIZONA CASE STUDY

### Creating a Tribal GIS Road Data System

**RITA THOMAS**

*The Navajo Nation*

The Navajo Nation Department of Transportation's Transportation Planning Program (TPP) gave a Power-Point presentation on how its tribal program started collecting the Navajo Nation Roads System data. The TPP started editing the 1984 Topologically Integrated Geographic Encoding and Referencing (TIGER) road data and detected numerous errors within the TIGER data.

Some of these errors were

- Roads (arcs) did not connect at intersections;
- Existing roads were not recorded in the TIGER road data; and
- Roads that no longer existed were still showing in the data

Due to the uncertainties of the TIGER road data, the TPP decided to create its own set of reservation road data. This was the only way the program could produce an accurate up-to-date set of road data with a related road inventory.

The Global Positioning System (GPS) is a method of collecting road data in relation to the geographic information system (GIS) data. The GIS method of collecting road data is more accurate than tracing aerial photography roads (through the TIGER roads data) because technicians are literally closer to the ground when collecting the data. The GPS data were useful in creating a definitive database that was integrated with other forms of road-related data, such as accident data. The TPP continues to gather data and to update the Navajo Nation road inventory.

The Navajo Nation presented its data in the ARCVIEW format illustrating

- Political and congressional boundaries surrounding the Navajo Nation, including the Navajo Nation boundary,
- Twelve county boundaries,
- Seven agency boundaries,
- Chapter boundaries, and
- Roads by ownership.

The Navajo Nation roads database consists of the roads owned by the Bureau of Indian Affairs (BIA), as well as county, state, federal highway, and tribal roads that are not part of the system. The roads are classified by ownership in our database. The BIA roads are linked to the National Road Inventory database.

## CASE STUDIES OF STATE AND TRIBAL EXPERIENCES

### **Tribal Consultation Case Studies on the Spokane Reservation**

**BRYAN FLETT**

*Spokane Tribe Culture Program*

#### **INTRODUCTION**

I am the tribal heritage coordinator for the Spokane Tribe. I will speak on how the Spokane Tribe communicates and how we interact with county, state, and federal employees on transportation issues. The Spokane Tribe has two staff people, the Tribal Historic Preservation Officer (THPO) and me. As Heritage Coordinator, I coordinate the Language Department, the Archeology Department, and the THPO Department. The Language Department has six instructors, two elders, and four regulars. We have 320 students. I have to deal with college, public school, and tribal departments. The Language Department did not want any supervisors because all of the instructors wanted to remain equal. Therefore, I coordinate their functions and some of the issues.

#### **REQUESTS FOR A ROAD**

This office deals with the salmon recovery issues. We are dealing with nine federal agencies about salmon recovery along the Columbia River and on issues from the Pacific Ocean all the way up to Canada. When you send us a request for a road project, bear in mind that we deal with multiple issues, and there are only the two of us. Most senders have a 15- to 30-day time limit. We respond to requests as quickly as we can, but we are absolutely swamped. You send in a request about a proposed road project, and the tribe may send you back a form letter saying “no concern, but thank you anyway.”

I will get into the process if there is a concern. If you send us a road project and we have a concern about it, first we review our archives for information that we have about this particular area. After the archives, it goes to our Cultural Affairs Committee. The Cultural Affairs Committee reviews it and gives us advice as to what position we should take on this, bearing in mind that if we challenge something, then it could go towards litigation. Litigation means releasing information that we may not want released, so we have to weigh all those issues. Once they get their position, then we have to take it to our Business Council and inform them of the proposed project. Then they will tell us what we have to do. Then, more than likely, we have to send back a letter. This draft letter has to go to our Legal Department for review. Then it comes back to us with everybody’s comments. We formulate the letter, and *then* we get it back to you.

The Cultural Affairs Committee meets once a month. You never know when the Council’s going to be in. Our attorneys are always busy, too. The process that we have to work through to get a response back to you is long and drawn-out, especially if a culturally sensitive area is involved, but we are committed to it. We understand that you are sending the project letter because it is important.



## CASE STUDY: COYOTE'S ROCKS

I am going to be talking about a bad project that happened. It was with Spokane County, and it is called Coyote's Rocks. I filled this position 2 years ago. My first project was Coyote's Rocks. My background is the military, and then I was in construction. I started coordinating the Cultural Department. The county proposed a road project in the Spokane Valley, right along the river. Everybody knows the site: the counties, the city, and the state. Everybody recognizes Coyote's Rock as a culturally sensitive area. The tribe knew about this project when the county called up the forestry people for a forest permit to cut down three trees. The forester who went out to sign the forest permit knew about the area and asked the county whether it had contacted the tribe about this site. They said, "No." He did not sign the permit. All the while, they had the equipment on site, ready to go.

What they were going to do was to go into Coyote's Rocks, blast them, turn them into road fill, put up a kiosk, and say Coyote's Rocks used to be over there. This was a cultural enhancement project—the 4(f). This shocked us. I had little knowledge of the National Historic Preservation Act, so I had to learn quickly. Fortunately, I had an archaeologist on staff who said, "They can't do this. How do we stop them? How do we put a hold on the project?" In 1997, we contacted Allyson Brook, the State Historic Preservation Officer (SHPO) and Mary Ann Nabor at the National Historic Advisory Council. The project still has not gone through because they have not come up with a good 4(f).

When the Heritage Center got involved, we asked the SHPO and the Advisory Council of Historic Preservation (ACHP) to come in and asked them for alternatives. The county came back with three alternatives in the \$20- to \$30-million dollar price range for a \$600,000 project. That showed us that they were not willing to work with us. They insulted our intelligence by saying that there was no feasible alternative to this project. We laid out about three or four alternatives to them, but they came up with these \$20- to \$30-million dollar alternatives, which was absurd.

We realized that this would entail a fight. We dug in and, with the help of the SHPO and the ACHP, we have been able to hold them off. The county did have its cultural clearance through the Archeology and Historical Services (AHS) out of Eastern Washington University. But the AHS never did contact the tribe about that. While the AHS did the job to the best of its ability, it did not take the next step and contact the tribes about the oral stories from that area. A large component is missing. I would ask that if you use a service such as this, you still contact the tribes because AHS may not have all the information it needs to make a decision about this site. The tribes have that knowledge, and the tribes are not going to release that knowledge to the AHS and similar services because of confidentiality.

With this particular project, we had an agreement in place with the county not to disclose the location of Coyote's Rocks. Two days later, Coyote's Rocks was on the television and in the paper. The county was trying to build a working relationship by taking our agreements and doing the exact opposite of what we had asked. This remains a sore spot between the tribe and the county. The county blames the tribe because the project still has not gone forward. The tribe says that if the county had contacted the tribe and done the process correctly, then the project would probably already be completed. There are feasible alternatives. They can get their road project in. We can save the site that is significant to us, but they are not willing to budge, and at this point, neither are we, so we are deadlocked.

We got a telephone call about 2 months ago from a reporter asking us about the project, and we said, "We have not heard from the county in about a year."

The reporter said, “That’s funny. I just talked to the head of the county department. He said that the county and the tribe are almost in agreement and that the project is going to go forward this fall.”

We said, “I don’t know what tribe he’s talking to, but we haven’t had any communication with them.” This is an adversarial relationship. We do not like that. We do not have resources to fight somebody over every project, but we have to protect the few resources that we have.

### North-South Freeway

But out of this came something good, a project that had federal involvement, which meant the Washington State Department of Transportation (DOT) and FHWA had to be involved. Through them, we have been able to sit down and talk about many of the federal and state projects that are going on. They have consulted with us early on in the process for the upcoming North–South Freeway. At the earliest stage, they contacted us and said, “Here are our proposed alignments. We have four alternatives. Will you sit down and work with us before we have to go out and acquire the right-of-way?”

We said, “Sure.” We sat down and we met with them. We said, “We have a concern. Why not go up and take a look on the ground at this one?” We did have some background information about sites there. We went out there with some of our elders. The officials paid for our elders to go and take a look at the site. We looked at their four sites. Out of those four sites, we chose one that had the least impact. This selection was something that they were able to work with as well. This situation was a win-win and a lose-lose, too. It was not the least expensive route that was available to them. It was still affecting sites, but it was the route that had the least impact. We were able to sit down calmly and rationally and say, “We are going to give up this, and you are going to have to give up that.” It worked out well.

### “I Would Ask . . .”

Since the Coyote’s Rocks project with FHWA, we have had a good working relationship. We are also getting some of the projects from the county on their road projects. We do not get a really nice letter. It was just: “Here’s our project. Write us back.” The most important thing to us is respect. We will treat you the same way that you treat us. If you can talk to us calmly, rationally, and respectfully, we will give that back to you. That is important to us. We do not like to be in an adversarial position all the time, which taxes our resources to no end.

I would ask you to consult tribes early on. This North–South Freeway Project is a good example of how we were able to create a win-win solution. I would also ask you not to view this as a checklist on some form that you have that you have to come and consult with the tribes. If you sit down and talk to us and explain to us about a project, then we will work with you and find the best alternative for you and for us. I would ask that you understand that we are committed to what we do. We are morally and legally obligated to protect the few cultural resources that are left. We are morally obligated because our elders told us that this is what we must do. There are a lot of times when we are going to enter a lose-lose situation. We are going to lose. You are going to lose. But let’s minimize the loss for both of us.

### TRAILS TO ROADS

Many of the roads we have now are from earlier trails. Those trails were probably started by our ancestors centuries ago. Roads are now being built on top of these trails. These trails led to

somewhere. Along that route, recognize the fact that you are going to run into a traditional cultural property somewhere.

### CONFIDENTIALITY

We ask that you understand confidentiality. When we present an issue, and we ask for confidentiality, we do so for a reason. We have a lot of problems with New Agers coming in. For example, shortly after Coyote's Rocks hit the news, we had New Agers out there crawling around and practicing their interpretation of our religious beliefs. To us, that is an insult. We also had pot hunters out there looking around. When we ask for confidentiality, we are drawing a line in the sand. We know that if we challenge something and it goes to court, confidentiality could go out the window. I do not ask for something without giving something. What I will give is timely responses to your letters. But also understand that we are short on staff. We will give respectful communication.

### CONCLUSION

We also recognize the fact that you have an important function to do, that you would not be sending us projects unless they had to be done. But we have a mission as well. We need to sit down and work together on it. I understand that at times, we are both going to lose. Learning the Section 106 regulations has been a challenge. We will work with you to the best of our ability and protect our resources. That is what we are here to do. Thank you.

## CASE STUDIES OF STATE AND TRIBAL EXPERIENCES

### **Transportation Case Studies on the Muckleshoot Indian Reservation, Washington**

**WALTER PACHECO**

*Muckleshoot Indian Tribe, Washington*

#### **INTRODUCTION**

[Mr. Pacheco first welcomed the audience in his native language.] The Muckleshoot Indian Tribe is located in the state of Washington. Our reservation is roughly 30 mi south of Seattle and 20 mi east of Tacoma. We live in one of the most heavily populated areas of Puget Sound. Living in such a densely inhabited region, we find it difficult to keep abreast of the developments taking place on and around our traditional lands. Having worked with the tribe in the areas of fisheries and planning, I have become quite accustomed to what goes on in land use, planning, and environmental protection. Seeing all of the development that has occurred in our area and watching what has happened to our lands worries me because I have seen cultural resources being damaged and destroyed. When I first realized that our culture was being threatened, I felt compelled to become involved with cultural resources. Cultural matters were being handled from crisis to crisis, not through any long-term strategy.

#### **CULTURAL RESOURCES PROGRAM**

We deal with issues reactively, not proactively. Being situated between the two largest cities on the Puget Sound, we face a multitude of issues. The resources needed to address these issues have just been made available this year with the development of the Cultural Resources Program (CRP). I am thankful to our tribal council for listening to the words of our elders and me, as well as for bringing this to the table. New developments occur daily. For us to protect what we have left, we must do something immediately.

We have staff members who are dealing with land-management issues and challenging some of the major project developments that threaten our traditional and cultural values. The development of the CRP is encouraging because it shows that in these times of critical importance, we are making headway. The projects that we have been involved with range all over the Puget Sound area, including Mount Rainier, and the crest all the way to the shores of Puget Sound. The U.S. Forest Service, Weyhauser, and the Plum Creek Timber Companies are working on land exchanges that involve some of the Muckleshoot Tribe's customary lands.

#### **TRADITIONAL TRANSPORTATION**

These areas contain trail systems that were the pathways of our people, our transportation systems. We used those trails seasonally to go up in the mountains to gather, hunt, fish, and congregate with tribes from the eastern side of the state and trade. The pathways were truly culturally oriented; everything that the tribe did was culturally oriented. Even today, our lives are culturally oriented. Our people see everything as having a vast importance.

