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U.S. Department of Transportation Tribal Consultation Plan

1. Purpose Statement

The United States government has a unique legal relationship with Federally-recognized Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. The Federal government recognizes the right of self-determination for Indian tribal governments and the obligation to work with Indian tribal governments in a government-to-government relationship. As an executive agency, the U.S. Department of Transportation (USDOT) has a responsibility and is committed to working with Indian tribal governments in this unique relationship, respecting tribal sovereignty and self determination.

The USDOT seeks to foster and facilitate positive government-to-government relations between the Department and all Federally-recognized Indian tribes. The purpose of this plan is to develop, improve, and maintain partnerships with Indian tribes by using agreed-upon processes when the Department develops, changes, or implements policies, programs, or services with tribal implications.

2. Designated Official

The Deputy Assistant Secretary for Intergovernmental Affairs is the Department's Designated Official responsible for implementation of this plan, and related policies and requirements. The Designated Official will advise and make recommendations to the Secretary of Transportation on USDOT policies, issues, programs, and activities with tribal implications. The Designated Official will also update this plan as necessary.

3. Summary of the Memorandum, Executive Order and USDOT Order

On November 5, 2009, President Obama issued a Memorandum on Tribal Consultation reaffirming the unique legal and political relationship with Indian tribal governments and tasked executive departments and agencies with creating detailed plans of actions that they will take to implement the policies and directives of Executive Order 13175, "Consultation and Coordination with Indian tribal Governments" (Nov. 6, 2000). The memorandum gives agencies 90 days from issuance to create their plans of actions and directs agencies to create their plans in consultation with Indian tribes and tribal officials.

Executive Order 13175 recognizes the unique legal relationship that the Federal government has with Indian tribes and sets forth the criteria agencies should follow when formulating and implementing policies that have tribal implications. In addition, Executive Order 13175 requires Federal agencies to establish a consultation process for interactions with Indian tribes in the development of regulatory policies that have tribal implications.

The USDOT issued Order 5301.1, "Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes" on November 16, 1999. This Order affirms the Department's and the USDOT Modal Administrations' unique legal relationship with Indian tribes, establishes the Department's consultation and coordination process with Indian tribes for any action

that may significantly or uniquely affect them, and lists goals for Modal Administrations to meet when carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes. The requirements established for Modal Administrations under this Order are designed to recognize Indian statutory preferences in employment, Federal financial assistance arrangements, and contracting; respond to the transportation concerns of Indian tribes related to environmental justice, children's safety and environmental health risks, occupational health and safety, and environmental matters; foster opportunities for hiring tribal members and increasing participation in Federal training activities; include tribal colleges and universities in Departmental educational, research, and program activities; and treat correspondence from leaders of Indian tribes in the same manner as Congressional correspondence. The Department affirms its commitment to these principles, and those set forth in Executive Order 13175 and the President's November 5, 2009 memorandum, in establishing this plan of actions.

4. Definitions

1. "*Consultation*" refers to meaningful and timely discussion in an understandable language with tribal governments.
2. "*Indian tribe*" or "*Tribe*" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior recognizes as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
3. "*Tribal government*" refers to the recognized government of a tribe.
4. "*Tribal implications*" means substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power between the Federal government and Indian tribes.
5. "*Tribal member*" refers to a member of a tribe as determined by tribal membership rules.
6. "*Tribal officials*" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.
7. "*Tribal colleges and universities*" refers to those institutions cited in Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note) and any other institution that qualifies for funding under the Tribally Controlled Community
8. College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978 (Public Law 95-471), Title II (25 U.S.C. 640a note).
9. The "*U.S. Department of Transportation*," "*USDOT*," and "*Department*" refer to the Office of the Secretary of Transportation and its Modal Administrations, which include the Federal Aviation Administration, the Federal Highway Administration, the Federal Transit Administration, the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the Maritime Administration, the Pipeline and Hazardous Materials Safety Administration, the Research and Innovative Technology Administration, and the Saint Lawrence Seaway Development Corporation.

5. Goals and Actions

The USDOT will continue to support the fundamental principles of self-government, self-determination, and tribal sovereignty specified in Executive Order 13175. The USDOT will implement this plan to establish meaningful consultation and collaboration with tribal officials in the development

of Federal policies that have tribal implications, and to strengthen the government-to-government relationship between the United States and American Indians, Alaska Natives, and Indian tribal governments. Specifically, the USDOT will:

Foster meaningful government-to-government relations by:

- Ensuring participation by Department officials at national tribal conferences, tribal/state meetings, summits, and conferences discussing tribal issues.
- Establishing direct contact with Indian tribal governments, including visiting tribal governments at reservations, Native Villages, and communities.
- Seeking tribal government representation in meetings, conferences, summits, advisory committees, and review boards concerning issues with tribal implications.

