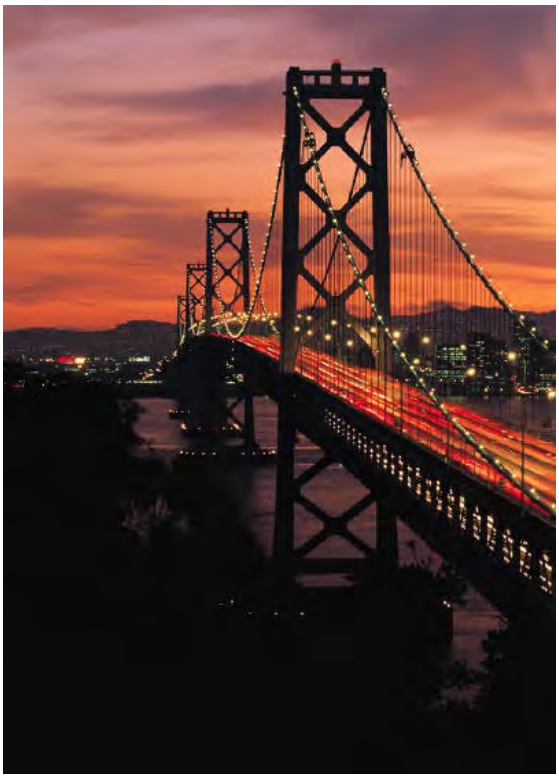
State of California

Department of Transportation



Transportation Guide

For

Native Americans

Division of Transportation Planning
Office of Regional and Interagency Planning
Native American Liaison Branch

November, 2002

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
1120 N STREET
P.O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-5267
FAX (916) 654-6608
TTY (916) 654-4086

Flex your power!
Be energy efficient!

February 8, 2002

To Tribal Leaders of California:

Enclosed is a copy of the "Transportation Guide for Native Americans," a publication of the California Department of Transportation (Department).

Our purpose in publishing the guide, at the request of the Native American Advisory Committee (Committee), is to assist Tribal Governments and other Native Americans to understand how the Department and local governments address transportation issues. We realize, however, that it is equally important that the Department and local entities understand the governance of Tribes and how they fit into the statewide transportation system.

The need for well-planned, safe and efficient transportation in California is more important than ever. It is, in fact, vital to our economic well being and to improving our quality of life. Fulfilling that need requires innovative and collaborative measures. The Department, Tribal Governments and the Metropolitan and Regional Transportation Agencies, in cooperation with the Federal Government, must work together to meet the challenges of our complex transportation environment. Success is essential to all citizens of California.

I extend my appreciation to the Committee, Federal agencies and those Department components that contributed to the publication of "The Transportation Guide for Native Americans," and look forward to a continuing productive working relationship.

Sincerely,

Jeff Morales

JEFF MORALES
Director

Enclosure

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Transportation Guide for Native Americans

Jeff Morales
Director

Brian J. Smith, Deputy Director, Planning & Modal Programs
Joan Sollenberger, Chief, Division of Transportation Planning
Sharon Scherzinger, Chief, Office of Regional & Interagency Planning

Native American Liaison Branch
Cynthia Gomez, Chief
Jila Priebe, Native American Liaison
Betty L. Miller, Native American Liaison

1120 N Street, MS-32
Sacramento, CA 95814

Tel (916) 653-3175 **Fax (916) 653-0001**

http://www.dot.ca.gov/hq/tpp/index.htm

Contents

Page

Acknowledgment 1

Introduction

Purpose 2
Scope and Limitation 2
Clarification 2

Chapter 1 **State, Regional and Federal Agencies**

California Transportation Commission 3
Business, Transportation, and Housing Agency 4
California Department of Transportation 4
Native American Liaison Branch 5
Native American Liaisons/Coordinators 6
Regional Agencies (Metropolitan Planning Organizations/ Regional Transportation Planning Agencies 9
U.S. Department of Transportation 12
Federal Highway Administration 12
Federal Transit Administration 13
Bureau of Indian Affairs 13

Chapter 2 **Native Americans**

Historical Overview 20
Legislative Overview 21
Tribal Government Authority 23
Functions of Tribal Government 24
Lands 24
Culture and Language 25
Key Transportation Issues of Tribal Governments 26
Government-to-Government Relations 26
Employment and Economic Development 26
Tribal Involvement in State Planning 27
State Funding Process 27
Lack of Federal Transportation Funding 28
Indian Reservation Roads Program Obligation Limitation 28
Preservation and Protection of Cultural Resources 29

Chapter 3 Federal and State Transportation Financing

Revenues/Highway Trust Fund....31
Authorization to Fund Programs....31
Budget Authority....32
ISTEA and TEA-21....32
Intermodal Surface Transportation Efficiency Act of 1991....32
Transportation Equity Act for the 21st Century....32
State Highway Account....36
State Funding Process....38
Federal and Transit Funds....40
Bureau of Indian Affairs Funds....40
Indian Reservation Roads Program....40
Indian Reservation Roads Maintenance Program....42
Bridges on Indian Reservation Roads....42

Chapter 4 Transportation Planning, Programming (Funding) and Implementation of Projects in California

Introduction....43
Growth Management in California....43
General Plans....44
Statewide Transportation Planning....45
California Transportation Plan....46
Regional Transportation Plan....46
Interregional Transportation Strategic Plan....47
Tribal Transportation Plan....48
Indian Reservation Roads (IRR) Program Planning....48
Statutes, Regulations and Policies....49
Programming (Funding Projects)....50
Project Initiation Document....50
State Highway Operation and Protection Program....50
Transportation Improvement Programs....51
Regional Transportation Improvement Program....51
Interregional Transportation Improvement Program....51
State Transportation Improvement Plan....51
Tribal Transportation Improvement Program....51
Federal Transportation Improvement Program....52
Federal State Transportation Improvement Program....52

Project Development 54
Preliminary Design and the Environmental Process 54
Design and Right of Way 54
Construction 55

Chapter 5 **Review of Local and Tribal Developments**
Local Assistance Program 57
Intergovernmental Review (IGR) 57
Encroachment Permits 58

Chapter 6 **Employment, TERO, Civil Rights**
Seeking a Job With the Department of Transportation 59
Tribal Employment Rights Ordinance (TERO) 59
Civil Rights Program 59
Title VI 59
Disadvantaged Business Enterprise 60
Small Business/Disabled Veteran Business Enterprise 60
Environmental Justice 61

Appendices

A. Abbreviations/Acronyms/Glossary 63

B. Presidential Memorandum, Government-to-Government Relations With Native American Tribal Governments, April 29, 1994 69

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, November 6, 2000 71

D. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 75

E. Code of Federal Regulations (CFR) 23, Part 450, Planning 81

F. U.S. Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives And Tribes (DOT Order 5301.1), November 26, 1999 93

Contents

G. California Executive Order W-26-92, Preservation of Cultural And Historic Properties, April 8, 1999 102

H. California Assembly Concurrent Resolution No.185 (Chapter 150), Native American Tribal Rights, September 18, 2000 105

I. California Department of Transportation Director's Policy Number 19, Working with Native American Communities, August 28, 2001 107

J. California Department of Transportation Memorandum, Native American Tribal Transportation Issues, July 25, 2001 110

K. California Department of Transportation Traffic Operations Program Directive No. 99-03, Signing for Indian Reservations and Rancherias, December 1, 1999 112

L. California Transportation Commission (CTC) Report To California Legislature, December 1, 1999 117

M. California Transportation Commission (CTC) 1999 Memorandum, Native American Transportation Issues, November 16, 2000 124

N. Native American Advisory Committee Charter 129

O. California Transportation Agencies 131

P. Tribal Governments 136

Q. Consultation/Public Participation Governance for Transportation Planning 142

R. California Department of Transportation Director's Policy Number 21, Environmental Justice, November 5, 2001 147

S. California Department of Transportation Director's Policy Number 21, Context Sensitive Solutions, November 29, 2001 149

T. California Department of Transportation Deputy Directive Number DD-74, Tribal Employment Rights Ordinances (TERO), October 7, 2002 154

U. California Department of Transportation Memorandum, IGR/Encroachment Permit Policies, September 10, 2002 158

Acknowledgement

The Division of Transportation Planning extends it appreciation to the members of the Native American Advisory Committee (past and present) for their recommendations and contributions to this endeavor.

In addition, the Division acknowledges the help of the many other individuals who gave of their knowledge and time: Representatives of the Federal Highway Administration, Federal Transit Administration, Bureau of Indian Affairs, California Department of Transportation, Tribes and other Tribal Organizations.

Purpose

This guide was developed at the request of the California Department of Transportation Director's Native American Advisory Committee and is intended to serve as a tool to assist transportation entities within California---Native American and non-Native American---in understanding the requirements (statutes, regulations, policies) that govern the planning and funding of transportation projects. It is oriented towards the issues and concerns of Federally recognized tribal governments.

Scope and Limitation

The information presented herein is not intended to be a complete reference for the reader.

Clarification

Throughout this guide, the terms "Indians" and "Native Americans" are used interchangeably. Much of the existing governance---and the agencies created to provide programs and services to Native Americans---use the term "Indians." The term is preferred by many Native American tribes and organizations.

State of California

The people of California elect a Governor who is the supreme executive power for the State, and whose duty it is to see that the law is faithfully executed. This duty is usually extended to state agencies, departments and programs within the Executive Branch of State government. For transportation, the Governor appoints members to the California Transportation Commission, the Executive Secretary for Business, Transportation, and Housing Agency (BT&H) and the Director for the Department of Transportation.

California Transportation Commission

The California Transportation Commission consists of nine members appointed by the Governor, all appointed to staggered four-year terms, and two non-voting ex-officio members, one from the State Senate and one from the State Assembly.

The Commission is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. The Commission advises and assists the Secretary of Business, Transportation and Housing Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. The Commission is also an active participant in the initiation and development of State and Federal legislation that seeks to secure financial stability for the State's transportation needs.

The Commission is primarily responsible for the following activities:

- Adopting the State Transportation Improvement Program (STIP), which is based on an estimate of State and Federal funds expected to be available over a four year period for transportation projects and a set of projects prioritized in keeping with regional and statewide interests;

- Adopting other capital improvement programs for aeronautics, toll bridge and environmental enhancement projects;

- Allocating State funds for capital improvements to specific highway, toll bridge, public mass transportation and aeronautics projects upon readiness for construction, with the constraint of available financial resources;

- Recommending funding priorities to the Legislature among the various elements of the State's Mass Transportation program;

- Offering policy guidance to the Administration and Legislature by identifying key issues in the areas of financing, operating and maintaining current and future transportation systems through the Annual Report to the Legislature;

- Developing statewide guidelines for programming funding of various elements of the State's transportation programs;

- Submitting to the Legislature an evaluation of the proposed budget of the California Department of Transportation, its adequacy for contributing to a balanced transportation program, and the adequacy of current State transportation revenues, including gasoline and diesel fuel taxes and vehicle weight fees; and

- Monitoring and reporting on the progress of the implementation of transportation capital improvement programs.

Business, Transportation, and Housing Agency

The Business, Transportation, and Housing (BT&H) Agency is part of the Executive Branch. The Executive Secretary is appointed by the Governor and is part of the Governor's cabinet. The Agency is the largest agency in the state with a collective budget of $12.4 billion and more than 47,000 employees. The Department of Transportation is one of 13 departments in the Agency.

California Department of Transportation

Mission: ***Improve Mobility Across California***

The California Department of Transportation has over 22,000 employees, and is the largest department within the BT&H Agency. The headquarters is located in Sacramento, and twelve district offices are located throughout the state. The Department is responsible for the planning, construction and improvement of the state highway system of more than 50,000 miles of highway and freeway lanes. In addition, the Department provides passenger services under contract with Amtrak, and provides technical assistance to more than 100 of California's public general aviation airports. The Department also assists local governments, normally through the regional transportation agencies, in constructing and operating highway, road, and transit systems.

Among other State agencies/departments with which the Department works in order to fulfill its mission are the California Highway Patrol, Department of Housing and Community Development, California Environmental Protection Agency, State Clearinghouse; and, the Native American Heritage Commission.

Chapter 1 State, Regional and Federal Agencies

Authority

The Department receives its authority over the state transportation system through the California Streets and Highways Code, Division 1, State Highways, Chapter 1, Administration, Article 3, The Department of Transportation, Section 90:

"The Department shall have full possession and control of all state highways and all property and rights acquired for state highway purposes." and

Section 92:

"The Department may do any act necessary...for the...use of all highways".

In addition to working with the local governments, the Department is committed to working with the Tribal Governments in California. In order to facilitate this objective, the Department created the Native American Liaison Branch and a Director's Native American Advisory Committee.

Native American Liaison Branch

The Native American Liaison Branch (NALB) was created in 1999 in the Department of Transportation to serve as a liaison between the Department, federal, state, local and regional transportation agencies to establish and maintain government-to-government working relationships with Tribal Governments throughout California.

The NALB also serves as staff to the Director's Native American Advisory Committee (NAAC), which was established in May 1997. The Committee advises the Department Director regarding matters of interest or concern to the Tribes and their constituents. A list of the NAAC members is available via the Internet address:

http://www.dot.ca.gov/hq/tpp/index.htm

or, by calling the NALB at (916) 653-3175.

The Department created positions in other programs/districts to address Native American issues, as well. Some districts have created Native American Liaisons and/or Native American Cultural Coordinators. Native American Liaisons within the districts have various roles, while Native American Cultural Coordinators specifically handle cultural resource issues. The positions that have been created are listed on the following page:

California Department of Transportation
Native American Liaisons/Coordinators

Liaisons: *Work on Native American issues. The roles and responsibilities of Regional and District Liaisons may vary depending upon the need, coordination and organization in their areas.*

Liaison	District/Location	Telephone	Fax
Statewide (NA Liaison Branch):			
Cynthia Gomez, Chief	HQ	(916) 654-2389	(916) 653-0001
Jila Priebe	HQ	(916) 651-8195	(916) 653-0001
Betty Miller	HQ	(916) 653-3175	(916) 653-0001
Statewide (HQ Civil Rights):			
Alex Morales	HQ	(916) 324-8764	(916) 324-8435
Northern California Region:			
Kathleen Sartorius	D-1, 2, 3	(707) 441-5815	(707) 441-5778
Districts:			
Jay Vega	D-4	(510) 286-5540	(510) 286-5559
Steve Price	D-5	(805) 549-3281	(805) 549-3329
Marta Frausto	D-6	(559) 488-4168	(559) 488-4088
Jo Sanford	D-8	(909) 308-1442	(909) 383-5936
Jane Wegge-Perez	D-10	(209) 948-7112	(209) 948-7164
Mario Orso	D-11	(619) 688-6955	(619) 688-2598

Coordinators: Environmental/Cultural Studies: Work strictly on cultural resources issues in the Environmental Division, Cultural Resources Program.

Coordinator	District/Location	Telephone	Fax
Statewide (Cultural Studies Br.):			
Tina Biorn, Chief	HQ	(916) 653-0013	(916) 653-6126
Districts:			
Barry Douglas	D-1, Eureka, Br. 1	(707) 445-6417	(707) 445-5775
Sara Atchley	D-1, Eureka, Br. 2	(707) 441-3983	(707) 445-5775
Wayne Wiant	D-2, Redding	(530) 225-3405	(530) 225-3019
Jody Brown	D-3, Marysville/Sac.	(916) 327-4579	(916) 327-7669
Seana Gause	D-4, Oakland, North	(510) 286-6336	(510) 286-5600
Lissa McKee	D-4, Oakland, South	(510) 622-5458	(510) 286-6374
Janet Pape	D-4, Oak./SF Toll Br.	(510) 286-5615	(415) 356-6643
Terry Joslin	D-5, San Luis Obispo	(805) 549-3778	(805) 549-3233
Karen Nissen	D-6, Fresno	(559) 243-8176	(559) 243-8215
Mandy Marine (Alt.)	D-6, Fresno	(559) 243-8211	(559) 243-8215
Gary Iverson	D-7, Los Angeles	(213) 897-3818	(213) 897-0685
Steve Hammond	D-8, San Bernardino	(909) 383-5914	(909) 383-6494
Tom Mills	D-9, Bishop	(760) 872-2424	(760) 872-8402
Cassandra Hensher	D-10, Stockton	(209) 948-7690	(209) 948-7782
Chris White	D-11, San Diego	(619) 688-6764	(619) 688-3192
Philippe Lapin	D-12, Orange County	(949) 724-2125	(949) 724-2256
Tina Biorn	HQ, Sacramento	(916) 653-0013	(916) 653-6126

State of California
Department of Transportation

ORGANIZATIONAL CHART

Director
Jeff Morales

Chief Deputy Director
Tony V. Harris

Assistant to the Director
Gale Ogawa

Audits & Investigations Deputy Director
Gerald A. Long

Civil Rights Deputy Director
Algerine McCray

Legal Chief Counsel
Bruce A. Behrens

External Affairs Deputy Director
Dennis A. Trujillo

Administration Deputy Director
Marisela Montes

- **Business, Facilities, Asset Management & Security**
  Steven M. Alston
- **Human Resources**
  Judy O'Day
- **Labor Relations**
  Dave Brubaker
- **Policy and Administration**
  Kelly A. Brooks, Acting
- **Procurement & Contracts**
  Jan Smelser
- **Training**
  Suzanne Witt

Finance Deputy Director
Robert L. Garcia
(Chief Financial Officer)

- **Accounting**
  Cindy McKim
- **Budgets**
  Rick Terry
- **Innovative Finance**
  Mark Hariri
- **Programming**
  Jim Nicholas
- **Traffic Congestion Relief Program**
  Deborah A. Mah

HQ Information Technology
Deputy Director
Gilbert Tafoya, Acting
(Chief Information Officer)

- **Enterprise Applications**
  Dan Sumpter
- **Network Operations**
  Rick Trussell, Acting
- **Program and Project Management**
  Mark Rayback
- **Resource Management**
  Diane Lowery

Maintenance & Operations Deputy Director
Thom Niesen, Acting

- **Equipment**
  Lisa Kunzman
- **Maintenance**
  Lawrence H. Orcutt
- **New Technology and Research**
  John L. Allison
- **Traffic Operations**
  Joseph Hecker

Planning & Modal Programs Deputy Director
Brian J. Smith

- **Aeronautics**
  R. Austin Wiswell
- **Local Assistance**
  Terry L. Abbott
- **Mass Transportation**
  Tom McDonnell
- **Rail**
  Warren Weber
- **Transportation Planning**
  Joan Sollenberger
- **Transportation Systems Information**
  Martha J. Tate Glass

Project Delivery Deputy Director
Brent Felker
(Chief Engineer)

- **Construction**
  Robert Pieplow
- **Design**
  Karla Sutliff
- **Engineering Services**
  Robert L. Buckley
- **Environmental Analysis**
  Gary R.Winters
- **Permit Ombudsman**
  William P. Leahy
- **Project Management**
  Mickey Horn, Acting
- **Right of Way**
  Brice Paris

- **District 1, Director**
  Rick Knapp
- **District 2, Director**
  Brian Crane, Acting
- **District 3/North Region, Director**
  Jody E. Lonergan
- **District 4, Director**
  Randell H. Iwasaki, Acting
- **District 5, Director**
  R. Gregg Albright
- **District 6/Central Region, Director**
  J. Mike Leonardo
- **District 7, Director**
  Robert W. Sassaman
- **District 8, Director**
  Anne E. Mayer
- **District 9, Director**
  Thomas P. Hallenbeck
- **District 10, Director**
  Mark Leja
- **District 11, Director**
  Pedro Orso-Delgado, Acting
- **District 12, Director**
  Cindy Quon

MARCH 2002

STATE OF CALIFORNIA
Business, Transportation and Housing Agency
Department of Transportation

JEFF MORALES
Director
California Department of Transportation
1120 N Street
P.O. Box 942874
Sacramento, CA 94274-0001 *
Phone: (916) 654-2852
Calnet: 8-464-2852

District 1
1656 Union Street
P.O. Box 3700
Eureka, CA 95502-3770 *
Phone: (707) 445-6333
Calnet: 8-538-6333

District 2
1657 Riverside Drive
P.O. Box 496073
Redding, CA 96049-6073 *
Phone: (530) 225-3484
Calnet: 8-442-3484

District 3
703 B street
P.O. Box 911
Marysville, CA 95901 *
Phone: (530) 741-4277
Calnet: 8–457-4277

District 4
111 Grand Avenue
P.O. Box 23660
Oakland, CA 94623-0660 *
Phone: (510) 286-6196
Calnet: 8-541-6196

District 5
50 Higuera Street
San Luis Obispo,
CA 93401-5415 *
Phone: (805) 549-3161
Calnet: 8-629-3161

District 6
1352 West Olive Avenue
P.O. Box 12616
Fresno, CA 93778-2616 *
Phone: (559) 445-5763
Calnet: 8-421-5763

District 7
120 South Spring Street
Los Angeles, CA 90012
Phone: (213) 897-1340
Calnet: 8-647-1340

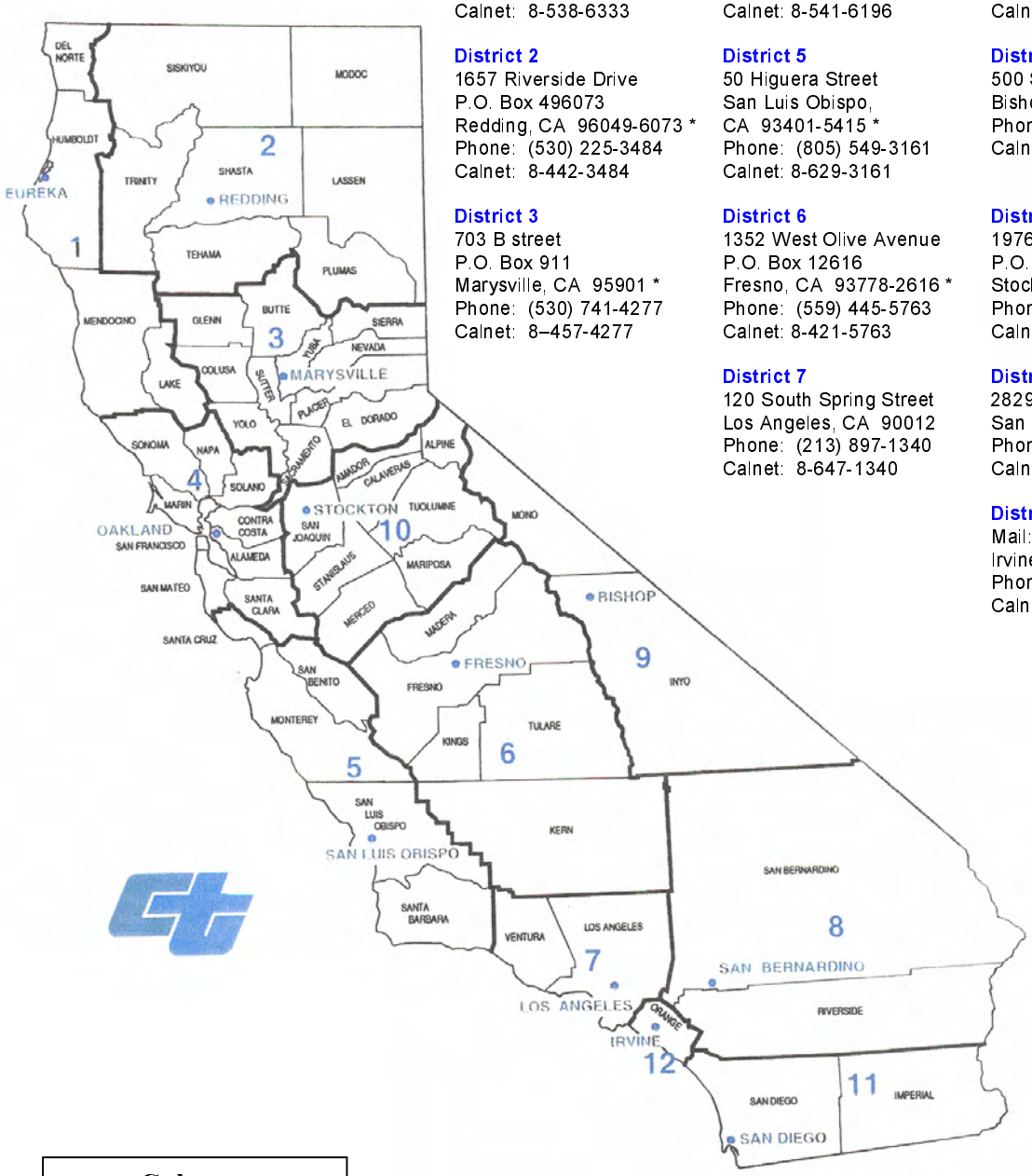
District 8
464 West fourth Street
6th Floor
San Bernardino, CA 92401
Phone: (909) 383-4147
Calnet: 8-670-4147

District 9
500 South Main Street
Bishop, CA 93514
Phone: (760) 872-0691
Calnet: 8-627-0691

District 10
1976 East Charter Way
P.O. Box 2048
Stockton, CA 95201
Phone: (209) 948-7906
Calnet: 8-423-7906

District 11
2829 Juan Street
San Diego, CA 92186-5406*
Phone: (619) 688-6460
Calnet: 8-688-6460

District 12
Mail: 3337 Michelson Drive, CN
Irvine, CA 92612
Phone: 949 724-2014
Calnet: 8-655-2014



Caltrans
District Boundaries
Mailing Addresses

Chapter 1 State, Regional and Federal Agencies

Regional Agencies

Metropolitan Planning Organizations (MPOs)/Regional Transportation Planning Agencies (RPTAs)

Regional transportation planning agencies (RTPAs) receive funding for a broad range of transportation improvements, including state highways, grade separations, transportation system management projects, transportation demand management projects, soundwalls, rail transit projects, local street and road projects, intermodal facilities and pedestrian and bicycle facilities.

There are 45 RTPAs designated by the State. Of these 45 RTPAs, 16 are designated as Metropolitan Planning Organizations (MPOs) by the Federal government. The MPOs are Federally funded and are responsible for transportation planning and programming in urbanized areas with a population in excess of 50,000. The RTPAs are funded primarily with State funds. (It is commonplace to refer to urban planning agencies as MPOs and non-urban planning agencies as RTPAs.) Their role as primary project planners and programmers within their regions is evolutionary.

Contemporary formation of planning agencies can be traced to the 1962 Federal Highway Act. The Act did not require "regional planning agencies," but it did establish the requirement for continuing, comprehensive and cooperative (3-C) transportation planning as a prerequisite for federal funding. Thus, an opportunity was created for local public officials to influence transportation decisions.

The National Environmental Protection Act (NEPA), California Environmental Quality Act (CEQA) and the Federal Clean Air Act (1969/70) further provided significant and new opportunities for the public and local decision makers to influence transportation decisions.

In 1971/72, in California, the Transportation Development Act created a Local Transportation Fund (LTF) to be distributed to regional transportation agencies, resulting in the formation of local transportation commissions. In 1972, California Assembly Bill 69 authorized and funded regional transportation planning agencies (RTPA's) with responsibility to develop and maintain regional transportation plans.

The Federal Highway Act of 1976 authorized Federal funding for 3-C metropolitan planning and programming, thus providing staffing resources for MPOs independent of State highway departments. California Assembly Bill 402 in 1977 established the California Transportation Commission (CTC) and the State Transportation Improvement Plan (STIP) process, which further levied responsibility on the regions for most local transportation issues.

The Intermodal Surface Transportation Equity Act (ISTEA) of 1991 strengthened the role of the urbanized regions (MPOs) in Federally required planning and programming. Significantly for Tribes, ISTEA urged states to include Tribal Governments in transportation

decision making. California Senate Bill 1435 (1991) allocated funds to regions for planning decisions and authorized the Department to prepare a State Transportation Plan (STP).

In 1997, California Senate Bill 45 had significant impacts on the regional planning and programming process, most notably by mandating that, after "off the top" allocations, regions receive 75% and the Department receives 25% of STIP funding, further empowering regional transportation planning agencies to take a more active role in the programming projects.

The Transportation Equity Act of the 21st Century (TEA-21) in 1998 maintained the existing responsibilities of the MPOs for urban planning and programming of Federally funded projects and reinforced Federal emphasis on Tribal Government participation, requiring the State to consult with Tribes when developing the STP and the STIP, as well as with non-metropolitan local officials.

Also, in December 1999, the CTC revised its Regional Transportation Plan Guidelines to reflect the need for Consultation with Tribal Governments, as required by the Federal government.

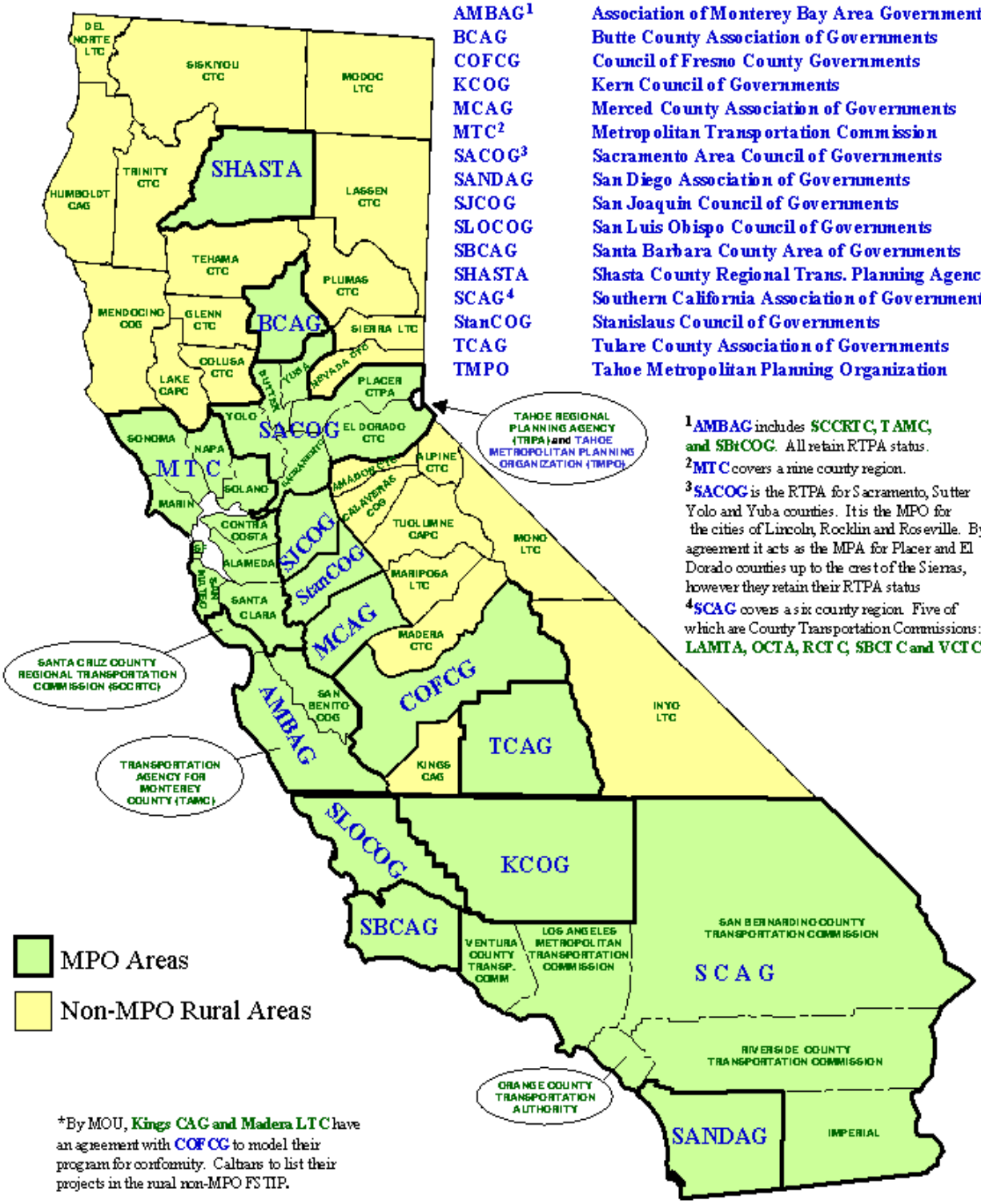
CALIFORNIA

METROPOLITAN PLANNING ORGANIZATIONS (MPO's)

and

Regional Transportation Planning Agencies (RTPA's)

AMBAG[1]	Association of Monterey Bay Area Governments
BCAG	Butte County Association of Governments
COFCG	Council of Fresno County Governments
KCOG	Kern Council of Governments
MCAG	Merced County Association of Governments
MTC[2]	Metropolitan Transportation Commission
SACOG[3]	Sacramento Area Council of Governments
SANDAG	San Diego Association of Governments
SJCOG	San Joaquin Council of Governments
SLOCOG	San Luis Obispo Council of Governments
SBCAG	Santa Barbara County Area of Governments
SHASTA	Shasta County Regional Trans. Planning Agency
SCAG[4]	Southern California Association of Governments
StanCOG	Stanislaus Council of Governments
TCAG	Tulare County Association of Governments
TMPO	Tahoe Metropolitan Planning Organization



[1]AMBAG includes SCCRTC, TAMC, and SBtCOG. All retain RTPA status.