Ironically, some of the major pathways are now highways. Another of our traditional modes of transportation was the canoe. Our villages in the lowlands were surrounded by waterways that were prime modes of transportation. From the villages, we went down to the beaches and dug clams. We had canoes strategically placed in different parts of the rivers and streams, usually somewhere near a trail. We would travel by land to a river system, get in a canoe, and go downstream until the location of our particular destination required travel in another waterway. We would then leave the canoe, walk to the next waterway, and continue on our way. Organized transportation is obviously not new to us; it has always been a part of our way of life.

## RECOGNIZING THE PROBLEM

Given the amount of growth that has occurred, transportation has become a major issue in Seattle and Tacoma. Our so-called freeways are more like parking lots. People are finding it exceedingly frustrating to get from home to work and vice versa. Such frustration has resulted in planning for rapid transit, carpooling, high-occupancy vehicle lanes, and other, similar projects.

The tribe has been fortunate because one of the light-rail projects that we have encountered has worked out well. The South Transit is a light-rail project that currently extends from Everett to Tacoma, and there are plans to extend it even farther north and south. The light-rail project just happens to cross one of our traditional cultural properties. This property is surrounded by developments: the Burlington Northern Railroad, Kent County roads, Interstate 5, and the Boeing Air Field. There is so much development occurring around this traditional cultural property that for us to save any of it, further development must be ruled out. We must look at that piece of property and say, "We cannot do any more damage to this place."

## Cultural Background

The land is important to us because it is part of our history. We have myths and legends that are intertwined with this land. The area impacted by the light-rail project is one of three places within the aforementioned district that we would like to see protected. [Mr. Pacheco told us this legend and provided the following written version by Arthur H. Ballard, 1929, *Mythology of Southern Puget Sound*, in University of Washington Publications in Anthropology, Volume 3, No. 2, pp. 31-150. First Version as told by Big John of the Green River]

### North Wind and Storm Wind Legend

A stone mountain down on the Duwamish River used to belong to an old, old woman. Her name was *sqw'Ats*. Her house was there. It was afterwards transformed into part of the mountain. That old woman was living alone. She was the only one of her people left alive. They were the Rain Wind people. Cold Wind had killed them. There was a war between the Rain Wind people and the Cold Wind people.

It happened this way. Rain Wind [*stegwauX* or *stegwau'q<sup>w</sup>* (this is the Chinook Wind, a warm southwesterly breeze which melts the snow and causes freshets)] the son of that old lady, was married to a daughter of Cold Wind (*stoble*), who lived farther down the Duwamish valley toward the north. That young woman was Mountain Beaver Woman (*caw'L*).

The people of the Cold Wind village did not like the man and they killed him. They killed all the Rain Wind people. Rain Wind was killed by Cold Wind and Mountain Beaver Woman was taken as a slave to the land of the Cold Wind people. She was held there as a slave for a long time under the power of Cold Wind. There a boy child was born to her; Rain Wind was this father. That little boy was called Little Mountain Beaver (*cic''L*). Old Mountain Beaver Woman raised that

orphan child. When that boy grew strong his name was *sXatsa'latei*. That means, “Wind-that-tears-the-trees-up”, that boy was Storm Wind.

Cold Wind held the land under his power. All the land was covered with ice and snow. He stretched a fish-weir of ice across the Duwamish River. No fish could get up the river past his trap. Farther up the valley the people starved. They could get no fish to eat. The land was desolate.

Storm Wind was growing up. Mountain Beaver, his grandfather, gave him a bow and arrow to play with. “Do you see that mountain yonder?” he said to him. “There is something dangerous there!” The old, old woman, last of his father's race, was living there. “Something taboo is there,” they told the boy. It was his own great aunt that was dangerous for him. They knew that she would tell him how Cold Wind killed his people.

The boy grew big. He was going away to that mountain. His grandfather said, “Do not go.” “Why not?” he asked. “I am going to get my grandmother.” The boy's grandfather had taught him, “After so many years you may go.” He went to the mountain. He came to a mat house on top of the mountain. Inside that mat house there was an old lady making baskets. She made baskets of different kinds, coarsely woven and finely woven baskets: many, many! That old lady was his grandmother *sqwelAts*.

No one else was there. All the People were killed. For her fire the old lady had only some tops of the cattail rush. When she laid these on the fire it would blaze up quickly and then die down just as quickly. She could not keep warm. She was crying for her dead son.

That boy talked to her. He found out about her. He went and pulled up big fir trees by the roots. He laid them at her door for fuel. He asked how and when they should fight the Cold people. The old lady said, “Wait until I get my baskets all finished, then we shall settle that. I will fill the baskets up with rain and then those cold wind people will be killed by the fish trap.” Storm Wind went away.

Storm Wind went up to his grandmother again. This time she had the baskets ready. Out of the coarse ones she poured big splashes of rain; out of the fine ones she poured a fine misty rain. When this came the flood raised the trap and broke it apart. All of the Cold Wind people were killed, all but the young man's mother. She had been warned to flee.

Cold Wind ran away, down the valley he ran, the land flooding behind him. Everything was melting. From Elliott Bay he ran across the Sound [Puget Sound]. He could not stop anywhere.

He ran across the Sound on top of the water. He came to land again on Bainbridge Island on the far side of the Sound. At a place called Yeomanly he landed. He could not stop. Away north he ran. That place where he landed used to be called, before the whites came and changed it somewhat, *tLIboa'ltXW*. The meaning of that word is Spirit House. If Cold Wind had not been chased away we should all be cold and hungry all the time. As it is we have little ice and snow, but not for long.

After Cold Wind left the country the fish weir, which he had built across the Duwamish River, was turned to stone, what was left of it. It stretches across the river there now. Anybody can see it. At low tide the water runs between the stones.

Before the country was all torn up by the whites, people who wanted rain would go in their canoes to the foot of that mountain, which we call *sqelAts*, on the west bank of the river just above Allentown. There they would splash the water. Then it would rain.

## TAKING ACTION

The tribe has also been involved with placing fiber-optic lines on the rights-of-way of highways, such as I-90. We are in the process of finishing a traditional-cultural-property inventory and study on Crystal Mountain, which is near our reservation and a foothill of Mt. Rainier.

The Mathern Memorial Parkway, another road going up to Mt. Rainier, goes through the Mt. Rainier National Park. The tribe was brought in late on that project, as usual. Obviously, we are fighting to reverse this trend. With the addition of our new staff, we are no longer waiting for people to come to us and discuss their projects. Instead, we are trying to let them know that we



have people available to whom they need to talk. Fortunately, Dr. Brooks, the Washington State Historic Preservation Officer, has been instrumental in advising people who come to her about projects that they need to consult the Muckleshoot Indian Tribe. As a result, we have started receiving many more timely notices of project developments. This is encouraging. This conference demonstrates that people understand that this can be done. We must make sure that those transportation improvements are planned properly and that the tribes are involved from the beginning.

## CONCLUSION

The land that I have been speaking of and the legend that is tied to it are integral parts of my people's history. The legend is not just some simple story; it is a part of the teachings that our elders bring to our young people. These teachings discuss the creation of life in this world. It is referred to as *syayahub*. *Syayahub* is the world literature of our people. I would like to quote a book called *The Mythology of South Puget Sound*. It explores the importance of these teachings for our culture and our need to preserve them. "Through the world literature of the *syayahub*, given as short vignettes, epics, or cycles of stories, the culture's wisest members could pass on information about the origin of the world and its inhabitants; about ancient monsters, natural phenomena, and present-day species, as well as about culture and the results of right and wrong behavior." These legends were heard many times by young people as an important part of their education. They were cherished and repeated by adults, then refined and dramatized by elders. They contain many admonitions, both obvious and subtle. A storyteller never said anything like "and the moral of this legend is." Figuring out the point of a story and applying it to one's own life is an important part of the educational process. The job of the audience was, and is, to pay attention and think. Attention is traditionally proved by calling out a signal word to let the teller know that the audience is listening. The world literature of our people, being an educational tool, depicts the importance of our culture, our resources, and the values that are placed in it as a part of life.

The legend of the North Wind Storm Wind, our traditional cultural property, and the Sound Transit Project are important to us. Right now, it is especially important that we preserve our traditional properties so that we may pass them on to our children and they, in turn, can pass them to their children. If we are going to preserve our lands for the generations to come, we need to make people understand that traditional cultural properties do not hold a dollar value. We cannot place those kinds of values on our culture. For us to get this message across, we need to eliminate the whole idea of capitalism and shift our focus towards the spiritual. We need to begin to approach the development of Mother Earth in a holistic light because if we do not, the outcome could be devastating.

## CASE STUDIES OF STATE AND TRIBAL EXPERIENCES

### **Kawerak, Inc.** *A Tribal Experience in the State of Alaska*

**JULIANNE STEVENSON**  
*Kawerak, Inc.*

#### **BACKGROUND**

Kawerak, Inc., is a regional consortium of tribal governments organized as a nonprofit corporation. Kawerak's corporate headquarters is in Nome, Alaska. Nome is located in the far northwest tip of Alaska on the Seward Peninsula just below the Arctic Circle. Nome has a population of about 4,200. Kawerak provides services to 20 Native villages located on or near the Bering Straits. Most of the villages are located on the Seward Peninsula, and others are located on islands. Little Diomedé, one of the villages served by Kawerak, is located on an island that is situated 2 mi from the border between Russia and the United States.

Transportation needs in Alaska are dramatically different from those in the Lower 48. In the villages and cities within Alaska, transportation is a daily challenge. For instance, the capital of the state of Alaska, Juneau, is accessible only by air and water. No highways connect Juneau with the other large Alaskan cities of Anchorage and Fairbanks. The normal mode of access to most villages in the state of Alaska is by air.

Nome is nationally known as the finish line for the Iditarod Sled Dog Race. Although the dogs and mushers all arrive on foot, they all depart via Alaska Airlines, the only major carrier to Nome.

There is a great amount of misunderstanding about Alaska and its weather, climate, daylight, and darkness. Alaska is the largest state in the United States of America ([Figure 1](#)), with dramatic fluctuations in conditions. Nome's conditions are consistent with an arctic climate; one example of this is the ground condition called permafrost. In the winter, the ground is frozen solid. During the summer, only the top 2 to 3 ft of soil thaws; below that depth, the soil remains frozen. This condition causes challenges for all construction.

In the wintertime, the Bering Sea transforms into pack ice. Unlike frozen lakes in the Lower 48, the pack ice is dynamic and dangerous due to ocean currents and tidal action. Huge ridges are forced many feet above the surface. At the same time, crevices form below. Travel over the pack ice is difficult and hazardous.

Nome is the primary air hub for the Bering Straits Native villages. The only practical transportation between Nome and Anchorage is via Alaska Airlines. The fare runs between \$352 and \$600 for the round trip. Several small air carriers provide passenger service to the outlying villages. These include Cape Smythe Air, Baker Aviation, and Bering Air, which primarily use single and twin-engine aircraft to hop between villages. The standard round-trip fare between the villages and Nome is around \$200. Many of these services are available only on a limited schedule. During the summer, the only access to Little Diomedé is via helicopter. Weather has a year-round impact on air travel. Unlike the Lower 48, which normally experiences inconveniences only during occasional severe weather situations, weather delays, which affect the delivery of passengers, food, supplies, and mail, are normal in Alaska.





**FIGURE 1 Size of Alaska in relation to the contiguous United States.**

Within Nome, there are several primary modes of transportation. These include car (including 4x4 pickups, one brand-new Volkswagen Bug, and one Corvette), taxi, walking, biking, all-terrain vehicles (ATV), and, in the winter months, snow machines. Within the villages, the primary mode of transportation is walking, ATV, and snow machines. There are some 4x4 pickups, but they are more commonly owned by businesses and agencies rather than by individuals.

Subsistence is a way of life for most Native villagers. In the Bering Straits Region, the villagers hunt, trap, fish, and collect berries. To access subsistence activities, the modes of transportation include 4x4, ATV, snow machines, dogsleds, walking, and skiffs.

After the pack ice thaws, usually by late May, barges are used to haul important bulky goods such as fuel, heating oil, dry and canned goods, supplies, vehicles, prebuilt houses, construction materials, and equipment to the coastal communities. The last barge run occurs in October. The price of unleaded regular gasoline last winter in Nome was \$2.15 per gallon. This was before the price increases hit in the Lower 48 last winter (2000).

### **KAWERAK TRANSPORTATION PROGRAM**

Kawerak began contracting of Bureau of Indian Affairs (BIA) service programs in 1976 concerning Public Law 93-638. In 1992, the contract was converted to a Compact of Self-Governance under amendments to P.L. 93-638. This compact relationship was made permanent by further amendments to P.L. 93-638 in 1994 (Title IV). In August 2000, Kawerak entered into a P.L. 93-638 contract (Title I) with the BIA to operate a transportation-construction program for the villages of the Bering Straits Region. The funds provided to the contract are from the Indian Reservation Roads (IRR) Program and are Highway Trust Funds. This is the first regional contract of its type in the state of Alaska. In addition, Kawerak has a P.L. 93-638 contract with the BIA for transportation planning.