Improve existing tribal programs by:

- Seeking tribal input when the USDOT develops or revises regulations with tribal implications and providing adequate time to allow for comment.
- Notifying tribes of grant opportunities through multiple means, including direct letters and emails whenever appropriate, as well as announcements on the USDOT website and in the Federal Register.
- Providing timely technical assistance on changes to legislation, regulations, programs, and grants.

Ensure meaningful tribal input into future tribal transportation programs by:

- Developing policy and programs using input, guidance, and recommendations from tribal leaders.
- Seeking and responding to comments from tribal governments.
- Soliciting tribal comments in the development of the USDOT's surface transportation reauthorization proposal.
- Conducting meetings throughout the country after the passage of the next surface transportation authorization legislation to discuss impacts on and opportunities for the tribes and their transportation systems.
- Consulting with tribal governments on making transportation services available to improve mobility, employment opportunities, and access to community services for people who have disabilities, are elderly, or low-income.

Ensure the USDOT's uniform and effective delivery of tribal programs throughout the country by:

- Reviewing existing tribal policies in USDOT's Modal Administrations to ensure consistency with this action plan and each other.
- Assessing the resource needs of the tribal transportation programs at the USDOT.
- Developing training modules for USDOT employees on tribal transit and highway programs.
- Developing a training program for USDOT employees regarding tribes, the sovereignty of tribal governments, and the unique government-to-government relationship between tribes and the Federal government.
- Reaffirming USDOT's commitment to working with the Bureau of Indian Affairs on the administration of tribal highway safety grants.

- Continuing to support the tribal Technical Assistance Program (TTAP).
- Addressing tribal transportation issues in USDOT Strategic Plans.
- Enhancing support for tribal Liaisons in the Federal Transit Administration, the Federal Highway Administration, and the Federal Aviation Administration and other staff throughout the Department working with tribal governments.
- Coordinating efforts among USDOT's Modal Administrations by establishing a Department-wide working group tasked with making specific recommendations to the Secretary of Transportation.

Assist in implementing tribal infrastructure projects by:

- Building capacity of tribes on USDOT Programs and processes, including the Indian Reservation Roads Program and the Tribal Transit Program.
- Initiating a review of the grant process for the Tribal Transit Program in consultation with the tribes.
- Working with tribal governments to develop case studies and best practices in transportation planning and highway safety.
- Developing a highway Safety Management System (SMS) for tribal governments and forming a Steering Committee that includes tribal representatives to advise on the SMS.
- Identifying and communicating to tribal leaders emerging issues that could impact tribal transportation programs.
- Publishing guidance on the USDOT's programs with potential benefits to tribal governments.

Assist tribal members in developing transportation capacities by:

- Increasing internships for American Indians and Alaska Natives at the USDOT through outreach to tribal colleges and universities.
- Creating a webpage for tribes on the USDOT website.
- Increasing the representation of American Indians and Alaska Natives in the USDOT workforce, within merit principles and consistent with the application of appropriate veterans' preference criteria.

Assist efforts to coordinate national tribal infrastructure policy and programs within the Federal government by:

- Working with the U.S. Department of Agriculture, the Indian Health Service, and the Bureau of Indian Affairs to coordinate Federal tribal infrastructure programs and incorporating livability principles as adopted by the Department's Sustainability Partnership with the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency.

6. Accountability

Plan Transmission. In accordance with President Obama's Memorandum on tribal Consultation, the Designated Official will submit to the Director of the Office of Management and Budget (OMB) this detailed plan by February 3, 2010.

Progress Reports. The Designated Official will submit to the Director of OMB a progress report on the

status of each action included in this plan, together with any proposed updates to this plan, within 270 days. The Designated Official will submit such progress reports annually thereafter.

Regulations. In transmitting any draft final regulation that has tribal implications to OMB, the USDOT shall include a certification from the Designated Official stating that the requirements of this plan have been met in a meaningful and timely manner in accordance with Executive Order 13175.

Legislation. In transmitting proposed legislation that has tribal implications to OMB, the USDOT shall include a certification from the Designated Official stating that all relevant requirements of this plan have been met in accordance with Executive Order 13175.

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United States Department of Transportation - Federal Highway Administration