[2]MTC covers a nine county region.

[3]SACOG is the RTPA for Sacramento, Sutter Yolo and Yuba counties. It is the MPO for the cities of Lincoln, Rocklin and Roseville. By agreement it acts as the MPA for Placer and El Dorado counties up to the crest of the Sierras, however they retain their RTPA status

[4]SCAG covers a six county region. Five of which are County Transportation Commissions: LAMTA, OCTA, RCTC, SBCTC and VCTC.

*By MOU, Kings CAG and Madera LTC have an agreement with COFCG to model their program for conformity. Caltrans to list their projects in the rural non-MPO FSTIP.

Chapter 1 State, Regional and Federal Agencies

Federal Agencies

The Department works with numerous Federal agencies. This section, however, addresses the partnerships with the major funding agencies: The U.S. Department of Transportation's Federal Highway and Transit Administrations; and, the U.S. Department of Interior's Bureau of Indian Affairs.

U.S. Department of Transportation

The U.S. Department of Transportation (DOT) oversees the formulation of national transportation policy and promotes intermodal transportation. Other responsibilities include negotiation and implementation of international transportation agreements, ensuring the fitness of U.S. airlines, enforcing airline consumer protection regulations, issuing regulations to prevent alcohol and illegal drug misuse in transportation systems; and, preparing transportation legislation. The Secretary of Transportation is appointed by the President and is the President's principal adviser in all matters relating to federal transportation programs.

On May 4, 1994 President Clinton issued an Executive Memorandum acknowledging and clarifying the Government-to-Government relationship with Native American Tribal Governments. On November 6, 2000 Executive Order 13175 was issued to establish meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the U.S. government-to-government relationships with Indian tribes; and, to reduce the imposition of unfounded mandates upon Indian tribes. These documents, and other executive orders, memoranda, statutes and regulations, provided the initiative for the November 16, 1999 DOT Order 5301.1, Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes. DOT Order 5301.1 was developed to ensure that those programs, policies and procedures administered by DOT are responsive to the needs and concerns of American Indians and tribes. Copies of these documents are included in the Appendices.

Federal Highway Administration

The Federal Highway Administration (FHWA) is one of 11 agencies within the U.S. DOT and is headquartered in Washington, D.C., with field offices across the United States. The FHWA is responsible for ensuring the safety, efficiency and economy of the Nation's highway transportation system, and it oversees all phases of highway policy, planning, research, design, operations, construction and maintenance. There are two principal programs administered by the FHWA that accomplish this task:

The Federal-Aid Highway Program provides federal financial assistance to the States to construct and improve the National Highway System, urban and rural roads, and bridges. The program provides funds for general improvements and development of safe highways and roads.

The Federal Lands Highway Program, as an adjunct to the Federal-Aid Highway Program, provides access to and within national forests, national parks, Indian reservations/rancherias, and other public lands. The FLHP is administered through partnerships and interagency agreements among the FHWA, Bureau of Indian Affairs, U.S. Forest Service, National Park Service, Bureau of Land Management and the U.S. Fish and Wildlife Service. The Indian Reservation Roads (IRR) Program is administered through this program.

Federal Transit Administration

The Federal Transit Administration (FTA) is headquartered in Washington, D.C., with field offices across the United States. FTA works with local, state and federal partners to ensure credible programs meet the growing demand for reliable, safe and convenient transit. Some of the transit programs include the Transportation Planning Grant Program, Research Grant Program, Elderly and Persons with Disabilities Program, and Urbanized Areas.

U.S. Department of Interior

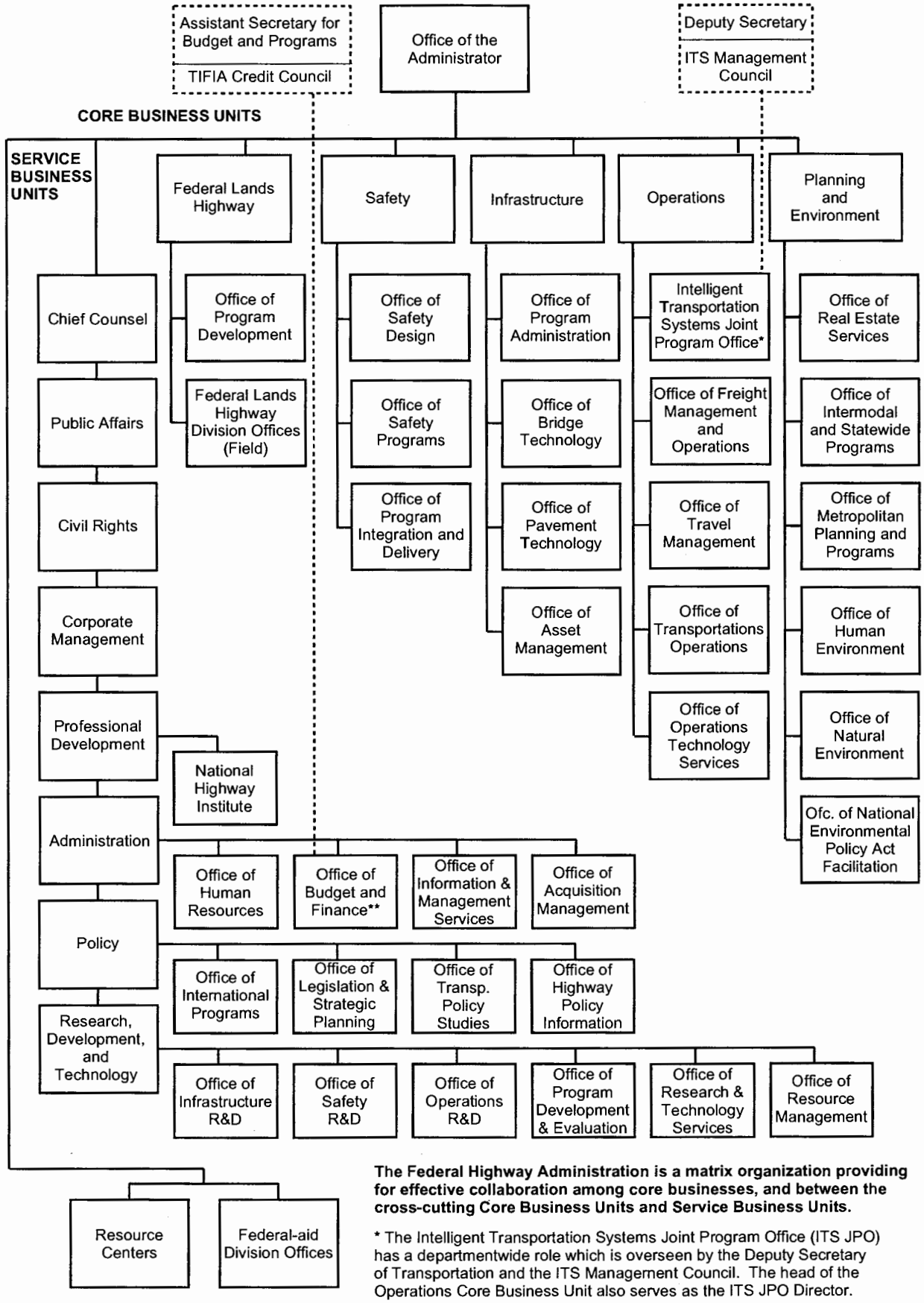
Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is an agency within the U.S. Department of Interior. The mission of the BIA is to act as the principle agent of the United States in carrying out the government-to-government relationship that exists between the United States and federally recognized tribes; and, to act as principal agent of the United States in carrying out the responsibilities of the United States as trustee for property it holds for federally-recognized Tribes and individual Native Americans. (This does not, however, exempt other federal agencies from fulfilling their responsibilities to federally recognized Tribes on a government-to-government basis.)

The BIA Division of Transportation (BIADOT), in conjunction with the FLHP, administers the Indian Reservation Roads (IRR) Program and Highway Bridge Replacement and Rehabilitation (HBRRP) Program through an interagency agreement. **The term "Indian reservation roads" means public roads that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without 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."** (23 USC, Chapter 1, Section 101.)

As of 1994, the IRR system nationwide consisted of about 25,700 miles of BIA and tribal owned roads, 25,600 miles of State, county and local government public roads; and, 1 ferry boat operation (in Washington).

FEDERAL HIGHWAY ADMINISTRATION



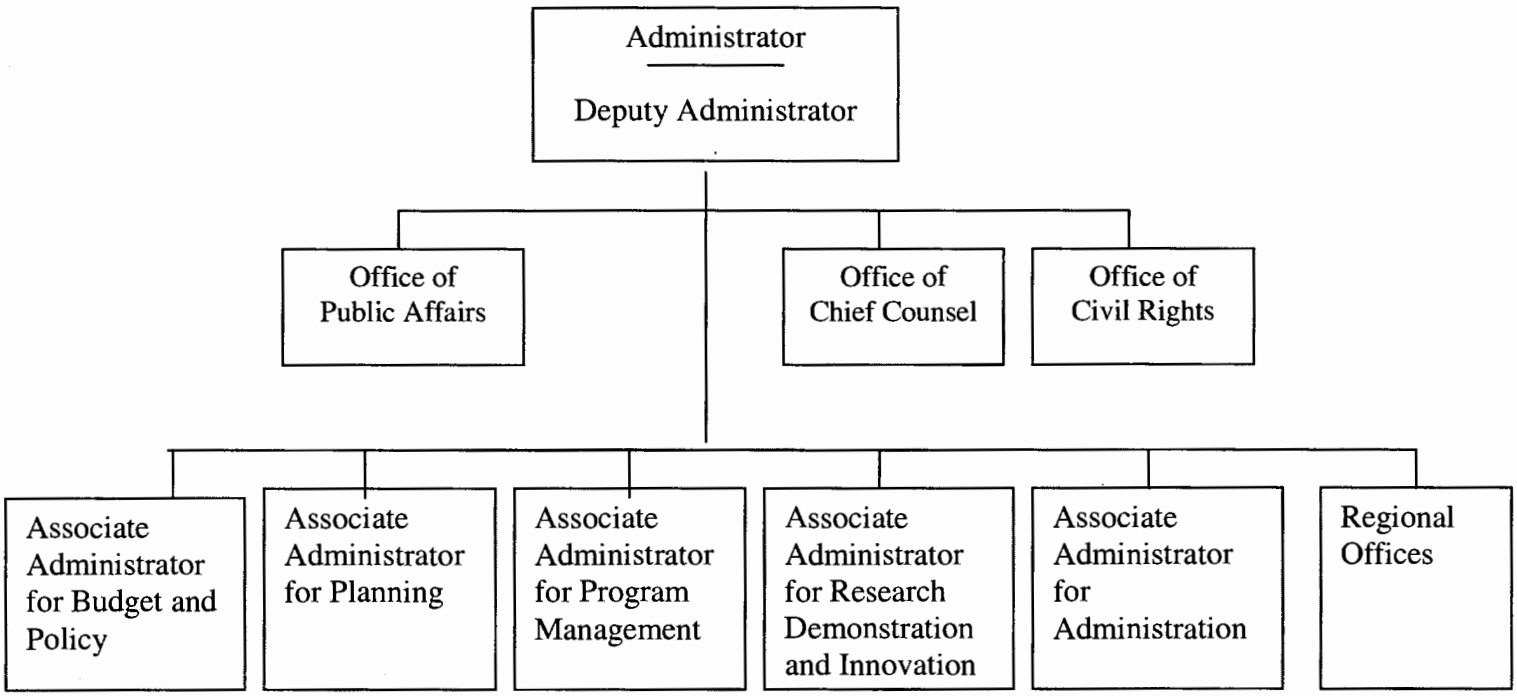
The Federal Highway Administration is a matrix organization providing for effective collaboration among core businesses, and between the cross-cutting Core Business Units and Service Business Units.

* The Intelligent Transportation Systems Joint Program Office (ITS JPO) has a departmentwide role which is overseen by the Deputy Secretary of Transportation and the ITS Management Council. The head of the Operations Core Business Unit also serves as the ITS JPO Director.

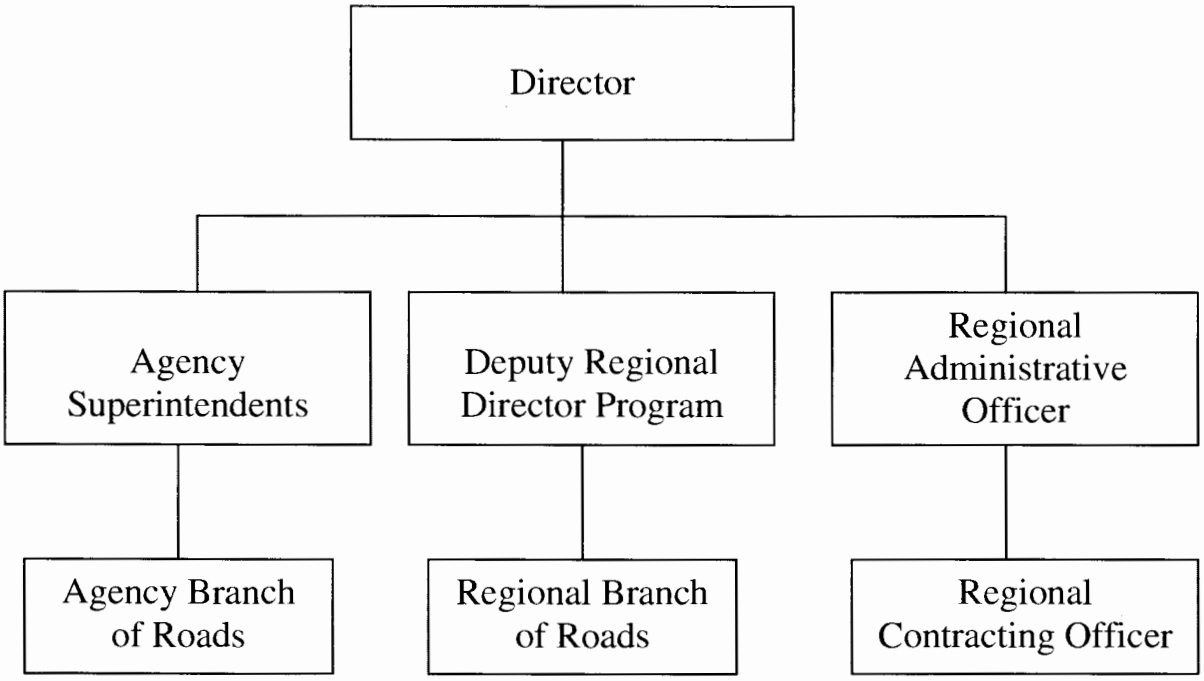
** The Transportation Infrastructure Finance and Innovation Act Joint Program Office (TIFIA JPO), a multi-modal organizational element, is located in FHWA's Office of Budget and Finance. The TIFIA JPO has a departmentwide role which is overseen by the Assistant Secretary for Budget and Programs and the TIFIA Credit Council.

FEDERAL TRANSIT ADMINISTRATION

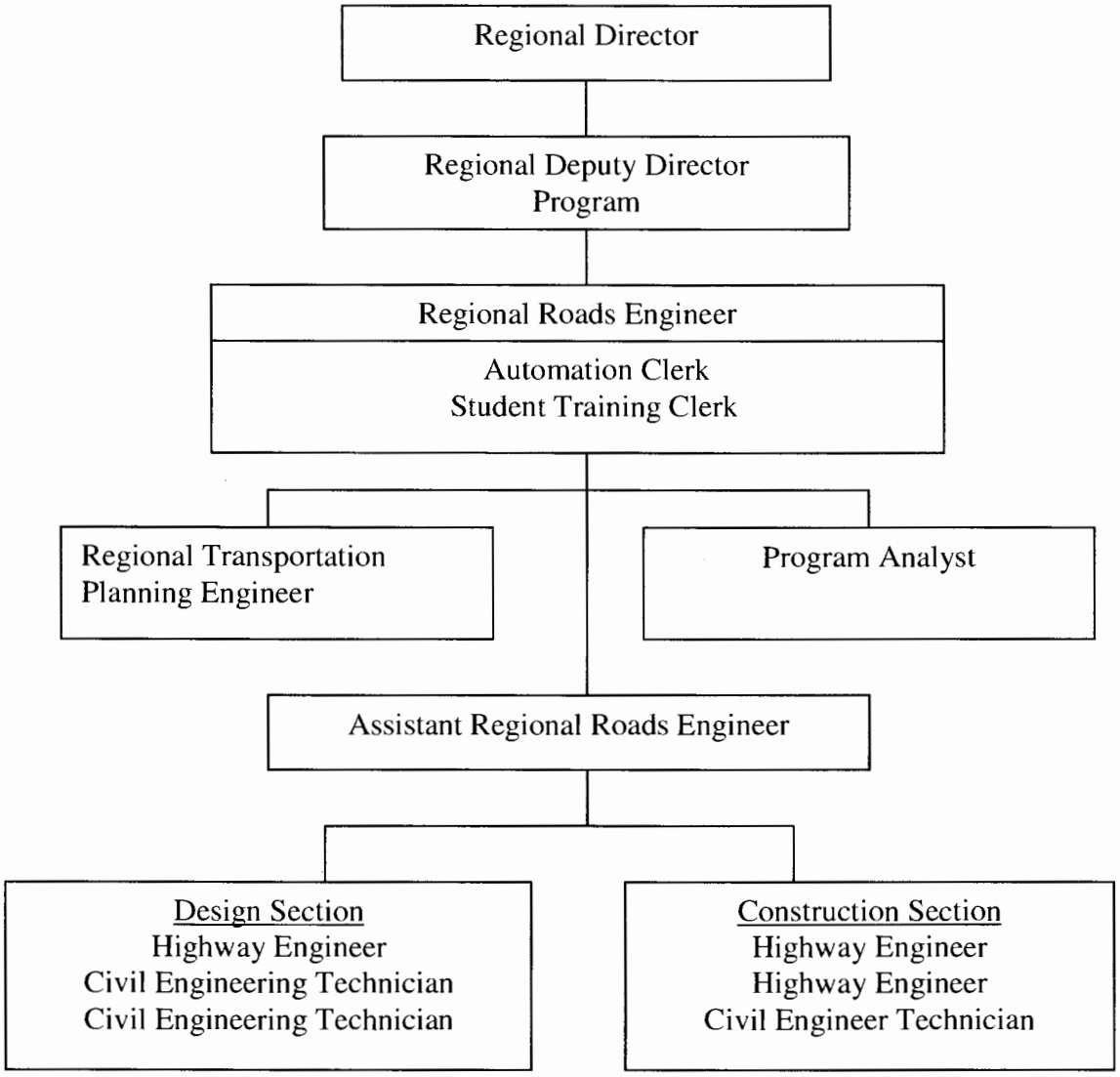
ORGANIZATION CHART



BUREAU OF INDIAN AFFAIRS
PACIFIC REGION



BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE
BRANCH OF ROADS



There are few subjects in United States law that are less understood than that of Indian affairs. The very foundation of our legal system, the United States Constitution, acknowledges the unique relationship of Indians to the Federal government. The richness and diversity of Indian law is extraordinary, drawn from constitutional law, international law, federal jurisdiction, conflict of laws, real property, contracts, corporations, torts, domestic relations, procedure, trust law, intergovernmental relations, sovereign immunity, and taxation.

State highway agencies have increasingly experienced problems in the planning, project development, construction, and operation of state highways across and near Indian reservations. Many of the problems encountered by state highway agencies stem from conflicts with Indian tribes and their self-determination policies. Tribal sovereignty and---at times---the reluctance of state and local agencies to accept tribal sovereignty are at the root of the conflict. Many agencies find it difficult to accept the notion that rules, which seemingly apply to everyone, may not apply to tribes or may be applied differently in some cases.

California is no exception. Indeed, with California's Indian population---the largest in the nation---including Federally recognized tribes, terminated or unacknowledged tribes, and urban Indian communities, its circumstances are particularly complex.

There are 109 Federally recognized tribes in California, with their land bases throughout the State. There are approximately 55 terminated or unacknowledged tribes, as well as urban Indian communities. While the terminated tribes, unacknowledged tribes and urban communities may not, in fact, be recognized by the Federal government as belonging to a governmental entity, they comprise a socially, economically, culturally and politically significant group of California's minority citizens.

As State and local agencies continue their expansion into the more remote regions of the state, they encounter more and more contemporary and ancestral lands of many tribes. Redevelopment has led to discovery of previously undisturbed cultural resources. It is incumbent upon all parties to understand the legal issues involved in order to enhance the cooperation and coordination among all agencies and to meet our transportation goals.

At the same time, the volume of Indian law is like no other in existence, and it is simply not possible to present a detailed review of the executive, legislative and judicial actions that have led to contemporary Indian law. Congress, alone, has enacted over four thousand treaties and statutes dealing with Native Americans. Nor is it possible to detail the impacts of our California history on its original occupants.

It is, however, necessary to understand that knowledge of "transportation" statutes, regulations and policies alone is insufficient when projects impact tribal sovereign rights. We

have, therefore, attempted herein to simply present an overview of the development of California as experienced by its Indian population, as well as highlight some of the legislation that has played a part in defining the status of that population today.

Historical Overview

Prior to the arrival of the first Spanish expedition in the mid eighteenth century, the Indians of California were divided into about 500 separate and distinct bands. They enjoyed the sole use, occupancy and possession of all lands in the state. In the wake of the Spanish Conquest, a number of families, mostly Mexican or Spanish, held claim to large parts of the state.

In 1848, the Treaty of Guadalupe Hidalgo, which ended the war between the United States and Mexico over "land disputes," resulted in a large cession of land to the United States, including lands that now comprise the State of California. There was no provision in the Treaty of Guadalupe Hidalgo for protecting Indian land title in what later became California other than, ". . . special care shall then be taken not to place its Indian occupants (referring to the Indians in all of the land ceded by Mexico in the Treaty---California, New Mexico, Texas) under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain."

The discovery of gold in California in 1849 thwarted attempts by the United States Government to investigate and resolve the Indian title question following the Treaty of Guadalupe Hidalgo, as the influx of thousands of Anglo-Europeans immediately clashed with the Indians and their land claims. Additionally, the admission of California to statehood in 1850 increased resistance by the State's representatives to the Indians' claims to their aboriginal lands.

On the other hand, the United States Government recognized that Tribes of California existed in the nineteenth century and that they were capable of entering into intergovernmental relations with the United States. Treaty Commissioners were sent from Washington in 1851 to negotiate treaties with Indian leaders, promising them reservation territory and sovereign nation status in exchange for their ceding lands to the United States Government. Treaty negotiations ensued, during which time the Commissioners met with some 402 Indian chiefs and headmen representing approximately one-third to one-half of the California Tribes.

Contemporaneous with the treaty negotiations, however, Congress passed the Land Claims Act of 1851, which provided that all lands in California, the claim to which was invalid or not presented within two years of the date of the Act, would pass into the public domain. California Indians were not aware, nor were they notified, of the need to present their claims, and therefore failed to meet the 1853 deadline. The California Indians, with the exception of certain bands of Mission Indians that were protected in their occupancy by early Spanish and Mexican land grants, became homeless. Furthermore, due to objections from California's legislature and

business interests, when the treaty Commissioners returned to Washington in 1852 the U.S. Senate refused to ratify eighteen treaties which had been negotiated. The treaty documents themselves were put under a 50-year injunction of secrecy.

The combined results of the Land Claims Act of 1851 and the failure of the U.S. Congress to ratify the treaties, was, in effect, a death sentence for the large majority of California Indians. Only a few of those who survived campaigns to remove or eradicate them in the 1850's found refuge in four authorized reservations to which they were forcibly removed. In 20 years, their numbers were cut in half; by the 1890's the population of Native Californians had been cut by 86%.

Legislative Overview

Following what was popularly termed the "Extermination Period" during the middle of the nineteenth century, there have been a number of Federal actions that have contributed to the complex tribal and individual Indian status conditions that persist:

- The Allotment Act. The General Allotment Act in 1887 opened parts of the small number of California Indian reservations to non-Indian settlement and divided the tribal land base. It was a major piece of legislation underlining the assimilation policies of the U.S. Government at the time.

- The Mission Indian Relief Act of 1891. Around 1890, a commission was appointed to conduct a survey of the conditions of Southern California Indians, resulting in the passage of the Mission Indian Relief Act of 1891, which set aside small parcels of land in Southern California for Indians.

- The Homeless California Indian Acts. In 1905, the U.S. Senate removed the injunction of secrecy that had been placed on the eighteen unratified treaties, and for the first time the public was informed of their existence. Exposure of the unratified treaties resulted in a series of appropriation Acts being passed between 1906 and 1910 that provided funds to purchase small tracts of land in the central and northern parts of the state for the landless Indians of those areas.

- The Indian Reorganization Act (IRA). In 1934, Congress passed the Indian Reorganization Act, a shift from "assimilation" policies to those of Indian self-determination. The Bureau of Indian Affairs (BIA) allowed most of the Rancheria groups to vote on whether to accept or reject the tribal reorganization provisions of the IRA. This single fact has been a deciding factor in determining whether the Federal Government recognized a Rancheria as a Tribe prior to enactment of the Rancheria Act.

- Public Law 280, Indians---Criminal Offenses and Civil Cases---State Jurisdiction. In 1953, Congress enacted legislation giving criminal and civil jurisdiction over Indian land to five states, including California. Civil jurisdiction is limited, however. Several amendments to Public Law 280 and numerous judicial opinions have resulted, in essence, in the State being able to adjudicate some cases, but it does not have general civil regulatory powers over Indian lands.

- The Rancheria Act. In California, the Rancheria Act of 1958 codified a policy of termination of tribal sovereign status that had reemerged. It undertook to terminate the status of forty-one California Rancherias. Pursuant to the terms of the Act, lands were to be distributed in fee to individual Indians. In return, the Federal government was to provide housing, water and sanitation facilities. The lands were distributed, but the promised improvements were either inadequate or not provided at all. As a consequence, most of the distributed lands were rendered uninhabitable and were sold or passed out of Indian ownership pursuant to tax sales. (Litigation in the 1970's revealed that, while a specific appropriation was made by Congress to implement the trust obligations of the Federal government under the terms of the Rancheria Act, a secret agreement had been reached between the BIA and the Congressional subcommittee that reviewed the legislation. The BIA had agreed not to seek any special appropriation to carry out the terms of the Rancheria Act, resulting in the gross underfunding of the termination program.)

- In the late 1960's, efforts began, through litigation, to reverse the termination of the California Rancherias and to restore to California Tribes and Bands the recognition and authority they had lost when Congress refused to ratify the eighteen treaties negotiated in 1852. Recognition has been restored to the majority of the terminated Rancherias as a result of litigation, but some continue to seek re-recognition.

- The Tribal Federal Jurisdiction Act of 1966. The Act permits Indian tribes access to Federal courts for cases in which the U.S. Attorney has declined to bring an action. Tribes can take independent steps to protect and assert their constitutional, statutory, and treaty rights.

- The Indian Civil Rights Act of 1968. Extended guarantees similar to those in the Constitution and the Bill of Rights to Indians.

- Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, as amended through 1994. This Act recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of Federal services. Congress directed, upon the "request" of any Indian tribe, the Secretaries of the Department of the Interior and Health and Human Services to enter into self-determination contracts with tribal organizations to plan, conduct, and administer

programs, including those which the Departments are authorized to administer for the benefit of Indians.

- Indian Child Welfare Act of 1978. Returned jurisdiction over child custody proceedings to Indian Tribes that had become subject to State jurisdiction pursuant to Public Law 280.

- The Indian Health Care Improvement Act, Amendments of 1988. The Indian Health Care Amendments of 1988 recognized that eligibility for health care benefits under the Indian Health Care Improvement Act must be extended to California Indians regardless of Tribal status. All California Indians, whether or not they are members of federally recognized tribes, are eligible for health care.

- Indian Gaming Regulatory Act (IGRA), 1988. The policy of the IGRA is to provide for tribal economic development, self-sufficiency, and strong tribal government. It provides tribes with "the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

It bears repeating that the above references are *not* all-inclusive. They are simply intended *to illustrate* the breadth of the subject area when considering the governance of issues that impact tribes. We have purposely omitted reference to specific "transportation" legislation, as the impact of such legislation must be considered against the background of "Indian law" in its totality.

Everyone benefits when all transportation agencies recognize the unique legal status of Federally recognized Indian tribes as set forth in the U.S. Constitution, treaties, and Federal statutes, executive orders and court decisions.

Tribal Governmental Authority

The United States Constitution recognizes Native American tribes as separate and independent political communities within the territorial boundaries of the United States. Tribes promulgate and administer their own laws. Tribes operate under their own constitutions, some of which are adopted by their membership and approved by the federal government pursuant to the Indian Reorganization Act of 1934. Other tribes operate under constitutions not related to the Act, and still others have no written constitution at all.

Functions of Tribal Government

In addition to standard governmental functions of regulating, taxing and delivering services, tribal governments act to preserve and protect tribal culture and the tribal community. Tribal governments are also responsible for the development, management and operation of tribal economic enterprises.

Tribal governments' functions include:

- Executive actions (similar to those taken by the governor of a state or the President of the United States).
- Legislative actions (similar to those taken by the state legislature or the U.S. Congress).
- General government administration (personnel management, budgeting, capital programming, intergovernmental affairs).
- Public safety (police protection, tribal courts and prosecution, other legal services, fire suppression, emergency medical response).
- Health care (medical services, mental health counseling, dental services, environmental health).
- Public works/engineering/infrastructure development (roads, sewers, water, cable television, facilities management, etc.).
- Planning and community development (comprehensive planning, zoning, and land development regulation, environmental protection).
- Education (Headstart, K-12 schooling, remedial schooling and GED testing, vocational training, college schooling, scholarship support).
- Social services provisions (daycare services, recreation services, youth and elderly services, child welfare and protective services.

Lands

Most lands occupied by California Native American communities are very small in size compared to other tribes in other states throughout the nation. In California, Native American lands are usually referred to as reservations or rancherias. From a legal standpoint, there is no distinction between the two. Land ownership in Native American communities varies from tribe to tribe and is held in a variety of ways, each presenting its own problems and advantages. The

term "Indian lands" refers to those lands that are held by Indians or tribes under some restriction or with some attribute peculiar to the Indian status of their legal or beneficial owners. "Indian lands" do not include the purchase of real property in the public market by an individual Native American who thereby acquires a fee title that is freely disposable.

Lands presently set aside for Native Americans, whether by statute or executive order, may be held in various patterns of tenure. Nearly all of the land is in trust, with the United States holding naked legal title and the Native Americans having the beneficial interest.

When the tribe communally holds land, individual members may hold an "assignment." The terms of an assignment are usually determined by the governing body of the tribe and may vary greatly in size, duration and scope.

Allotted land, on the other hand, is trust land held for an individual or group of individuals. Under various statutes, particularly the General Allotment (Dawes) Act of 1887 (25 USC Section 331 et seq.), Congress provided for Indian lands to be allotted to individual Native Americans. Tribally held lands were consequently divided into small farm-sized tracts to be held by individuals. Many allotments passed out of trust status during this era because after a certain period, usually 25 years, the land became totally alienable and taxable fee interest. Many of these lands were sold to non-Indians or lost to the local governmental taxing authority due to lack of payment of the taxes, a practice with which most Native Americans were unfamiliar. For the most part, the 1934 Indian Reorganization Act provided that no further lands were to be allotted. Large numbers of allotments remain today. The allotment era led to immense practical problems, including: controversy of civil and regulatory jurisdiction with local governments; sharing of many allotments by as many as a hundred other allottees, which makes productive use of the land a near impossibility. The "checkerboard" pattern of Indian and non-Indian land further complicates proper land use.

Culture and Language

Language is a major cultural component of Native American communities. The cultural integrity of each tribal community varies depending on population, historical circumstances surrounding their federal recognition, involvement of members retaining cultural knowledge, and other factors. Access to, and protection of, cultural resources needed for the practice of beliefs and customs plays an important role in the continuation of native culture. Some of the major laws that protect Native American culture are the National Historic Preservation Act of 1966, the Native American Graves and Repatriation Act of 1990, the California Native American Graves Protection and Repatriation Act of 2001, the California Public Resources Code 5097.98; and, tribal laws.

Key Transportation Issues of Tribal Governments

Tribal governments throughout California have identified the following issues and/or concerns:

❖ *Government to Government Relations*

The Federal Government has a unique legal and political relationship with federally recognized Tribes that have been found by the U.S. Supreme Court to be sovereign, domestic dependent nations, subject to the protection of the United States.

With regard to transportation, the U.S. Department of Transportation is tasked with cooperating with other Federal, State, or local agencies to accomplish government-to-government relations. In California, the Department of Transportation Director's Policy Number 19, "Working with Native American Communities," established and acknowledged the government-to-government relationship between Tribes and the Department.