Kawerak's vision in entering into these contracts is to develop and implement a transportation program for the Bering Straits regional villages that is designed to identify and meet their transportation needs. As part of this vision, Kawerak will train and employ local Alaska natives to plan, design, construct, and maintain the projects that are implemented.

The primary goal of the Kawerak Transportation Program is to identify, develop, and construct a safe, efficient, environmentally responsible, and cost-effective transportation system, which considers all modes of transportation for Bering Straits regional villages. The secondary goal is to promote and facilitate the employment and training of Alaska Natives who reside within the Bering Straits Region on all transportation projects within the region.

Kawerak has identified the following transportation-program objectives:

- Work cooperatively with all villages in the development of meaningful transportation plans and build construction projects that meet the transportation needs of the respective communities as identified by those communities.
- Communicate and develop working relationships with federal and state of Alaska agencies that may have resources available to assist us in meeting our transportation goals.
- Work to develop transportation-related training, apprenticeship, and employment opportunities for Alaska Natives residing within the Bering Straits Region.
- Work with local schools to provide information on employment and training opportunities in transportation-related fields.
- Work with each village to develop a meaningful public-involvement process for the development of the Village Transportation Improvement Program and for the development phase of individual transportation projects.
- Work with all other providers of services to the villages (such as Economic Development, Housing Authority, Natural Resources, Schools, and Health Services) to make sure that transportation needs are coordinated and addressed in a timely manner.

## INTERACTION WITH OTHER GOVERNMENTS

Within the first month of signing the contract with the BIA, Kawerak held its first public meeting for one of its IRR projects at the village of Shishmaref. A second meeting was requested and held with the Director of the Northern Region of the Alaska Department of Transportation and Public Facilities (DOT&PF). Recognizing the responsibility still carried by the BIA in each instance, Kawerak invited and was joined by the BIA at both meetings.

Kawerak recognizes that other governments in Alaska are, for the most part, unfamiliar with the opportunities available to tribes that contract under P.L. 93-638. Of great interest to other governments is the ability to use federal funds as a local match when P.L. 93-638 is the contracting vehicle used by the tribe.

## OPPORTUNITIES WITH A FEW BUMPS

### BIA National

Knowledge regarding the IRR program is limited in Alaska. Several years ago, Kawerak took the initiative in educating itself in the program. When the IRR Negotiated Rulemaking (IRR Neg-Reg) Committee was being established, Kawerak requested to be, and was selected as, one of three tribal representatives for the Alaska Region.

The IRR Neg-Reg has provided an opportunity for Kawerak to evaluate the historical operation of the IRR program. Kawerak found that the BIA has largely ignored the transportation needs of Alaska Native villages, although Congress has expressly made them eligible for the IRR service by federal law. This assessment was made on several grounds: the determination by the BIA that Alaska could not add the BIA roads to the IRR funding inventory; that the villages were allowed to identify only one priority project; and that the BIA had hired a consultant to evaluate the construction cost in all BIA regions, but for Alaska the area studied by the consultant was limited to urban Alaska. Perhaps the most significant is the administrative decision of the BIA and FHWA to count only the BIA system roads in the funding inventory. Clearly, federal law stipulates that the IRR program is for all eligible public projects that provide access to or serve American Indian and Alaska Native communities.

In an attempt to remedy these problems, Kawerak has worked diligently as a member of the IRR Neg-Reg Funding work group to develop a new funding formula proposal. Some of the features of this proposal include a population component that is stepped. This component would generate just enough funds by tribe to allow meaningful participation, primarily coordination with other governments, and an update of the funding inventory. The second innovation is the High Priority Project Discretionary Pool, which would primarily fund tribes that do not generate enough funds during the period of the authorization to build even one small project.

### **BIA Regional Office**

The BIA Regional Office is located in Juneau, Alaska. There are over 220 federally recognized Alaska Native villages. The amount of funds received by the BIA to interact with the tribes for the IRR program is insufficient to perform required tasks, such as consultation, planning, and technical assistance. Kawerak recognized the need to regionalize the transportation effort and submitted a contract proposal in 1997 to the regional office. This was the first contract application of its kind in Alaska and was not received well by the BIA, which initially declined the contract request. However, in its settlement of an appeal of the contract declination, the BIA entered into a memorandum of understanding that defined a process and schedule for Kawerak to contract the IRR program for the villages in the Bering Straits region.

Historically, in Alaska, the BIA has built a few extremely expensive projects, typically \$3- to \$7-million dollar projects for three to six villages. This has resulted in the vast majority of villages never receiving IRR projects. In addition, the amount of 2% of tribal transportation planning funds has been inadequate for the villages. The BIA has divided the funding by the number of villages, providing about \$2,400 per village per year. No villages to date have even identified eligible projects, much less fulfilled their transportation needs. The Alaska Region's BIA inventory, which is used to determine fund allocation, is still based on projects identified on the region's out-of-date 1993 transportation plan, which was limited in scope and did not include all villages.

In 2000, the BIA issued a Request for Proposal for Tribal Transportation Planning and IRR Bridge Design to expend \$18.3 million in special appropriated funds. These funds were to be provided to applicants who had either inadequate transportation planning or had bridges in the National Bridge Inventory that qualified for either replacement or rehabilitation. Kawerak applied on behalf of 15 villages for planning and for two bridge projects. Our application for planning was initially denied due to an error by the BIA in evaluating the application. We identified the problem and wrote letters to the FHWA and the BIA in Washington, D.C., to correct the error. Kawerak's application was reevaluated and accepted. The contract for planning

was finalized in August. The bridge projects have been negotiated, but an award for the existing program contract is still pending. With the funds received for planning, Kawerak will develop long-range village transportation plans and establish a transportation inventory. At a minimum, we anticipate holding no fewer than three public meetings at each of the participating villages.

## ALASKA DOT&PF

Kawerak has taken the lead in providing information to the DOT&PF regarding the IRR program. Based on discussions to date, the state is interested in coordinating with Kawerak. Many projects that have been identified by the state never proceed to construction due to the inability of local villages to provide the local matching funds. Kawerak sees this as an opportunity to work cooperatively with the state and move village projects from concept to construction through the use of IRR funds in place of a local match.

Kawerak would like to administer projects for the state, but it is currently running into problems with state law. As with many states that have antidiscrimination laws, the state perceives Indian preference as racial discrimination rather than political preference. Kawerak, working with BIA and FHWA, intends to work with the state and hopes ultimately to find creative ways of working around existing state law.

In addition, the state of Alaska is initiating statewide long-range planning efforts. Kawerak has been approached by the DOT&PF to assist in setting up public meetings in the Bering Straits Region. Kawerak has proposed a cooperative agreement with the state and is currently awaiting execution of the agreement.

## CONCLUSION

The problems are not all resolved; many have not yet been faced. Kawerak also has recognized the need to devote resources to research and resolving problems. We not only negotiated the IRR program contract, but also actually developed and provided the contract template for BIA's regional office.

Kawerak does not intend to rely on BIA's IRR funding to operate. We are seeking other sources of funds, including the state, other federal agencies, and private foundations. We will be a leader in identifying transportation needs in Alaska and will work with the federal administration and Congress to find creative means to address those needs.

Kawerak is in business to serve its communities. If those communities are not satisfied with the level and quality of service we provide, those communities will pull their authorizing resolutions and take their business elsewhere. This means that Kawerak has to be focused on customer service and quality.

Communication is perhaps the most important component of customer service. Telling the communities what Kawerak is doing is not enough; communication involves listening to what the communities identify as their needs and desires. We cannot fix all problems, but through coordinating with other resources, we hope to meet the needs of our communities.

We intend to be full partners with our villages, the state, BIA, FHWA, the U.S. Army Corps of Engineers, and every other participant in the transportation process. In addition, we are identifying other entities that have a stake in the infrastructure development of our villages. Through coordination, cooperation, and communication, we hope to build better, cost-efficient, environmentally sensitive transportation projects for the generations to follow.

## FEDERAL PROGRAMS PERSPECTIVE

# Updates on Federal Lands Highway Policy/Projects for Transportation System Improvements Affecting Indian and Alaska Natives

**PAUL SCHNEIDER**

*Federal Highway Administration*

## INTRODUCTION

A significant emphasis at the U.S. Department of Transportation exists to ensure that a coordinated effort in implementing transportation-system improvements that affect tribal lands, including working better with the tribal governments during the transportation planning processes. We hope that this emphasis will be highly successful, resulting in better transportation systems that provide access to and within Indian country.

## THE FEDERAL LANDS HIGHWAY

The Federal Lands Highway (FLH) primarily performs program-administration activities for the FLH program, but we also do transportation planning, environmental compliance, engineering design, and construction contracting and supervision on federally owned roads. In addition, we advocate for the federal land-management agencies and the tribal governments. We collect inventory and condition data for transportation systems that serve federal and tribal lands and analyze the data so that when the reauthorization of the Surface Transportation Bill comes due in 6-year cycles, we can provide Congress information on the needs of the federal land-management agencies and tribal governments.

## Partnerships

The FLH's four primary partners are the Bureau of Indian Affairs (BIA), the National Park Service, the U.S. Forest Service, and the U.S. Fish and Wildlife Service. These four agencies receive highway trust-fund money through the FLH program for transportation-system improvements that provide access to and within federally and tribally owned lands. The FLH program's authorization level in the Transportation Equity Act for the 21st Century (TEA-21) is \$706 million annually. While that sounds like a lot of money, it really is not when you consider the needs of the transportation systems that are funded through this program.

One category within the FLH program is the Indian Reservation Roads (IRR) Program. The FLH jointly administers the IRR Program with the BIA. The TEA-21 IRR program funding level is \$275 million annually. This funding level provides a relatively small amount of money for a large set of transportation systems, and it would be beneficial if the program level were increased significantly. The IRR program provides funds that are used to accomplish transportation improvements on public roads that are within and provide access to Indian country. About 25,000 mi of the IRR system are owned by state and county governments, 25,000 mi are federally owned, and 2,000 to 3,000 mi are tribally owned.



### Goals of the Federal Lands Highway Program

One federal goal of the program is to enhance economic development in Indian country. In some areas of Indian country, there is poor access to the most basic goods and services. No one can be economically secure or have a good quality of life without a good transportation system. Another federal goal is to promote seamless transportation systems. We need to have good connectivity between the transportation systems that are under various jurisdictions. Another federal goal is cultural preservation. Transportation, if done properly, can help preserve and protect cultural and natural resources, and it can also help preserve the culture itself. But we know also that the exact opposite can happen if planned or implemented poorly.

### Recent Developments

Transportation planning requirements changed substantially with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and they have been further changed with the TEA-21. Furthermore, the flexibility of federal funding has changed dramatically; we have greatly expanded the eligibility items for the federal transportation programs, especially the Surface Transportation Program and the transportation-enhancement activities. It would be good for the tribes if each tribal government or tribal transportation representative understood what the eligible activities are under the various programs, especially the Surface Transportation Program because it is a flexible program and has broad applicability to tribal lands. The Scenic Byways Program was established in the early 1990s, and it has potential applicability on tribal lands. The Recreational Trails Program also has potential applicability on tribal lands.

The IRR program, implemented in 1982, has become more flexible over the years. In the early 1990s, in the ISTEA, program eligibility was expanded to include transit activities. Another substantial change in the TEA-21 was that the IRR program funds could be used as the nonfederal match for many federal programs. When a state uses federal funds for a transportation project and is required to match the federal funds with a 20% nonfederal share, the IRR program funds can also be used as the nonfederal share. This makes tribal governments much more attractive partners to state and local governments. The tribal governments now have a significant opportunity to leverage federal funds through this new provision.

### TRANSPORTATION PLANNING

There is a great potential for transportation planning process improvements because of the significant changes in transportation planning laws that were enacted through ISTEA and TEA-21. The laws have been changed so that states are required to include tribal governments in the transportation-planning process. We have seen through the case studies presented here at this conference that developing positive long-term relationships can be extremely beneficial. Early coordination between stakeholders during the transportation planning processes can result in transportation projects that benefit all involved parties. We need to be diligent in developing those positive relationships because we will keep meeting over and over again in the future on various transportation-improvement projects. A positive, nonadversarial relationship is going to be much more beneficial to all involved in the project. When there are positive relationships, the transportation projects will be developed in a manner that meets as many goals and objectives of all of the stakeholders as possible.

### Supporting the Objectives of Our Partners

When we work together on projects, we have to understand each other's cultures, and we also have to understand applicable laws and regulations. Federal, state, and local officials are bound by and need to comply with many laws and regulations pertaining to the coordination and consultation activities required during transportation planning. It would be beneficial for the tribal governments to have a comprehensive knowledge of the laws and regulations that govern the transportation-planning and project-development processes. Federal, state, and local officials need to understand the culture of the tribes and how to consult with tribal officials. For the consultation process to work, government officials have to know how to enter into good productive dialogue with tribal governments. Without the ability to dialogue with each other well, given the constraints that each party is working within, the consultation and coordination process is just not going to work. Both sides must be willing to compromise. Both sides have negotiable and nonnegotiable issues. I hope that through the encouragement of the new laws and regulations, federal, state, and local officials will sit down with tribal representatives and have good productive relationships that result in transportation projects that meet the goals of the state and local transportation agencies, as well as the goals of the tribal government.

### Coordinating System Improvements

Operating a transportation system is a collaborative process in which there are many different owners of these systems. When we perform transportation system improvements, we have to talk with those other owners and operators of those systems so that when we implement projects, they fit with what the other parties are planning for in the future.

### Leveraging Funds

Getting people together who can draw from different pools of money lowers the total costs of a project for each organization. Tribal governments should leverage the IRR funds by utilizing them as the nonfederal share on state and local projects.

### TRANSPORTATION PLANNING PRODUCTS

Transportation planning is not project planning; it is systemwide planning. One of the transportation planning-process products required in federal law is the 20-year transportation plan. Each state and metropolitan planning organization (MPO) is required to develop a 20-year plan. These plans contain strategies for the states and the MPOs to develop and implement intermodal transportation systems. Most state plans are not project specific. Normally, state plans are policy plans, but in many of these plans, the state has designated specific corridors for improvement.

Another transportation-planning product required in federal law is a Transportation Improvement Program (TIP). Each state and MPO is required to develop a TIP. A TIP is a prioritized list of proposed FHWA- and FTA-funded projects that cover a 3-year period. States are required to update the TIPs and submit them to the FHWA and the FTA for approval every 2 years.

The USC 23 says, "States shall consider the concerns of tribal governments when carrying out planning." This means that states must consider tribal governments' concerns throughout the entire planning process, including the development of the 20-year plans and the development of the 3-year TIPs. The state 20-year plans and the TIPs have to cover all areas of the state, including the areas under tribal jurisdiction. For areas under tribal jurisdiction, the

states are required by law to consult with tribal governments during the development of these documents.

At this conference, we have seen that even states in which a significant portion of the land is owned by tribal governments, such as New Mexico and Arizona, have not yet perfected the process of consulting with tribal governments, despite aggressive efforts. Mary Lynn Tischer has said that the Arizona Department of Transportation's vision for tribal coordination is progressive. She said it is an evolving process in the state, so they are working on it, and they have a plan laid out, but the process for coordinating with tribal government has not been completed. In the New Mexico case study, a historic lack of outreach in consultation with the tribes was mentioned. The state of New Mexico has recognized that limited contact with the tribes in transportation planning in the past leaves the need to establish protocols. Even New Mexico, with the Navajo Nation, is still working hard on figuring out how to develop this process. It was stated at this conference that during the Hoover Dam Project, a new process for tribal involvement was developed. In all the case studies presented, we have heard that there was no formal plan for involving tribal governments in transportation planning prior to the start of the planning process, although many states are developing such formal plans. They have plans, and they are in process of developing good consultation processes.

Federal law requires the IRR program's TIPs to be included in the state TIPs. A unique part of the FLH program is that FHWA approves the IRR TIPs prior to inclusion in the State Transportation Improvement Plan. The 23 USC also states, "Regionally significant projects shall be carried out in cooperation with states and MPOs." If an IRR project is regionally significant, we are required to carry it out cooperatively with the states. We also cooperate with the MPOs in the MPO regions.

The USC 23 requires the federal government to develop planning regulations for the IRR Program. The USC 23 tells us, "The Secretary of Transportation, in consultation with the Secretary of the Interior, shall develop transportation-planning regulations that are consistent with the statewide and metropolitan transportation-planning laws." Prior to the TEA-21, there was no federally required transportation-planning process for the IRR projects, although there was a federally mandated process for implementing projects. Transportation planners had to follow the National Environmental Policy Act laws and Section 106, but there was nothing similar in the statewide and metropolitan transportation processes. Now, we are required to develop transportation-planning regulations that pertain to the IRR Program. For the IRR transportation-planning regulations, we published an "Advanced Notice of Proposed Rulemaking" on September 1, 1999. The comment period closed on November 1, 1999. We received comments from eight organizations. The reason we received such a low number of comments on an advanced notice of proposed rulemaking is that it did not include any proposed requirements. It just stated that the federal government is about to promulgate transportation planning regulations for the IRR program. The comments we received from the publication of the advance notice of proposed rulemaking are available on the Internet.

In the near future, we will be walking through this process of developing a notice of proposed rulemaking, the draft regulations. These regulations have to be consistent with the statewide and metropolitan transportation planning laws. We must coordinate the development of the IRR transportation planning regulations closely with the ongoing effort of developing statewide and metropolitan transportation planning regulations. And we also must coordinate closely our regulations with the IRR negotiated rulemaking transportation planning regulations.



The Negotiated Rulemaking Committee is developing regulations for transportation planning. We must make sure that ours are totally consistent with theirs.

I hope that you are encouraged that the federal programs, federal laws, and federal regulations are changing substantially for the better. In the 1990s, they have changed tremendously to improve coordination with tribal governments. We have a long way to go in carrying it out, but we have already come a long way. The only way this is going to work is if we all work together, compromise, and develop mutually acceptable goals on these transportation projects. I was encouraged to hear about the Spokane case study, in which the county and the state approached the tribal government and asked the tribe, at the beginning of the planning process, to start reviewing the alternatives. The state implemented an alternative slightly more expensive than its original preferred alternative, but that better met the needs of the tribal government. The state had to compromise and come up with additional funds from its limited resources. The tribe had to accept some limited impact on land that was important to it. Yet throughout the process, the state and the tribe were able to minimize the impact to the tribe without greatly increasing the state's costs, so it was a win-win situation.

The requirement for the states to consult with tribal governments during up-front planning is a significant advance in the transportation-planning process. Great benefits can be realized from this requirement. If this is not happening in your state, I encourage you to work with your state and local officials to ensure that it happens. I hope that I have given you enough information so that you can begin to make coordination between the tribes and state and local governments happen.

## FEDERAL PROGRAMS PERSPECTIVE

# Department of Energy Tribal Consultation Protocols for Transporting Hazardous Materials

**JUDITH HOLM**

*U.S. Department of Energy*

## INTRODUCTION

The U.S. Department of Energy's (DOE's) main mission in transportation is to move materials and clean-up sites, not necessarily to develop or fund road or rail infrastructure. We are a major defense-related operation, and we have a number of facilities around the country. I will talk about the transportation and shipment of materials, as well as some of the processes that we are engaged in to involve tribes early in consultation processes.

## SHIPMENTS MADE BY DOE

Various companies and agencies ship around 300,000,000 hazardous materials in this country every day; much of it moves along the highway system. DOE makes approximately 10,000 hazardous materials shipments annually. Furthermore, there are about 3,000,000 shipments of radioactive materials made annually by different companies. DOE makes around 5,000 radioactive materials shipments annually. Some of the people in the DOE say, "We are a small shipper. Why is everyone concerned about us?" The answer is that we are a federal agency. We have the same federal trust responsibilities that other agencies do. We have an impact on tribal lands, tribal governments, and reservations. We use the same roads that everyone else does. This is why our activities are of interest to people.

Many people are especially concerned about what kind of radioactive materials we are shipping. About one-third of our shipments are medical or radioisotopes that are used in medical treatment or in research. About one-third is radioactive waste. This is clean-up material as we decommission sites that were used in the Cold War. Much of it is dirt and rubble; some of it is higher-activity material. Some of it is spent fuel. There are also miscellaneous radiological materials or constituents of different kinds of materials that are shipped, which comprise another third of our shipments.

We ship by all major modes. Air is our largest shipment mode for most materials; the largest amounts out of everything that we ship are paper and coal. For our hazardous materials and radioactive materials, trucks are a primary mode of shipment. We do, however, ship a lot of radioisotopes by air primarily because they are short-lived, and they need to get to the destination quickly so that they can be used in medical treatments.

The joint interest that everyone has here today is in planning: both planning of facilities and coordination, consultation, and cooperation. Our shipments move across the country between sites and to disposal facilities. The routes we use are fairly consistent from year to year, primarily because of where we are shipping. And as you can see, many of these facilities are in Indian country and cross reservation lands.

We have DOE sites next to Indian tribes with lands contiguous to the site. The sites are on lands that were once owned by the tribes. Hanford Reservation in Washington State is one;

Los Alamos National Laboratory, north of Albuquerque, is another. Several tribes and pueblos are located on the road to Los Alamos. DOE and its contractors have worked with tribes on issues related to site effects on tribes. We have not done enough in working with tribes on transportation planning activities; we can do better in the future. That is the main focus of this presentation: to give you kind of a picture of who we are, where we are shipping, why people are concerned, and why particular tribes are concerned.

## DOE CONSULTATION PROTOCOLS

At DOE, we are developing consultation protocols right now, modeled after the process that the state of New Mexico uses in its Highway Planning Division. We are identifying the different organizations that represent tribal leadership and bringing information about these different policies and other activities directly to tribal leadership. We also have a new program that is called the Transportation Emergency Preparedness Program. At each one of our operations offices around the country, we have people who are chartered to provide services in training, planning, and technical assistance to states and tribes for the transportation of radioactive materials. Free training on emergency response is available to tribes to enhance their capability to respond to the DOE and other radioactive-material shipments in the event of an emergency. The training can also assist tribes in their understanding of whom to call for assistance if one of our shipments is involved in an accident on tribal lands.

We are starting to do more specific-shipment planning. On some high-visibility shipments, such as spent fuel and transuranic waste, we have engaged states and tribes in round-table discussions. In these planning sessions, we sit down together to plan and write out a transportation plan for the shipment. Some of the issues that we are considering in these different processes are how to get to more consistent shipment practices, what kind of funding and coordination needs to take place to assist in preparing for our shipments, and what is needed in the way of the emergency-preparedness planning, training, and communication. We try to identify what the needs are at the state, tribal, and local level, and what we need to do as a responsible agency to help you to be prepared for these shipments.

Two years ago, we had a shipment from the San Francisco area to Idaho. That rail shipment went through the Pyramid Lake Indian Reservation. Our Idaho Operations Office staff worked with the tribe to bring the Environmental Protection Agency funding, the U.S. Department of Transportation's funding, technical assistance, and training so that the tribe could enhance its emergency capabilities and prepare to manage any event that might happen with the shipment. The side benefit to all this is that the tribe's emergency plans are still in place in case they need them for the future. We are not the only shipper of these kinds of hazardous materials. We may not be back through that area again for years, but we have established relationships both locally and in the region so that the tribe can continue to chart its course on these issues and be better prepared.

To accomplish better relationships, a national transportation protocol effort has been developed. This will become a policy in the DOE. National Transportation Protocols guide DOE programs and DOE contractors on how they are to coordinate and work with outside people (states, tribes, and local governments). The goal is to establish a more consistent approach to shipments that we are managing, whether they are spent fuel or low-level waste. It is a graduated approach based on the level of hazard. Some of the protocols that we have outlined are for planning and prenotification. We follow the Nuclear Regulatory Commission (NRC) requirements for prenotification of state and tribal governments for spent fuel and high-level

radioactive-waste shipments. The NRC is currently considering implementing rules that would require shippers to notify tribal governments in the same way they notify states. This would establish the same requirements for NRC licensees, the nuclear power industry and other commercial users such as medical users of radioactive materials, as the DOE has for its contractors.

### **PROPOSED CONSOLIDATED TRANSPORTATION GRANT**

As part of our planning, we are working on a proposed consolidated grant to assist people in planning for DOE shipments. The consolidated grant program plan is still in draft form, but it describes the process that we will use for consultation and interaction with states and tribes. The grant will provide consistent and equitable funding for states and tribes to enhance public safety.

I attended some of the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking sessions, and it struck me that what we need to do for this grant is use a process that mirrors the TEA-21 process. That process is good because it coordinates directly with each tribe and invites them to participate. In addition to learning from other federal agencies about processes for consulting with tribal governments, we will use our DOE tribal points of contact in our regions to carry the message about the grant. We will conduct whatever consultation is needed to get input on how to administer this grant.