Tribal Governments recognize that the Director's Policy reflects a respect for their sovereign rights and a commitment to building a more effective day-to-day working relationship. Long accustomed to working with the Federal Government as sovereigns, however, Tribes are concerned that regional acceptance of their status, by and large, is resisted. They see communication and education between and among all agencies as a major part of the solution to addressing Tribal transportation needs.

❖ *Employment and Economic Development*

Employment is a key issue for tribal communities in California due to the generally depressed economic conditions on most reservations. The result is high unemployment, which typically ranges from 25% to 75%. Inadequate access to and from Tribal communities is a factor in the lack of employment opportunities, as well as health, social and cultural services. Many Tribes have economic developments such as gaming facilities, which provide employment opportunities to their respective communities, but the majority of the California Tribes do not. Some Tribes have implemented Tribal Employment Rights Ordinances (TERO) regulating tax and commercial activity within the jurisdictional boundaries of their reservations, thus enabling them to enforce Indian preference requirements in employment, training, business, contracting and all other economic opportunities on and near reservations.

Tribal communities need proper roads, bridges and highways to adequately connect their communities to other communities, thereby enhancing the opportunity for economic, social, cultural and community developments. They also need better transit to and from their communities to take advantage of job opportunities in surrounding communities. As new economic and community development ventures expand in Tribal communities, transportation becomes a major planning component for land use and traffic operations.

❖ *Tribal Involvement in State Planning*

Cooperation among the various Tribal, Federal, State and local governments is the key to fully involving Tribes in transportation project planning and programming. U.S.C. 23 requires that states, as a minimum, "consider the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State." In addressing the Long-Range Transportation Plan in particular, U.S.C. 23, Sec. 135 (e)(2)(C) states, "With respect to each area of the State under the jurisdiction of an Indian tribal government, the long-range transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior." In addressing the State Transportation Improvement Program, U.S.C. 23, Sec. 135(f)(1)(B)(iii) states, "With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior."

Within the transportation regions of the State, responsibility for consultation with Tribes has devolved to the regional transportation agencies---the Metropolitan Planning Organizations (MPOs) and the Regional Transportation Planning Agencies (RTPAs). A number of factors contribute to the resulting limited participation by Tribes: Tribes are accustomed to working with the Federal government and the BIA process, which differs greatly from the State process; regional agencies are not aware of the need (or definition) of consultation, or they are reluctant to include the Tribes' transportation needs in their plans (local agencies have historically regarded Tribes as the BIA's "responsibility"); some Tribal Governments lack the resources (staff, finances, experience) to participate in regional transportation planning processes; and, sometimes, relationships between Tribes and local governments have been adversarial. Progress is being made by some of the Tribes and regional transportation planning agencies with regard to consultation and participation; however, communication and coordination must be improved in order to fully involve Tribal Governments in transportation planning.

Tribal members pay State, Federal, and local transportation taxes the same as all citizens, and they believe that they should be included in policy bodies that determine the use of those tax revenues.

The lack of Tribal participation in the transportation planning process has been a problem nationwide.

❖ *State Funding Process*

State transportation funds are distributed for projects that include the State highway system, local streets, roads, state and local public transit and toll bridge operation. California Senate Bill 45 (SB 45), enacted in 1977, governs how those funds will be distributed.

Based upon on SB 45, 25% of the funds are allocated to the Department for improvements to interregional transportation systems; and, 75% of the funds are placed under the control of the MPOs and RTPAs. There is no legal impediment to the use of these funds for projects on Tribal lands or projects to access Tribal lands. The difficulty lies in participating in the planning process, as discussed above. Projects cannot be funded in the State process without being included in the STIP.

❖ *Lack of Federal Transportation Funding*

The basic philosophy behind the federal aid highway program is "return to source." California contributes approximately 12 per cent to the national fuel tax receipts while receiving about 10 per cent in return. The current level of annual funding to California Tribes from the Indian Reservation Roads (IRR) Program is approximately 2.5 per cent ($5 million).

IRR funding is allocated in accordance with a "relative need" formula. Tribes from other states, particularly the larger ones, gain from the current formula since they are able to demonstrate a greater need based upon larger inventories of road miles, vehicle miles traveled and population figures. (On August 7, 2002 the BIA published 25 CFR Part 170, "Indian Reservation Roads Program; Proposed Rule." The funding formula contained within the proposed rule would continue the inequitable distribution of IRR Program funds to California. It remains to be seen whether efforts by Tribal Governments and the Department to increase funding to California will be successful.)

In May 1999, the CTC, as part of a 10-year assessment of California's transportation rehabilitation, maintenance and operations needs, identified $275 million in needed road improvements on Tribal lands. If the funding formula remains as is, the expected IRR Program funding over the next 10 years will be just $50 million, only 18% of the identified needs. At current funding levels, it would take 55 years to fund currently identified projects.

California and the Tribal governments within California lose an estimated $20 million each year through this inequity.

❖ *Indian Reservation Roads Program Obligation Limitation*

Funds for the Indian Reservation Roads (IRR) Program are apportioned under the Federal Lands Highway Program (FLHP) of the Federal-aid Highway Program (FAHP). The apportionment is transferred by the FLHP to the Bureau of Indian Affairs for administration.

There are two types of budget authority (the license to proceed with Federal programs) approved by Congress: "Appropriated budget authority," which requires an appropriations act following authorizing legislation before program funds can be obligated and distributed; and, "contract authority," wherein obligation of funds is approved without further Congressional action.

Surface transportation authorization acts provide funding under contract authority. The use of contract authority gives the states advance notice of the size of the FAHP, and eliminates much of the uncertainty contained in the authorization-appropriation sequence. However, because Congress needs some way to respond to economic conditions within a multi-year authorization act, it places a limitation against what can be obligated in any one year, removing or "lopping off" authorized amounts to programs.

At the end of the fiscal year, the "lopped off" distributions are sent to states for their FAHP programs, excluding the FLHP. The IRR Program, therefore, receives no year-end distribution of limitation funds, thereby suffering a permanent loss of authorization.

The "lop off" provision is inherently inequitable to Tribes because it ensures that the IRR Program cannot effectively compete for redistributed obligation limitation funds at the end of each fiscal year.

❖ *Preservation and Protection of Cultural Resources*

Native Americans are concerned about the protection and preservation of cultural resources that may be affected by transportation projects.

More than 34 million people live in California, representing 12.5% of the entire United States population. Although the State's growth rate slowed during the 90's, due mainly to declines in domestic migration, California's population is projected to increase by 16% to nearly 40 million people as it approaches the year 2010.

Geographically, future population growth will occur both in dense urban areas of the State's south coast and its southern and central valley counties. Since Native Americans inhabited most, if not all, of California prior to the arrival of non-Indians, the potential for impacts to cultural resources are inevitable. Even the urban areas that have already been developed are starting to revitalize older communities with redevelopment activities. These communities may require the expansion or redirection of streets, roads and highways. Cultural resources that may have been previously covered, providing some protection, run the risk of being impacted.

The surviving traces of the cultural resources are non-renewable resources, easily degraded or destroyed by highway projects unless an appropriate effort is made to identify, evaluate and protect them.

INDIAN LANDS AND BIA OFFICE SITES
SACRAMENTO AREA OFFICE

LOCATOR MAP - BIA AREA OFFICES

Geographic Data Service Center

Produced October 1998

Revenues/Highway Trust Fund

The transportation programs of the Federal government (and most States) depend upon highway-user tax receipts as their principal source of funding. These tax revenues are derived from excise taxes on highway motor fuel and truck related taxes on truck tires, sales of trucks and trailers, and heavy vehicle use.

Taxes collected are deposited mostly into the Highway Trust Fund (HTF), a fund created by the Highway Revenue Act of 1956 as a depository for the major portion of highway-user tax receipts. Prior to that time, the taxes were deposited into the General Fund. Originally, the HTF focused solely on highways, but in 1983 Congress created the Mass Transit Account within the HTF for highway-user taxes to be used to fund transit needs.

Like other Federal trust funds, the HTF is simply a financing mechanism to account for tax receipts that are collected by the Federal government and earmarked for special purposes. We mention it because it is the main account through which the bulk of Federal transportation revenues are distributed to states; and, because as a trust fund, it is one factor that contributes to the FAHP operating with contract authority once Congress has authorized funding for programs, rather than appropriated budget authority.

Authorization to Fund Programs

Congress determines where the user taxes will be deposited and how the funds will be expended through authorizing legislation, the first step in financing the Federal-Aid Highway Program (FAHP). An authorization is a statutory provision that establishes or continues a Federal agency, activity or program.

Authorizing legislation for highways began with the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. These acts provided the foundation for the FAHP as it exists today. Since 1978, Congress has passed highway legislation as part of larger, more comprehensive, multi-year surface transportation acts, more recently the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which authorized surface transportation programs for Federal FYs 1992-1997; and, the Transportation Equity Act for the 21st Century (TEA-21), which covered Federal FYs 1998-2003.

In addition to setting authorization levels that define the maximum amount of money that can be expended for surface transportation programs, surface transportation acts generally add, eliminate or modify transportation programs, make special requests, such as studies and demonstration projects; and, provide direction to the U.S. Department of Transportation for the allocation of discretionary funds.

Figure 1 reflects Congressional procedures for enacting legislation.

Budget Authority

Once Congress has approved authorizations, the next question is *when* do those authorized amounts become available for obligation. The "license to proceed" with Federal programs is called "budget authority." There are two types of budget authority: "Appropriated budget authority," which requires an appropriations act following authorizing legislation before program funds can be obligated and distributed; and, "contract authority," wherein obligation of funds is approved without further Congressional action.

Under contract authority, amounts that Congress has approved for obligation are not immediately funded. Receiving entities spend money on programs and then bill the Federal Government for reimbursement.

Federal-aid Highway Program funds are authorized under contract authority. The use of contract authority gives the States advance notice of the size of the Federal-aid program when authorizations are enacted, and eliminates much of the uncertainty contained in the authorization-appropriation sequence. However, because Congress needs some way to respond to economic conditions within a multi-year authorization act, it places a limitation against what can be obligated in any one fiscal year. This is known as an obligation limitation, and with regard to the Federal Lands Highway Program, amounts to an annual "lop off" of program funds, including those for the Indian Reservation Roads (IRR) Program, as discussed in Chapter 2.

Figure 2 reflects how contract authority programs are funded.

ISTEA and TEA-21

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) resulted in a major restructuring of Federal programs. It contained eight titles covering Federal-aid highways, recreational trails, mass transportation, highway safety, motor carrier provisions, intermodal transportation, research programs, studies and activities, intelligent vehicle systems, advanced transportation systems, air transportation; and, the extension of highway-related taxes and the Highway Trust Fund.

Transportation Equity Act for the 21st Century (TEA-21)

TEA-21 built on the initiatives established in ISTEA. Significantly, in a major change to Federal budget rules, it guaranteed a minimum level of Federal funds for surface transportation through FY 2003. The annual floor for highway funding is keyed to receipts of the HTF.

Transit funding is guaranteed at a selected fixed amount. All highway user taxes were extended at the same rates when legislation was enacted.

TEA-21 also extended the Disadvantaged Business Enterprises (DBE) program, providing a flexible national 10% goal for the participation of disadvantaged business enterprises, including small firms owned and controlled by women and minorities, in highway and transit contracting undertaken with Federal funding.

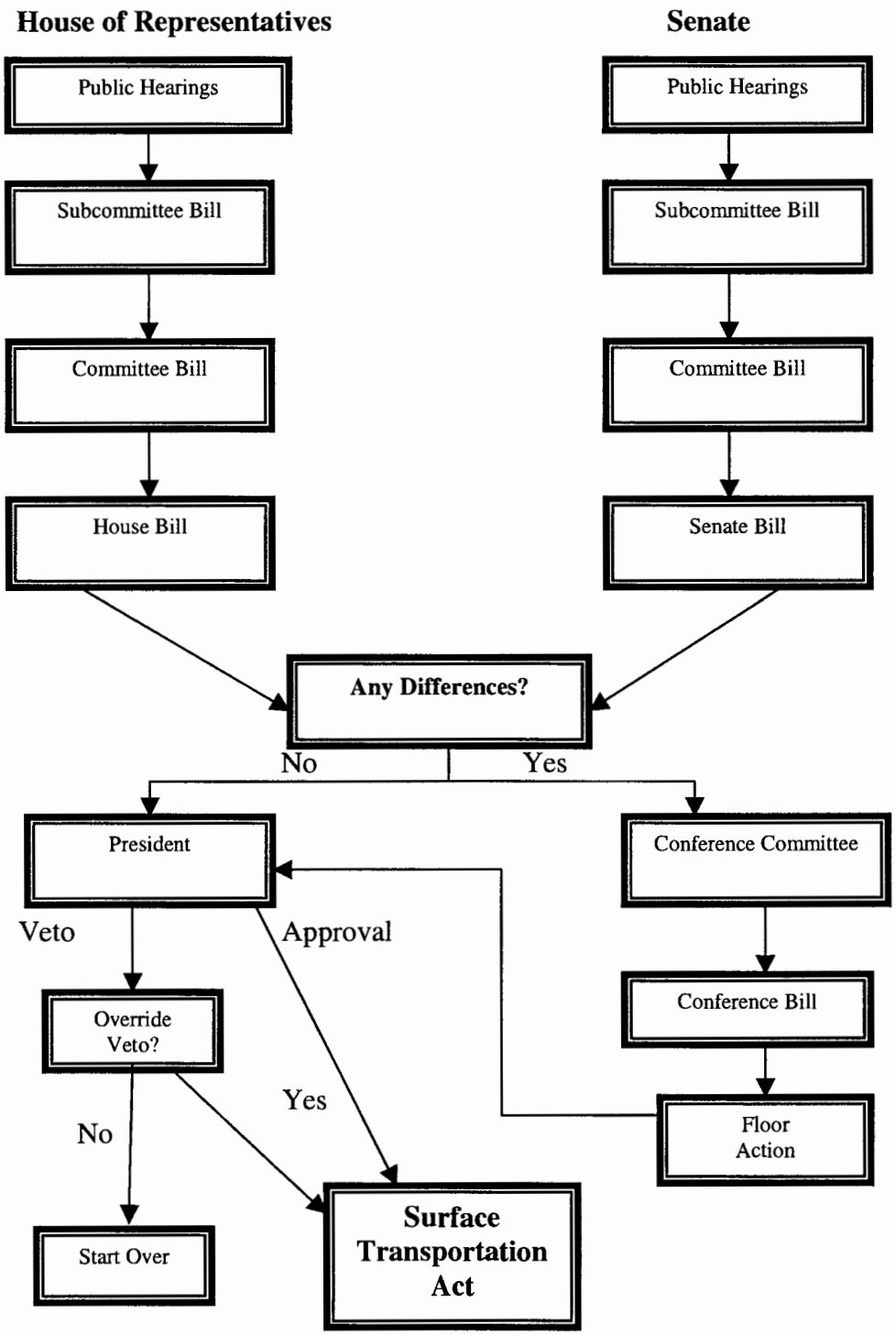


Figure 1. Congressional Procedures. Proposed legislation will simultaneously go through the subcommittees of the House of Representatives and Senate for action and approval.

Contract Authority Programs

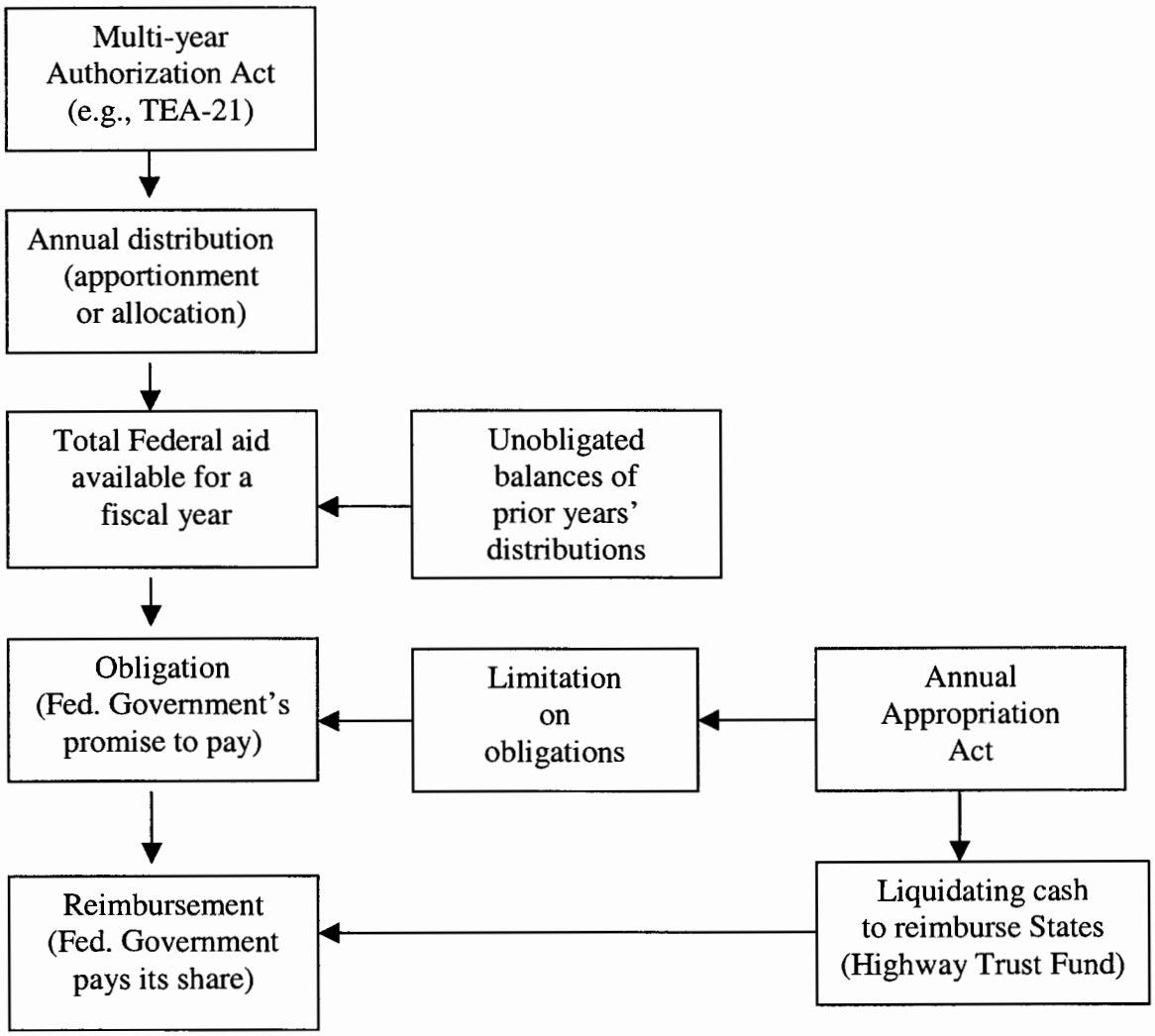


Figure 2. Contract authority programs.

State Highway Account

Federal Aid Highway Program (FAHP) funds are apportioned and allocated to the States from the Highway Trust Fund (HTF). California deposits the funds, along with transportation revenues it collects, into the State Highway Account, which is the main funding source for the State's highway transportation program. California contributes about 12% of the annual revenues deposited in the HTF while receiving about 10 % of the annual Federal distributions.

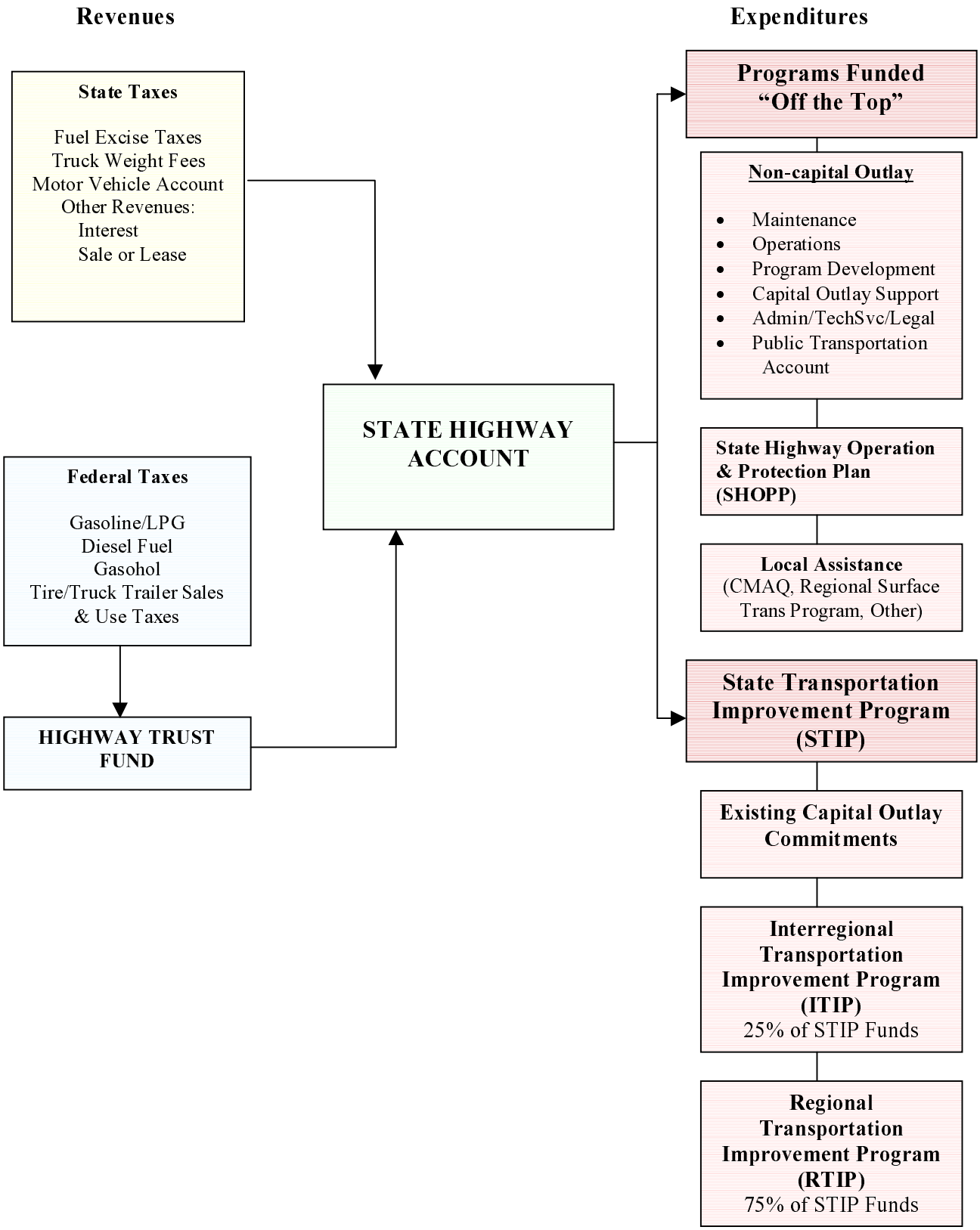
In addition to the Federal dollars, the State collects it's own special taxes to be used for transportation projects. Revenues from the State of California are received from various sources including gasoline tax, toll bridge revenue, diesel fuel tax, truck weight fees, motor vehicle license fees, and general sales tax.

The following programs are funded from the State Highway Account:

- State Operations
- Local Assistance
- Capital Outlay Unclassified
- Public Transportation Account Environmental Enhancement Mitigation (EEM) Demonstration Fund
- Toll Bridge Seismic Retrofit Account Equipment Service Fund
- Earthquake Risk Reduction Fund

Figure 3 displays the flow of Revenues and Expenditures of Federal and State programs. Programs such as Non-capital Outlay, State Highway Operation & Protection Plan (SHOPP), and Local Assistance receive their funds "off the top" before any other programs are funded in the State Transportation Improvement Program.

Federal & State Highway Funding



State Funding Process

Senate Bill 45

Passage of Senate Bill 45 in 1997 changed the funding process in California. SB 45 essentially gave the regions the responsibility to program what is needed at the regional level. The bill gave 75% of the State Transportation Improvement Program (STIP) funds to the regions to implement their respective projects and 25% to the Department for the Interregional Transportation Improvement Program for the state highway system.

State Transportation Improvement Program

The State Transportation Improvement Program (STIP) is a multi-year capital improvement program resource management document to assist the state and regions to plan and implement transportation projects. Funds for the STIP are used primarily but not limited to improving State highways, local roads, public transit (including buses), intercity rail, pedestrian and bicycle facilities.

Figure 4 reflects the distribution of STIP Funds between the Department and Regions.

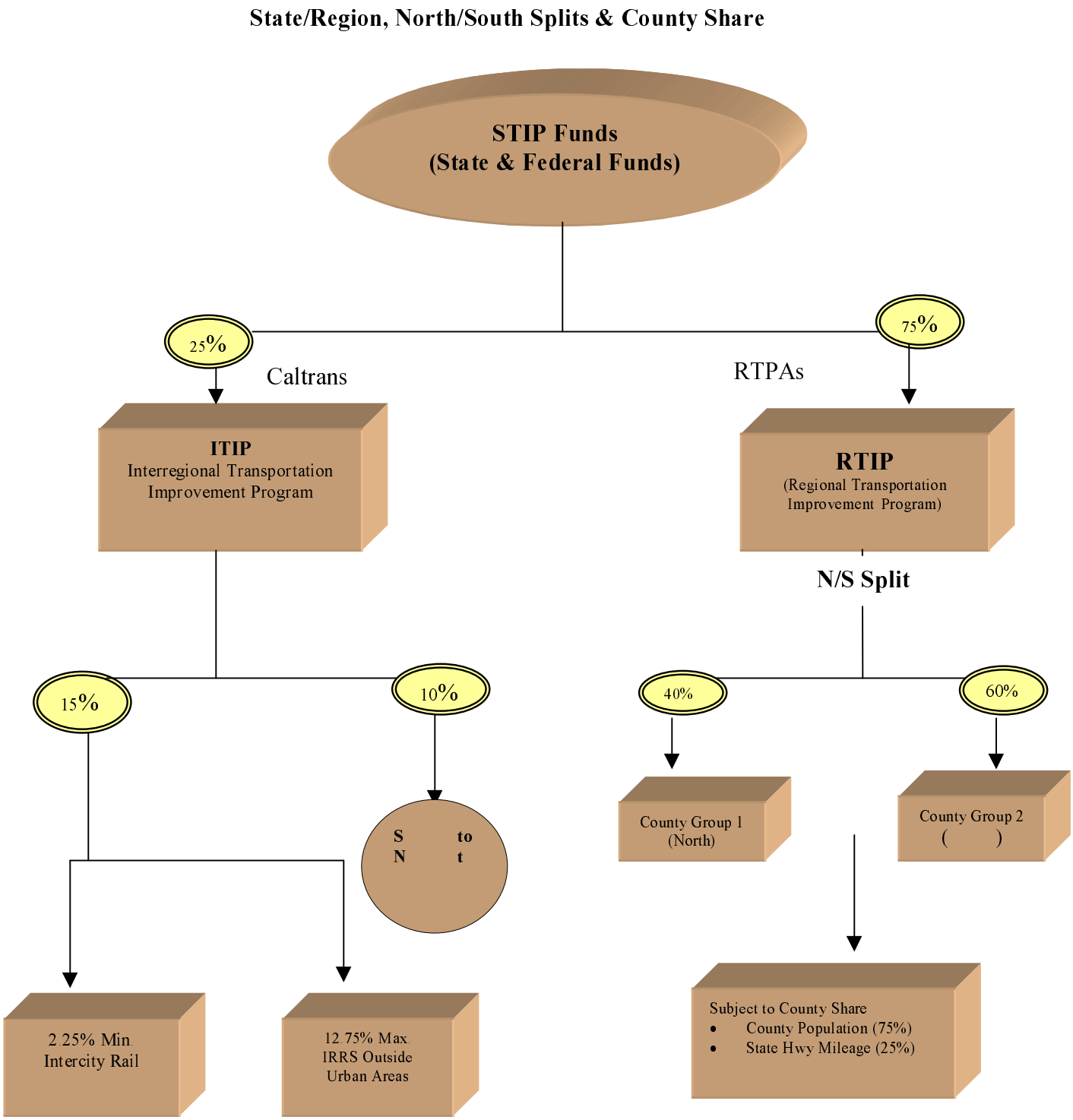


Figure 4. Distribution of STIP Funds

Federal and State Transit Funds

The Federal Transit Administration (FTA) is an agency of the U.S. Department of Transportation. FTA works with local, state and Federal partners to ensure credible programs meet the growing demand for reliable, safe and convenient transit. Some of the transit programs include:

- The Transportation Planning Grant Program (Sections 5303, 5313)
- Elderly and Persons with Disabilities Program (Section 5310)
- FTA Nonurbanized Area Formula Program Urbanized Areas (Section 5311)
- FTA Urbanized Area Formula Program (Section 5307)
- Clean Air and Transportation Improvement Act (Section 5309)

FTA receives the majority of its revenues from the Mass Transit Account of the Highway Trust Fund. State revenues from sales tax on gasoline and diesel fuel are distributed by formula to the State's General Fund and the Public Transportation Account (PTA). Fifty per cent of the fund is distributed to the Interregional Transportation Improvement Program (ITIP) for capital improvements and operational support. The other half is put into the PTA Trust Fund, which supports the Department's Mass Transportation and Rail programs, transit planning; and, the State's intercity rail services operated by Amtrak.

Following are examples of the type of programs funded for capital improvements and : capital support:

- Bus purchases and bus rehabilitation
- Exclusive public mass transit guide ways and rolling stock
- The transit portion of Intermodal transfer stations serving various transportation modes
- Ferry vessels and terminals

Bureau of Indian Affairs

Indian Reservation Roads Program

The Indian Reservation Roads (IRR) Program was established on May 26, 1928, by Public Law 520 (25 USC 318(a)) and is authorized under the Federal Lands Highway Program (23 USC 204). The purpose of the IRR Program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans, visitors, recreationalists, resource users and others while contributing to economic development, self-determination, and employment of Native Americans. Please refer to Chapter 1, Page 13, for a definition of "Indian reservation roads."

IRR Program funds are included within surface transportation authorization acts (currently TEA-21) as part of the Federal Lands Highway Program (FLHP). The U.S. Department of Transportation, Federal Highway Administration (FHWA), transfers funding to the Bureau of Indian Affairs (BIA) for the construction and improvement of roads and bridges leading to, and within, Indian reservations or other Indian lands. The program is administered jointly by the BIA Department of Transportation (BIADOT) and the Federal Land Highway Office (FLHO) of the FHWA.

From the yearly authorization, the FHWA reserves up to 3.75% for FHWA administration. The BIADOT and the FLHO develop a plan for using the remaining funds. This plan includes operating expenses for the Federal Lands Highway Coordinated Technology Implementation Program (CTIP); the Tribal Technical Assistance Program (TTAP) centers for Tribal Governments; and, BIA administration (not to exceed 6%, as authorized in the annual Department of Interior (DOI) Appropriation Act. The BIA administers transportation planning studies for the reservations, bridge inspections, and pays for inventory updates, training, and atlas mapping. An additional 2% of the IRR funds are set-aside for transportation planning by Tribal Governments.

Activities eligible for transportation planning funding under the IRR Program include, but are not limited to, the following:

- Planning related activities for other modes such as mass transit, air, etc., and intermodal connections
- Development of a control schedule for the implementation of the IRR projects in the Tribal TIP
- Acquisition (rental or purchase) of equipment necessary to perform ongoing transportation planning, development of rural addressing and street maps.

Public Law 93-638, "The Indian Self- Determination and Education Assistance Act," enables Tribal Governments to use funds included in TEA-21 for proposes of transportation planning and project implementation.

The BIADOT distributes the remaining funds (approximately 85%) to the 12 BIA Regional Offices for construction projects. The funds are allocated based on a "Relative Needs" formula. Currently, a new formula for allocation of funds is under review.

Indian Reservation Roads Maintenance Program

Nationally BIA currently receives about $26 million per year for maintenance. Less than $700,000 is received for Tribes in California. The maintenance funds are allocated to the BIA Regional Office by formula. The actual maintenance activities are performed by the BIA, Tribal Governments under Public Law 93-638 contracts, compacts, inter-governmental cooperative agreements, or by other methods.

The BIA Regional Office, Agency Offices and FHWA Federal-Aid and Federal Lands Highway Division Offices are responsible for conducting random maintenance inspections.

Bridges on Indian Reservation Roads

Congress established the Indian Reservation Highway Bridge Program in 1991 under the ISTEA. The program is authorized under 23 USC 144, Highway Bridge Replacement and Rehabilitation Program (HBRRP).

The HBRRP funds are transferred to the BIA for use on eligible bridge projects. To be eligible for funding, a bridge or multiple pipe culverts must:

- Have an opening of 20 feet or more;
- On a public road which meets the definition of an IRR;
- Deficient for reasons of condition or function;
- Be more than 10 years old;
- Be recorded in the National Bridge Inventory.