You may be wondering: What are the features that are important to tribes in the grant? What are the allowable activities? We want to make this as flexible as possible and not dictate to people what they should be doing. The overall goal of the grant is to enhance public health and safety, as well as to prepare for DOE shipments.

### **EMERGENCY PREPAREDNESS PROGRAM**

In the DOE Emergency Preparedness Program, we have four areas. One is planning and needs assessment. Our regional coordinators will come to your location and help you develop your emergency-preparedness plans. They also can assist in coordination with state planning and training activities. We also have training courses specific to radioactive-materials shipments that can be either delivered in a trainer setting or in modules that are available as either CD-ROMs or in hard copy form to be used at the responder's leisure. The training materials are geared toward a first-responder level for fire, police, and emergency management technicians. Because state, local, and some tribal emergency planners and responders helped DOE to develop the training, the program has been well received by people who have integrated it into their training curricula.

We also have exercise tools that are in development that will help if you want to have a mock exercise or drill. I understand that this may be a problem with some tribes due to cultural issues. I talked with people 6 or 8 months ago who said that according to their tradition, they believe that if you prepare for something, then bad things will happen. That is a real dilemma when you are talking about preparing for emergencies. How do you balance those cultural values and issues about being prepared? We are all learning.

### **INFORMATION EXCHANGE**

The DOE has an external coordination group, which is a good tool for information exchange. In addition, we have contracted with the National Congress of American Indians and its Tribal Radioactive Materials Subcommittee to work with us to disseminate information about what we are doing and ask for input on review of many of our documents.

We also have two web pages. One is run by the ATR Institute, right here in New Mexico. The location is [www.trex-center.org](http://www.trex-center.org). That web page is designed to provide all the information that you would ever want to find on radioactive-materials transportation. It has a specific area with links to tribal organizations and tribal interests. Many sites related to tribal issues are on that web page.

We also sponsor a DOE website at [www.ntp.doe.gov](http://www.ntp.doe.gov) that contains a number of maps of what we have shipped over the last several years and a national map that includes routes and tribal reservation lands. We used the Bureau of Indian Affairs base for those data. It has a click-on feature so that if you click on a region on that map, you can find the leadership of the various tribes in that area, with phone numbers and addresses. This feature is also for our own program managers so that we have a way to contact tribes. Those data are updated every year to stay current.

The Transportation Tracking and Communications System is a DOE tracking system, which is moving to the World Wide Web. It is a secure, password-protected system that tracks certain shipments. For example, transuranic waste shipments to the Waste Isolation Pilot Plant and spent fuel shipments are being tracked. Tribal governments can have access to this system. If you are interested, let me know, and I can get you the material and the information about this system. Several tribes in New Mexico are using it right now. The Pojoaque Pueblo has access to the tracking system, as do the Shoshone-Bannock Tribes near our Idaho facility.

## CONCLUSION

What have we learned over the last couple of years in working with tribes and listening to other people as they have worked with tribes? An important skill is to read between the lines. Federal agencies need to step back and be quiet. We spend a lot of time talking at people as federal agencies; it is good to stop and let the information from others enter our minds. We can learn a lot that way. Building formal institutional relationships often results in rewarding personal relationships. That is just something that is a natural outcome whenever you work with people and can find mutual areas of interest; you cannot help but enjoy each other and learn from each other on a personal level.

For our transportation process to work more effectively with tribes and tribal governments, we must recognize sovereignty, insure that we protect cultural values, and do all the things that we are mandated to do. We are striving to make progress towards those goals. We have advanced in our tribal relationships over the last ten to fifteen years concerning our sites, but we have not done enough, and we are still working toward better relationships on transportation. We do not build roads, but we would surely like to build better partnerships with tribal governments as we work to improve our consultation processes.

## FEDERAL PROGRAMS PERSPECTIVE

### Walden Point Road Project, Metlakatla, Alaska

**BRIAN G. ALLEN**

*FWHA*

**WILLIAM WILSON**

*Metlakatla Indian Community*

### INTRODUCTION

The Walden Point Road Project includes approximately 15 mi of new road construction on Annette Island Reserve in southeast Alaska. The project is unique in the complex coordination of multiple agencies in building 15 mi of road in a rugged environment. A multiagency memorandum of agreement was signed for the project to build a road that would eventually allow the Metlakatla Indian Community (MIC) to use a short-distance ferry to reach the town of Ketchikan.

### METLAKATLA INDIAN COMMUNITY PERSPECTIVE

My name is William Wilson. I would like to thank you for the opportunity to speak to you today. I am a councilman with the tribe of the Metlakatla Indian Community. Our treasurer, Sandra Wilson, and I are here as representatives. Originally, the Mayor was supposed to do this presentation, but he could not make it, so I now have the honor of giving this presentation.

The MIC is located on Annette Island, which is approximately 21 mi long by 10 mi wide and contains approximately 87,000 acres. The population presently is 1,673 people; in the summer months, it swells up to 2,000. The northern tip of Annette Island is approximately a third of a mile from Ketchikan, the largest city in the southern southeast part of our area. The northern terminus of our Walden Point Road is at the northern tip of Annette Island. Upon completion of the Walden Point Road, we will ride a shuttle ferry to Ketchikan with the trip taking about 20 min.

Let me give you a brief history of Metlakatla. In 1887, approximately 823 Tsimpsian Indians migrated from old Metlakatla in British Columbia, Canada, to Annette Island, then a territory of Alaska under the leadership of William Duncan, an Anglican minister. In 1891, the U.S. Congress established the Annette Island Reserve for the use of the Metlakatla Indians, to be held and used by them in common, under such rules and regulations and subject to such restrictions as may be prescribed from time to time by the Secretary of the Interior. In 1916, President Wilson established the Annette Island Reserve boundary as the waters 3,000 ft from the shorelines at mean low tide of Annette Island.

Metlakatla is located approximately 15 mi from Ketchikan, Alaska. It is accessible by ferry, private boat, or floatplane. During the winter months to early spring, October through May, we may experience high winds up to 115 mph. The state ferry services cut back to one trip per week on a Tuesday evening or early Wednesday morning. When the winds reach a velocity of over 35 mph, the floatplanes are grounded, so we can be isolated for a week at a time. For 50 or more years, Metlakatla has been dependent on the timber industry and the fishing industry. Recently, both of these markets have collapsed. As a result, the community is now facing an 87% unemployment rate. Having said that, the importance of this project cannot be overstated and will



provide better logistical capabilities for our people, as well as a seemingly endless economic development opportunity.

I will give you a brief history of the Walden Point Road. The MIC Council has been pursuing this road for over 50 years. We located a copy of an agreement signed between the Territory of Alaska and the Department of the Interior dated 1946 to construct the road for an estimated cost of only \$3 million. We also located a copy of the survey dated in 1956 showing the route of the road. We learned that the road had been surveyed on three different occasions. Walden Point Road has always been considered an important project to Metlakatla. In 1995, the Council put the project on the table once again with the intent to vigorously pursue it from all angles.

The state of Alaska was approached; the Bureau of Indian Affairs (BIA) was briefed. Our U.S. Congressional delegation was briefed on our pursuit of the road. The Alaska Department of Transportation (DOT) and FHWA were approached and briefed on our requested project. We learned about the Department of Defense Innovative Readiness Training Program. This prompted us to prepare briefings for the military requesting their assistance in constructing the road. Our team briefed the Missouri National Guard, the Alaska National Guard and the Alaska Command located in Anchorage, the Commander in Chief of the Pacific Ocean in Hawaii, and the Secretary of Defense at the Pentagon.

The military decided that this was a viable project that would provide excellent training, so it made it a project. We invited the Alaska National Guard, the Alaska Command, BIA, FHWA, and the Alaska DOT to Metlakatla to request assistance from each agency. As a result of these important coordination meetings, a memorandum of agreement was signed in Metlakatla on May 29, 1997. Once again, I would like to thank you on behalf of the MIC.

### **FHWA'S ENGINEERING PERSPECTIVE**

The memorandum of agreement that was signed in May 1997 outlined the roles and responsibilities for the agencies that were participating in the project. The MIC was responsible for formally requesting the Department of Defense (DOD) to participate in the project through the military's Innovation Readiness Training Program. Metlakatla was also responsible for determining the project requirements and providing all construction materials: such items as the culverts, the blasting materials, the erosion control items, and seed for revegetation. The BIA was designated as the lead agency for compliance with the National Environmental Policy Act of 1969 (NEPA). The BIA also agreed to support the project with BIA funds or to facilitate securing funds from other sources. DOD agreed to provide military personnel and equipment to perform construction activities that met their training needs. They agreed to construct a base camp to support the military troops that were assigned to the project, and they agreed to provide public affairs support for not only the project, but also their Innovative Readiness Training Program. The military wanted to provide the public with good access to information about the project and its program.

The BIA was designated as the lead agency for compliance with the NEPA, but the Alaska DOT actually funded the environmental clearance and wrote the NEPA document. The BIA signed the environmental assessment and the finding of no significant impact documents. In addition to the NEPA work, the Alaska DOT committed to obtaining permits for the wetland effects associated with the project and to fund, design, and construct two ferry terminals that would connect the new road via ferry to the town of Ketchikan.

FHWA agreed to design the project. We also agreed to prepare and administer commercial contracts for all the work that the military would not be able to complete because it would not meet



any of its training needs. FHWA also agreed to provide a project engineer to assist the base commander in directing construction operations associated with the project. To date, the primary funding, \$21 million, for the project has come through DOD's Innovative Readiness Training Program. Those funds were used to construct the base camp, as well as to construct the road over the past three construction seasons. We have received about \$2 million to date on several different occasions through the FHWA's Public Lands Discretionary Program. We have received about \$1 million from the MIC and the BIA, plus another \$1 million or so have come through the FHWA's Indian Reservation Roads (IRR) program.

We received \$1.25 million through the Public Lands Discretionary Program for fiscal year 2001. We were pleased to hear that. We had submitted a proposal for \$2.95 million but were happy to get anything. The MIC as well as the BIA continued to pursue a line item in the Department of Interior's budget. They have been unsuccessful in that effort to date, so they are currently working on the fiscal year 2002 budget proposal. We need about \$30 million in addition to the military's contributions through the Innovative Readiness Training Program to complete the project. The \$30 million would cover the FHWA design support, as well as the commercial contracts that we would have to award to complete the work. Assuming \$30 million is secured for the project, we anticipate that the military will essentially have the road grade constructed by September of 2005. That currently is the end of their commitment to the project. We would then hope to complete the project with commercial contracts by the end of 2007.

The military refers to the project as Operation Alaskan Road. It constructed the base camp in the summer and early fall of 1997. Clearing operations and road construction began in the spring of 1998. There is a lot of rock on this island, so it takes a lot of drilling and blasting to carve a road grade in the mountainous terrain. To date, we have had about 4,000 military personnel rotate through the project. The personnel are National Guard, Army, and Navy Reserves, as well as full-time military units. The last time I was on the project, there were Marines with their Kevlar helmets and Kevlar vests operating track hoes and setting slope sticks. The military has leased excellent equipment that allows them to efficiently and safely complete the work. The terrain is steep, with a lot of rock. Sometimes it is hard to tell that there will be a road there. But as work continues, the road grade begins to become evident. At locations where we have proposed bridges, we have constructed temporary detours around these sites so the military can continue constructing road grade. Commercial contracts will be assigned later to construct these bridges.

We have brought about 4 mi of the 15-mi road project up to grade. Ultimately, when this project is completed, including the two ferry terminals that need to be constructed, we will have provided greatly improved access to the goods and services available in Ketchikan. FHWA has thoroughly enjoyed working with the agencies on this project. I believe that it has been successful so far, and I look forward to continuing this relationship. I also want to thank Councilman Wilson for participating in this program with me, especially on such short notice. Thank you.

## Workshop Sessions

The conference attendees broke out into eight assigned and facilitated workshop groups. Attendees were placed into breakout groups based on their work affiliations of federal, state, local, and tribal. There were three federally oriented groups, four state-oriented groups, and one local-oriented group. The ATR Institute ensured that tribal members were included in each workshop group. While all attendees were scheduled to be at the workshops, not all persons attended.

### KEY ISSUES IDENTIFIED

All eight groups identified key issues experienced or seen in tribal to federal, state, and local government interaction. Compilations of these issues are presented with a short explanation of the group's comments. Issues that these groups defined are

- **Developing trust and respect for differing cultures.** Most groups noted instances of current lack of cultural sensitivity.
- **Increasing all parties' knowledge and understanding of: law, protocol, values, and jurisdiction** registered as increasingly important. While most attendees acknowledged the complexity of learning and having time to research this information, everyone knew more understanding was needed.
- **Developing protocol and consultation appropriate to each group.** Departments within state and federal governments and tribes within states are unique. A one size fits all approach may not work in developing protocol and consultation styles.
- **Developing an understanding of the roles and responsibilities for tribal involvement.** Groups mentioned that tribes might have several layers of government that must be informed of a project, analyze the project, and decide if the project will help or harm their tribal interests. Inherent in a partnership is the need for both partners to state their requirements in a manner that the other partner may understand.
- **Including tribal governments in the transportation-planning process and having effective tribal participation.** Tribes and their consultants need to be invited to every meeting on transportation projects that affect their tribal lands. Tribal representatives need to attend these meetings and bring their issues to the planning table.
- **Figuring out how to identify tribes affiliated with certain geographic areas.** Many states are still resolving what ancestral tribe(s) lived in their state and who are the contemporary tribe(s) and where they reside so that they may be notified of upcoming projects.
- **Improving communication, which is critical to all aspects of transportation relationships between and within tribes and state agencies.** All groups talked of wanting cordial interactions and communication.
- **Integrating proper protocol on a routine basis and establishing a regular early consultation process with tribal governments in existing processes** (namely planning, programming, and the environment). The group wanted to have relationships established on an on-going basis and not just on a project-by-project nature.

## IDEAL CONDITIONS

### Federal Workshop Groups Defined Ideal Conditions as

- Early involvement of all the players.
- Ongoing relationships between the federal government, state, and tribes.
- Respect for sovereignty.
- Knowing customs, for example, knowing when tribal festivals, feasts, or other culturally important days are for each Indian tribe so that meetings are not scheduled on those days. When is the right time to make a presentation to the tribe for them to consider? For example, when are the tribal council meetings, and how soon before the meeting does the issue need to be brought before the scheduling person to be placed on the agenda?
- More initiative on both sides. Exchanges of information. Transportation professionals, both tribal and non-tribal, need to pick up the phone and introduce themselves to start a working relationship.
- The cultural-resource-management plan needs to lay a case for compliance, laws, regulations, history, and standard operating procedures. What is in the annual plan and budget? What are the future plans? A written protocol agreement is needed.

### State Workshop Groups Identified Ideal Conditions as

- Having governments work together.
- Meeting for introductions prior to business at all levels: technical people to technical people, planners to planners, state to state.
- Operating on a government-to-government basis; showing respect for sovereign status.
- Not waiting until there is a “crisis.”
- Creating and fostering an ideal cultural sensitivity.
- Recognizing that there are 557 federally recognized tribes.
- Building on commonalities; identifying common threads.
- Showing respect for tribal elders.
- Listening to tribal elders.
- Broadening unofficial contact between state, federal, and tribal professionals.
- Encouraging tribal flexibility with project proposals.
- Fostering an understanding of tribal issues by states.

### Local Workshop Group Identified Ideal Conditions as

- Establishing in the protocol an authorized representation from every affected government. These decision makers, who can speak for a government, would be included at all stages of the process.
- Having an established set protocol for all occasions.
- Recognizing that in an ideal world, no protocol would be needed because programs would be inclusive and sensitive to minority or ethnic needs or concerns.

## IDENTIFIED BARRIERS

### Federal Groups Defined Barriers as

- Lack of information resources;
- Lack of personnel resources;
- Lack of fiscal resources;
- Ignorance or insensitivity to how people in different countries have different beliefs and customs;
- Lack of an emphasis in the past for proper consultation;
- Difficulty in knowing what is proper protocol when dealing with so many tribal entities;
- Lack of knowledge of the history of treaties, past relations, legislation, and forced migrations;
- Lack of trust; and
- Lack of understanding of government-to-government relationships.

### State Groups Identified Barriers as

- Financial: lack of funds to travel to meetings, including non-project or program-specific gatherings.
- Federal and state personnel need to have authority to make decisions.
- Tribes need to be organized to be able to make timely decisions (for example, Executive Committee representing the tribal council).
- Too much dependence on consultants by federal agencies is not good management.
- Interpretations of regulations versus the spirit of the regulation and the “right thing to do.”
- Inadequate scopes of work.
- Concerns and discomfort with interactions between Indians and non-Indians and the type of approach needed. Paradigm shifts are needed to be able to easily approach the other group.
- Insufficient time to perfect the approach.
- Inconsistency of politics.
- Language/definitions. It was noted that using the wrong word or phrases can cause Indians distress, particularly when it appears that sovereignty and sacred or traditional ways are not respected.
- Funding.
- Lack of staff.
- Lack of commitment.
- Legislation/legislators/legislative.
- Vested interests/“good-old-boys” politics.
- Geography/need for out-of-state travel.
- Poor consultative process.
- Lack of tribal resources.
- Institutional barriers.

### Local Group Identified Barriers as

- Resistance to change within the organizational culture of non-tribal governments.
- Lack of understanding of cultural diversity is a barrier.
- Lack of understanding of appropriate overlapping laws from many levels of government regarding environmental laws and regulations and historic preservation.
- Insufficient resources to no resources from state governments to establish protocols.
- Difficulty of educating all parties and overcoming political turnover.

### NEXT STEPS

The following sections include suggestions made by conference participants.

### Federal Groups' Suggestions

- Support the development of a comprehensive resource identifying tribal geographic affiliations.
- Cultivate ongoing relationships rather than project-by-project relationships.
- Emphasize early involvement in the State Transportation Improvement Plan.
- Increase resources for tribal issue specialists and tribal travel.
- Standardize training pertaining to roles and responsibilities for all parties.
- Establish guidelines to follow before developing consultation approaches.
- Establish timeframes to follow
  - Share best practices (state-wide, federal-wide),
  - Partner better in both directions, both by the federal agencies and by the Native Americans, and
  - Assume nothing/seek first to understand.
- Educate and consistently interpret and apply laws and regulations.
  - Political/agency will and commitment is an important aspect of this equation,
  - Public Relations, and
  - Memoranda of understanding (MOU) can be used to tailor specific needs of a project or a tribal or agency request.
- Build trust; bring agencies and tribes to the table without hidden agendas or predetermined solutions; make tribes a part of the process.
- Ensure early planning and involvement.
- Provide state-agency funding to tribes.
- Provide access to expertise.
- Create a tribal participation plan for projects.
- Create educational opportunities.
- Move state approach of engineering driven to a shared decision making via management buy-in, which may be a culture change.
- Build a relationship of trust that is not project driven.
- Change political priorities to make tribal participation a priority.

## State Groups' Suggestions

- Initiate policy updates of the 3 C's:
  - Coordination,
  - Cooperation, and
  - Consultation.
- Involve leadership from Washington, D.C., and educate leadership on the current conditions and needs of all parties to resolve barriers.
- Provide guidance from state and tribal agencies to the federal agencies. State and tribal agencies need to be proactive in educating the federal agencies in what is needed at the local level to remove transportation barriers.
- Be proactive without fear.
- Provide funding for the removal of barriers.
- Use good research sources: the departments of transportation (DOTs), federal agencies, internet, elders, libraries to get the information needed to resolve transportation barriers
- Explore long-term strategies.
  - Lobbying/communication to improve conditions and laws at the local, state, and federal level,
  - Raising awareness and sensitivity,
  - Changing the paradigm,
  - Working toward overcoming resistance to change, and
  - Creating project timelines and priorities that reflect reality and are equitable.
- Explore mid-range strategies.
  - Cross-training: protocol-identify people who are key in the organization. Find individuals who will teach you the protocol of the organization you need to learn, whether it is tribal or a local, state or federal agency culture.
  - Sensitivity training.
  - Project planning and training.
  - Initiate state and tribal summits to introduce the transportation professionals and leadership with one another. Discover common goals and understand where the differences lie.
  - Identification of contact and key persons: funnel information to proper communication channels.
  - Advanced technology use: E-mail, Internet, brochures, faxes. Use those methods that actually reach the tribe in question.

## Local Groups' Suggestions

- All stakeholders should designate an authorized, empowered Native American representative liaison within the FHWA, the FTA, and within each state DOT and tribe.
- Establish a protocol with every tribal government in coordination with that particular tribe.
- Negotiate a MOU or memoranda of agreement (MOA) and an annual review of protocol and performance. Evaluate the effectiveness of the protocol and continually upgrade its effectiveness with new information.

- Note that people can and do leave the table.
- Tribal involvement should take place all the way through the process, no matter how long it takes.
- There are concerns that written protocol relies on a document. Will tribes sign a MOU or a MOA? In some states, the answer is yes, but not in all states. A tribe may pass a tribal resolution prior to signing a MOU or MOA and this process will take time.
- Open the lines of communication so that it is at least clear whether a tribe will sign a MOU or a MOA.



## Pueblo of Acoma Field Trip

Conference participants were bused to the Pueblo of Acoma, 55 mi west of Albuquerque, to tour Sky City, the ancient and present day home of the pueblo. Participants experienced a sovereign nation and viewed traditional and modern pueblo existence. The field trip was designed to give the conference participants first-hand experience with transportation issues on tribal lands. The Pueblo of Acoma consists of Sky City, their ancestral village that sits atop an isolated mesa, the modern community of Acoma, and tribal lands purchased for the development of their casino and convention center, truck stop, and Route 66 Visitor Center. Pueblo of Acoma negotiates between tourism and traditional lifeways and promotes sensitivity in issues of native peoples.

Acoma Pueblo's Sky City is the longest continually occupied city in the United States. Archaeologists theorize that Acoma has been inhabited since 1150 A.D. Located on top of a 367-ft mesa, the site of the Sky City is ideal for defense yet has access to fertile farmland below. The pueblo was nearly destroyed in 1598 by Spanish General Juan de Oñate when he ordered the village raided in retaliation for the killing of 13 of his soldiers who had been stealing from the village. The San Esteban del Rey Mission was built in 1629 and restituted peace between the villagers and the Spanish troops. The Mission and the Sky City village are National Historic Landmarks.

Currently, most of the pueblo's population of approximately 6,000 lives in nearby communities on other parts of the pueblo, but there are always some families who live in the mesa top village continuously. Life on the top of the mesa is a living example of a simpler time. Buildings are still built by the labor of families using adobe bricks and limestone brought from the valley floor; children play in unpaved roads where their ancestors once walked. Electricity must be generated on the mesa, propane is brought up for cooking, and there is no running water. Yet to live on the mesa top is an honor and a privilege to the people of Acoma. There are approximately 400 houses in Sky City, although they are not all occupied year-round. The houses are passed through the youngest daughter because it is she who is thought to be able to live the longest and take care of her parents the best. As "traditional" as life is for the people who live on top of the mesa, tourists are welcomed.

The fieldtrip to Acoma began with a presentation by 2nd Lieutenant Governor Rex Salvador in the Administration's Community Center. Here participants learned about the history and culture of the people of the Pueblo of Acoma. Salvador described the history of paving the only road to the top of the mesa. The Bureau of Indian Affairs built this road in 1997. Before that, all supplies had to be brought up a narrow dirt road built in 1956. There were some in the village who opposed the road; they viewed it as an unnecessary modernization. A compromise of bringing tourists to the top in pueblo-run buses was established and now provides the pueblo control over who goes up to their sacred village.

## Glossary

<b>4(f)</b>	<b>Section 4(f) of the National Environmental Policy Act of 1969</b> National policy states that special effort should be made to preserve the natural beauty of the countryside, public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. In the U.S. Department of Transportation Act of 1966, a special provision was included to provide protection to these resources. It is known as Section 4(f) and stipulates that the FHWA will not approve any program or project that requires the use of any publicly owned public park, recreation area, wildlife or waterfowl refuge, or any land from an historic site of national, state, or local significance unless there is no feasible and prudent alternative to the use, and all possible planning to minimize harm resulting from such use is included. Source: FHWA web page at: <a href="http://www.fhwa.gov/environment/nepa/section.htm">http://www.fhwa.gov/environment/nepa/section.htm</a>
<b>AIPC</b>	<b>All Indian Pueblo Council</b> The All Indian Pueblo Council, a consortium of the 19 pueblos of New Mexico, was established in 1598 to foster the social and economic advancement of all the Pueblo Indians, to preserve and protect our common interest, our inherent rights to self-government, and our rights as guaranteed and confirmed to us by the governments of Spain and Mexico, the Federal Constitution of the United States of America, and the state of New Mexico. Source: The Indian Pueblos Federal Development Corporation.
<b>BIA</b>	<b>Bureau of Indian Affairs</b> The BIA mission statement is “to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives. We will accomplish this through the delivery of quality services and maintaining government-to-government relationships within the spirit of Indian self-determination.” Source: Department of Interior web page.
<b>Chapter House</b>	The Navajo Tribe rejected the Indian Reorganization Act of 1934 (IRA). The Navajo Nation is governed by a council consisting of 88 members and represents 110 Chapters. The Chapter House is where the people meet to discuss community issues. Twelve standing committees conduct business between the full council sessions, which are held quarterly. All program and projects are processed through the appropriate standing committee before submission to the Navajo Nation Council.
<b>EA</b>	<b>Environmental Assessment</b> This environmental analysis is prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) to determine whether a federal

action would significantly affect the environment and thus requires a more detailed environmental impact statement. Source: U.S. Environmental Protection Agency web page.