Bridges with sufficiency ratings less than or equal to 80 are eligible for rehabilitation while those with a sufficiency rating of less than 50 are eligible for replacement. Bridges eligible for rehabilitation may be replaced if the total life cycle cost for rehabilitation is greater than the cost for replacement.

Each BIA Regional Office working with Tribal Governments, States and local governments identifies the source of the 20% matching and develops a priority list of bridge projects. State, local or IRR funds can be used as the 20% matching share. Per the Secretary of Transportation's letter dated, May 21, 1986, IRR funds can be used as matching funds for HBRRP funds.

Chapter 4 *Transportation Planning, Programming (Funding) and Implementation of Projects in California*

Introduction

Community based planning and decision-making is a long-standing tradition in California. The governments that make-up the diverse rural areas, cities, towns, and Tribal reservations have made their own decisions for community development and land use. There are several common threads that bind communities together throughout the state – transportation is one of those. Transportation facilities are owned and operated by numerous jurisdictions. Transportation, however, connects people from their own community to other places, close and far away, making it essential that the transportation system function as one interconnected and coordinated system.

Transportation planning is conducted to identify existing problems and to find possible solutions, as well as try to foresee the needs of the future and ensure the quality of life of the community. Transportation planning should be done proactively to take advantage of opportunities that will shape our future and create the transportation system and preserve the quality of life we all desire. Transportation planning helps us to invest our transportation resources wisely. Transportation facility and service investments are expensive, take a long time to deliver, and provide service for many years. Because we have limited revenue available, transportation planning helps decision makers target investments that best serve the transportation customers needs and meet our social, economic and environmental goals. Transportation plans lay out the future implications of today's decisions. Since decision-making is an ongoing process, transportation planning also needs to be ongoing, reflecting the changing values and conditions of the state.

Growth Management in California

In the 20-year period from 1992 to 2012, California's population is expected to increase by 40%, to almost 44 million people. Consumption of goods will grow by as much as 50% and production will expand at almost the same rate. The volume of goods moved is expected to increase by 46%.

Native American communities are impacted in various ways, including opportunities for economic and community development.

Planning in California is reflected in various processes and documents. This Chapter will cover some of the processes and documents that affect transportation activities.

Chapter 4 *Transportation Planning, Programming (Funding) and Implementation of Projects in California*

General Plans

California law requires each city and county to adopt a general plan "for the physical development of the county or city, and any land outside its boundaries which...bears relation to it's planning." Pursuant to state law, subdivisions, capital improvements (transportation improvements), development agreements, and many other land use actions, must be consistent with the adopted general plan.

Chartered cities adopt general plans, which contain the following mandatory elements:

- A land use element which designates the proposed general distribution and general location and extend to the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. Also included in this element is: An annual review and statement of the standards of population density and building intensity recommended for the various areas and other territory covered by the plan; and, timber production.

- A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element.

- A housing element consistent with state policy to include: The availability of housing; cooperative participation of government and the private sector to expand housing opportunities; affordable to low and moderate income households; facilitation to improve and develop housing to make adequate provisions for housing needs of all economic segments of the community; consideration of economic, environmental and fiscal factors; and, community goals.

- A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals.

- An open space element. Open space is any parcel or area of land or water which is essentially unimproved and devoted to an open space use for: Preservation of natural resources; managed production of resources, including forest lands, rangeland, agricultural lands; management of commercial fisheries; areas required for recharge of ground water; outdoor recreation; and, public health and safety.

- A noise element, which identifies and appraises noise problems in the community. Noise levels are projected for the following sources: Highways and freeways; primary arterials and major local streets; passenger and freight on-line railroad operations and ground rapid transit systems; commercial, general aviation, heliport, helistop, and military airport operations, aircraft over flights, jet engine test stands, and other ground facilities and maintenance functions related to airport operation; local industrial plans including railroad yards; and, other ground stationary noise sources identified by local agencies.

- A safety element for the protection of the community from any unreasonable risks associated with the effects of: Seismically induced surface rupture; slope instability; subsidence leading to mudslides and landslides; liquefaction; and, other seismic hazards.

During the preparation or amendment of the general plan, opportunities for the involvement of citizens, public agencies, public utility companies, civic, education, and other community groups, should be made through public hearings and other means the city or county deems appropriate.

This is an opportunity for Tribal participation, particularly for elements that may impact the Tribal community. If the legislative body of the city or county does not directly notify the Tribe, the Tribe should contact the city or county for a schedule of the public hearings. Tribes may also wish to request a meeting with the city or county legislative body to discuss tribal concerns.

After the general plan is adopted by a city or county, its planning agency (i.e., planning commission) should make recommendations regarding reasonable and practical means for implementing the general plan so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open space land and natural resources, and the efficient expenditure of public funds. The planning agency also provides an annual report to the State Office of Planning and Research and the Department of Housing and Community Development on the status of the plan and progress in its implementation.

Other city or county plans, including transportation plans, should be consistent with the general plan.

Statewide Transportation Planning

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) changed the way states and local agencies conduct transportation planning in a revolutionary way. Rather than providing a

specific list of regulations, ISTEA, and subsequently TEA-21, provided new flexibility and decision making at the local level---a major shift from previous ways of doing business. States are now required to implement and impart this new concept of decentralized participation. The State and the regional transportation planning agencies (Metropolitan Planning Organizations [MPOs] and Regional Transportation Planning Agencies [RTPAs]) are responsible to put in place a planning process that takes into account a wide range of data and analysis, involves the public early in the process, and creates close linkages among the required management systems.

California Transportation Plan (CTP)

Transportation planning in California reflects the decentralized and diverse ownership of the transportation system. The California Transportation Plan (CTP) provides direction for planning, developing, operating, and maintaining California's transportation system. This State long-range transportation plan (20-year) as required by ISTEA and continued with TEA-21, was developed under SB 1435 (Chapter 1177, 1992 Statutes) and Governor's Executive Order W-26-92. The CTP is developed by the Department in cooperation with other state agencies and departments, local governments, Tribal governments, and interested members of the public and the private sector. The CTP is a long-range, multi-modal, statewide document, which considers the mobility of people, goods and services, and preservation of the transportation system.

The CTP is submitted to the Legislature and Governor for review and comment. The Governor adopts the plan and it is submitted to the Legislature and the Secretary of the U.S. Department of Transportation.

Regional Transportation Plan (RTP)

California Government Code Chapter 2.5, Section 65080 et seq., and U.S.C.Title 23, Sections 134 and 135 et seq. require that MPOs and RTPAs develop a Regional Transportation Plan (RTP). The intent of the plan is to:

- Promote an integrated, statewide, multimodal, regional transportation planning process;
- Set forth a uniform regional transportation planning framework throughout California;

- Promote a transportation planning process that facilitates decision-making;
- Promote a continuing, comprehensive, and coordinated transportation planning process that facilitates the rapid and efficient development and implementation of projects while maintaining California's commitment to public health and environmental quality; and
- Promote a planning process that integrates the public into the decision-making process.

California Government Code 14522 requires that the California Transportation Commission (CTC) develop RTP Guidelines to aid in the preparation and utilization of the RTP. In December 1999, the CTC adopted new Guidelines, which reflect the new transportation planning requirements. The RTP Guidelines now require RTPAs and MPOs to document Tribal concerns within their plans.

RTPAs are responsible for transportation activities in rural areas. The state requires them to update their RTPs every four (4) years starting September 1, 2001.

MPOs have the responsibility for transportation activities in urbanized areas with a population in excess of 50,000. Their projects must conform to transportation/air quality planning requirements. The transportation/air quality planning requirements must be prepared in compliance with all applicable state and federal statues through a planning process that includes public participation. MPOs are required to update their RTP every three (3) years starting September 1, 2001.

RTPs do not require Federal or State approval, but they must comply with the requirements established by Federal and State statues, regulations, policies and guidelines.

Interregional Transportation Strategic Plan (ITSP)

The Department prepares an Interregional Transportation Strategic Plan (ITSP) to consolidate and communicate key elements of its ongoing long-and short range planning. As such, it serves as a counterpart to the RTPs. As a unit of State government responsible for the State Highway System (it is a "trustee" on behalf of the citizens of the State), the Department addresses the State Highway System in detail, with special emphasis on the statutorily-identified Interregional Road System (IRRS), which comprises about 35% of State highway routes or portions thereof. The ITSP addresses, in less detail, other elements of the interregional transportation system, including intercity rail, which serve the State.

Tribal Transportation Plan (TTP)

Tribal Transportation Plans (TTPs) are encouraged, but are not required. Limited funding resources have discouraged adequate planning in Tribal communities. According to the Indian Reservation Roads (IRR) Program, Transportation Planning Procedures and Guidelines, Tribes can fund transportation planning and planning coordination efforts through four primary programs:

- The Bureau of Indian Affairs (BIA) allocates Indian Reservation Roads Program Funds;
- Federal Highway Administration (FHWA) State Planning and Research and MPO Funds. Tribal governments should consult with the State and MPO regarding the possibility of using these funds for Tribal transportation planning;
- Federal Transit Administration (FTA) State Planning and Research and MPO Funds;
- Public Lands Highway Discretionary Funds are available from the FHWA Federal Lands Highway office through the Department.

Indian Reservation Roads Program Planning Policy

U.S. Department of Transportation policy is set forth in the "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines," published in October, 1999:

- Transportation planning activities among Tribal governments, the BIA, FHWA, FTA, States and local governments will be conducted on a government-to-government basis as outlined in the Presidential Memorandum dated, April 29, 1994;
- The BIA, FHWA, and FTA shall encourage and assist Tribal governments to do transportation planning;
- The BIA, FHWA, and FTA shall assist Tribal governments in transportation planning activities as requested;
- The FHWA and FTA require State, Regional Planning Agencies, and Metropolitan Planning Organizations to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs.

- Transportation planning will consider all modes of transportation and how they interface with each other;
- Request for IRR transportation planning funds shall be initiated by a proposal or negotiated agreement;
- Tribal Local Technical Assistance Programs (LTAPs) and Tribal Technical Assistance Programs (TTAPs) should actively coordinate and participate with the BIA and Tribal governments to provide training and technical assistance in transportation planning activities to Indian Tribal Governments;
- The IRR construction funds may be used to carry out transportation planning activities;
- The IRR funds provided to Tribal governments shall not be used to lobby any Federal, State, local government, or elected officials;
- The IRR transportation planning funds set-aside for Tribal transportation planning may be reprogrammed to IRR construction projects prior to the end of the fiscal year.

The IRR Program planning policy differs somewhat on specifics from that for metropolitan and statewide transportation planning in 23 CFR 450; however, in general they are consistent with the planning framework established in ISTEA and TEA-21.

Statutes, Regulations and Policies

There are Federal, State, Tribal and local laws, regulations, and policies that guide transportation planning. At the Federal level, these include the following:

23 U.S.C. 134 Metropolitan Planning
23 U.S.C. 135 Statewide Planning
23 U.S.C. 202 Allocations
23 U.S.C. 204 Federal Lands Highways Program
23 U.S.C. 307 Research and Planning
PL 93-638 Indian Self-Determination and Education Assistance Act, as amended
23 CFR 450 Statewide and Metropolitan Planning Rule
23 CFR 771 Environment
25 CFR 170 Construction and Maintenance of Roads
BIA-FHWA Memorandum of Agreement
BIA Area Certification Acceptance Plan
IRR Program Stewardship Plan

Chapter 4 Transportation Planning, Programming (Funding) and Implementation of Projects in California

Programming (Funding Projects)

Programming and project selection under ISTEA, and now TEA-21, have changed significantly from previous practice. This section highlights important issues related to programming and project selection. Once projects are included in the planning documents, a Project Initiation Document (PID) must be completed prior to programming (budgeting and funding) the project.

Project Initiation Document (PID)

Before a project can be programmed (budgeted and funded) into the State Transportation Improvement Plan (STIP), a Project Initiation Document (PID) must be developed and approved. PIDs are not required in the Federal IRR Program process until *after* the projects are programmed.

The PID is a preliminary engineering report, which contains a detailed analysis of cost, schedule and scope of a project. A Project Study Report (PSR) is a form of PID for larger projects, and a Project Scope and Summary Report (PSSR) for smaller ones. A PSSR is an abbreviated document that contains a very brief project description, cost, schedule, and scope information for a project that is exempt from detailed environmental studies.

State Highway Operation and Protection Program (SHOPP)

Passage of Senate Bill 45 in 1997 changed the funding process in California. SB45 essentially gave 75% of the State Transportation Improvement Program (STIP) funs to regional agencies and 25% to the Department for improvements to interregional connections on the State highway system. However, prior to funds being distributed to the STIP program, funding is taken "off the top" for Non-capital Outlay, Local Assistance and the State Highway Operation & Protection Program (SHOPP).

The Department develops the SHOPP, which includes projects designed to maintain the safety and integrity of the State highway system. Projects are for road and bridge rehabilitation and traffic safety and operation improvements.

Chapter 4 *Transportation Planning, Programming (Funding) and Implementation of Projects in California*

Transportation Improvement Programs (TIPs)

Transportation Improvement Programs (TIPs) are short-range comprehensive listings of all projects that receive Federal and State funds. Projects nominated for inclusion in a TIP must be consistent with a long-range plan.

Regional Transportation Improvement Program (RTIP)

The Regional Transportation Improvement Program (RTIP) is a five -year plan identifying all the transportation projects for the region that are eligible for funding in the State Transportation Improvement Program (STIP). The Regional Transportation Planning Agencies (RTPAs) propose 75% of STIP funding for regional transportation projects in their RTIPs.

Interregional Transportation Improvement Program (ITIP)

The Interregional Transportation Improvement Program (ITIP) is a five-year program developed by the Department that includes the programming of funds for interregional projects that increase the capacity of the transportation system. The Department proposes 25% of STIP funding for interregional transportation projects in the ITIP.

State Transportation Improvement Plan (STIP)

The State Transportation Improvement Plan (STIP) is a five-year capital improvement program of transportation projects on and off the State Highway System, funded with revenues from the State Highway Account and other funding sources.

Projects in the STIP include projects from the RTIP and ITIP. The California Transportation Commission (CTC) is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. The CTC adopts the STIP, which is based on an estimate of State and Federal funds expected to be available over a five-year period for transportation projects and a set of projects prioritized in keeping with regional and statewide interests.

Tribal Transportation Improvement Program (TTIP)

A Tribal Transportation Improvement Program (TTIP) is a multi-year, financially constrained, list of proposed transportation projects to be implemented within or providing access to Indian country during a three-year period. It is developed from the Tribal priority list. Ideally, a TTIP is consistent with the Tribal Transportation Plan and must contain all Indian

Reservation Roads (IRR) funded projects. (As discussed earlier, not all Tribal governments have approved Tribal Transportation Plans.) The TTIP may also contain information regarding other
Federal, State, county, municipal, and Tribal transportation projects initiated by or developed in cooperation with Tribal Governments. Only those projects approved for funding by the sponsoring governmental entity may be included in the Tribal TIP.

Federal Transportation Improvement Program (FTIP)

The MPOs have an additional responsibility to develop a Federal Transportation Improvement Program (FTIP), which is a three-year plan that incorporates all highway and transit projects funded with Federal funds or of regional significance. Projects in the FTIP are required to include an air quality conformity determination that is adopted as part of the plan.

Projects are drawn from the State STIP and SHOPP for their respective geographic regions along with any local and Federally funded improvements, including projects from the TTIPs.

The FTIP is updated every two years.

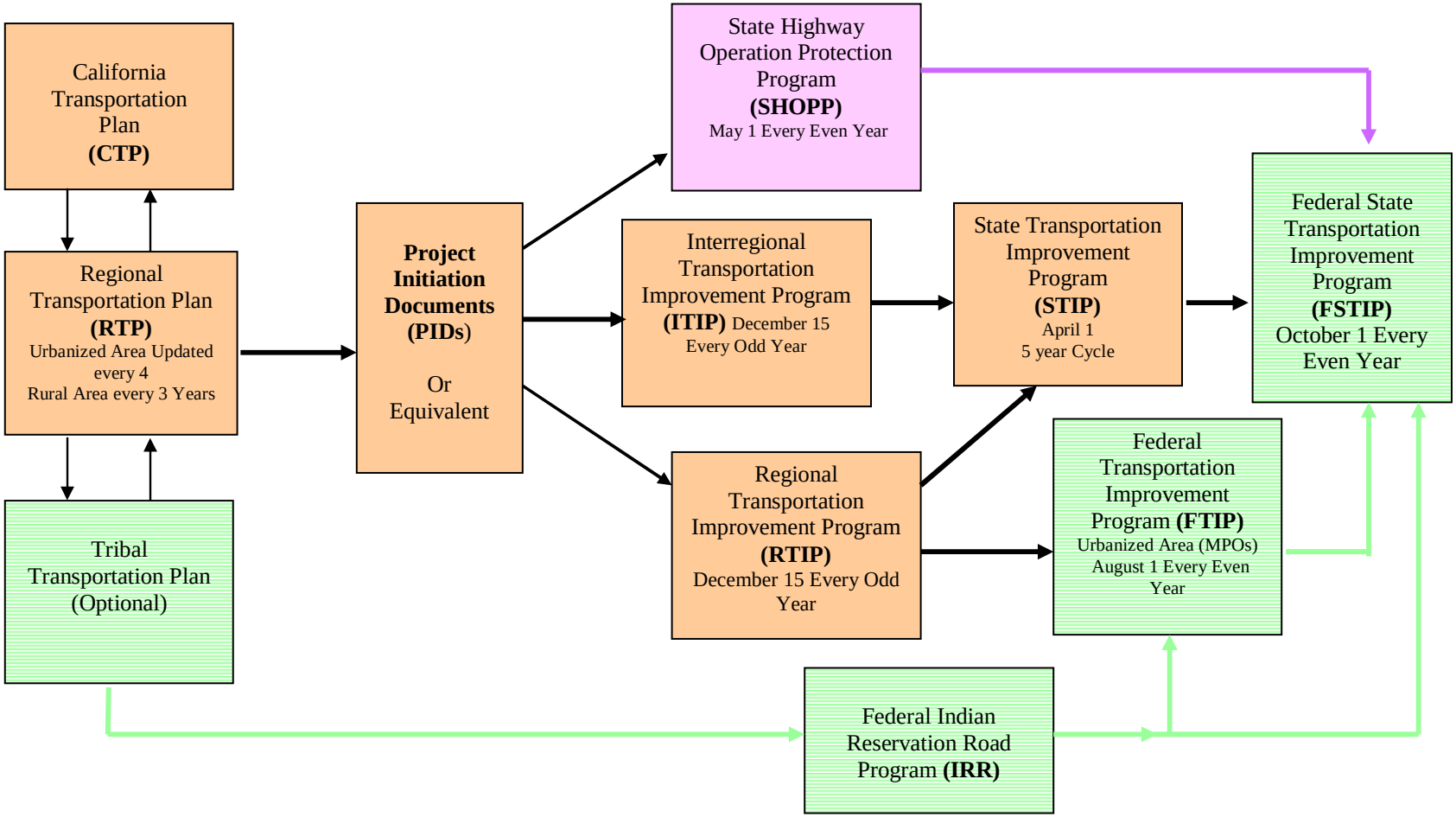
Federal State Transportation Improvement Program (FSTIP)

The Department, as required by TEA-21, prepares the FSTIP. The Act requires all highway and transit projects in the State funded under Title 23 and the Federal Transit Act be included in this document. In a nutshell, the FSTIP is a global funding document, incorporating all programming in all of the RTIPs, STIP, SHOPP, Tribal Transportation Improvement Program, and all local Federal aid work in the rural regions of the state.

The major difference between the State and IRR process is that the State requires a Project Initiation Document (PID) prior to prioritizing a project in the STIP. The PID includes the schematic design, alternatives, initial environmental documentation, project schedule, and financial resources available for the project. While Tribal projects included in the TTIP or FTIP do not require a PID, Tribes wanting projects prioritized for State funding should consider this factor in their planning.

State of California
Transportation Project Planning and Programming

Process to achieve comprehensive, continuous, cooperative planning begins with long-range plan(s)



Reflects the State Process

Reflects Combined State and Federal Process

Reflects the State Process (The Department's Highway Maintenance)

Project Development

Once projects have been identified and funding has been secured through the planning and programming processes, the project development process starts, as demonstrated in the following:

Preliminary Design and the Environmental Process

- A Project Development Team (PDT) is established for each project, with various technical staff and interested parties. The PDT oversees the project's design, keeping in mind the time frames and funding availability, and provides input on issues that should be addressed. If a Tribal community will be impacted by the project, a Tribal representative should be included on the PDT.

- Engineering and Environmental Studies are conducted. This includes preliminary designs reflecting a minimum of five alternatives. Based on these alternatives, environmental studies are conducted, identifying resources, impacts and development of mitigation measures.

- This information collected from the Engineering and Environmental studies is used to prepare a Draft Project Report (DPR). The DPR outlines recommendations for the best alternative. The DPR is submitted for approval from the appropriate agency, i.e., the Department or/and FHWA. (The appropriate agency depends upon the source of funding.)

- After the final approval is secured, the final environmental document is prepared.

Design and Right of Way

- Acquisition of right of way, if required, begins at this stage.

- The necessary permits are acquired.

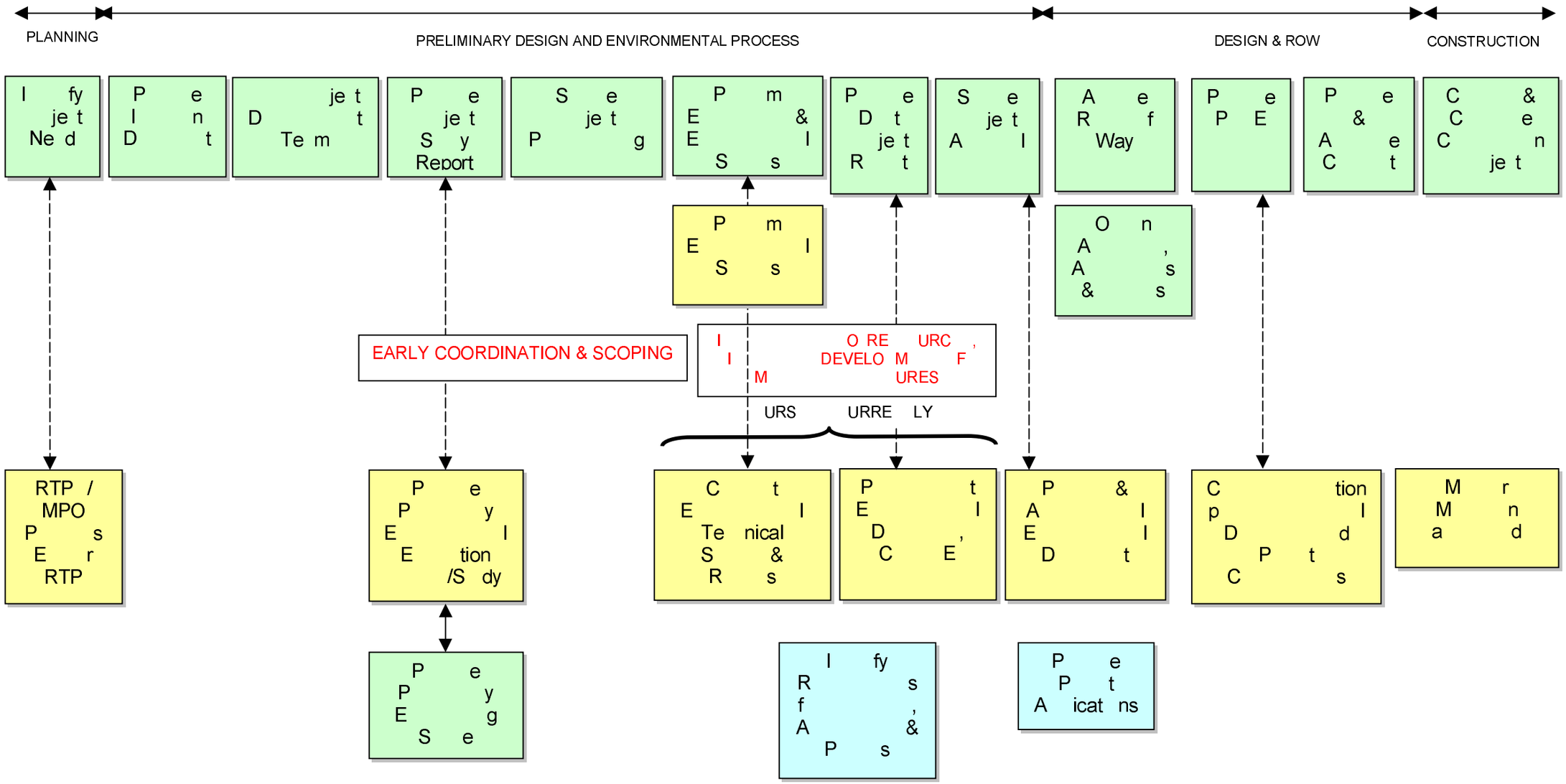
- Project Specifications and Estimates (PS&E) are completed. Mitigation and permit commitments are included within the PS&E. The PS&E may also include Tribal Employment Rights Ordinance (TERO) provisions.

- The final bid document is prepared and the project is advertised to hire a construction contractor. The bid document and contract follow local, State, and Federal laws; and, for projects on Indian lands, the bid and contract documents should include the applicable tribal laws, including those pertaining to the TERO, if one has been established by the Tribe.

Construction

- The Department's Resident Engineer is responsible for the oversight of the project during and after construction.
- Mitigation measures are monitored.
- TERO provisions should be monitored with the Tribe.
- Upon completion of work to the satisfaction of the contracting agency, the final paperwork including final payments and awards are completed and the facility is open to traffic.

SUM Y F CA RANS PROJECT DEVELOPM T PR CESS
HI HL HTI HE ENVIRO L PR CESS



Chapter 5 Review of Local and Tribal Developments

The Department has a responsibility to respond to development and transportation activities that are not included in the State programming documents, when these activities have an impact or potential impact to the state highway system. The Local Assistance Program and Intergovernmental Review Program are responsible for reviewing these activities.

Local Assistance Program

The Department's internal program responsible for administering and managing the Federal and State funded local assistance highways programs is called the Local Assistance Program. This program assists local agencies in taking advantage of state and federal funded transportation programs, and develops implementation policies that are consistent with Legislative requirements. The program processes project-funding applications, federal documents, and serves as the primary contact for local agencies. Typical projects are (1) State funded county road widening projects and (2) Federal funded improvements on a city "main street" (either locally owned or a State highway).

Tribal developments and private developments are reviewed by another program called the Intergovernmental Review Program.

Intergovernmental Review (IGR)

In addition to projects implemented by the Department or the regional transportation planning agencies, private developers and Tribal Governments implement projects that can impact the state highway system.

The Department's internal program that reviews development projects from private developers and Tribal Governments is called the Intergovernmental Review Program (IGR). IGR is a program that is mandated by federal law (Presidential Executive Order 12372) and state law (Governor's Executive Order D-24-83). These laws require the Department to review all planning and development activity that have a potential to impact the state highway system, and to recommend improvements that either eliminate the impacts or reduce them to a level of insignificance.

IGR program policies are based on the concept that a safe, efficient, and reliable transportation system is essential to California's economic prosperity. In order to maintain a balance between land use development and transportation, Caltrans, along with cities, counties, Tribal governments, and developers need to work cooperatively to ensure that the public's access needs are met. Typical projects include (1) Shopping centers, (2) Industrial parks, (3) Housing tracts, and (4) Casino development or expansion.

The environmental processes contain procedural foundations for the Department's role as a responsible or commenting agency when reviewing local planning or development proposals. The IGR program typically involves the review of development proposals in which the Department is either a responsible (permitting) or commenting agency, but has no discretionary approval power over the project other than permit authority. If the project requires a permit it is handled by the Department's Encroachment Permit program.

Encroachment Permits

When a project requires the construction, alteration, repair, or improvement of any portion of the highway for the purpose of improving local traffic access, and the improvements are required as part of, or as a condition to, the development of the property, and the improvements are accepted by the Department, then the Department may issue an encroachment permit. Individuals, contractors, corporations, utilities, cities, counties, Tribal Governments and other government agencies proposing to conduct any activity within, under, or over the State highway right of way need an encroachment permit. The authority for the Department to control encroachments within the State highway right of way is contained in the California Streets and Highways Code starting with Section 660.

An encroachment is defined as "any tower, pole, pole line, pipe, pipeline, billboard, stand or building, or any structure, object of any kind or character not particularly mentioned in the section, or special event, which is in, under, or over any portion of the highway." "Special event" means any street festival, sidewalk sale, community-sponsored activity, or community-approved activity. An encroachment permit is not a property right. It authorizes only the permittee or the permittee's agent to perform work, and the permittee may not transfer or assign a permit to another party.

Work within the State highway right of way is exempt from permits only when it is performed under a State highway construction contract, a service contract that specifically exempts the contractor, delegation of maintenance agreement, or an authorization by District Right of Way when the work is located in non-operating right of way. Also, activities authorized by the California Vehicle Code and not affecting highway operation or safety do not require an encroachment permit.

Prior to the issuance of encroachment permits, the Department reviews the environmental document to determine if any mitigation measures had already been identified. If they have been identified, these measures become part of the conditions of the encroachment permit. If other conditions are necessary that were not included in the environmental document, they may be stated, but they should be consistent with applicable federal, state laws and regulations, and Department policy.

Employment

Seeking a Job With the Department of Transportation

The California State civil service process consists of seven parts:

1. Examination;
2. Becoming "reachable" (after passing an examination, a person's name is placed on a list, with highest scorers being placed at top of list);
3. Applying for a vacant position;
4. Participating in a hiring interview, and if successful, being offered a job;
5. Passing Medical Examinations, if job required;
6. Depending on the classification, pre-employment drug tests;
7. Completing a probationary period.

For further information and a listing of exams and positions, please visit the State Personnel Board website at: http://www.spb.ca.gov Telephone: (916) 653-1705

Tribal Employment Rights Ordinance (TERO)

An inherent power of Tribal Governments is to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations/rancherias. The Tribal Employment Rights Ordinance/Office (TERO) is a tribally established and operated Indian/Native preference enforcement and compliance program that has been established by some Tribes that wish to exercise their sovereign right to enforce employment requirements on employers conducting business on the reservation or rancheria. This includes employment, taxation on projects, and use of Tribal resources/products for projects.

Civil Rights Program

The purpose of the Civil Rights Program is to ensure nondiscrimination in employment and all other transportation programs, activities and services, and promote and encourage the participation of all people in California regardless of race, color, national origin, sex, age, disability and socioeconomic status.

Title VI

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. The Department's Title VI Program provides

on-going technical assistance to all internal and external customers, i.e., Metropolitan Planning Organizations (MPOs), Regional Transportation Planning Agencies (RTPAs), cities, counties, colleges and universities regarding Title VI issues and concerns. The Program provides training, conducts compliance reviews, analyzes statistical data, develops program guidelines and ensures compliance with the program statutes, regulations and policies.

Disadvantaged Business Enterprise (DBE) Program

One of the objectives of the Civil Rights Program is to increase the level of participation of disadvantaged businesses in all Federal contracting activities. Pursuant to Federal regulations, in order to participate in the Disadvantaged Business Enterprise (DBE) program, qualifying firms must first be certified as such. Effective January 1, 2002, the California Unified Certification Program (UCP) was implemented, establishing four Regional DBE Certification Clusters to effectively facilitate statewide certification activities. The UCP is a "one-stop" shop certification procedure that will eliminate the need for firms to obtain certificates from multiple agencies within the State. Tel: (916) 227-9406.

Only small business concerns as defined by the United States Small Business Administration---owned and controlled by one or more socially and economically disadvantaged individuals---can be certified as a DBE. Owned and controlled means:

- At least 51% of the small business concern is owned by one or more socially and economically disadvantaged individuals; and
- The management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small Business/Disabled Veteran Business Enterprise Program

It is the policy of the Department to promote and enhance contracting opportunities for California certified small and disabled veteran business enterprises. It is also the policy of the Department to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of State funded contracts.

The Department established a Small Business/Disabled Veteran Business Enterprise Program (DVBE) to carry out these policies and to comply with Governor Gray Davis' Executive Orders D-37-01 and D-43-01, which require that all State agencies aggressively pursue an annual 25% small business participation goal and an annual 3% DVBE goal. The Civil Rights Program was given the lead responsibility for administration of the Department's Small Business and DVBE Program.

Firms who wish to apply for certification as a Small or Disabled Veteran Business Enterprise may contact the California Department of General Services, Office of Small Business Certification Resources at (916) 322-5060.

A small business is defined in the California Code of Regulations as a business that is independently owned and operated; is not dominant in its field of operation; must have its principal office located in California; must have its owners (or officers in the case of a corporation) domiciled in California; and, together with its affiliates, be either: A business with 100 or fewer employees and an average annual gross receipts of $10 million or less over the previous three (3) tax years; or, a manufacturer with 100 or fewer employees.

A disabled veteran business enterprise is defined as a business that is at least 51% owned by one or more disabled veterans; the daily business operations must be managed and controlled by one or more disabled veterans; and, the home office must be located in the United States. A disabled veteran is a veteran of the United States military; has a service-connected disability of at least 10% and must be a California resident.

Disabled Veteran Business Enterprise Liaison: (916) 227-9599.

Environmental Justice

Executive Order 12898, Federal Actions To Address Environmental Justice In Minority Populations and Low-Income Populations, was signed by President Clinton on February 11, 1994, to ensure that Federal programs and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations. The objective of the order is to develop a process to integrate existing statutory and regulatory requirements to help ensure that the interest and well being of minority populations and low-income populations are considered and addressed in the transportation planning or decision making processes.

Although environmental justice is not a new concept, Executive Order 12898 refocused attention on the need to identify and address disproportionate impacts on minority and low-income populations.

There are three fundamental environmental justice principles:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.

2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.

3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Appendices

Appendix A

Allocation. An administrative distribution of funds for programs that do not have statutory distribution formulas.

Apportionment. The distribution of funds as prescribed by a statutory formula.

Appropriations Act. Action of a legislative body that makes funds available for expenditure with specific limitations as to amount, purpose, and duration. In most cases, it permits money previously authorized to be obligated and payments made, but for the highway program operating under contract authority, the appropriations act specifies amounts of funds that Congress will make available for the fiscal year to make cash reimbursements to the States.

Authorization Act. Basic substantive legislation that establishes or continues Federal programs or agencies and establishes an upper limit on the amount of funds for the program(s). The current authorization act for surface transportation programs is the Transportation Equity Act for the 21st Century (TEA-21).

Budget Authority. Empowerment by Congress that allows Federal agencies to incur obligations that will result in the outlay of funds. This empowerment is generally in the form of appropriations. However, for most of the highway programs, it is in the form of contract authority.

Budget Resolution. A concurrent resolution passed by Congress presenting the Congressional Budget for each of the succeeding 5 years. A concurrent resolution does not require the signature of the President.

California Environmental Quality Act (CEQA). State law which requires the environmental effects associated with proposed plans, programs, and projects be fully disclosed.

California Transportation Commission (CTC). The Commission is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California.

California Transportation Investment Strategy (CTIS). Relates to a unit and process within California Department of Transportation that gathers and compiles all transportation data. Data may be accessed electronically and used by all RTPAs and others.

Congestion Management Agency (CMA). The county agency responsible for developing, coordinating and monitoring the Congestion Management Program.

Congestion Management Programs (CMP). Required by State law for counties containing an urbanized area. CMPs are prepared by designated Congestion Management Agencies. CMPs affect and are affected by other local plans and the Regional Transportation Plan (RTP). CMPs must be consistent with RTPs and are a source for all projects listed in the RTIP.

Contract Authority (CA). A form of Budget Authority that permits obligations to be made in advance of appropriations. Most of the programs under the Federal-Aid Highway Program operate under Contract Authority.

Federal-aid Highway Program (FAHP). An umbrella term for most of the Federal programs providing highway funds to the States. This is not a term defined in law. As used in this document, FAHP is comprised of those programs authorized in Titles I and V of TEA-21 that are administered by FHWA.

Federal Highway Administration (FHWA). A component of the U.S. Department of Transportation, established to ensure development of an effective national road and highway transportation system. FHWA and FTA, in consultation with US EPA, make Federal Clean Air Act Conformity findings for Regional Transportation Plans, Transportation Improvement Programs, and Federally funded projects.

Federal State Transportation Improvement Program (FSTIP). A three-year list of transportation projects proposed for funding developed by the State in cooperation with Metropolitan Planning Organizations (MPOs) and in consultation with local non-urbanized governments. The FSTIP includes all FTIP projects as well as other federally funded rural projects.

Federal Transit Administration (FTA). A component of the U.S. Department of Transportation, responsible for administering the Federal transit program under the Federal Transit Act, as amended, and the Intermodal Surface Transportation Enhancement Act (ISTEA) of 1991.

Federal Transportation Improvement Program (FTIP). A three-year list of all transportation projects proposed for Federal funding within the planning area of an MPO. It is developed as a requirement for funding. In air quality nonattainment areas the plan must conform to a State Implementation Plan.

Firewall. A budgetary device separating certain Federal spending within the discretionary spending category from other spending in the discretionary category. Spending for programs with firewalls may not be reduced in order to increase spending for other discretionary programs. The TEA-21 establishes, for fiscal years 1999-2003, a firewall to protect highway and highway safety spending and a firewall to protect transit spending.

Fiscal Year (FY). The accounting period for the budget. The State fiscal year is from July 1 until June 30. The Federal fiscal year is from October 1 until September 30. The fiscal year is designated by the calendar year in which it ends. For example, FY 1999 runs from October 1, 1998 until September 30, 1999.

Guaranteed Funding. Highway, highway safety, and transit spending protected by firewalls, plus highway funds that are classified as mandatory spending, i.e., exempt from the obligation limitation.

Highway Trust Fund (HTF). An account established by law to hold Federal highway-user taxes that are dedicated for highway and transit related purposes. The HTF has two accounts: the Highway Account and the Mass Transit Account.

Indian Reservation Roads Program (IRR). The IRR Program was established on May 26, 1928, by Public Law 520 (Codified at 25USC 318(a)) and is authorized under the Federal Lands Highway Program, 23 U.S.C. 204. The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans, visitors, recreationalists, resource users and others while contributing to economic development, self-determination, and employment of Native Americans.

Intermodal Surface Transportation Efficiency Act (ISTEA), 1991. Superseded by TEA 21, the transportation authorization act mandated planning requirements and created funding programs for transportation projects.

Interregional Transportation Improvement Program (ITIP). Funds capital improvements, on a statewide basis, include capacity increasing projects primarily outside of an urbanized area. Projects are nominated by the California Department of Transportation and submitted to the California Transportation Commission for inclusion in the STIP. The ITIP has a five-year planning horizon and is updated every two years by the CTC. Under SB 45, the ITIP is funded with 25% of the State Highway Account revenues programmed through the STIP.

Interregional Transportation Strategic Plan (ITSP). Describes the framework in which the state will carry out its responsibilities for the Interregional Improvement Program (IIP).

Metropolitan Planning Organization (MPO). A planning organization created by federal legislation charged with conducting regional transportation planning to meet federal mandates.

National Environmental Protection Act (NEPA). Federal legislation which created an environmental review process similar to CEQA, but pertaining only to projects having federal involvement through financing, permitting, or Federal land ownership.

Obligation. The Federal government's legal commitment (promise) to pay or reimburse the States or other entities for the Federal share of a project's eligible costs.

Obligation Ceiling. Identical to obligation limitation.

Obligation Limitation. A restriction, or "ceiling" on the amount of Federal assistance that may be promised (obligated) during a specified time period. This is a statutory budgetary control that does not affect the apportionment or allocation of funds. Rather, it controls the rate at which these funds may be used.

Obligational Authority (OA). The total amount of funds that may be obligated in a year. For the Federal-aid Highway Program this is comprised of the obligation limitation amount plus amounts for programs exempt from the limitation.

Outlays. Actual cash (or electronic transfer) payments made to the States or other entities. Outlays are provided as reimbursement for the Federal share for approved highway program activities.

Penalty. An action taken by Federal agencies when the grant recipient does not comply with provisions of the law. For the highway program the imposition of penalties, which are defined in law, may prevent a State from using or receiving its full apportionment or may force a transfer from one program to another.

President's Budget. A document submitted annually (due by the first Monday in February) by the President to Congress. It sets forth the Administration's recommendations for the Federal budget for the upcoming fiscal year.

Regional Transportation Improvement Program (RTIP). A list of proposed transportation projects submitted to the California Transportation Commission by regional transportation planning agencies (Metropolitan Planning Organizations and Regional Transportation Planning Agencies) for state funding. The RTIP has a 5-year planning horizon and is updated every two years by the CTC. Under the STIP reforms of SB 45, the RTIP is funded from 75% of the STIP funds, divided by formula among fixed county shares.

Regional Transportation Plan (RTP). State mandated document prepared biennially by all regional transportation planning agencies. The Plan describes existing and projected transportation needs, conditions and financing affecting all modes within a 20-year horizon.

Regional Transportation Planning Agency (RTPA). A state designated agency (multi-county or county-level agency) responsible for regional transportation planning to meet state planning mandates. RTPAs can be Local Transportation Commissions, Councils of Government, MPOs or statutorily created agencies.

Revenue Aligned Budget Authority (RABA). The adjustment in funding made annually to the highway program, beginning in FY 2000, as a result of the adjustment in the firewall level for highways. The firewall level is adjusted to reflect revised receipt estimates for the Highway Account of the Highway Trust Fund. Then, adjustments—equal to the firewall adjustment—are made to Federal-aid highway authorizations and obligation limitation for the fiscal year.

Short Range Transit Plans (SRTP). Developed by transit agencies, they describe local transit conditions and needs. SRTPs can be included in an RTP. RTP goals and policies shape transit systems.

State Bill 45 (Chapter 622, Statutes of 1997, Kopp) (SB 45). Mandated major transportation reform legislation impacting many areas of transportation planning, funding and development.

State Highway Account (SHA). The SHA is the state's primary source for funding transportation improvements. Revenues from state fuel tax (gasoline and diesel fuel excise tax), truck weight fees and the federal highway funds are deposited into SHA.

State Highway Operations and Protection Program (SHOPP). Program to maintain the integrity of the state highway system, primarily associated with safety and rehabilitation without increasing roadway capacity. SHOPP is a four-year program of projects, approved by the CTC separately from the STIP cycle.

State Implementation Plan (SIP). Required by the Federal Clean Air Act Amendments of 1990. The SIP is an air quality plan developed by the California Air Resources Board in cooperation with local air districts for attaining and maintaining Federal Clean Air Standards.

State Transit Assistance (STA). Formerly Transportation and Development funds are funds derived from the Public Transportation Account.

Transportation Equity Act for the 21st Century (TEA 21). Signed into law and amended in 1998, made a number of changes in the metropolitan transportation planning process. These changes reflect the evolution and maturing of the nation's transportation planning process since the passage of ISTEA.

Tribal Technical Assistance Program (TTAP). The Tribal Technical Assistance Program began in 1992 with the introduction of the Intermodal Surface Transportation Efficiency Act of 1991. The goals of the Program are to assist American Indian Tribal governments by increasing their technical capabilities in transportation and to expand their workforces to effectively address their transportation needs.

Tribal Transportation Improvement Program (TTIP). The TTIP is a multi-year, financially constrained, list of proposed transportation projects to be implemented within or providing access to Indian country during a three-year period.

Tribal Transportation Plan (TTP). Twenty-year transportation plan that outlines the transportation activities on an Indian Reservation or Rancheria. Tribal Transportation Plans are not required, but are encouraged. The Bureau of Indian Affairs submits a long-range plan to FHWA regarding the transportation needs of Tribal governments.

Trust Funds. Accounts established by law to hold receipts (such as specific taxed or revenues) collected by the Federal Government and earmarked for financing special purposed and program. To assure the financial soundness of a trust fund, it must be tracked separately to determine that outlays/expenditures do not exceed available revenues.

U.S. Environmental Protection Agency U.S. (EPA). Reviews and approves the State Implementation Plan, including emissions budgets used in RTP conformity assessments.

Government-to-Government Relations With Native American Tribal Governments

[Federal Register: May 4, 1994]

Presidential Documents

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

Title 3--
The President
Memorandum of April 29, 1994

Government-to-Government Relations With Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self- government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during

the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 (``Enhancing the Intergovernmental Partnership") and 12866 (``Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

(Presidential Sig.)

THE WHITE HOUSE,
Washington, April 29, 1994.

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have 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 and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

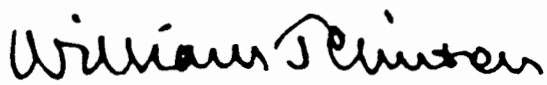
Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.



THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003
Filed 11–8–00; 8:45 am]
Billing code 3195–01–P

February 11, 1994

EXECUTIVE ORDER Number 12898

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. IMPLEMENTATION.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth In the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marian islands.

1-102. Creation of an Interagency Working Group on Environmental Justice (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an Interagency Federal Working Group on Environmental Justice ("Working- Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a)Department of Defense; (b) Department of Health and Human Services; (c)Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (1) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b)The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2)coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner; (3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings at required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies. (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b) - (e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations: (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shell identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to The President. Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities For Federal Programs. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such, programs, policies, and activities, because of their race, Color, or national origin.

Sec. 3 -3. Research, Data Collection, and Analysis

3-301. Human Health and Environmental Research and Analysis. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to, substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section

552a): (a) each federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. Subsistence Consumption Of Fish And Wildlife.

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions far Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally- recognized Indian Tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William J. Clinton

THE WHITE HOUSE,
February 11, 1994.

Code of Federal Regulations

23

Revised as of April 1, 2000

Highways

and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.

(c) The FHWA Division Administrator shall determine if the State is in compliance with the requirements of this subpart.

§ 420.215 Procedure for withdrawal of approval.

(a) If a State is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State. The notice shall set forth the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The State's reply should address the deficiencies cited in the notice and provide documentation as necessary.

(b) If the State and Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State may appeal to the Federal Highway Administrator.

(c) The Federal Highway Administrator's action shall constitute the final decision of the FHWA.

(d) An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State's RD&T activities until the State is in full compliance.

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Planning Definitions

Sec.
450.100 Purpose.
450.102 Applicability.
450.104 Definitions.

Subpart B—Statewide Transportation Planning

450.200 Purpose.
450.202 Applicability.
450.204 Definitions.
450.206 Statewide transportation planning process: General requirements.
450.208 Statewide transportation planning process: Factors.
450.210 Coordination.
450.212 Public involvement.
450.214 Statewide transportation plan.
450.216 Statewide transportation improvement program (STIP).
450.218 Funding.
450.220 Approvals.
450.222 Project selection for implementation.
450.224 Phase-in of new requirements.

Subpart C—Metropolitan Transportation Planning and Programming

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Metropolitan planning organization: Designations and redesignation.
450.308 Metropolitan planning organization: Metropolitan planning area boundaries.
450.310 Metropolitan planning organization: Agreements.
450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.
450.314 Metropolitan transportation planning process: Unified planning work programs.
450.316 Metropolitan transportation planning process: Elements.
450.318 Metropolitan transportation planning process: Major metropolitan transportation investments.
450.320 Metropolitan transportation planning process: Relation to management systems.
450.322 Metropolitan transportation planning process: Transportation plan.
450.324 Transportation improvement program: General.
450.326 Transportation improvement program: Modification.
450.328 Transportation improvement program: Relationship to statewide TIP.
450.330 Transportation improvement program: Action required by FHWA/FTA.
450.332 Project selection for implementation.
450.334 Metropolitan transportation planning process: Certification.
450.336 Phase-in of new requirements.

AUTHORITY: 23 U.S.C. 134, 135, 217(g), and 315; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

SOURCE: 58 FR 58064, Oct. 28, 1993, unless otherwise noted.

Subpart A—Planning Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a).

This page intentionally left blank in order to compensate for unintentionally duplicating a page in previous edition.

§450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§450.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C 101(a) are used in this part as so defined.

Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party's views.

Cooperation means that the parties involved in carrying out the planning, programming and management systems processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies or entities with legal standing, and adjustment of plans, programs and schedules to achieve general consistency .

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Maintenance area means any geographic region of the United States designated nonattainment pursuant to the CAA Amendments of 1990 (Section 102(e)), 42 U.S.C. 7410 et seq., and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act as amended (CAA), 42 U.S.C. 7410 et seq.

Major metropolitan transportation investment means a high-type highway or transit improvement of substantial cost that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the transportation corridor or subarea scale. Consultation among the MPO, State department of transportation, transit operator, the FHWA and the FTA may lead to the designation of other proposed improvements as major investments beyond the examples listed below. Examples of such investments could generally include but are not limited to: Construction of a new partially controlled access (access allowed only for public roads) principal arterial, extension of an existing partially controlled access (access allowed only for public roads) principal arterial by one or more miles, capacity expansion of a partially controlled access (access provided only for public roads) principal arterial by at least one lane through widening or an equivalent increase in capacity produced by access control or technological improvement, construction or extension of a high-occupancy vehicle (HOV) facility or a fixed guideway transit facility by one or more miles, the addition of lanes or tracks to an existing fixed guideway transit facility for a distance of one or more miles, or a substantial increase in transit service on a fixed guideway facility. For this purpose, a fixed guideway refers to any public transportation facility which utilizes and occupies a designated right-of-way or rails including (but not limited to) rapid rail, light rail, commuter rail, busways, automated guideway transit, and people movers. Projects that generally are not considered to be major transportation investments include but are not limited to: Highway projects on principal arterials where access is not limited to public roads only, small scale improvements or extensions (normally less than one mile) on principal arterials with the primary goal of relieving localized safety or operational difficulties, resurfacing, replacement, or rehabilitation of existing principal arterials and equipment, highway projects not located on a principal arterial, and changes in transit routing and scheduling.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency and safety of, and protect the investment in the nation's infrastructure. A management system includes: identification of performance measures; data collection and analysis; determination of needs; evaluation, and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area. MPOs designated prior to the promulgation of this regulation remain in effect until redesignated in accordance with § 450.106 and nothing in this part is intended to require or encourage such redesignation.

Metropolitan transportation plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

Nonattainment area means any geographic region of the United States that the Environmental Protection Agency (EPA) has designated as a nonattainment area for a transportation related pollutant(s) for which a National Ambient Air Quality Standard (NAAQS) exists.

Regionally significant project means a project (other than projects that may be grouped in the STIP/TIP pursuant to § 450.216 and § 450.324) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State Implementation Plan (SIP) means the portion (or portions) of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under sections 110, 301(d) and 175A of the Clean Air Act (42 U.S.C. 7409, 7601, and 7505a).

Statewide transportation improvement program (STIP) means a staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the Statewide transportation plan and planning processes and metropolitan plans, TIPs and processes.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects which is consistent with the metropolitan transportation plan.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Subpart B—Statewide Transportation Planning

§ 450.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program, that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C 134.

§ 450.202 Applicability.

The requirements of this subpart are applicable to States and any other agencies/organizations which are responsible for satisfying these requirements.

§ 450.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23

U.S.C. 101(a) are used in this part as so defined.

§ 450.206 Statewide transportation planning process: General requirements.

(a) The statewide transportation planning process shall include, as a minimum:

(1) Data collection and analysis;

(2) Consideration of factors contained in § 450.208;

(3) Coordination of activities as noted in § 450.210;

(4) Development of a statewide transportation plan that considers a range of transportation options designed to meet the transportation needs (both passenger and freight) of the state including all modes and their connections; and

(5) Development of a statewide transportation improvement program (STIP).

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by subpart C of this part.

§ 450.208 Statewide transportation planning process: Factors.

(a) Each State shall, at a minimum, explicitly consider, analyze as appropriate and reflect in planning process products the following factors in conducting its continuing statewide transportation planning process:

(1) The transportation needs (strategies and other results) identified through the management systems required by 23 U.S.C. 303;

(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements;

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State;

(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations;

(5) The transportation needs of nonmetropolitan areas (areas outside of MPO planning boundaries) through a process that includes consultation with local elected officials with jurisdiction over transportation;

(6) Any metropolitan area plan developed pursuant to 23 U.S.C. 134 and section 8 of the Federal Transit Act, 49 U.S.C. app. 1607;

(7) Connectivity between metropolitan planning areas within the State and with metropolitan planning areas in other States;

(8) Recreational travel and tourism;

(9) Any State plan developed pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (and in addition to plans pursuant to the Coastal Zone Management Act);

(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities (including consideration of all transportation modes);

(11) The overall social, economic, energy, and environmental effects of transportation decisions (including housing and community development effects and effects on the human, natural and manmade environments);

(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel;

(13) Methods to expand and enhance appropriate transit services and to increase the use of such services (including commuter rail);

(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decision-making and the provisions of all applicable short-range and long-range land use and development plans (analyses should include projections of economic, demographic, environmental protection, growth management and land use activities consistent with development goals and transportation demand projections);

(15) Strategies for identifying and implementing transportation enhancements where appropriate throughout the State;

(16) The use of innovative mechanisms for financing projects, including

value capture pricing, tolls, and congestion pricing;

(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, identification of those corridors for which action is most needed to prevent destruction or loss (including strategies for preventing loss of rights-of-way);

(18) Long-range needs of the State transportation system for movement of persons and goods;

(19) Methods to enhance the efficient movement of commercial motor vehicles;

(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements;

(21) The coordination of transportation plans and programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems;

(22) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development; and

(23) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

(b) The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation problems, land use, employment, economic development, environmental and housing and community development objectives, the extent of overlap between factors and other circumstances statewide or in subareas within the State.

§ 450.210 Coordination.

(a) In addition to the coordination required under § 450.208(a)(21), in carrying out the requirements of this subpart, each State, in cooperation with participating organizations (such as MPOs, Indian tribal governments, environmental, resource and permit agencies, public transit operators) shall, to the extent appropriate, provide for a fully coordinated process including coordination of the following:

(1) Data collection, data analysis and evaluation of alternatives for a transit, highway, bikeway, scenic byway, recreational trail, or pedestrian program with any such activities for the other programs;

(2) Plans, such as the statewide transportation plan required under § 450.214, with programs and priorities for transportation projects, such as the STIP;

(3) Data analysis used in development of plans and programs, (for example, information resulting from traffic data analysis, data and plans regarding employment and housing availability, data and plans regarding land use control and community development) with land use projections, with data analysis on issues that are part of public involvement relating to project implementation, and with data analyses done as part of the establishment and maintenance of management systems developed in response to 23 U.S.C. 303;

(4) Consideration of intermodal facilities with land use planning, including land use activities carried out by local, regional, and multistate agencies;

(5) Transportation planning carried out by the State with transportation planning carried out by Indian tribal governments, Federal agencies and local governments, MPOs, large-scale public and private transportation providers, operators of major intermodal terminals and multistate businesses;

(6) Transportation planning carried out by the State with significant transportation-related actions carried out by other agencies for recreation, tourism, and economic development and for the operation of airports, ports, rail terminals and other intermodal transportation facilities;

(7) Public involvement carried out for the statewide planning process with public involvement carried out for the metropolitan planning process;

(8) Public involvement carried out for planning with public involvement carried out for project development;

(9) Transportation planning carried out by the State with Federal, State, and local environmental resource planning that substantially affects transportation actions;

(10) Transportation planning with financial planning;

(11) Transportation planning with analysis of potential corridors for preservation;

(12) Transportation planning with analysis of social, economic, employment, energy, environmental, and housing and community development effects of transportation actions; and

(13) Transportation planning carried out by the State to meet the requirements of 23 U.S.C. 135 with transportation planning to meet other Federal requirements including the State rail plan.

(b) The degree of coordination should be based on the scale and complexity of many issues including transportation problems, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

§450.212 Public involvement.

(a) Public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. The processes shall provide for:

(1) Early and continuing public involvement opportunities throughout the transportation planning and programming process;

(2) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects;

(3) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(4) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to action on the plan and STIP;

(5) A process for demonstrating explicit consideration and response to public input during the planning and program development process;

(6) A process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households which may face challenges accessing employment and other amenities;

(7) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary.

(b) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in §450.322(c) or §450.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(c) During initial development and major revisions of the statewide transportation plan required under §450.214, the State shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation and other affected agencies, private and public providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see §450.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(d) During development and major revision of the statewide transportation improvement program required under §450.216, the Governor shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation or other affected agencies, private providers of transportation, and other interested parties, a reasonable opportunity for review and comment on the proposed program.

The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 450.220(c)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(e) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program will be determined by the State and local officials based on the complexity of the revisions.

(f) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(g) The public involvement processes will be considered by the FHWA and the FTA as they make the planning finding required in § 450.220(b) to assure that full and open access is provided to the decision making process.

§ 450.214 Statewide transportation plan.

(a) The State shall develop a statewide transportation plan for all areas of the State.

(b) The plan shall:

(1) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the efficient movement of people and goods;

(2) Be reasonably consistent in time horizon among its elements, but cover a period of at least 20 years;

(3) Contain, as an element, a plan for bicycle transportation, pedestrian walkways and trails which is appropriately interconnected with other modes;

(4) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134;

(5) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation need studies, management system reports and any statements of policies, goals and objectives regarding issues such as transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan; and

(6) Reference, summarize or contain information on the availability of financial and other resources needed to carry out the plan.

(c) In developing the plan, the State shall:

(1) Cooperate with the MPOs on the portions of the plan affecting metropolitan planning areas;

(2) Cooperate with the Indian tribal government and the Secretary of the Interior on the portions of the plan affecting areas of the State under the jurisdiction of an Indian tribal government;

(3) Provide for public involvement as required under § 450.212;

(4) Provide for substantive consideration and analysis as appropriate of specified factors as required under § 450.208; and

(5) Provide for coordination as required under § 450.210.

(d) The State shall provide and carry-out a mechanism to establish the document, or documents, comprising the plan as the official statewide transportation plan.

(e) The plan shall be continually evaluated and periodically updated as appropriate using the procedures in this section for development and establishment of the plan.

§ 450.216 Statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, e.g., metropolitan area, Indian tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan

planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist this process, the State will need to provide MPOs with estimates of available Federal and State funds which the MPO can utilize in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in nonattainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land agency, Indian tribal government, etc. when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 and Federal Transit Act fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for public involvement in development of the STIP as required by § 450.212. In addition, the STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first 3 years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, e.g., year 1, year 2, year 3;

(2) Cover a period of not less than 3 years, but may at State discretion cover a longer period. If the STIP covers more than 3 years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 450.214;

(4) In nonattainment and maintenance areas, contain only transportation projects found to conform, or from programs that conform, to the requirements contained in 40 CFR part 51;

(5) Be financially constrained by year and include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified;

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under the Federal Transit Act (49 U.S.C. app. 1602, 1607a, 1612 and 1614) and/or title 23, U.S.C. excluding:

(i) Safety projects funded under section 402 of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. app. 2302);

(ii) IVHS planning grants funded under section 6055(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914);

(iii) Transit planning grants funded under section 8 or 26 of the Federal Transit Act (49 U.S.C. app. 1607 and 1622);

(iv) Metropolitan planning projects funded under 23 U.S.C. 104(f);

(v) State planning and research projects funded under 23 U.S.C. 307(c)(1) (except those funded with NHS, STP and minimum allocation (MA) funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(vi) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C. or Federal Transit

Act funds, e.g., addition of an interchange to the Interstate System with State, local and/or private funds, demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act. (The STIP should, for information purposes, include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Include for each project the following:

(i) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total cost;

(iii) The amount of Federal funds proposed to be obligated during each program year;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds;

(v) For the second and third years, the likely category or possible categories of Federal funds and sources of non-Federal funds;

(vi) Identification of the agencies responsible for carrying out the project; and

(9) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the project selection requirements in § 450.222(c).

(b) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117 (c) and (d) and/or 40 CFR part 51.

(c) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the project selection requirements of § 450.222.

(d) The STIP may be amended at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 450.212 (for public involvement) and in § 450.220 (for the FHWA and the FTA approval).

§ 450.218 Funding.

Funds provided under sections 8, 9, 18, and 26(a)(2) of the Federal Transit Act and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f)(3) and 307(c)(1) may be used to accomplish activities in this subpart.

§ 450.220 Approvals.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently to the FHWA and the FTA for joint approval. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 135, section 8(q) of the Federal Transit Act and this part;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(3) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Pub. L. 97-424, 96 Stat. 2100; 49 CFR part 23);

(4) The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(5) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities; and

(6) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)).

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal lands agencies, will review the STIP or amendment and jointly make a finding as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., the Federal Transit Act and subparts A, B and C of this part.

(c) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment

meet, to an acceptable degree, the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will approve the STIP. Approval action will take one of the following forms, as appropriate:

(1) Joint approval of the STIP;

(2) Joint approval of the STIP subject to certain corrective actions being taken;

(3) Joint approval of the STIP as the basis for approval of identified categories of projects; and/or

(4) Under special circumstances, joint approval of a partial STIP covering only a portion of the State.

(d) The joint approval period for a new STIP or amended STIP will not exceed two years. Where the State demonstrates that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, FHWA and FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted if the conformity determination on the TIP is no longer valid under EPA's conformity regulations (40 CFR part 51).

(e) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP.

(f) The FHWA and the FTA will notify the State of actions taken under this section.

(g) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator may approve operating assistance for specific projects or programs even though the projects or programs may not be included in an approved STIP.

§ 450.222 Project selection for implementation.

(a) Except as provided in §§ 450.220(f) and 450.216(a)(7), only projects included in the Federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring title 23 or Federal Transit Act funds administered by the FHWA or the FTA shall be selected in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials. Federal lands highway projects shall be selected in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected by the State in cooperation with the affected local officials, and projects undertaken with Federal Transit Act funds shall be selected by the State in cooperation with the appropriate affected local officials and transit operators.

(d) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further project selection action is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 450.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used. Expedited selection procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection.

U.S. Department
of Transportation

Office of the Secretary
of Transportation

ORDER

DOT 5301.1

November 16, 1999

SUBJECT: **Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes**

1. **PURPOSE.** To ensure that programs, policies, and procedures administered by the Department of Transportation (DOT) are responsive to the needs and concerns of American Indians, Alaska Natives, and tribes.

2. **REFERENCES.** This list is not all-inclusive but is intended to help in the understanding of this DOT Order.

a. **Executive Orders and Memoranda:**

(1) Executive Order 12866, Regulatory Planning and Review (58 Federal Register 51739, October 4, 1993), dated September 30, 1993.

(2) Executive Order 12875, Enhancing the Intergovernmental Partnership (58 Federal Register 58093, October 28, 1993), dated October 26, 1993.

(3) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Federal Register 7629, February 16, 1994), dated February 11, 1994.

(4) Executive Order 13007, Indian Sacred Sites (61 Federal Register 26771, May 29, 1996), dated May 24, 1996.

(5) Executive Order 13021, Tribal Colleges and Universities (61 Federal Register 54929, October 23, 1996) dated October 19, 1996

(6) Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 Federal Register 19885, April 23, 1997) dated April 21, 1997.

(7) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 Federal Register 27655, May 19, 1998), dated May 14, 1998.

(8) Executive Order 13096, American Indian and Alaska Native Education (63 Federal Register 42681, August 11, 1998), dated August 6, 1998.

(9) Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes, Memorandum for the Heads of Executive Departments and Agencies, signed by the President, April 29, 1994.

(10) Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments (59 Federal Register 22951, May 4, 1994).

b. **DOT Orders:**

(1) DOT 1000.12, Implementation of the Department of Transportation's Title VI Program, dated January 19, 1977.

(2) DOT 1300.1, ONE DOT Management Strategy, dated September 18, 1998.

(3) DOT 1325.2C, DOT Correspondence Policy, dated October 29, 1993.

(4) DOT 5610.1C, Procedures for Considering Environmental Impacts, dated September 18, 1979.

(5) DOT 5610.2, Environmental Justice in Minority Populations and Low-Income Populations, dated April 4, 1997.

c. **Statutes:**

(1) Antiquities Act of 1906, as amended, 16 U.S.C. " 431-433 (1998).

(2) Historic Sites Act of 1935, 16 U.S.C. " 461-467.

(3) National Historic Preservation Act of 1966, as amended, 16 U.S.C. " 470-470w-6.

(4) National Environmental Policy Act of 1969, 42 U.S.C. " 4321, 4321 note, 4331-4335, 4341-4346b, 4347.

(5) Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended, 43 U.S.C. " 1601-1629g.

(6) Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. ' 450.

(7) American Indian Religious Freedom Act of 1978, as amended, 42 U.S.C. ' 1996.

(8) Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. " 1801-1815.

(9) Navajo Community College Assistance Act of 1978, 25 U.S.C. ' 640a.

(10) Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. " 3001-3013.

(11) Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. " 479a and 479-a-1 (63 Federal Register 71941, December 30, 1998).

(12) Tribal Self-Governance Act of 1994, 25 U.S.C. " 458aa - 458hh.

(13) Equity in Educational Land Grant Status Act of 1994, 7 U.S.C. ' 301 note.

(14) Unfunded Mandates Reform Act of 1995, 2 U.S.C. " 602, 658,

658a - 658g, and Chapter 25.

(15) Archeological Resources Protection Act of 1979, as amended, 16 U.S.C. " 470aa - 470mm.

(16) Religious Freedom Restoration Act of 1992, 42 U.S.C. " 2000bb - 2000bb - 4.

(17) Buy Indian Act (as amended 1994), 25 U.S.C. ' 47.