**EIS****Environmental Impact Statement**

This document is required of federal agencies by the NEPA for major projects or legislative proposals significantly affecting the environment. A tool for decision making, it describes the positive and negative effects of the undertaking and cites alternative actions. Source: U.S. Environmental Protection Agency web page.

**HAZMAT****Hazardous Materials**

These materials are defined by their chemical constituents as those chemicals that are hazardous to human health and environmental habitats.

**IPFDC****Indian Pueblos Federal Development Corporation**

The IPFDC is a federally chartered corporation owned and operated by the 19 pueblos of New Mexico for the purpose of developing the 46-acre property, formerly known as the Albuquerque Indian School property, in Albuquerque, New Mexico. Source: Indian Pueblos Federal Development Corporation.

**IRR****Indian Reservation Roads**

These public roads are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the federal government or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under federal laws specifically applicable to Indians. Roads on the BIA Road System are also IRR roads. Source: FHWA.

**ISTEA****Intermodal Surface Transportation Efficiency Act of 1991**

This law declared the Interstate system complete and established a new role for the federal government in transportation policy. In the post Interstate era, federal funds are available to support local decisions about transportation service to communities and to encourage local planning that promotes transportation's contribution to protecting the environment, making jobs and housing more accessible, and giving Americans more transportation choices. Source: The ISTEA web page at <http://www.istea.org/docs/istea.htm>

**MOA****Memorandum of Agreement**

A MOA is signed between government agencies or between governments to allow them to work together toward a particular goal or to complete a particular project. This agreement may or may not have time limits

incorporated. See website location [www.achp.gov/agreement.html](http://www.achp.gov/agreement.html) for agreements specific to Historic Preservation, Section 106.

**MOU****Memorandum of Understanding**

A MOU is signed between government agencies or between governments allowing them to agree upon the idea, procedures or framework of working together toward a particular goal or to complete a particular project. It is usually not as specific or formal as an MOA.

**MPO****Metropolitan Planning Organization**

This planning group, whose members include both private citizens and local government officials, is mandated for urban areas with a population of over 50,000. An MPO addresses federal aid planning mandates by producing local transportation plans or transportation-improvement plans on an annual or biannual basis or by employing other methods to make existing systems more effective.

**MRGCOG****Middle Rio Grande Council of Governments**

Both the New Mexico Joint Powers Act and the Regional Planning Act created this voluntary association. The MRGCOG is composed of county, municipal, and other local government officials from the Bernalillo, Sandoval, Torrance, and Valencia counties. The MRGCOG conducts the regional and metropolitan transportation-planning process. Source: The MRGCOG web page.

**NAGPRA****Native American Graves Protection and Repatriation Act**

This federal legislation protects cultural items and burial sites on all tribal and federal lands. It also requires the repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony held by museums and federal institutions (although the Smithsonian is exempt under the NAGPRA) to modern Native American groups that have documented ancestral and historic ties to the cultural items.

**NEPA****National Environmental Policy Act of 1969**

Sec. 2 [42 USC § 4321]. The purposes of this Act are: to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

**NHPA****National Historic Preservation Act of 1966, as amended**

This law sets federal policy to protect historic sites and values in cooperation with other nations, states, and local governments. It establishes

a program of grants-in-aid to states for historic preservation activities. Subsequent amendments designated the State Historic Preservation Officer as the individual responsible for administering programs in the states. Source: NHPA web page at <http://www.usbr.gov/laws/nhpa.html>

**NMSHTD****New Mexico State Highway Transportation Department**

NMSHTD's primary responsibility is to plan, build, and maintain a statewide transportation network that will serve the social and economic interest of our citizens in a productive, cost-effective innovative manner. Source: The NMSHTD web page.

**NEG- REG****Regulatory Negotiating Committee created by the TEA-21 Section 1115(b)**

This Negotiated Rulemaking Committee has members from geographically diverse, small, medium-sized, and large federally recognized Indian tribes who work with the Federal Lands Highway Office and the Assistant Secretary of the Interior on the administration of IRR programs and the allocation of funds. The committee's purpose is to ensure Indian input for the IRR funds. Source: The TEA-21 web page and [www.fhwa.dot/legregs/directives/orders/47107.htm](http://www.fhwa.dot/legregs/directives/orders/47107.htm)

**P.L. 93-638**

**The Indian Self-Determination and Education Assistance Act**, commonly known as P.L. 93-638.

**RPO****Regional Planning Office**

Several states allow a regional planning commission between (1) any two or more cities with adjoining planning jurisdictions, (2) any two or more counties with adjoining planning jurisdictions, and (3) a city and its county. (Daniels, Thomas, L., John W. Keller and Mark B. Lapping, 1995, *The Small Town Planning Handbook*, American Planning Association, Planners Press, Second Edition).

**ROW****Right of Way**

The land (usually a strip) acquired for or devoted to highway transportation purposes. Source: U.S. Department of Transportation.

**Section 106****Section 106 Regulations of the National Historic Preservation Act of 1966, as amended**

This regulation requires that any proposed federal or federally assisted undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.

**STIP****State Transportation Improvement Plan**

This spending plan for allocating transportation funding to state and local projects. It addresses a time period of 3 years, and, by law, is constrained by predicted funding levels.

**TEA-21****Transportation Equity Act for the 21st Century**

Enacted on June 9, 1998, TEA-21 is Public Law 105-178 and authorizes federal surface transportation programs for highways, highway safety, and transit from 1998 to 2003. Source: FHWA.

**THPO****Tribal Historic Preservation Officers**

In 1992, Congress adopted amendments to the NHPA that allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. In accordance with Section 101(d)(2), the participating tribes have formally assumed the responsibilities of the State Historic Preservation Office (SHPO) for purposes of Section 106-compliance on their tribal lands. They have designated THPOs whom federal agencies consult in lieu of the SHPO for undertakings occurring on or affecting historic properties on tribal lands. Federal agencies must also consult with Indian tribes that attach religious and cultural significance to historic properties, regardless of their location. Source: Advisory Council of Historic Preservation web page at: <http://www.achp.gov/thpo.html>

**Termination****1953 to 1968 Termination Era**

The Meriam Report of 1938, detailed the government's shortcomings in providing services to reservations. Congress responded to the report by passing the Indian Reorganization Act (IRA), which aimed to improve tribal economies and strengthen tribal governments. BIA services were expanded to include forestry, range management, and agricultural extension service, construction, and land acquisition. BIA services continued to expand until the 1950s and 1960s, the termination era, at which time congress dismantled some of the agency's duties. The responsibility for educating Indian children passed to the states and Indian health care became the responsibility of the Department of Health, Education and Welfare (now called the Department of Health and Human Services).

1953: Passage of H.C.R. 108 termination resolution

1953: Passage of laws to terminate over 100 tribes

1953: Passage of P.L. 83-280, § 7, 67 Stat. 588, 590 (Limits of State Jurisdiction), 18 U.S.C. § 1162, 28 U.S.C. § 1360

1955: Lease of Restricted Lands for Public, Religious, Educational, Recreational, Residential, Business, and Other Purposes; Approval By Secretary, 25 U.S.C. § 415

1964: Arizona v. California, establishes methodology for quantifying Indian water rights, 373 U.S. 546 (1963) [[www.doi.gov/oait/docs/timeline.htm](http://www.doi.gov/oait/docs/timeline.htm)]

**TIP****Transportation Improvement Plan**

Federal law requires this transportation-planning product. A TIP is a prioritized list of proposed FHWA and FTA-funded projects that cover a 3-year period. Each state and MPO is required to develop a TIP and update it every 2 years.

**WIPP****Waste Isolation Pilot Plant**

A U.S. Department of Energy facility located in southeastern New Mexico, 26 mi southeast of Carlsbad. The site chosen for the 2,150-ft-deep WIPP is a 16-mi<sup>2</sup> tract of federal land that consists of a thick layer of rock salt deposited about 225 million years ago. The facility is the nation's first geological repository for permanent disposal of transuranic (TRU) radioactive waste. The term "transuranic" is derived from trans, meaning beyond, and uranic, meaning uranium. TRU waste, which contains manmade elements heavier than uranium (and therefore "beyond uranium" on the periodic chart) is produced during nuclear fuel assembly, nuclear weapons research, productions, cleanup, and as a result of reprocessing spent nuclear fuels. Congress authorized the development of WIPP in 1980 to demonstrate the safe disposal of radioactive waste resulting from defense programs of the United States.





**TRANSPORTATION IMPROVEMENTS**  
**Experiences Among Tribal, Local,**  
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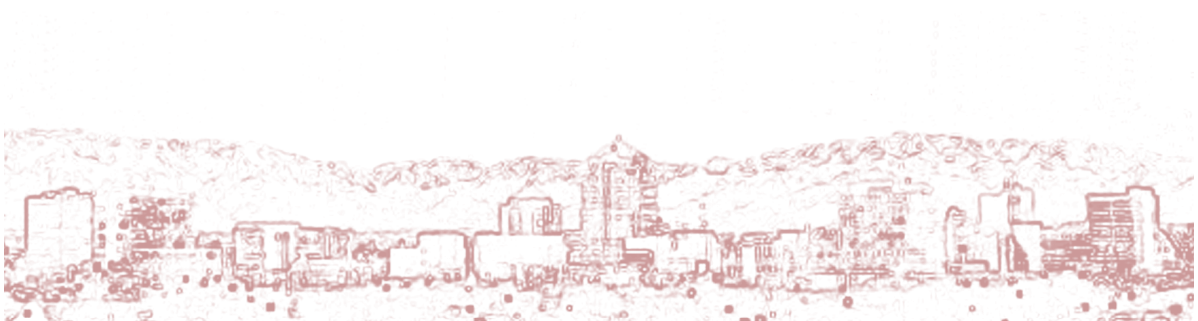
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## TRANSPORTATION IMPROVEMENTS

### Experiences Among Tribal, Local, State, and Federal Governments

#### Conference Schedule Thursday, October 19, 2000

<b>7:00 – 8:00 a.m.</b>	Alcove/Mezzanine	<b><i>Registration</i></b>
<b>7:00 – 8:00 a.m.</b>	Ballroom	<b><i>Continental Breakfast</i></b>
<b>8:00 – 8:30 a.m.</b>	Ballroom	<b><i>Welcome to Conference and VIP Introductions</i></b>

Co-chairs: Kathleen H. Quinn, Chair, A1F05  
 Ronald C. Hall, Chair, A1F05(1)

Speakers: Carol Weahkee, Director, Albuquerque Indian Center  
 John Arthur III, US DOE, National Transportation Program  
 Ray Begaye, New Mexico State Representative  
 Judith M. Espinosa, Director, ATR Institute

Invocation by Rex Salvador, 2nd Lt. Governor, Pueblo of Acoma

<b>8:30 – 10:15 a.m.</b>	Ballroom	<b><i>New Mexico Case Study</i></b>
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Panelists: James Kozak, New Mexico State Highway and Transportation Department, Planning Division  
 Ed Gonzales, P.E., ELG Engineering

Moderator: Bernie Teba, Executive Director, Eight Northern Indian Pueblos Council, Inc.