(18) Transportation Act of 1966, as amended 49 U.S.C.' 303 (formerly known as Section 4f).

(19) Intergovernmental Personnel Act 5 U.S.C. ' 4701 (allows temporary employment of tribal government officials) and 42 U.S.C. " 4771- 4772 (authority allowing tribal officials to participate in Federal training)

(20) Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000d, et seq.

3. **DEFINITIONS.**

a. **American Indian and Alaska Native**. "American Indian" refers to the term used in the OMB Statistical Policy Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" to identify descendants of the populations indigenous to North America at the time of European discovery. American Indian includes Alaska Natives. "American Indian" however, is commonly used to refer to individuals of such populations residing in the lower 48 States. "Alaska Native" came into use with the passage of the Alaska Native Claims Settlement Act of 1971. Alaska Native is the usage preferred according to results of the Census Bureau's Race and Ethnic Targeted Test (RAETT), included in the Office of Management and Budget's Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity; Notice and Proposed Request for Comments, 62 Federal Register 36873-36946 (July 9, 1997). Alaska Native refers to Alaskan Indians (including American and Canadian Indians living in Alaska), Eskimo, and Aleut. Note that "Alaska Native" and "American Indian" is not necessarily equivalent to the terms "tribe" and "tribal member." Therefore, since the application of specific statutes and executive orders vary, the definitions contained within these laws should be referred to for additional information.

b. **Consultation**. Refers to meaningful and timely discussion in an understandable language with tribal governments during the development of regulations, policies, programs, plans, or matters that significantly or uniquely affect federally recognized American Indian and Alaska Native tribes and their governments. The specific guidelines and instructions for implementing the Unfunded Mandates Reform Act of 1995 found in OMB Memorandum M-95-20 and the recommendations in the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated

April 29, 1994, also provide general principles for intergovernmental consultation under this Order.

c. **DOT Component**. Refers to each agency, office, mode, administration or other entity of the Department of Transportation.

d. **Environmental Justice**. Refers to avoiding, minimizing, and mitigating disproportionately high and adverse effects of DOT policies, programs, and activities on minority populations and low-income populations.

e. **Federally Recognized Tribe**. Refers to the tribal government and tribal members of any tribe, band, pueblo, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.), or that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for the programs, services, and other relationships established by the U.S. for Indians because of their status as Indians.

f. **Government-to-Government Relations**. Refers to the protocol for communicating between the Federal Government and tribes as sovereigns in accordance with the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994. The first point of contact should be the Chairman of the Tribal Council or the President of the Tribe.

g. **Indian Preference**. Refers to a preference, typically in employment and contracts, based on the political relationship between the U.S. and members of federally recognized tribes. Indian preference applies only to members of federally recognized tribes and not to individuals who are racially classified as "Indians" but who are not members of federally recognized tribes.

h. **ONE DOT Management Strategy**. Refers to the Department's management strategy and intermodal collaboration that builds on the strengths of DOT modes and the Office of the Secretary of Transportation (OST) to achieve the Department's mission and goals as prescribed in paragraph 2b(2).

i. **Tribe**. The term "tribe," when used in its ethnographical sense to describe a cultural group, does not necessarily confer legal status on a tribe. Therefore, for purposes of this Order, the term "tribe" refers to "Indian tribe" or "Federally recognized tribe" and may also refer to State recognized tribes which are not Federally recognized but which are eligible for certain Federal benefits and privileges under specific Federal laws.

j. **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 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).

k. Tribal Government. Refers to the recognized government of a tribe.

l. Tribal Member. Refers to a member of a tribe as determined by tribal membership rules.

m. **Tribal Sovereignty**. Refers to the unique legal status of federally recognized Indian tribes as set forth in the U. S. Constitution, treaties, and Federal statutes, executive orders, and court decisions, which establish these tribes, as domestic dependent nations subject to the protection of the U.S. Government. As domestic dependent nations, these tribes exercise inherent sovereign powers over their members and territory unless explicitly removed by Congress.

n. **Trust Resources**. Refers to natural resources such as, but not limited to, water, fish, wildlife, air, minerals, natural gas, oil, forests, plants, land, rivers, cultural resources, that are held in trust by the Federal Government on behalf of the federally recognized tribes.

4. **BACKGROUND.**

a. American Indians and Alaska Natives have a special place in our Nation's history and culture, and certain laws and policies apply to them.

b. The Federal Government has a unique legal and political relationship with federally recognized tribes that have been found by the U.S. Supreme Court to be sovereign, domestic dependent nations, subject to the protection of the United States.

c. The Federal Government has a moral obligation of the highest responsibility and trust for resources held by the Federal Government on behalf of federally recognized tribes and their members, who are properly concerned that trust resources should be conserved for the benefit of present and future generations.

d. The Federal Government, in carrying out its trust responsibility, has the duty to act in good faith and loyalty to the best interests of American Indians, Alaska Natives, and tribes, among these being their interest in self-government and that it is the express policy of Congress and the President to strengthen tribal self-governance.

e. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (Public Law 93-638). This Act recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of Federal services.

f. On April 29, 1994, a Presidential Memorandum was issued, entitled, "Government-to-Government Relations with Native American Tribal Governments." This Memorandum directed all Executive Departments and Agencies to implement activities affecting Indian tribal rights or trust resources by consulting with tribes in a knowledgeable, sensitive manner respectful of tribal sovereignty.

g. Executive Order 13084, dated May 14, 1998, entitled, @Consultation and Coordination with Indian Tribal Governments,@ directs Federal agencies to work with Indian tribes by: establishing regular and meaningful consultation and collaboration with them on Federal matters that significantly or uniquely affect their communities; reducing the imposition of unfunded mandates on them; and streamlining the application process and availability of waivers to them.

5. **POLICY.** In conducting and administering activities and programs, and fostering relationships with American Indians, Alaska Natives, and tribes, all components within DOT must, to the extent practicable and permitted by law:

a. Carryout DOT's mission, strategic goals, policies, programs, and activities affecting American Indians, Alaska Natives, and tribes in a manner that reflects a high commitment to the ONE DOT management strategy.

b. Consult with Indian tribes before taking any actions that may significantly or uniquely affect them. This process may be supplemented by seeking information from other relevant sources and may be required by specific laws, regulations, and executive orders. This includes, but is not limited to, traditional leaders or elders and associations of tribal officials.

c. Work with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their respective interests.

d. Recognize American Indian and Alaska Native statutory preferences in employment, Federal financial assistance arrangements and contracting, subject to eligibility.

e. Assess the environmental impact of DOT activities on tribal trust resources and ensure that tribal interests are considered before DOT activities are undertaken. This assessment must include ensuring that the concerns of federally recognized tribes, regarding the potential impact on trust resources, are properly addressed in agency policies, programs, and activities.

f. Respond effectively to the transportation concerns of American Indians and Alaska Natives related to environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental matters.

g. Streamline DOT procedures for working directly with tribes on activities that affect trust resources or tribal self-governance of the tribes.

h. Seek tribal representation in relevant DOT sponsored meetings, negotiated rulemaking efforts, forums, advisory committees, listening sessions, focus groups, public surveys, research protocols, and data collection activities.

i. Design solutions and tailor DOT programs as appropriate to address specific or unique needs of tribal communities.

j. Consider opportunities under the Intergovernmental Personnel Act for temporarily hiring tribal members and publicizing eligibility of tribal members to participate in Federal training activities

k. Foster opportunities such as internships, fellowships, scholarships, or other related DOT programs in education and research for American Indians, and Alaska Natives.

l. Include tribal colleges and universities in DOT educational, research, and program activities as prescribed in paragraph 2a(5). This may also include helping the institutions through such activities as providing DOT personnel as temporary instructors and providing surplus property and equipment.

m. Support government-wide educational efforts aimed at American Indian and Alaska Native students such as improving literacy and mathematics skills and increasing high school completion rates.

n. Ensure non-discrimination in employment of and services to American Indians and Alaska Natives.

o. Integrate information about Federal laws and policies on relations with American Indians and Alaska Natives into DOT training.

p. Treat correspondence from leaders of federally recognized tribes in the same manner as congressional correspondence as prescribed in the DOT Correspondence Manual (refer to paragraph 2b(3) of this document).

q. Cooperate with other Federal, State, or local agencies to accomplish government-to-government relations, carryout consultation, address regulatory issues, and solve problems in accordance with the policy objectives above.

6. **RESPONSIBILITIES OF EACH DOT COMPONENT.** In carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes, each DOT component must to the extent practicable and permitted by law:

a. Ensure that an effective mechanism is in place to achieve the following goals:

(1) Improve communication with American Indians, Alaska Natives, and tribes to respond more effectively to their transportation concerns.

(2) Develop an intergovernmental consultation process for that component in coordination with the designated office established under paragraph 7 of this Order.

(3) Adapt processes to recognize American Indian, Alaska Native, and tribal culture and traditions.

(4) Address American Indian, Alaska Native, and tribal transportation issues and concerns under the ONE DOT management strategy.

(5) Ensure consistency within procedures, regulations, and guidance of the various DOT components for addressing American Indian, Alaska Native, and tribal transportation issues.

(6) Maximize cooperation and coordination with the OST, other DOT components, other Federal agencies, and appropriate public and private organizations on transportation matters affecting American Indians, Alaska Natives, and tribes.

(7) Share information about DOT components, programs, activities, and accomplishments as they relate to American Indian, Alaska Native and tribal matters.

(8) Maximize participation of tribal colleges and universities in DOT education, employment, and mission-related programs.

(9) Avoid infringing on tribal lands and accommodate access to and ceremonial use of sacred sites and ancestral burial grounds on Federal and tribal lands to the extent practicable and consistent with essential agency functions.

(10) Invite participation of American Indian, Alaska Native or other tribal employees of DOT to help achieve communication goals.

b. Periodically review efforts to achieve the goals listed in paragraphs 6a(1) through 6a(10) and take appropriate action, as necessary, to improve accomplishment of established goals.

c. Designate a point of contact, experienced in working with tribes or knowledgeable in laws, regulations, and policies regarding federally recognized American Indians, Alaska Natives, and tribes, to serve as a resource for the Department.

7. **DESIGNATED DOT OFFICE.** The Secretary will designate an office to facilitate effective implementation of the policies and requirements of this Order. In this regard, the designated office will advise and make recommendations to the Secretary of Transportation on American Indian, Alaska Native, and tribal policies, issues, programs, and activities. The designated office's mission and responsibilities are further described below.

a. **Mission**. To facilitate a consistent Departmental policy, and strategy relative to American Indian, Alaska Native, and tribal transportation matters to the extent practicable and permitted by law.

b. **Duties**. The designated DOT Office must perform the following duties:

(1) Provide Departmental oversight, guidance, direction, and recommendations to the Secretary and DOT components with regard to implementing this Order and achieving the goals listed in paragraphs

6a(1) through 6a(10) of this Order. This includes providing summary information and/or reports on the Department's efforts as described in paragraph 6b.

(2) Educate DOT employees on American Indian, Alaska Native and tribal laws, policies, programs, activities, culture, and traditions.

(3) Stress the importance of tribal involvement in transportation planning and decision-making.

(4) Ensure tribes' involvement in DOT decision-making that significantly or uniquely affects them.

(5) Encourage direct relationships with the tribes.

(6) Exercise creativity and flexibility in fostering partnerships among the tribes, States, and local governments.

(7) Ensure implementation of the goals listed in paragraphs 6a(1) through 6a(10) of this Order through the following:

(a) **Improve Communication.**

1 Maintain a current directory of DOT programs, including a list of contact persons, for which American Indians, Alaska Natives, and tribes are eligible.

2 Coordinate and promote innovative partnerships among Federal, State, and local government programs and activities that will have the optimal positive effect on American Indians, Alaska Natives, and tribes.

3 Serve on the White House Domestic Policy Council/Native American Subcommittee.

4 Participate in interagency forums on American Indian and Alaska Native issues or concerns.

5 Seek opportunities for training and information exchange via meetings, conferences, workshops, and forums.

6 Facilitate communication and dialogue among Federal, State, tribal representatives, and other government entities.

7 Ensure the DOT website focusing on DOT programs, policies, activities, and issues affecting

American Indians, Alaska Natives, and tribes convey the ONE DOT message.

8 Determine through information or recommendations from tribes the best communication channels to disseminate DOT information.

9 Establish a mechanism for initiating contact and providing information about DOT programs, policies, and activities to tribal officials using their preferred protocol.

(b) **Employ the ONE DOT Management Strategy.**

1 Facilitate full and open internal and external communications that allow DOT to speak with one voice concerning American Indian, Alaska Native and tribal transportation concerns.

2 Maintain a point of contact to address, coordinate, and resolve American Indian, Alaska Native, and tribal policy, programs, and activities from a ONE DOT perspective while providing for maximum participation by DOT components and recognizing the unique nature of the programs and operations of each component.

(c) **Improve Regulations and Guidance.**

1 Assist and make recommendations concerning the development, establishment, and maintenance of Departmental American Indian, Alaska Native, and tribal policy, guidance, procedures and regulations.
2 Participate in Department-wide review and resulting modification of existing regulations affecting American Indian, Alaska Natives, and tribes.

This Order is intended to improve the internal management of the Department, consistent with paragraph 1 of this Order, and is not intended to create any right enforceable in any cause of action by any party against the U.S., its agencies, officers or any person. In addition, this Order should not be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers, or any other person.

SECRETARY OF TRANSPORTATION

Rodney E. Slater

EXECUTIVE DEPARTMENT

STATE OF CALIFORNIA

APR 8 1992

By Ann M. Monauer
Deputy

EXECUTIVE ORDER W-26-92

WHEREAS, the preservation and wise use of California's cultural and historic resources are of importance to the people of this state; and

WHEREAS, these cultural and historic resources, hereinafter referred to as "heritage resources," include artifacts, sites, building, structures, districts, and objects with historical, architectural, archaeological, and cultural significance; and

WHEREAS, these heritage resources provide not only continuity with our past, but foster community pride, stimulate economic activity, improve housing, enhance the quality of life and, along with California's unique natural resources, draw hundreds of thousands of visitors to California every year; and

WHEREAS, due to their location, age, and the construction materials used, many of our important historic buildings and historic sites may be at risk from deterioration, destruction, and natural disasters; and

WHEREAS, an assessment of the extent of our heritage resources is needed in order to ensure their recognition and adequate protection in the future; and

WHEREAS, the preservation and wise use of historic resources must include consideration of cost-effectiveness and fostering private sector incentives, and state agencies must consider these and other public interests in their decision-making processes;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and the statutes of the State of California, do hereby issue this order to become effective immediately, and do hereby direct all agencies of the Executive Branch of state government as follows:

Section 1. In furtherance of the purposes and policies of the State's environmental protection laws, including but not limited to the California Environmental quality Act, Public Resources Code Section 21000 et seq., the State Historic Building Code, Health and Safety Code Section 18950 et seq., and the historic resources preservation laws, Public Resources Code Section 5020 et seq., all state agencies shall recognize and, to the extent prudent and feasible within existing budget and personnel resources, preserve and maintain the significant heritage resources of the State. In accordance with these statutes, each state agency is directed:

1) to administer the cultural and historic properties under its control in a spirit of stewardship and trusteeship for future generations; and

2) to initiate measures necessary to direct its policies, plans, and programs in such a way that state-owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and

3) to ensure that the protection of significant heritage resources are given full consideration in all of its land use and capital outlay decisions; and

4) in consultation with the California State Office of Historic Preservation, to institute procedures to ensure that state plans and programs contribute to the preservation and enhancement of significant non-state owned heritage resources.

Section 2. Each state agency shall designate from among its current staff a key official (Agency Preservation Officer) whose responsibility will be to ensure that the State's policies regarding the protection of cultural and historic resources within the jurisdiction of such state agency are carried out.

Section 3. Under the direction of its Agency Preservation Officer, in consultation with the State Historic Preservation Officer, and in consultation as appropriate with the State Historical Building Safety Board, each agency shall, by January 1994, develop and institute feasible and prudent policies and a management plan to preserve and maintain its significant heritage resources.

(a) Inventories pursuant to Section 5024 are to be completed or updated by January 1995, or as soon thereafter as feasible as specified in a Memorandum of Understanding with the State Historic Preservation Officer. Inventory preparation shall take into account the kind, quantity, location of, and development risk to properties within the ownership and control of the agency.

(b) Heritage resources management plans and policies shall be reviewed periodically and revised as appropriate in consultation with the State Office of Historic Preservation.

(c) For purposes of developing management plans and policies under this order, resources which meet the following criteria shall be considered significant heritage resources:

(1) listed in or potentially eligible for inclusion in the National Register of Historic Places; or

(2) registered or eligible for registration as a state historical landmark or point of historical interest; or

(3) registered or eligible for listing in a California Register of Historical Resources in accordance with procedures and criteria developed by the State Historical Resources Commission.

Section 4. The State Historic Preservation Officer and the State Office of Historic Preservation shall provide leadership to and shall coordinate the efforts of State agencies in implementing their stewardship obligations with regard to historic resources, including, but not limited to, the requirements of Public Resources Code Sections 5020, et seq.

Section 5. Each state agency shall report to the State Office of Historic Preservation annually its progress in completing inventories, management plans, and policies pursuant to this order.

Section 6. The Resources Agency and the Office of Planning and Research shall provide guidance concerning the application of the California Environmental Quality Act (CEQA) and the state's CEQA regulations in order to provide for the consistent protection and preservation of the heritage resources of California.

The provisions of Section 21080(b)(3) and (4) of the Public Resources Code shall not be construed or applied to exempt from review projects to alter significant historic resources except to the extent that the condition of the historic structures or resources poses an emergency as defined by Section 21060.3 of the Public Resources Code. The historic value of structures is to be preserved and enhanced, unless the state or local agency finds the structure presents an imminent threat of harm to the public or of damage to adjacent property.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 8th day of April 1992.

Governor of California

ATTEST:

Secretary of State

Assembly Concurrent Resolution No. 185

RESOLUTION CHAPTER 150

Assembly Concurrent Resolution No. 185—Relative to Native American tribal rights.

[Filed with Secretary of State September 18, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 185, Battin. Native American tribal rights.

This measure would reaffirm state recognition of the sovereign status of federally recognized Indian tribes as separate and independent political communities within the United States, encourage all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty, and encourage all state agencies to continue to reevaluate and improve the implementation of laws affecting Native American tribal rights.

WHEREAS, The United States Constitution gives Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Section 8, Article I, U.S. Const.) thus recognizing Native American tribes as separate and independent political communities within the territorial boundaries of the United States; and

WHEREAS, The United States Constitution has been construed to recognize Indian sovereignty by classifying Indian treaties as part of the "supreme law of the land," and to establish Indian affairs as a unique area of federal concern; and

WHEREAS, Congress and the President of the United States have enacted measures that promote tribal economic development, tribal self-sufficiency, and a strong tribal government, such as the federal Indian Gaming Regulatory Act (25 U.S.C. Sec. 2701 and following); and

WHEREAS, Previous presidents have consistently affirmed tribal sovereignty and, thus, the rights of Indian nations in the following ways: President Lyndon B. Johnson recognized "the right of the first Americans ... to freedom of choice and self-determination"; President Nixon strongly encouraged "self-determination" among the Indian people; President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes; and President Bush recognized that the federal government's "efforts to increase tribal self-governance have brought a renewed

sense of pride and empowerment to this country's native peoples"; and

WHEREAS, The Legislature of the State of California is committed to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance; and

WHEREAS, The Legislature supports and is committed to the enforcement of the Indian Civil Rights Act of 1968 (25 U.S.C. Sec. 1301 and following), which safeguards tribal sovereignty while simultaneously ensuring that the civil rights of Indian people are protected; and

WHEREAS, Because the Legislature recognizes and respects tribal customs and traditions, it is important that the state government work to preserve tribal cultures; and

WHEREAS, The Legislature acknowledges that tribal governments now are able to provide tribal members with better health care services, education, job training, employment opportunities, and other basic essentials; and

WHEREAS, The Legislature further recognizes that tribal governments have been generous benefactors—helping their neighbors in making California communities as good as they can be; and

WHEREAS, The people of the State of California overwhelmingly indicated their support for Indian sovereignty through the passage of Proposition 5, the Tribal Government Gaming and Self-Sufficiency Act of 1998, by a vote of 63 percent at the November 3, 1998, general election and Proposition 1A, the Gambling on Tribal Lands Initiative, by a vote of 64.5 percent at the March 20, 2000, primary election; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California reaffirms state recognition of the sovereign status of federally recognized Indian tribes as separate and independent political communities within the territorial boundaries of the United States, encourages all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty, and, in recognizing their tribal sovereignty, encourages all state agencies to continue to reevaluate and improve the implementation of laws that affect Native American tribal rights; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to all federally recognized tribes in California, Members of Congress, and the President of the United States.

DIRECTOR'S POLICY

Number: 19

Effective Date: 08-29-01

Supersedes: New

TITLE Working with Native American Communities

POLICY

When working on issues affecting Native American communities, the Department of Transportation (Department) acts consistently, respectfully and sensitively. When there are regulatory, statutory and/or procedural impediments limiting the Department's ability to work effectively and consistently with Native American communities, the Department seeks to resolve such impediments.

The Department establishes and adheres to government-to-government relationships when interacting with federally recognized California Native American Tribes (Tribal Governments). The Department:

- Acknowledges these tribes as unique and separate governments within the United States.
- Ensures that its programs and activities avoid or minimize adverse impacts to cultural and other resources.
- Recognizes and respects important California Native American rights, sites, traditions and practices.
- Consults with Tribal Governments prior to making decisions, taking actions or implementing programs that may impact their communities.

INTENDED RESULTS

When engaging in activities or developing policies that affect Native American tribal rights or trust resources, the Department acts in a knowledgeable, sensitive and respectful manner.

Native American communities include lands held in trust by Tribal Governments, communities of non-federally recognized tribes, tribal members of California tribes living outside the exterior boundaries of a reservation or rancheria, Native Americans that are not part of a California tribe living in California.

RESPONSIBILITIES

Director: Works with Tribal Governments to achieve the intended results of this policy either directly or through subordinates.

Deputy Director, Planning and Modal Programs:

- Has lead responsibility for the development and implementation of departmental policy regarding issues impacting Native American communities.
- Coordinates the activities of and serves as the Director's representative and ex-officio member to the Director's Native American Advisory Committee.
- Advises Districts, Divisions, agencies and states to resolve issues or concerns of Native American communities.

Deputy Director, Civil Rights:

- Develops and implements departmental policy on issues regarding Civil Rights, Disadvantaged Business Enterprises (DBE) and Tribal Employment Rights Ordinances (TERO) as they relate to Native Americans and Native American communities.
- Advises Tribal Governments and the Department on Title VI provisions as they relate to Native Americans.

Deputy Director, Project Delivery:

- Develops and implements departmental policy on issues regarding environmental and cultural resources as they relate to Native American communities.
- Develops procedures to implement this policy as it relates to project delivery issues.

Deputy Director, Maintenance and Operations: Develops procedures to implement this policy as it relates to the maintenance and operation of State transportation facilities.

District Directors:

- Promote, establish and manage government-to-government relationships between the Department and Tribal Governments.
- Coordinate District activities with the Native American Liaison Branch.

Division Chiefs and Program Manager: Develop procedures to implement this policy as it relates to their respective areas of responsibility.

Chief, Division of Transportation Planning:

- Oversees the Department's Native American Liaison Branch that:
  - — Serves as Department ombudspersons on Native American issues and initial contact for Native American legal issues.
  - — Serves as liaisons between the Department, Tribal Governments and other involved third parties to promote government-to-government relationships.
  - — Provides information, training and facilitation services related to issues affecting Native American communities.

Chief, Division of Environmental Analysis:

- Oversees the Native American Cultural Studies Branch.
- Develops policies and procedures implementing applicable State and federal environmental and cultural resources laws that affect Native American communities.
- Acknowledges and complies with applicable tribal environmental laws.

Managers and Supervisors: Ensure that their subordinates are informed of and comply with this policy.

Employees: Ensure that the Department is represented in a knowledgeable, sensitive and respectful manner when engaging in activities that impact Native American communities.

APPLICABILITY

Everyone who works for the Department in any capacity including contractors, consultants and subcontractors.

Jeff Morales

JEFF MORALES
Director

8/29/01
Date Signed

Memorandum

To: DISTRICT DIRECTORS
DEPUTY DISTRICT DIRECTORS for Planning

Date: July 25, 2001

File:

From: DEPARTMENT OF TRANSPORTATION
Division of Transportation Planning

Subject: Native American Tribal Transportation Issues

This memorandum is intended to ensure that Tribal Governments are included in the planning process. There are over 300,000 Native Americans in California with a notable Native American population in every county. All counties except Los Angeles and Orange, contain Tribal lands with respective Tribal Governments with populations totaling over 60,000.

Tribal Governments, combined, currently receive approximately $5 million per year for capital projects, and less than $700,000 for maintenance through the Bureau of Indian Affairs, Indian Reservation Roads Program. These funds are distributed for projects serving all 109 Tribal Governments. The California Transportation Commission (CTC) identified, as part of a 10-year needs assessment of transportation rehabilitation, maintenance, and operations needs, $275 million of needed road improvements on Tribal lands in the State. With the current level of funding available to Tribal Governments, it would take approximately 55 years to fund currently identified projects within their communities.

By this memorandum, we are requesting that your district ensure that Tribal Governments are included in the planning process, particularly during the early stages of planning. The CTC adopted the 1999 Regional Transportation Plan Guidelines, which emphasized the Federal and State requirements to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs. The CTC held three statewide workshops with Tribal Governments, the California Department of Transportation (Department), Regional Transportation Planning Agencies (RTPAs), and Metropolitan Planning Organizations (MPOs) in 1999 and 2000. Further, the CTC reported in their 1999 and 2000 Annual Reports to the California Legislature, their support to encourage funding of transportation projects accessing Tribal lands through state and local transportation programs. Through early planning, the Department can ensure timelier project delivery, avoiding potential problems during the implementation of projects.

Some suggestions to achieve Departmental strategic goals include:

- Contact the Headquarters Native American Liaison Branch for information regarding Tribal Governments in your district. This Branch is a section of the Division of Transportation Planning and Office of Regional Interagency Planning. The staff can assist in the facilitation of meetings with the Tribal Governments in your district. A web page is also available with a listing of the Tribal Governments, the address is: http://www.dot.ca.gov/hq/tpp/Offices/ORIP/NatAmer/NatAmer.htm.
- If Native American lands are likely to be impacted, their local communities must be notified. Local communities are defined as the local federally recognized tribe(s), non-federally recognized tribe(s), or Native American communities.
- Become familiar with the Native American leadership, their government structures, and protocol for the most effective communication.

- Include the Tribal Governments in early planning of transportation plans and projects, i.e., Route Concept Reports, Transportation Improvement Programs, and District System Management Plans.
- Facilitate and encourage meetings with the Tribal Governments and the RTPAs and MPOs.
- Emphasis that consultation with Tribal Governments means involving the elected leaders in the planning process and decision-making process, particularly when our Department's activities directly impact their communities.
- During the early planning and the environmental scoping process, if there is likelihood of impact on historical or archaeological resources, contact: (1) the area California Historical Resource Information Center to obtain the necessary information on known archaeological and historical sites, and (2) the Native American Heritage Commission to identify recorded sites within the project area, and to obtain a list of Native Americans to contact regarding their project and its area of coverage. If Native American lands are impacted, the Tribal Governments should be notified, and if appropriate, an archaeological survey shall be required. If environmental resources are present in the project area, the applicant is expected to comply with CEQA procedures to evaluate their significance. The Department's District Native American Cultural Coordinator should also be contacted.
- When state highways are located within the boundaries of an Indian Reservation/Rancheria, the status of the right of way should be established to determine our Department's authority during the planning stages, to avoid problems during the implementation of the project.

A list of California Indian Reservations and Rancherias is attached. Thank you for your assistance in helping us fulfill our responsibilities. If you have any questions about any of these procedures, please contact Cynthia Gomez, Office Chief, Native American Liaison Branch, at (916) 654-2389 or Calnet 8-464-2389.

Joan C Sollenberger

JOAN C. SOLLENBERGER, Chief
Division of Transportation Planning

Attachment

c: Jeff Morales
Tony Harris
Randy Iwasaki
Brian Smith
Brent Felker
Algerine McCray
Gary Winters
Greg King
Sharon Scherzinger
Cynthia Gomez
Federally Recognized Tribes
NAAC
FHWA
FTA
CTC
Bureau of Indian Affairs

TRAFFIC OPERATIONS PROGRAM DIRECTIVE	NUMBER 99-03	Page 1 of 2
KIM NYSTROM, ACTING PROGRAM MANAGER *(Signature)*	DATE ISSUED 11/23/99	EFFECTIVE DATE 12/01/99

SUBJECT
Signing for Indian Reservations and Rancherias

DISTRIBUTION

- ☒ All District Directors
- ☒ All District Division Chiefs - Traffic Operations
- ☒ All District Division Chiefs - Maintenance
- ☐ All District Division Chiefs - Construction
- ☐ All District Division Chiefs - Project Development
- ☒ All District Division Chiefs - Planning
- ☐ Service Center Directors
- ☒ Program Manager - Maintenance

DOES THIS DIRECTIVE SUPERSEDE ANOTHER DOCUMENT? ☒YES ☐NO	IF YES, DESCRIBE Memorandum dated December 26, 1996, by William A. J. Hoversten, entitled "Requests for Signing to Indian Rancherias"
WILL THIS DIRECTIVE BE INCORPORATED IN THE TRAFFIC MANUAL? ☒YES ☐NO	IF YES, DESCRIBE Suplemental Destination/Miscellaneous Signs

DIRECTIVE

Indian Reservations and Rancherias shall be signed in a like manner as cities and unincorporated communities for supplemental destination and miscellaneous guide signs. Only the official name of the federally recognized Indian Tribe, Reservation, or Rancheria shall be used on signs. Signs shall be white (retroreflective) legend and border on green (retroreflective) background.

Signs and sign messages shall conform to the requirements of the California Outdoor Advertising Act, which prohibits advertising displays within the right-of-way of any state highway.

IMPLEMENTATION

Effective immediately, Districts are, upon request, encouraged to work cooperatively with Indian Tribes regarding appropriate signs on state highways. Attached for your information is a listing of federally recognized Reservations and Rancherias in California.

BACKGROUND

The California Department of Transportation has a Native American Advisory Committee which works with the Department on transportation issues. In August 1999, the Committee made a request that the Department conside a policy for signing to federally recognized Indian Reservations and Rancherias. There are about 100 federally recognized Indian Reservations and Rancherias in California. The request was for a policy which would allow reservation boundary signs (similar to city limit signs) and destination signs like cities and unicorporated communities. This Directive was developed in response to that request.

This Directive supersedes the memorandum dated December 26, 1996, by William A. J. Hoversten, Chief, Office of Signs and Delineation, entitled "Requests for Signing to Indian Rancherias." Generally, the memorandum explained past practices for signing to Indian establishments and made a clarification regarding signs for gaming facilities on Indian land.

By signature, on October 21, 1999, Mr. Lawrence Orcutt (for Mr. Michael Miles, Acting Program Manager Maintenance) concurs with this new policy directive for signing to Indian Reservations, including funding and placement of signs by Maintenance.

California Department of Transportation

Addendum to:

Traffic Operations Program Directive No. 99-03, "Signing for Indian Reservations and Rancherias"

County	Reservation / Rancheria
Alpine	Washoe (Woodsford Community) Reservation
Amador	Buena Vista Rancheria Ione Band of Miwok Indians Jackson Rancheria
Butte	Berry Creek Rancheria Mechoopda Indian Tribe of the Chico Rancheria Enterprise Rancheria Mooretown Rancheria
Calaveras	California Valley Miwok Tribe
Colusa	Colusa Rancheria Cortina Indian Rancheria
Del Norte	Elk Valley Rancheria Resighini Rancheria Smith River Rancheria Yurok Tribe
El Dorado	Shingle Springs Rancheria
Fresno	Big Sandy Rancheria Cold Springs Rancheria Table Mountain Rancheria
Glenn	Grindstone Indian Rancheria
Humboldt	Big Lagoon Rancheria Blue Lake Rancheria Hoopa Valley Tribal Council Karuk Tribe of California Bear River Band of Rohnerville Rancheria Table Bluff Reservation Trinidad Rancheria Yurok Tribe
Imperial	Quechan Tribal Council
Inyo	Big Pine Reservation Bishop Reservation Fort Independence Reservation Lone Pine Reservation Timbi-sha Shoshone Tribe
Kings	Santa Rosa Rancheria

County	Reservation / Rancheria
Lake	Big Valley Rancheria
	Elem Indian Colony
	Middletown Rancheria
	Robinson Rancheria
	Scotts Valley Rancheria
	Upper Lake Rancheria
Lassen	Susanville Indian Rancheria
Madera	North Fork Rancheria
	Picayune Rancheria of Chukchansi Indians
Marin	Federated Indians of Graton Rancheria
Mendocino	Coyote Valley Reservation
	Guidiville Rancheria
	Hopland Reservation
	Laytonville Rancheria
	Manchester-Point Arena Rancheria
	Pinoleville Rancheria
	Potter Valley Rancheria
	Redwood Valley Reservation
	Round Valley Reservation
	Sherwood Valley Rancheria
Modoc	Alturas Rancheria
	Cedarville Rancheria
	Fort Bidwell Reservation
Mono	Benton Paiute Reservation
	Bridgeport Indian Colony
Placer	United Auburn Indian Community
Plumas	Greenville Rancheria
Riverside	Agua Caliente Band of Cahuilla Indians
	Augustine Band of Mission Indians
	Cabazon Tribal Business Committee
	Cahuilla Reservation
	Colorado River Reservation
	Morongo Band of Mission Indians
	Pechanga Band of Mission Indians
	Ramona Band of Mission Indians
	Santa Rosa Band of Mission Indians
	Soboba Band of Luiseno Indians
	Torres-Martinez Desert Cahuilla Indians

County	Reservation / Rancheria
San Bernardino	Chemehuevi Reservation
	Colorado River Reservation
	Fort Mojave Indian Tribe
	San Manuel Band of Mission Indians
	Twenty-Nine Palms Band of Mission Indians
San Diego	Barona Band of Mission Indians
	Campo Band of Mission Indians
	Cuyapaipe Band of Mission Indians
	Inaja-Cosmit Reservation
	Jamul Indian Village
	La Jolla Band of Luiseno Indians
	La Posta Band of Mission Indians
	Los Coyotes Reservation
	Manzanita Band of Mission Indians
	Pala Band of Mission Indians
	Pauma/Yuima Band of Mission Indians
	Rincon Band of Mission Indians
	San Pasqual Band of Diegueno Indians
	Santa Ysabel Band of Mission Indians
	Sycuan Band of Mission Indians
	Viejas Band of Mission Indians
Santa Barbara	Santa Ynez Band of Mission Indians
Shasta	Pit River Tribal Council
	Redding Rancheria
Siskiyou	Karuk Tribe of California
	Quartz Valley Reservation
Sonoma	Cloverdale Rancheria
	Dry Creek Rancheria
	Lower Lake Rancheria
	Lytton Rancheria
	Stewarts Point Rancheria
Tehama	Paskenta Band of Nomlaki Indians
Tulare	Tule River Reservation
Tuolumne	Chicken Ranch Rancheria
	Tuolumne Rancheria
Yolo	Rumsey Rancheria

California
Transportation
Commission

1999 ANNUAL REPORT TO CALIFORNIA LEGISLATURE

Volume I

2000 Issues

Pursuant to Government Code, Sections 14535–14536

Adopted December 8, 1999

I. 2000 ISSUES

J. Native American Tribal Transportation Issues

There are 309,000 Native Americans in California with a notable Native American population in every county. All counties, except Los Angeles and Orange, contain Tribal lands with resident populations totaling 60,200. The transportation needs of the Native American Tribes in California have not been adequately addressed by either federal or state transportation programs. It is in the best economic interest of the State, local governments and Tribal governments to better plan and fund the transportation improvements needed to improve the quality of life on Tribal lands and to provide for coordinated economic development of all regions of the state.

To date, transportation improvements for roads on Tribal lands have been funded almost exclusively through the federal Indian Reservation Roads (IRR) Program. The IRR Program currently provides less than 20% of the annual funding needed to provide basic road service on Tribal lands in California. Transportation investments to improve the connectivity of Tribal lands to surrounding communities and the state transportation system have not competed well in local and state transportation programs. Federal transportation funds programmed by state and local agencies may be used on Tribal lands, however, funds have not been programmed to meet Tribal needs because Tribal governments are not represented on transportation agency governing bodies or effectively included in the transportation planning process.

Commission Initiatives to Address Tribal Transportation Needs

The Commission held a workshop with Native American Tribal Governments, Caltrans, and Regional and Metropolitan Planning Organizations on September 15, 1999 at the Morongo Indian Reservation in Cabazon. The workshop was entitled "Strengthening State, Tribal and Regional Government Transportation Partnerships" and is discussed in detail in Volume II - Section -N of this Annual Report. Its purpose was to identify Native American transportation issues, and discuss ways of improving the Government-to-Government coordination of transportation planning and programming in order to better integrate the land use policies and transportation needs of the Tribal governments into the state and regional transportation planning process.

The Commission will continue to work with the Tribal leaders on a Government-to-Government level to identify Native American transportation issues, and to develop policies to resolve these issues at the State level. The Commission will conduct additional workshops in Northern and Central California similar to the September 15 workshop in Cabazon.

The Commission has also taken action to better integrate the land use policies and transportation needs of the Tribal Governments into the state and regional transportation planning process. The Regional Transportation Plan Guidelines adopted by the Commission in December 1999, emphasize the federal and state requirement to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs. Further, the Commission will support and encourage funding of transportation projects accessing Tribal lands through state and local transportation programs.

The Commission has also communicated to the California Congressional delegation and the Bureau of Indian Affairs, its support for an increased share of federal Indian Reservation Roads (IRR) Program funding going to Tribes in California, specifically supporting (1) increasing the share of IRR funds allocated to California Tribes to 9.1962% of the program total (California's minimum guarantee percentage of federal highway funds), and (2) guaranteeing 100% obligational authority for the IRR Program.

Federal Funding – Indian Reservation Road Program

There is a need to address both the level of funding for the federal IRR Program, and inequities in the formula controlling the distribution of these funds among the Native American Tribes. The Commission believes the present structure and funding level of the IRR program do not reflect the current needs of Tribal Governments nationwide, and is grossly inadequate in funding needed transportation improvements for the Tribes in California.

The State of California is committed to working with the leaders of the tribes in California at a Government-to-Government level to identify Native American transportation issues, and to develop policies to resolve these issues at the State level. Specifically, the Commission is working to better integrate the land use policies and transportation needs of the Tribal governments into the state and regional transportation planning and programming processes. However, the effective coordination of transportation improvements funded through the IRR program and funding of transportation projects accessing Tribal lands through state and local transportation programs is hampered by the inadequate IRR Program funding for tribes in California.

There is a notable Native American population in every county in California, and all counties except Los Angeles and Orange contain Tribal lands. California's population includes 309,000 Native Americans (15.9% of the national total), including 60,200 living on reservations (4.5% of the national total). Also, more than 100 federally recognized Tribes, 20% of the 550 federally recognized Tribes nationwide, are located in California. The total amount of Tribal lands in California is rather small, about half a million acres (1% of the national total) because there are many small rancherias and reservations located mostly in rural areas of the State. Due to the fragmentation of Tribal lands among many remote locations, the cost of maintaining and constructing roads on Tribal lands is much higher per mile in California than on large reservations in other states. Also, the cost of necessary transportation improvements for providing access to lifeline services in distant urban areas is beyond the resources of the small remote rancherias and reservations. The current formula for distributing IRR program funds does not address these higher cost factors for Tribes in California.

In May 1999, the Commission, as part of 10-year needs assessment of transportation rehabilitation, maintenance, and operations needs, identified $275 million of needed road improvements on Tribal lands in the state. The current level of funding from the IRR program for road improvements for Tribes in California is about $5 million a year. The expected IRR program funding over the next 10 years will be just $50 million, only 18% of the identified needs. At current funding levels, it would take 55 years to fund currently identified projects.

The federal IRR program is funded with federal fuel tax revenues and is included in the Transportation Equity Act for the 21st Century (TEA-21). The amount of the IRR program apportionment is set by TEA-21, initially $235 million and rising to $275 million nationally. FHWA annually transfers the funds to the Bureau of Indian Affairs (BIA) to administer. After Congress sets the amount of Obligational Authority (OA) each year, FHWA gives BIA their share of OA. Any IRR program apportionment above the OA limitation is returned to FHWA to be added to apportionments for federal Surface Transportation Program funds in the states where the Tribes are located. This is called the "lop off provision" which is unique to the IRR program and is inherently inequitable to the Tribes because it assures that the IRR program cannot effectively compete for redistributed OA at the end of each federal fiscal year.

BIA allocates funds to the tribes in accordance with a "relative need" formula. Negotiated rule making is still underway among the Tribal governments and BIA for updating the IRR program procedures and relative need funding formula. In federal fiscal year 1999, $275 million was authorized for the IRR program and OA was limited to $238,557,000. **California received $6,043,533:** $5,361,000 in construction funds, and $682,533 in maintenance funds, **only 2.5% of the national total**.

The basic philosophy behind the federal aid highway program is "return to source". Given that California accounts for approximately 12% of the national gas tax receipts and receives back about 10%, it is fundamentally unfair to distribute IRR funds according to a different formula, one that yields only 2.5% of the national total. California and the Tribal Governments within California lose an estimated $20 million each year through this inequity.

The Commission strongly supports:

- immediate revision of the formula for the distribution of IRR program funding to increase the share of IRR program funds allocated to California Tribes to 9.2% of the program total (California's minimum guarantee percentage of federal highway funds),
- guaranteeing 100% obligational authority for the IRR Program nationwide,
- making all IRR program apportionments above the OA limitation in previous years of TEA-21 available for expenditure in FY 1999-00,
- counting any "underrun" in IRR funds back to the states in calculating minimum guarantee funds coming back to donor states,
- further consideration of a procedure in California allowing Tribal Governments to compete for redistributed OA, and Minimum Guarantee funds, at least to the extent that any "lopped off" IRR apportionments are redistributed back to the state.

II. 1999 ACCOMPLISHMENTS/ACTIVITIES

N. Strengthening State, Tribal & Regional Government Transportation Partnerships

The Commission held a workshop, chaired by Commissioner Robert Wolf, with Native American Tribal Governments, Caltrans, and Regional and Metropolitan Planning Organizations on September 15, 1999 at the Morongo Indian Reservation in Cabazon. The workshop was entitled "Strengthening State, Tribal and Regional Government Transportation Partnerships." Its purpose was to identify Native American transportation issues, and discuss ways of improving the Government-to-Government coordination of transportation planning and programming in order to better integrate the land use policies and transportation needs of the Tribal governments into the state and regional transportation planning process.

Attendance at the meeting included representation from 76 Tribes from throughout the State; the California Transportation Commission; Caltrans Headquarters, District 8 and District 11; San Diego Association of Governments, Southern California Association of Governments, Riverside County Transportation Commission, San Bernardino Association of Governments, Imperial Valley Association of Governments; Bureau of Indian Affairs (BIA); and the Federal Highway Administration (FHWA). The following Tribes and Tribal organizations were in attendance:

Northern California
- Cahto Tribe

Central California
- Hopland Band of Pomo Indians
- Scotts Valley Tribe

Southern California
- Cabazon
- Cahuilla Band of Indians
- Chemehuvi Indian Reservation
- Morongo Band of Mission Indians
- Santa Rosa Rancheria
- Torres Martinez Desert Cahuilla
- Jamul Band of Mission Indians
- Los Coyotes
- Rincon
- Santa Ysabel Reservation

Tribal Organizations present:
- Reservation Transportation Authority (represents 23 Tribes in southern California).
- Central California Policy Committee (represents 52 Tribes in central California).
- Native American Negotiating Rule Making Committee (represents all Tribes in California at national meetings held throughout the United States).

Issues – The following issues were discussed at the workshop:

- **Address Tribal Issues Through a Government-to-Government Process** - TEA-21 requires that transportation planning activities among Indian Tribal Governments, the BIA, FHWA, Federal Transit Administration (FTA), States and local governments be performed on a Government-to-Government basis. Also, the FHWA and FTA require the State, Regional Planning Organizations, and Metropolitan Planning Organizations to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs, and with respect to each area of the State under the jurisdiction of all Tribal government, the program shall be developed in consultation with the Tribal government and the Secretary of the Interior. Tribal lands are located in all but two counties (Orange and Los Angeles) in California. Commissioner Wolf, Caltrans, and the regional agencies present, all expressed a commitment to work with the Tribes on transportation issues.

- **Consultation** – It was suggested that discussion and consultation on transportation policies at the state level should be between the existing BIA Advisory Committees, which are composed of elected Tribal leaders, and the Secretary of Business, Transportation and Housing, the California Transportation Commission, and the Director of Caltrans. The BIA Advisory Committees are the appropriate forum for developing unified positions among the Tribes on issues to be negotiated with the State. At the project level, the most effective coordination would be between individual Tribes, or coalitions of Tribes, and the Regional Transportation Planning Agency and Caltrans District.

- **Federal Funding** – The federal Indian Reservation Roads (IRR) Program provides $275 million a year nationwide for improvements that address transportation issues specific to the Tribes, with $1.7 million (0.6%) of these funds available for more than 100 federally recognized Tribes in California. The Commission's SR 8 Report identified $275 million of road improvement needs for access to and circulation within Tribal lands over the next ten years. Tribal representatives asked the Commission to help secure more of the federal funds by supporting their requests to; (1) increase the share of IRR funds allocated to California Tribes to 9.1962% of the program total (California's minimum guarantee percentage of federal highway funds), and (2) guarantee 100% obligational authority for the IRR Program.

- **State and Local Funding** – The FHWA representative stated that there is no legal impediment that would prohibit the use of federal funds programmed by the State or regional agencies in the State Transportation Improvement Program (STIP) on projects on Tribal lands. Tribes were encouraged to participate in the planning and programming process at the local level where programming decisions for 75% of STIP funding are made. Participation in the local process is particularly important in counties with county transportation sales taxes.

- **District 11 Activities** – The Caltrans District 11 Director, Gary Gallegos stated that he is planning on creating a Native American Advisory Committee for District 11. Tribes requested that Caltrans Director, Jose Medina encourage other districts to do the same. Allan Hendrix indicated that he would carry this message back to Director Medina. Mr. Gallegos said that he is working with some Tribes on a training program for the use of heavy equipment

in road construction. The program will also assist Tribes in acquiring Caltrans equipment that is on the replacement list.

- **STIP Process** - The Tribes asked that state law be amended to give Tribes the same standing and eligibility as cities and counties in transportation planning and programming. Tribal members pay local and state sales and fuel taxes and, as an equity issue, should be included policy bodies that determine the use of the tax revenues. The Tribes proposed a demonstration project to form a Reservation Regional Transportation Authority in Southern California which would cooperate with the regional transportation planning agencies, but would also have direct access to the Commission for programming projects.

- **Bureau of Indian Affairs** - Tribes indicated that there is a misconception that the Bureau of Indian Affairs (BIA) is able to take care of all Tribal needs and issues. They pointed out that the BIA is not being given the resources necessary to even begin to address the needs for construction and maintenance of Tribal roads. Current annual BIA funding provides only $2 to $8,000 per Tribe for transportation planning, less than $700,000 statewide for maintenance, and approximately $1.5 million for construction for all Tribes in the State.

- **Support for a Tribal Desk at the Governor's Level** - Tribes requested support to have an Indian desk in the Governor's Office. Commissioner Wolf indicated that he would support this concept.

Commission Action - Commissioner Wolf reported on the workshop to the full Commission at its September 29-30 meeting. Based on that report, the Commission has committed to the following course of action:

- Continue working with the Tribal leaders on a Government-to-Government level to identify Native American transportation issues, and to develop policies to resolve these issues at the State level,

- Communicate with the California Congressional delegation and the BIA, calling for an increased share of federal IRR Program funding going to Tribes in California, specifically supporting (1) increasing the share of IRR funds allocated to California Tribes to 9.1962% of the program total (California's minimum guarantee percentage of federal highway funds), and (2) guaranteeing 100% obligational authority for the IRR Program,

- Better integrate the land use policies and transportation needs of the Tribal governments into the state and regional transportation planning process through requirements in the Regional Transportation Plan Guidelines adopted by the Commission,

- Support and encourage funding of transportation projects accessing Tribal lands through state and local transportation programs,

- Support and encourage better integration of the Tribes into the transportation decision making process in California at the State and local level, and

- Work toward conducting workshops in Northern and Central California similar to the September 15 workshop in Cabazon.

Memorandum

To: Chairman and Commissioners

Date: November 16, 2000

From: Robert Y. Remen

File No: R 1
BOOK ITEM 4.2
ACTION

Ref: NATIVE AMERICAN TRANSPORTATION ISSUES

Over the past 16 months, the Commission has held three workshops with Native American tribes in Cabazon (Riverside County) on September 15, 1999, at the Jackson Rancheria (Amador County) on January 12, 2000, and in Eureka (Humboldt County) on April 12, 2000. The objective of the meetings was to define tribal transportation issues and ways to better integrate the land use policies and transportation needs of the Tribal governments into the state and regional transportation planning and programming process. The interaction at the meetings was also meant to strengthen the Government-to-Government relationships between the State, Tribal Governments, and regional transportation planning agencies, and to promote the partnership necessary to provide a safe and comprehensive transportation system that meets the needs of all our respective communities.

During the year 2000, the Commission has played an active role in supporting Native American transportation initiatives. The Commission has requested support from California's Congressional delegation for an increase in the share of federal Indian Reservation Road program funds distributed to California Tribes, has adopted policies and guidelines to include Tribal governments in the regional transportation planning process, and has encouraged programming of transportation projects to improve access to tribal lands.

Issues and Actions from the Native American Transportation Workshops

The following issues and Commission actions have come out of the three meetings on Native American transportation issues held September 15, 1999 at Cabazon in Riverside County, January 12, 2000 at Jackson Rancheria in Amador County, and April 12, 2000 at Eureka in Humboldt County.

1. **Commitment to work on Tribal issues through a Government-to-Government process** - TEA-21 requires that transportation planning activities among Indian Tribal Governments, the Bureau of Indian Affairs (BIA), Federal Highway Association (FHWA), Federal Transit Administration (FTA), States and local governments be performed on a Government-to-Government basis. Also, the FHWA and FTA require the State, Regional Planning Organizations, and Metropolitan Planning Organizations to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs, and with respect to each area of the State under the jurisdiction of an Indian Tribal government, the program shall be developed in consultation with the Tribal government and the Secretary of the Interior. (23 U.S.C., Section 135(f)(1)(B)(iii)). The Commission and

Caltrans have expressed a commitment to work with the Tribes on transportation issues through the Government-to-Government process.

The Commission, Caltrans, and regional transportation planning agencies that attended the workshops committed to:

a. increase sensitivity to confidentiality of contents and location of tribal cultural sites;
b. integrate tribal environmental concerns into environmental documents and their review process;
c. increase flexibility to work toward desired final products and outcomes in a way compatible with tribal processes rather than being strictly tied to existing Caltrans procedures;
d. include Tribal consultation in the project decision-making process as well as in the planning process;

2. **Consultation** – It was suggested that discussion and consultation on transportation policies at the state level should be between the existing BIA Advisory Committees, which are composed of elected Tribal leaders, and the Secretary of Business, Transportation and Housing, the California Transportation Commission, and the Director of Caltrans. The BIA Advisory Committees are the appropriate forum for developing unified positions among the Tribes on issues to be negotiated with the State. At the project level, the most effective coordination would be between individual Tribes, or coalitions of Tribes, and the Regional Transportation Planning Agency and Caltrans District.

3. **Federal Funding** – The federal Indian Reservation Roads (IRR) Program provides $275 million a year nationwide for improvements that address transportation issues specific to the Tribes, with $1.7 million (0.6%) of these funds available for the 107 federally recognized Tribes in California. The Commission's SR 8 Repot identified $275 million of road improvement needs for access to and circulation within Tribal lands over the next ten years. Tribal representatives asked the Commission to help secure more of the federal funds by supporting their requests to; (1) increase the share of IRR funds allocated to California Tribes to 9.1962% of the program total (California's minimum guarantee percentage of federal highway funds), and (2) guarantee 100% Obligational Authority for the IRR Program.

   a. The Commission has communicated to the California Congressional delegation and the Bureau of Indian Affairs, its support for an increased share of federal Indian Reservation Roads Program funding going to Tribes in California, specifically increasing the share of IRR funds allocated to California Tribes to 9.2% of the program total, and guaranteeing 100% Obligational Authority (OA) for the IRR Program.

4. **Indian Reservation Road Program "Lop-Off"** - The Commission made a commitment to the Tribes to support 100% Obligational Authority for the IRR Program. Another issue that arose was the identification of the disposition, amount, and accessibility of the funds lost as a result of less than 100% IRR Program OA, and to work with the federal government and Caltrans to make these funds available to the Tribes.

a. Caltrans has determined that the OA limitation on the IRR Program resulted in the loss of $1,967,652 to California tribes in the first three years of TEA-21 ($452,341 in FY1998, $719,100 in FY1999, and $796,211 in FY2000).
b. Vice Chairman Kellogg and Commissioner Wolf committed to work to develop a process to make funding lost by California tribes as a result of OA limitations on the IRR Program, available to tribal transportation projects through a state program.

5. **Bureau of Indian Affairs (BIA)** - Tribes indicated that there is a misconception that the Bureau of Indian Affairs can take care of all Tribal issues. They pointed out the limited resources the BIA and Tribes have for construction and maintenance of Tribal roads. This included very small amounts for planning from $2-$8,000 per year for Tribes, less than $700,000 for maintenance, and approximately $5 million for construction for all 107 Tribes in the State.

6. **State and Local Funding** – According to the FHWA there is no legal impediment that would prohibit the use of federal funds programmed by the State or regional agencies in the State Transportation Improvement Program (STIP) on projects on Tribal lands. Tribes were encouraged to participate in the planning and programming process at the local level where programming decisions for 75% of STIP funding are made. Participation in the local process is particularly important seeking project funding from county transportation sales taxes.

   a. The Commission stated in its adoption of the Regional Transportation Plan Guidelines its support of funding transportation projects accessing tribal lands through state and local transportation programs.

7. **Planning** - The Commission adopted Regional Transportation Plan (RTP) Guidelines which emphasize the federal and state requirement to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs.

   a. This requirement will be enforced by accepting only Regional Transportation Improvement Programs for programming in the 2002 STIP which address the requirements in the RTP Guidelines.

8. **Programming** - The Commission committed to work with Caltrans, Lassen County Transportation Commission, and the BIA to improve the road connection between Susanville Rancheria and State Route 139.

   a. At the July 2000 Commission meeting, a STIP amendment to program the Spring Ridge Road project was presented to the Commission. This project is jointly funded by Caltrans, Lassen County Transportation Commission, and the BIA.

9. **Additional Caltrans Project Development Assistance** – The Commission communicated to the Caltrans Director support for additional Caltrans personnel to meet and work with Tribes

to assist in identifying projects and preparing the necessary studies, to get projects in the BIA transportation plans funded through the State Transportation Improvement Programs.

10. **Caltrans District Native American Advisory Committees** - Caltrans District 11 (San Diego) Director Gary Gallegos reported that he is creating a Native American Advisory Committee for his district. The Tribes requested that the Caltrans Director direct other districts to do the same.

11. **Caltrans Training and Assistance Programs** - The Commission communicated to the Caltrans Director support for additional Caltrans personnel to meet and work with Tribes to assist in training and development of transportation plans.

    a. Caltrans has committed to hold a Tribal Transportation Planning Academy as an orientation on working within the Caltrans process. This academy will provide information to tribes on state and federal processes for planning, programming and implementation of projects.
    b. Caltrans agreed to assist tribes in securing funding from sources currently available to tribes for transportation projects including BIA planning funds, Transportation Enhancement Activities (TEA) funds, the 10% ITIP funding for economic development, and other federal discretionary grant funds.
    c. Caltrans has modified highway signage policies to allow tribes destination signage. A list of the Caltrans District contacts was provided.
    d. Caltrans was asked to include information on TERO requirements in Requests for Bids on Caltrans projects and to ensure that contractors are aware of the Indian workforce.
    e. Caltrans District 11 (San Diego) is working with some Tribes on a training program for the use of heavy equipment in road construction.
    f. Caltrans is working with the Department of General Services and the Tribes to allow Tribes to purchase or lease Caltrans equipment.

12. **Regional Transportation Planning Agency Representation** - The Tribes asked that state law be amended to give the Tribes the same standing and eligibility as cities and counties in transportation planning and programming. Tribal members pay local and state sales and fuel taxes and, as an equity issue, should be included policy bodies that determine the use of the tax revenues. They proposed a demonstration project to form a Reservation Regional Transportation Authority in Southern California that would cooperate with the regional transportation planning agencies, but would also have direct access to the Commission for programming projects.

    a. The Tribes will pursue legislation to designate tribal governments as members of regional transportation planning agency boards. The Hoopa Valley Tribe in Humboldt County is the only tribe that currently has this authority (Government Code Section 65101.1);

13. **CTC Appointment** - The Commission has voiced support to the Governor for a Tribal representative to be appointed to the Commission.

14. **Support for a Tribal Desk at the Governor's Level** - Tribes requested support to have an Indian desk at the Governor's level. The Commission indicated support of this concept.

Tribes Attending Meetings

Listed below are the 34 Tribes that sent representatives to one or more of the three Native American Transportation Workshops. Also listed are the Tribal Organizations that sent representatives to these meetings. Taken together, these organizations represent all 106 Tribes in California.

Northern California

- Cahto Tribe
- Bear River Band of Rohnerville Rancheria
- Blue Lake Rancheria
- Hoopa Valley Tribe
- Karuk Tribe
- Resighini Rancheria
- Susanville Indian Rancheria
- Table Bluff Rancheria
- Trinidad Rancheria
- Yurok Tribe of California

Southern California

- Barona Reservation
- Cabazon
- Cahuilla Band of Indians
- Chemehuvi Indian Reservation
- Jamul Band of Mission Indians
- Los Coyotes
- Morongo Band of Mission Indians
- Rincon Reservation
- Santa Rosa Rancheria
- Santa Ysabel Reservation
- Torres Martinez Desert Cahuilla

Central California

- Bishop Indian Reservation
- Coyote Valley Reservation
- Dry Creek Rancheria
- Hopland Band of Pomo Indians
- Guidiville Rancheria
- North Fork Rancheria
- Paskenta Band of Nomlaki Indians
- Redwood Valley Reservation
- Round Valley Tribes
- Scotts Valley Tribe
- Shingle Springs Rancheria
- Tule River Indian Reservation
- United Auburn Indian Community

Tribal Organizations present:

- Reservation Transportation Authority (represents 23 Tribes in southern California).
- Central California Policy Committee (represents 52 Tribes in central California).
- Sacramento Regional Area Committee (represents 106 Tribes in the state).
- California Indian Lands Office (statewide organization).
- Caltrans Native American Advisory Committee (statewide organization).
- Inter-Tribal Council of California (26 Tribes statewide).
- American Indian State Employees Association (statewide organization).
- Native American Negotiating Rule Making Committee (represents all Tribes in California during the national meetings held throughout the United States).

4-2Dec00NaAm/winword/co

CHARTER

CALTRANS NATIVE AMERICAN ADVISORY COMMITTEE

1. PURPOSE: The committee is established to improve the government to government relationships between the Indian Tribes of California (Tribes), and the California Department of Transportation (Caltrans). The committee provides advice to the Director of Caltrans (Director) about matters of interest or concern to the Tribes and their constituents. The Director recognizes and respects the sovereign status of the Tribes. The committee has the power to recommend policies or procedures for Caltrans, but not to incur debt payable by Caltrans, nor to represent Caltrans before any other entity. By no means will the meetings with Tribes through this committee constitute a "consultation" with Tribes.

2. QUALIFICATION, NOMINATION AND APPOINTMENT: For the purposes of this committee, the terms "Tribe" and "Tribes" shall refer exclusively to the federally-recognized Indian tribes located entirely or partially within the State of California. Each member of the committee is appointed by the Director of Caltrans upon nomination either by a Tribe, or by an Indian organization in California. No single Tribe or Indian organization may nominate more than one member. Nominations will be solicited by Caltrans annually or upon determination that a need to solicit exists. Considering the recommendations of the committee, the Director of Caltrans shall have the exclusive authority to appoint members to the committee. If any member of the committee is unable to serve for any reason, the Director in consideration of recommendations from the committee shall have the exclusive authority to determine the appropriate process to select and appoint his or her successor.

3. REPRESENTATION. Notwithstanding his or her Tribal affiliation, each member who is appointed by the Director upon nomination by a Tribe is considered an "at large" advocate, to the best of his or her ability, for the interests of all the Tribes in the geographic area of the State of California (south, central, north) in which his or her Tribe is located. Each member who is appointed by the Director upon nomination by an Indian organization is considered an advocate for Indians of California. The committee shall elect, by majority vote of those present, a Chair, Vice Chair, and/or Secretary. The Chair, Vice Chair and/or Secretary will serve a term that coincides with their membership on the committee.

4. CALTRANS REPRESENTATION: The Caltrans Deputy Director, Planning is the Director's representative to the committee. The Deputy Director serves ex-officio as a member of the committee and shall not vote on any matter whatsoever.

5. NUMBER OF MEMBERSHIPS: The total number of memberships on the committee shall at a minimum, consist of twelve voting memberships, and at maximum it shall consist of no more than eighteen voting memberships. At all times, twelve voting memberships shall be members appointed upon the nomination of Tribes, and one nonvoting member shall be the Deputy Director, Planning. No more than one-third of the membership shall be Indian organizations.

6. TERM OF MEMBERSHIP: Each voting member shall be appointed to a two-year term. Members appointed to fill a vacancy occurring mid-term, shall be appointed for the period of time remaining in that term of membership. By mutual agreement of the Director, Indian organization, and the Tribe nominating the member, a member may be reappointed for any number of terms of membership. A member may send an alternate to serve in his or her place. Any member who misses two consecutive meetings in a calendar year, and has not sent an alternate shall automatically be deemed unable to serve, and his or her membership shall be declared vacant. Alternates have all the voting rights and privileges of the member they represent. Alternates do not automatically fill vacant memberships.

7. "SUNSET" PROVISIONS: The Director shall, on or about the first day of January of each year evaluate whether this Native American Advisory Committee will continue to exist. The committee shall automatically continue in existence unless the Director determines otherwise.

8. FREQUENCY AND LOCATION OF MEETINGS: A minimum of three meetings shall be called and held each calendar year. Meetings shall be held in Sacramento, California or at such other locations as may from time to time be convenient and necessary. Any Tribe may sponsor a meeting of the committee at its reservation, under mutually agreeable terms.

9. ADMINISTRATIVE AND LOGISTICAL SUPPORT FOR THE COMMITTEE: Caltrans shall provide reasonable staff support for the activities of the committee. Caltrans shall make arrangements for all meetings, shall provide administrative support, and shall record and maintain minutes of each meeting. While Caltrans will attempt to accommodate each member's needs, Caltrans shall not be responsible for any costs to members, except as may be agreed in advance in writing. In all cases the provisions of the State Administrative Manual, and federal regulations as appropriate, shall govern the conduct of business affairs.

10. CONDUCT OF MEETINGS: Meetings shall be conducted in a decorous, parliamentary and collegial manner. No specific rules of order are prescribed. Summary minutes of each meeting shall be taken. All decisions of the committee shall be made on the basis of consent of the voting members present, except that any member may request a vote to be taken on any specific matter. When a vote is taken, a voting member must make a formal motion defining the committee's proposed action on the matter, the motion must be seconded by a voting member, the number of "ayes" and "nays" must be counted, and the vote of a simple majority of the members present shall govern. In case of a tie vote, the motion shall be deemed to have failed of passage. All formal motions, seconds, and votes must be recorded in writing in the minutes of the meeting.

11. OPEN MEETING LAW: Inasmuch as the committee is entirely advisory in nature, and has no governmental powers in and of itself, the proceedings of the committee are not subject to state or federal open meeting laws. However, the Director urges the committee to conduct its business in an open manner, whereby any interested person is permitted to observe any meeting of the committee. The committee may, upon formal motion and approval by a majority of the voting members present, close the meeting to public observation for stated and reasonable cause. The committee shall decide the terms and conditions under which it will receive testimony before it. The committee shall not issue any form whatsoever of public information or news releases; however, the committee may request Caltrans to issue such releases on its behalf and Caltrans shall not unreasonably refuse to do so.

12. INCOMPATIBLE ACTIVITIES: Inasmuch as the committee is entirely advisory in nature, and has no governmental nor fiduciary powers in and of itself, the proceedings of the committee are not subject to state or federal laws governing incompatible activities. The Director requests each member to refrain from any activity that could reasonably be construed as, or give the appearance of, an incompatible activity or a conflict of interest. Members shall not seek any personal preference in any business matter involving Caltrans, by virtue of their membership on this committee. However membership shall not bar any member from otherwise conducting business with Caltrans.

13. MODIFICATIONS OF CHARTER: The Director shall have the right to change this Charter. However, the committee may at any time request the Director to change this charter. Notwithstanding his right in this regard, the Director shall not unreasonably refuse such request. By the same token, in the event the Director considers necessary any change not requested by the committee, he shall seek the committee's consent to the change.