<b>10:15 – 10:30 a.m.</b>	Ballroom	<b><i>Break</i></b>
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<b>10:30 – 11:50 a.m.</b>	Ballroom	<b><i>State Project Experiences in Tribal Coordination</i></b>
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U.S. Hoover Dam Bypass Panelists:  
 F. Dave Zanetell, P.E., Project Delivery Manager,  
 Central Federal Lands Division  
 Dave Ruppert, National Park Service, Intermountain Region  
 Richard Arnold, Executive Director, Las Vegas Indian Center

Navajo Nation/Arizona Cooperation Panelists:  
 Jeff Swan, District Engineer, Arizona Department of Transportation  
 Ermalinda Gene, Civil Rights Office, Arizona Department of Transportation

Moderator: Michael Marchand, The Confederated Tribes of the Colville Reservation

<b>12:00 – 1:15 p.m.</b>	Ballroom	<b><i>Keynote Lunch: TEA-21 and Its Effect on Tribal Lands</i></b>
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Keynote Speaker: Michael Marchand, The Confederated Tribes of the Colville Reservation  
 Keynote Introduction: Ed Hall, Department of Transportation, Bureau of Indian Affairs  
 Keynote Presentation: Red Carpet presented by Ruth Hashimoto, ATR Institute

<b>1:30 – 5:00 p.m.</b>	<b><i>Interaction Workshops</i></b>
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Speaker: Elaine Brouillard, ATR Institute  
 Moderators: Kathleen H. Quinn and Ronald C. Hall

<b>5:30 – 7:00 p.m.</b>	Eulalia's	<b><i>Reception with light refreshments</i></b>
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## TRANSPORTATION IMPROVEMENTS

### Experiences Among Tribal, Local, State, and Federal Governments

**Workshops**  
**Thursday, October 19, 2000**  
**1:30 – 5:00 p.m.**

#### **Second Floor Meeting Rooms**

**Tribal–State Issues**  
 Ballroom A  
 Facilitator: Tracy Jordan

**Tribal–State Issues**  
 Ballroom B  
 Facilitator: Elaine Brouillard

**Tribal–Local Issues**  
 Plaza Suite Parlor A  
 Facilitator: Joe Maestas

**Tribal–State Issues**  
 Plaza Suite Parlor B  
 Facilitator: To be announced

**Tribal–Federal Issues**  
 Alvarado Suite 204  
 Facilitator: Larry Perrault

#### **First Floor Meeting Rooms**

**Tribal–Federal Issues**  
 Eulalia's  
 Facilitator: Jack Petring

**Tribal–Federal Issues**  
 Boardroom  
 Facilitator: William “Wil” Dooley

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|---|--|
| <b>1:30 – 1:40 p.m.</b>   | Introduction and Objectives of Process, Elaine Brouillard          |
| <b>1:40 – 2:15 p.m.</b>   | Identify issues and decide on one.                                 |
| <b>2:15 – 3:00 p.m.</b>   | Prioritize issues, broadening of points.                           |
| <b>3:00 – 3:45 p.m.</b>   | Final output to an overhead transparency.                          |
| <b>3:45 – 5:00 p.m.</b>   | Return to Ballroom and present one to two overhead transparencies. |
| <b>Break</b>  |  |
| A beverage and cookie break will be provided on the mezzanine from 2:30 – 3:30 p.m. |  |



## TRANSPORTATION IMPROVEMENTS

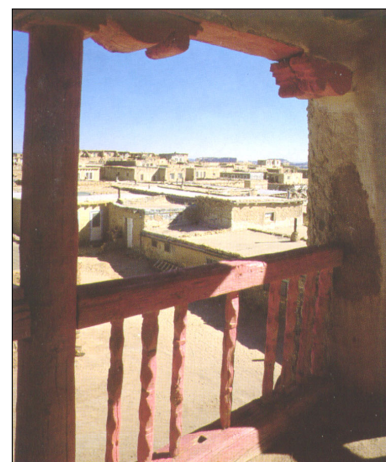
### Experiences Among Tribal, Local, State, and Federal Governments

Conference Schedule  
Friday, October 20, 2000

7:00 – 8:30 a.m.	Alcove/Mezzanine	Registration
7:00 – 8:30 a.m.	Ballroom	Continental Breakfast
8:30 – 10:00 a.m.	Ballroom	Arizona Case Study
Panelists:	Paulson Chaco, The Department of Transportation, The Navajo Nation Esther Corbett, Inter Tribal Council of Arizona, Inc. Mary Lynn Tischer, Planning Division, Arizona Department of Transportation Don Sneed, Planning Division, Arizona Department of Transportation Bettina H. Rosenberg, Historic Preservation Office, Arizona Department of Transportation Ronald C. Hall, Institute for Transportation Management, Colorado State University	
10:00 – 10:15 a.m.	Copper Street Lobby	Prepare for Field Trip (pick up box lunch and soda)
10:15 – 10:30 a.m.	Copper Street Lobby	Depart hotel
10:30 a.m. – 11:30 p.m.	Drive to Pueblo of Acoma	
11:30 a.m. – 12:20 p.m.	Acoma Tribal Office	
Host Welcome by Rex G.	Salvador, 2nd Lt. Governor	
12:20 – 12:45 p.m.	Drive to Acoma “Sky City”	
12:45 – 2:45 p.m.	Tour of Acoma “Sky City”	
2:45 – 3:05 p.m.	Drive to Acoma/ Route 66 Interpretive Center	
3:25 – 3:45 p.m.	Route 66 — “Mother Road”	
Speakers:	Juana Franco, Acoma/ Route 66 Interpretation Center Joseph Maestas, FHWA, New Mexico Division	
3:45 – 4:15 p.m.	Tribal Economic Development/ Transportation Issues	
Speakers:	Greg Shutiva, Chairman, Acoma Business Enterprises Arthur Gurule, NMSHTD, Right-of-Way, invited	
4:15 – 5:15 p.m.	Drive back to Albuquerque	
Dinner on your own.		







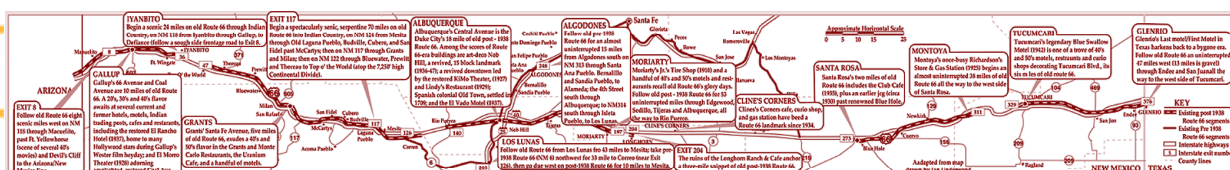
## TRANSPORTATION IMPROVEMENTS

### Experiences Among Tribal, Local, State, and Federal Governments

## Conference Schedule

### Saturday, October 21, 2000

<b>7:00 – 8:30 a.m.</b>	Ballroom	<i>Continental Breakfast</i>
<b>8:30 – 10:00 a.m.</b>	Ballroom	<i>Case Studies of State and Tribal Experiences</i>
Panelists:	Walter Pacheco, Muckleshoot Reservation Bryan Flett, Spokane Tribe of Indians Julianne Stevenson, Kawerak, Inc.	
Moderator:	Dr. Allyson Brooks, Office of Archaeology and Historic Preservation, Washington	
<b>10:00 – 10:15 a.m.</b>	Ballroom	<i>Break</i>
<b>10:15 a.m. – 12:00 p.m.</b>	Ballroom	<i>Federal Programs Perspective Panel</i>
Panelists:	Paul D. Schneider, P.E., FHWA, Federal Lands Highway Judith A. Holm, U. S. Department of Energy, National Transportation Program Brian G. Allen, FHWA, Western Federal Lands Highway Division	
Moderator:	Kathleen H. Quinn, Federal Highway Administration	
<b>11:45 a.m. – 12:00 p.m.</b>	Closing by Kathleen H. Quinn and Ronald C. Hall	
<b>12:00 – 12:15 p.m.</b>	Plaza Suite, Parlor A	<i>Working Lunch</i>
<b>12:15 – 2:30 p.m.</b>	Plaza Suite, Parlor A	<i>A1F05(1) Subcommittee Meeting</i>
Ronald C. Hall, TRB Subcommittee Chair		



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GARY E. JOHNSON  
GOVERNOR

(505) 827-3000

Good morning and welcome to the TRB Committees on Historic Preservation and Native American Issues mid-year meeting.

In July of 1996, my administration, along with the Attorney General, and the tribes of the state signed a Government-to-Government Agreement that detailed a Statement of Principles and Policy for inter-governmental cooperation. Within that policy, we agreed that the tribes and the state would foster a relationship based on a spirit of cooperation, coordination, communication and goodwill. We agreed that the appropriate state agencies and Indian tribal governments should address issues of mutual concern. We have the opportunity today and for the rest of the week to share our experiences; both successful and those that have led us to re-think our "business-as-usual" approaches.

I am pleased that the theme for this event is "Transportation Improvements: Experiences Among Tribal, State and Federal Governments" because I believe that transportation is a key element in all of our lives. Transportation infrastructure provides us with the opportunities to communicate with one another; opportunities for education, recreation, healthcare, and employment, and access to emergency services. Transportation infrastructure provides opportunities for improving our economic well being. All of these areas are vital to preservation of culture. The first roads in the state followed many of the traditional paths and wagon roads. These roads were connected to the population centers of the time to foster travel and trade.

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Over time, the original needs and purposes for many of these roads have changed. Farm-to-market roads have become primary arterials within urban areas and the interstate highways now replace many of the rural roads that carried the bulk of the traveling public. Today we have the challenge to develop transportation networks that safely meet the economic and social needs of regions while preserving the cultural and environmental assets of our communities. This is why we have gathered here today: to discuss mutually beneficial policies and processes that will allow us to constructively address transportation needs.

I realize that there are many complex and diverse issues surrounding transportation planning, funding and construction. While not all of the issues will be resolved during this conference, the sharing of communication and cooperation processes will be a major step towards creative solutions to those problems. The processes set in motion at this conference will guide us to a better future. For the Native American governments of New Mexico and the State of New Mexico, the next 400 years will be better than the last 400.

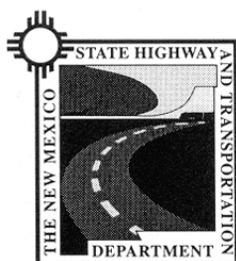
I wish to thank the tribal leaders who have supported this effort and also Secretary Rahn and his dedicated staff who have worked diligently to make this milestone event a reality.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary E. Johnson".

Gary E. Johnson  
Governor

PKR/CVT:jdk



**GARY E. JOHNSON**  
GOVERNOR

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**NEW MEXICO STATE HIGHWAY  
AND TRANSPORTATION DEPARTMENT**  
AN EQUAL OPPORTUNITY EMPLOYER

October 18, 2000

Dear Honored Guests and Conferees of the Transportation Research Board's Historic Preservation and Native American Issues Committees' Transportation Improvements Conference: Welcome to the Land of Enchantment!

We are all aware of how important transportation infrastructure is to our quality of life. In New Mexico, perhaps unique to our state, transportation infrastructure is inextricably tied to the sovereign nations that are part of our culture. Twenty-two of the New Mexico's 23 tribes have trust lands that are adjacent to, or are crossed by, state highways. Most of these highways are four-lane facilities or interstates highways. Like all transportation facilities, these roads have both positive and negative impacts associated with them. And like most states with tribal reservations, sometimes the needs of the states and the needs of the tribes conflict with one another.

Just a year ago the state of New Mexico, its Highway and Transportation Department, the All Indian Pueblo Council, and the US Departments of Energy and Interior (BIA) sponsored a State/Tribal transportation summit to begin to address the many substantial transportation issues that are so important to all of us. While we have made progress in this last year toward that end, much remains to be done. Certainly this is an area that needs more research and study.

Because of the importance of transportation opportunities to all the residents of a state, it is imperative the federal, state, tribal, and local governments establish communications about transportation needs and



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problems, based on mutual respect, honesty, and willingness to listen to all sides of a problem. I firmly believe that the New Mexico State Highway and Transportation Department serves as an example to the nation as an agency of a state that has achieved the first steps in establishing such communication.

With transportation infrastructure, however, have come problems that can be as critical as the opportunities. Poorly maintained roads or roads that have not been improved to accommodate heavier demands may become hazardous to its users. Skyways and roads may encroach on tribal privacy needs. The need to remove hazardous materials to safe environs often brings these materials past our doors. Roads that provide access to markets and schools may divide a reservation.

There are many complex issues caught up in the planning, funding, and construction of transportation facilities. It will take time to accommodate the needs of all the parties impacted by transportation issues. Issues deriving from the confluence of sometimes conflicting, sometimes complementary, transportation needs have been neglected in the past. We have reached a point where we recognize most of these issues. But it will take a great deal of meeting of mind and spirit to resolve these issues. This conference is another step in that direction.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete K. Rahn". The signature is fluid and cursive, with the first name "Pete" and last name "Rahn" being more prominent than the middle initial "K".

Pete K. Rahn  
Secretary

PKR:RM:JDK:rc





# THE NATIONAL ACADEMIES

*Advisers to the Nation on Science, Engineering, and Medicine*

The **National Academy of Sciences** is a private, nonprofit, self-perpetuating society of distinguished scholars engaged in scientific and engineering research, dedicated to the furtherance of science and technology and to their use for the general welfare. On the authority of the charter granted to it by the Congress in 1863, the Academy has a mandate that requires it to advise the federal government on scientific and technical matters. Dr. Bruce M. Alberts is president of the National Academy of Sciences.

The **National Academy of Engineering** was established in 1964, under the charter of the National Academy of Sciences, as a parallel organization of outstanding engineers. It is autonomous in its administration and in the selection of its members, sharing with the National Academy of Sciences the responsibility for advising the federal government. The National Academy of Engineering also sponsors engineering programs aimed at meeting national needs, encourages education and research, and recognizes the superior achievements of engineers. Dr. William A. Wulf is president of the National Academy of Engineering.

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