CALIFORNIA MPO AND RTPA CONTACTS

TMA	MPO	RTPA	AGENCY	COUNTIES	CONTACT	ADDRESS	PHONE, FAX & INTERNET
		x	Alpine County Local Transportation Commission	Alpine	Mr. Leonard Turnbeaugh, Exec. Dir. Mr. Chris Gansberg, Chair	50 Diamond Valley Rd. Markleeville, CA 96120	(530) 694-2140 FAX: (530) 694-2214 alppuwks@gbis.com
		x	Amador County Transportation Commission	Amador	Mr. Charles Field, Exec. Dir. Mr. Bill Breiner, Chair Ms. Marie'Luis Solaja, Vice Chair	11400 American Legion Dr., Ste. A Jackson, CA 95642	(209) 267-2282 FAX: (209) 267-1930 actc@cdepot.net
	x	x	Butte County Association of Governments (BCAG)	Butte	Mr. Jon A. Clark, Exec. Dir. Ms. Jane Dolan, Chair	965 Fir Street Chico, CA 95928-6301	(530) 879-2468 FAX: (530) 879-2444 www.bcag.org
		x	Calaveras Council of Governments	Calaveras	Mr. George A. Dondero, Exec. Dir. Mr. Paul Stein, Chair Ms. Marianne Morgan, Vice Chair	P.O. Box 280 692 Marshall, Unit A San Andreas, CA 95249	(209) 754-2094 FAX: (209) 754-2096 gdondero@calacog.org
		x	Colusa County Transportation Commission	Colusa	Mr. John Joyce, Exec. Dir. Ms. Christy Scofield, Chair	1215 Market St. Colusa, CA 95932	(530) 458-5186 FAX: (530) 458-2035 colcodpw@mako.com
		x	Del Norte Local Transportation Commission	Del Norte	Ms. Susan Morrison, Exec. Dir. Transportation Coordinator Mr. David Finnigan, Chair	508 H Street, Suite 1 Crescent City, CA 95531	(707) 465-3878 FAX: (707) 465-5518 morrison@cc.northcoast.com
		x	El Dorado County Transportation Commission (3)	El Dorado (excluding the Tahoe Basin)	Mr. Matthew Boyer, Exec. Dir. Mr. Walt Shultz, Chair	550 Main St., Ste. C Placerville, CA 95667	(530) 642-5260 FAX (530) 642-5266 mboyer@innercite.com
x	x	x	Council of Fresno County Governments	Fresno	Ms. Barbara Goodwin, Exec. Dir. Mr. Trinidad Rodriguez, Chair	2100 Tulare St., Ste. 619 Fresno, CA 93721-2111	(559) 233-4148 FAX: (559) 233-9645 www.fresnocog.org
		x	Glenn County Transportation Commission	Glenn	Mr. Thomas Tinsley, Exec. Dir. Mr. Michael Murray, Chair	P.O. Box 1070 Willows, CA 95988	(530) 934-6530 FAX: (530) 934-6533 gcpwtrans@glenncounty.net
		x	Humboldt County Association of Governments	Humboldt	Mr. Spencer Clifton, Exec. Dir. Mr. Jack McKellar, Chair	235 4th St., Ste. F Eureka, CA 95501	(707) 444-8208 FAX: (707) 444-8319
		x	Inyo County Local Transportation Commission	Inyo	Mr. Jeffery Jewett, Exec. Dir. Mr. Bob Kimball, Chair	Inyo County Courthouse P.O. Drawer Q 168 North Edwards Independence, CA 93526	(760) 878-0201 FAX: (760) 878-2001 icrds@qnet.com

CALIFORNIA MPO AND RTPA CONTACTS

TMA	MPO	RTPA	AGENCY	COUNTIES	CONTACT	ADDRESS	PHONE, FAX & INTERNET
x	x	x	Kern Council of Governments	Kern	Mr. Ronald E. Brummett, Exec. Dir. Mr. Mike Gaston, Chair	1401 19th St., Ste. 300 Bakersfield, CA 93301	(661) 861-2191 FAX: (661) 324-8215 www.kerncog.org
		x	Kings County Association of Governments	Kings	Mr. William Zumwalt, Exec. Dir. Mr. Ruben Quintanilla, Chair	Kings County Government Center 1400 West Lacey Blvd. Hanford, CA 93230	(559) 582-3211 Extension 2670 FAX: (559) 584-8989 bmwalt@co.kings.ca.us
		x	Lake County/City Area Planning Council	Lake	Mr. William Kranz, Exec. Dir. Mr. Richard Lamkin, Chair	160 Fifth St. Lakeport, CA 95453	(707) 263-1600 FAX: (707)263-1826 bkranz@saber.net
		x	Lassen County Transportation Commission	Lassen	Mr. Russell Gum, Exec. Secretary Mr. Jim Chapman, Chair	County Admin. Building 707 Nevada St. Susanville, CA 96310	(530) 251-8288 FAX: (530) 257-4671 smaas@thegrid.net
		x	Madera County Transportation Commission	Madera	Ms Patricia Taylor Maley Mr. John Wells, Chair	1816 Howard Road, Suite 8 Madera, CA 93637	(559) 675-0721 FAX: (559) 675-9328 mctc@madnet.net
		x	Mariposa County Local Transportation Commission	Mariposa	Mr. Michael D. Edwards, Exec. Dir. Mr. Doug Balmain, Chair	4639 Ben Hur Road Mariposa, CA 95338	(209) 966-5151 FAX: (209) 742-5024 tpwd@yosemite.net
		x	Mendocino County Council of Governments	Mendocino	Mr. Phil Dow, Exec. Dir. Ms. Loretta Ellard, Deputy Ms. Patti Campbell, Chair	367 N. State Street, Suite 206 Ukiah, CA 95482	(707) 463-1859 FAX: (707) 463-2212 pdow@saber.net
	x	x	Merced County Association of Governments	Merced	Mr. Jesse Brown, Exec. Dir. Ms. Deidre Kelsey, Chair	369 W. 18th St. Merced, CA 95340	(209) 723-3153 FAX: (209) 723-0322 www.mcag.cog.ca.us
x	x	x	Metropolitan Transportation Commission (MTC)	Alameda, Contra Costa, Marin, San-Francisco, San-Mateo, Santa Clara, Napa, Solano, Sonoma	Mr. Steve Heminger, Exec. Dir. Mr. James Beall, Chair	Joseph P. Bort Metro Center 101 8th St. Oakland, CA 94607-4700	(510) 464-7700 FAX: (510) 464-7848 www.MTC.ca.gov
		x	Modoc County Local Transportation Commission	Modoc	Mr. Tom Tracy, Exec. Dir. Mr. Ron McIntyre, Chair	202 West 4th St. Alturas, CA 96101	(530) 233-6414 FAX: (530) 233-3132 ttracy@hdo.net

CALIFORNIA MPO AND RTPA CONTACTS

TMA	MPO	RTPA	AGENCY	COUNTIES	CONTACT	ADDRESS	PHONE, FAX & INTERNET
		x	Mono County Local Transportation Commission	Mono	Mr. Scott Burns, Exec. Dir. Ms. Kathleen Cage, Chair	P.O. Box 347 Mammoth Lakes, CA 93546	(760) 924-5450 FAX: (760) 924-5458 monocounty@qnet.com
	x		Association of Monterey Bay Area Governments (AMBAG)	San Benito (2), Santa Cruz, Monterey	Mr. Nicolas Papadakis, Exec. Dir. Mr. Jim Perrine, President	445 Reservation Rd., Ste. G (P.O. Box 809) Marina, CA 93933-0809	(831) 883-3750 FAX: (831) 883-3755 www.ambag.org
		x	Transportation Agency for Monterey County	Monterey	Ms. DeEtta Nicely, Acting Exec. Dir. Ms. Judy Pennycook, Chair	312 East Alisal St. Salinas, CA 93901-4371	(831) 755-4812 FAX: (831) 755-4957 www.tamcmonterey.org
		x	Nevada County Transportation Commission	Nevada	Mr. Daniel B. Landon, Exec. Dir. Mr. Rene' Antonson, Chair	101 Providence Mine Rd. Suite 102 Nevada City, CA 95959	(530) 265-3202 FAX: (530) 265-3260 dlandon@nccn.net
		x	Placer County Transportation Planning Agency	Placer (excluding the Tahoe Basin)	Ms. Celia McAdam, Exec. Dir. Ms. Claudia Gamar, Chair	550 High Street, Suite 107 Auburn, CA 95603	(530) 823-4030 FAX: (530) 823-4036 plactpa@ix.netcom.com
		x	Plumas County Transportation Commission	Plumas	Mr. Martin Byrne, Exec. Dir. Mr. Robert Meacher, Chair	1834 E. Main St. Quincy, CA 95971	(530) 283-6492 FAX: (530) 283-6323 tranpcpw@psln.com
x	x	x	Sacramento Area Council of Govern. (SACOG)	Sacramento, Placer(3) El Dorado(3), Sutter, Yolo, Yuba, Cities of Rocklin, Roseville, and Lincoln	Mr. Martin Tuttle, Exec. Dir. Ms. Sandra Hilliard, Chair	3000 S St., Ste. 300 Sacramento, CA 95816	(916) 457-2264 FAX: (916) 457-3299 www.sacog.org
		x	Council of San Benito County Governments	San Benito	Mr. George Lewis, Acting Exec. Dir. Mr. Richard Bloomer, Chair	3220 Southside Rd. Hollister, CA 95023	(831) 636-4170 FAX: (831) 636-8746 sbpubwks@ix.netcom.com
x	x	x	San Diego Association of Governments (SANDAG)	San Diego	Mr. Kenneth E. Sulzer, Exec. Dir. Mr. Bob Parrott, Deputy Dir. Mr. Art Madrid, Chair	Wells Fargo Plaza 401 B St., Ste. 800 San Diego, CA 92101	(619) 595-5300 FAX: (619) 595-5305 www.sandag.cog.ca.us
x	x	x	San Joaquin County Council of Governments	San Joaquin	Ms. Julia E. Greene, Executive Mr. Dave Ennis, Chair	6 So. El Dorado St., Ste 400 Stockton, CA 95202	(209) 468-3913 FAX: (209) 468-1084 sjccog@fusion.stockton.net

CALIFORNIA MPO AND RTPA CONTACTS

TMA	MPO	RTPA	AGENCY	COUNTIES	CONTACT	ADDRESS	PHONE, FAX & INTERNET
	x	x	San Luis Obispo Council of Governments	San Luis Obispo	Mr. Ronald L. DeCarli, Exec. Dir. Mr. Dave Romero, President Mr. K.H, "Katcho" Achadjian, VP	1150 Osos St., Ste. 202 San Luis Obispo, CA 93401	(805) 781-4219 FAX: (805) 781-5703 www.slonet.org/~ipslocog
x	x	x	Santa Barbara County Association of Governments	Santa Barbara	Mr. William Derrick, Exec. Dir. Ms. Joni Gray, Chair Mr. Richard Weinberg, Vice Chair	222 E. Anapamu St., Ste. 11 Santa Barbara, CA 93101	(805) 568-2546 FAX: (805) 568-2947 www.sbcag.org
		x	Santa Cruz County Regional Transportation Commission (1)	Santa Cruz	Ms. Linda Wilshusen, Exec. Dir. Mr. Jeff Almquist, Chair	1523 Pacific Ave. Santa Cruz, CA 95060-3911	(831) 460-3200 FAX: (831) 471-1290 www.sccrtc.org
	x	x	Shasta County Regional Transportation Planning Agency	Shasta	Mr. Daniel Kovacich, Exec. Dir. Mr. Dave McGeorge, Chair	1855 Placer St. Redding, CA 96001	(530) 225-5654 FAX:(530) 225-5667 shasroad@snowcrest.net
		x	Sierra County Local Transportation Commission	Sierra	Mr. Tim H. Beals, Exec. Dir. Mr. Milton Gottardi	Courthouse Annex 101 Courthouse Sq. (P.O. Box 98) Downieville, CA 95936	(530) 289-3201 FAX: (530) 289-3620 sctranco@jps.net
		x	Siskiyou County Transportation Commission	Siskiyou	Mr. D.A. Gravenkamp, Exec. Dir. Ms. LaVada Erickson, Chair	County Public Works Building 305 Butte St. Yreka, CA 96097	(530) 842-8250 FAX: (530) 842-8288 sajohnso@co.siskiyou.ca.us
x	x	x	Southern California Association of Governments (SCAG)	Imperial, Los Angeles, Orange, Riverside, San Bernardino, Ventura	Mr. Mark Pisano, Exec. Dir. Zev Yaroslavsky, President	818 West 7th St., 12th Fl. Los Angeles, CA 90017	(213) 236-1800 FAX: (213) 236-1825 Trans. Planning FAX: (213) 236-1963 www.scag.ca.gov
x	x	x	Stanislaus Council of Governments (StanCOG)	Stanislaus	Mr. Gary C. Dickson, Exec. Dir. Ms. Kenni Friedman, Chair Mr. Blair Bradley, Vice Chair	900 H Street, Suite D Modesto, CA 95354	(209) 558-7830 FAX: (209) 558-7833 sa@mail.co.stanislaus.ca.us
		x	Tahoe Regional Planning Agency	El Dorado & Placer, CA Douglas, Washoe & Carson City, NV (4)	Mr. Juan Palma, Executive Dir. Mr. Drake De Lanoy, Chair	308 Dorla Ct., Ste. 103 P.O. Box 1038 Zephyr Cove, NV 89448	(775) 588-4547 FAX: (775) 588-4527 www.ceres.ca.gov/trpa
	x		Tahoe Metropolitan Planning Organization	El Dorado & Placer, CA Douglas, Washoe & Carson City, NV (4)	Mr. Juan Palma, Executive Dir. Mr. Drake De Lanoy, Chair	308 Dorla Ct., Ste. 103 P.O. Box 1038 Zephyr Cove, NV 89448	(775) 588-4547 FAX: (775) 588-4527 www.ceres.ca.gov/trpa
		x	Tehama County Transportation Commission	Tehama	Mr. Gary Plunkett, Exec. Dir. Mr. Ross Turner, Chair	9380 San Benito Ave. Gerber, CA 96035-9702	(530) 385-1462 FAX: (530) 385-1189 plunkett@tco.net

CALIFORNIA MPO AND RTPA CONTACTS

TMA	MPO	RTPA	AGENCY	COUNTIES	CONTACT	ADDRESS	PHONE, FAX & INTERNET
		x	Trinity County Transportation Commission	Trinity	Mr. John Jelicich, Exec. Dir. Mr. Berry Stewart, Chair	190 Glen Road (P.O. Box 2819) Weaverville, CA 96093-2819	(530) 623-1351 ext.7 FAX: (530) 623-1353 tctc@trinitycounty.org
	x	x	Tulare County Association of Governments	Tulare	Mr. George Finney, Secretary Mr. Mel Richmond, Chair	Resource Management Agency Tulare County Government Plaza 5961 S. Mooney Blvd. Visalia, CA 93277	(559) 733-6291 FAX: (559) 730-2653 pwd@lightspeed.net
		x	Tuolumne County/Cities Area Planning Council	Tuolumne	Mr. Peter Rei, Exec. Director Mr. Darin Grossi, Dep. Dir. Mr. Ron Stearn, Chair	2 South Green St. Sonora, CA 95370	(209) 533-5601 (209) 533-5583 FAX: (209) 533-5698
	x		Yuma Metropolitan Planning Organization	Yuma	Mr. John Gross, Exec. Dir. Mr. Agustin Tumbaga Jr., Chair	502 South Orange Ave. Yuma, AZ 85364	(520) 783-8911 FAX: (520) 329-1674 www.ympo.org

1) Monterey and Santa Cruz RTPA's operate in cooperation with AMBAG. AMBAG is the designated MPO for the region and serves as the comprehensive planning agency for functional planning.
2) AMBAG is the designated MPO for San Benito County. San Benito COG retains its RTPA status and coordinates metropolitan transportation and air quality planning per ISTEA requirements with AMBAG by a Memorandum of Understanding.
3) SACOG is the designated MPO for Sacramento, Sutter, Yolo and Yuba Counties and the Cities of Roseville, Rocklin, and Lincoln in Placer County. SACOG acts as the MPO by agreement for the non-urbanized portions of Placer County and El Dorado County outside of the Tahoe Basin. Placer and El Dorado Counties retain their RTPA status.
4) TRPA is the RTPA for the portions of Placer and El Dorado Counties that are within the Tahoe Basin.

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
Alpine	Woodfords Washoe Community Council	96 Washoe Boulevard Markleeville, CA 96120	(530) 694-2170 FAX: (530) 694-1890
Amador	Buena Vista Rancheria	4650 Coalmine Road Ione, CA 95640	(209) 274-6512 FAX: (209) 424-1077
	Ione Band of Miwok Indians	P.O. Box 1190 Ione, CA 95640	(209) 274-6753 FAX: (209) 274-6636
	Jackson Rancheria	P.O. Box 1090 Jackson, CA 95642	(209) 223-1935 FAX: (209) 223-5366
Butte	Berry Creek Rancheria	5 Tyme Way Oroville, CA 95966	(530) 534-3859 FAX: (530) 534-1151
	Mechoopda Indian Tribe of the Chico Rancheria	125 Mission Ranch Boulevard Chico, CA 95926	(530) 899-8922 FAX: (530) 899-8517
	Enterprise Rancheria	1940 Feather River Blvd., Suite B Oroville, CA 95965	(530) 532-9214 FAX: (530) 532-1768
	Mooretown Rancheria	1 Alverda Drive Oroville, CA 95966	(530) 533-3625 FAX: (530) 533-3680
Calaveras	California Valley Miwok Tribe	1055 Winter Court Tracy, CA 95736	(209) 834-0197 FAX: (530) 533-3680
Colusa	Colusa Rancheria	50 Wintun Road, Suite D Colusa, CA 95932	(530) 458-8231 FAX: (530) 458-4186
	Cortina Indian Rancheria	P.O. Box 1630 Williams, CA 95987	(530) 473-3274 FAX: (530) 473-3301
Del Norte	Elk Valley Rancheria	P.O. Box 1042 Crescent City, CA 95531	(707) 464-4680 FAX: (707) 464-4519
	Resighini Rancheria	P.O. Box 529 Klamath, CA 95548	(707) 482-2431 FAX: (707) 482-3425
	Smith River Rancheria	250 N. Indian Road Smith River, CA 95567	(707) 487-9255 FAX: (707) 487-0930
	Yurok Tribe	1034 Sixth Street Eureka, CA 95501	(707) 444-0433 FAX: (707) 444-0437
El Dorado	Shingle Springs Rancheria	P.O. Box 1340 Shingle Springs, CA 95862	(530) 676-8010 FAX: (530) 676-8033
Fresno	Big Sandy Rancheria	P.O. Box 337 Auberry, CA 93602	(559) 855-4003 FAX: (707) 855-4129
	Cold Springs Rancheria	P.O. Box 209 Tollhouse, CA 93667	(559) 855-5043 FAX: (559) 855-4445
	Table Mountain Rancheria	P.O. Box 410 Friant, CA 93626	(559) 822-2587 FAX: (559) 822-2693

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
Glenn	Grindstone Indian Rancheria	P.O. Box 63 Elk Creek, CA 95939	(530) 968-5365 FAX: (530) 968-5366
Humboldt	Big Lagoon Rancheria	P.O. Box Drawer 3060 Trinidad, CA 95570	(707) 826-2079 FAX: (707) 826-1737
	Blue Lake Rancheria	P.O. Box 428 Blue Lake, CA 95525	(707) 668-5101 FAX: (707) 668-4272
	Hoopa Valley Tribal Council	P.O. Box 1348 Hoopa, CA 95546	(530) 625-4211 FAX: (530) 625-4594
	Karuk Tribe of California	P.O. Box 1016 Happy Camp, CA 96039	(530) 493-5305 FAX: (530) 493-5322
	Bear River Band of Rohnerville Rancheria	32 Bear River Drive Loleta, CA 95551	(707) 733-1900 FAX: (707) 733-1972
	Table Bluff Reservation	1000 Wiyot Drive Loleta, CA 95551	(707) 733-5055 FAX: (707) 733-5601
	Trinidad Rancheria	P.O. Box 630 Trinidad, CA 95570	(707) 677-0211 FAX: (707) 677-3921
	Yurok Tribe	1034 Sixth Street Eureka, CA 9551	(707) 444-0433 FAX: (707) 444-0437
Imperial	Quechan Tribal Council	P.O. Box 1899 Yuma, AZ 85366	(760) 572-0213 FAX: (760) 572-2102
Inyo	Big Pine Reservation	P.O. Box 700 Big Pine, CA 93513	(760) 938-2003 FAX: (760) 938-2942
	Bishop Reservation	50 Tu Su Lane Bishop, CA 93514	(760) 873-3584 FAX: (760) 873-4143
	Fort Independence Indian Reservation	P.O. Box 67 Independence, CA 93526	(760) 878-2126 FAX: (760) 878-2311
	Lone Pine Reservation	P. O. Box 747 Lone Pine, CA 93545	(760) 876-1034 FAX: (760) 876-8302
	Timbi-sha Shoshone Tribe	P.O. Box 206 Death Valley, CA 92328	(760) 786-2374 FAX: (760) 786-2376
Kings	Santa Rosa Rancheria	P.O. Box 8 Lemoore, CA 93245	(559) 924-1278 FAX: (559) 924-3583
Lake	Big Valley Rancheria	2726 Mission Rancheria Road Lakeport, CA 95453	(707) 263-3924 FAX: (707) 263-3977
	Elem Indian Colony	P.O. Box 618 Clearlake Oaks, CA 95453	(707) 995-2853 FAX: (707) 995-2805

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
	Middletown Rancheria	P.O. Box 1035 Middletown, CA 95461	(707) 987-3670 FAX: (707) 987-9091
	Robinson Rancheria	1545 E. Highway 20 Nice, CA 95464	(707) 275-0527 FAX: (707) 275-0235
	Scotts Valley Rancheria	149 N. Main Street, Suite 200 Lakeport, CA 95453	(707) 263-4771 FAX: (707) 263-4773
	Upper Lake Rancheria	P.O. Box 516 Upper Lake, CA 95485	(707) 275-0737 FAX: (707) 275-0757
Lassen	Susanville Indian Rancheria	P.O. Box Drawer U Susanville, CA 96130	(530) 257-6264 FAX: (530) 257-7986
Madera	North Fork Rancheria	P.O. Box 929 North Fork, CA 93643	(559) 877-2461 FAX: (559) 877-5467
	Picayune Rancheria of Chukchansi Indians	46575 Road 417 Coarsegold, CA 93614	(559) 683-6633 FAX: (559) 642-4075
Marin	Federated Indians of Graton Rancheria	P.O. Box 481 Novato, CA 94948	(707) 763-6143 FAX: (415) 883-3051
Mendocino	Coyote Valley Reservation	P.O. Box 39 Redwood Valley, CA 95470	(707) 485-8723 FAX: (707) 485-1247
	Guidiville Rancheria	P.O. Box 339 Talmage, CA 95481	(707) 462-3682 FAX: (707) 462-9183
	Hopland Reservation	P.O. Box 610 Hopland, CA 95449	(707) 744-1647 FAX: (707) 744-1506
	Laytonville Rancheria	P.O. Box 1239 Laytonville, CA 95454	(707) 984-6197 FAX: (707) 984-6201
	Manchester-Point Arena Rancheria	P.O. Box 623 Point Arena, CA 95468	(707) 882-2788 FAX: (707) 882-3417
	Pinoleville Rancheria	367 N. State Street, Suite 204 Ukiah, CA 95482	(707) 463-1454 FAX: (707) 463-6601
	Potter Valley Rancheria	112 North School Street Ukiah, CA 95482	(707) 462-1213 FAX: (707) 462-1240
	Redwood Valley Rancheria	3250 Road I Redwood Valley, CA 95470	(707) 485-0361 FAX: (707) 485-5726
	Round Valley Reservation	P.O. Box 448 Covelo, CA 95428	(707) 983-6126 FAX: (707) 983-6128
	Sherwood Valley Rancheria	190 Sherwood Hill Drive Willits, CA 95490	(707) 459-9690 FAX: (707) 459-6936
Modoc	Alturas Rancheria	P.O. Box 340 Alturas, CA 96101	(530) 233-5571 FAX: (530) 233-3170

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
	Cedarville Rancheria Community Council	200 South Howard St. Alturas, CA 96101	(530) 233-3969 FAX: (530) 233-4776
	Fort Bidwell Reservation	P.O. Box 129 Fort Bidwell, CA 96112	(530) 279-6310 FAX: (530) 279-2233
Mono	Benton Paiute Reservation	567 Yellow Jacket Road Benton, CA 93512	(760) 933-2321 FAX: (760) 933-2412
	Bridgeport Indian Colony	P.O. Box 37 Bridgeport, CA 93517	(760) 932-7083 FAX: (760) 932-7846
Placer	United Auburn Indian Community	661 Newcastle Road, Suite 1 Newcastle, CA 95658	(916) 663-3720 FAX: (916) 663-3727
Plumas	Greenville Rancheria	P.O. Box 279 Greenville, CA 95947	(530) 284-7990 FAX: (530) 284-6612
Riverside	Agua Caliente Band of Cahuilla Indians	600 East Tahquitz Canyon Way Palm Springs, CA 92262	(760) 325-3400 FAX: (760) 325-0593
	Augustine Band of Mission Indians	P.O. Box 846 Coachella, CA 92236	(760) 398-4722 FAX: (760) 398-4922
	Cabazon Tribal Business Committee	84-245 Indio Springs Drive Indio, CA 92201	(760) 342-2593 FAX: (760) 347-7880
	Cahuilla Band of Mission Indians	P.O. Box 391760 Anza, CA 92539	(909) 763-5549 FAX: (909) 763-2808
	Colorado River Tribal Council	RT 1 Box 23-B Parker, AZ 85344	(928) 669-9211 FAX: (928) 669-1216
	Morongo Band of Mission Indians	11581 Potrero Road Banning, CA 92220	(909) 849-4697 FAX: (909) 849-4425
	Pechanga Band of Mission Indians	P.O. Box 1477 Temecula, CA 92593	(909) 676-2768 FAX: (909) 695-1778
	Ramona Band of Mission Indians	P.O. Box 391372 Anza, CA 92539	(909) 763-4105 FAX: (909) 763-4325
	Santa Rosa Band of Mission Indians	P.O. Box 390611 Anza, CA 92539	(909) 763-5140 FAX: (909) 763-9781
	Soboba Band of Luiseno Indians	P.O. Box 487 San Jacinto, CA 92581	(909) 654-2765 FAX: (909) 654-4198

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
	Torres-Martinez Desert Cahuilla Indians	P.O. Box 1160 Thermal, CA 92070	(760) 397-8144 FAX: (760) 397-8146
San Bernardino	Chemehuevi Tribal Council	P.O. Box 1976 Havasu Lake, CA 92363	(760) 858-4301 FAX: (760) 858-5400
	Fort Mojave Tribal Council	500 Merriman Avenue Needles, CA 92363	(760) 629-4591 FAX: (760) 629-2468
	San Manuel Band of Mission Indians	P.O. Box 266 Patton, CA 92369	(909) 864-8933 FAX: (909) 864-3370
	Twenty-Nine Palms Band of Mission Indians	46-200 Harrison Place Coachella, CA 92236	(760) 775-5566 FAX: (760) 775-4639
San Diego	Santa Ysabel Band of Mission Indians	P.O. Box 130 Santa Ysabel, CA 92070	(760) 765-0846 FAX: (760) 765-0320
	Barona Band of Mission Indians	1095 Barona Road Lakeside, CA 92040	(619) 443-6612 FAX: (619) 443-0681
	Campo Band of Missioin Indians	36190 Church Road, Suite 1 Campo, CA 91906	(619) 478-9046 FAX: (619) 478-5818
	Cuyapaipe Band of Mission Indians	P.O. Box 2250 Alpine, CA 91903	(619) 445-6315 FAX: (619) 445-9126
	Inaja-Cosmit Reservation	1040 East Valley Parkway, Unit A Escondido, CA 92025	(760) 747-8581 FAX: (760) 747-8568
	Jamul Indian Village	P.O. Box 612 Jamul, CA 91935	(619) 669-4785 FAX: (619) 669-4817
	La Jolla Band of Luiseno Indians	22000 Highway 76 Pauma Valley, CA 92061	(760) 742-3771 FAX: (760) 742-1704
	La Posta Band of Mission Indians	P.O. Box 1048 Boulevard, CA 91905	(619) 478-2113 FAX: (619) 478-2125
	Los Coyotes Reservation	P.O. Box 189 Warner Springs, CA 92086	(760) 782-0711 FAX: (760) 782-2701
	Manzanita Band of Mission Indians	P.O. Box 1302 Boulevard, CA 91905	(619) 766-4930 FAX: (619) 766-4957
	Mesa Grande Band of Mission Indians	P.O. Box 270 Santa Ysabel, CA 92070	(760) 782-3818 FAX: (760) 782-9029
	Pala Band of Mission Indians	P.O. Box 50 Pala, CA 92059	(760) 742-3784 FAX: (760) 742-1293
	Pauma/Yuima Band of Mission Indians	P.O. Box 369 Pauma Valley, CA 92061	(760) 742-1289 FAX: (760) 742-3422

CALIFORNIA TRIBAL GOVERNMENTS (Updated: 1/16/02)

COUNTY	RESERVATION/ RANCHERIA	ADDRESS	PHONE & FAX
	Rincon Band of Mission Indians	P.O. Box 68 Valley Center, CA 92082	(760) 749-1051 FAX: (760) 749-8901
	San Pasqual Band of Diegueno Indians	P.O. Box 365 Valley Center, CA 92082	(760) 749-3200 FAX: (760) 749-3876
	Sycuan Band of Mission Indians	5459 Dehesa Road El Cajon, CA 92021	(619) 445-2613 FAX: (619) 445-1927
	Viejas Band of Mission Indians	P.O. Box 908 Alpine, CA 91903	(619) 445-3810 FAX: (619) 445-5337
Santa Barbara	Santa Ynez Band of Mission Indians	P.O. Box 517 Santa Ynez, CA 93460	(805) 688-7997 FAX: (805) 686-9578
Shasta	Pit River Tribal Council	37014 Main Street Burney, CA 96013	(530) 335-5421 FAX: (530) 335-3140
	Redding Rancheria	2000 Rancheria Road Redding, CA 96001	(530) 225-8979 FAX: (530) 241-1879
Siskiyou	Karuk Tribe of California	P.O. Box 1016 Happy Camp, CA 96039	(530) 493-5305 FAX: (530) 493-5322
	Quartz Valley Reservation	P.O. Box 24 Fort Jones, CA 96032	(530) 468-5970 FAX: (530) 468-5908
Sonoma	Cloverdale Rancheria	555 S. Cloverdale Blvd. Suite 1 Cloverdale, CA 95425	(707) 894-5775 FAX: (707) 894-5727
	Dry Creek Rancheria	P.O. Box 607 Geyserville, CA 95441	(707) 431-2388 FAX: (707) 431-2615
	Lower Lake Rancheria	1083 Vine Street, #137 Healdsburg, CA 95448	(707) 431-1908 FAX: (707) 431-1908
	Lytton Rancheria	1250 Coddingtown Center, Suite 1 Santa Rosa, CA 95401	(707) 575-5917 FAX: (707) 575-6974
	Stewarts Point Rancheria	P.O. Box 6525 Santa Rosa, CA 95403	(707) 591-0580 FAX: (707) 591-0583
Tehama	Paskenta Band of Nomlaki Indians	P.O. Box 398 Orland, CA 95963	(530) 865-3119 FAX: (530) 865-2345
Tulare	Tule River Reservation	P.O. Box 589 Porterville, CA 93258	(559) 781-4271 FAX: (559) 781-4610
Tuolumne	Chicken Ranch Rancheria	P.O. Box 1159 Jamestown, CA 95327	(209) 984-4806 FAX: (209) 984-5606
	Tuolumne Rancheria	P.O. Box 699 Tuolumne, CA 95379	(209) 928-3475 FAX: (209) 928-1677
Yolo	Rumsey Rancheria	P.O. Box 18 Brooks, CA 95606	(530) 796-3400 FAX: (530) 796-2143

State of California
Department of Transportation

Transportation Planning and Programming Requirements Regarding Tribal Governments

Federal statute and regulation require that Tribal Governments be involved in transportation planning and programming. The Federal Transportation Equity Act for the 21st Century (TEA-21) reinforced the emphasis on Tribal Government participation in transportation planning that was initiated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Regional transportation agencies are sometimes uncertain of the governance underlying the need to involve Tribal Governments and/or the appropriate methods of involvement required. The following attempts to clarify the "why" and "how" of Tribal Governmental participation in transportation planning and programming.

GOVERNANCE

Statute

Title 23, U.S.C., Chapter 1, Sections 134 and 135, as amended by TEA-21, provides statutory guidance relative to the planning requirements.

While **Section 134, Metropolitan Planning**, does not specifically identify Tribal Governments in the required process, **Para. (a), General Requirements**, stipulates that a metropolitan planning organization "in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State." **Para. (i)(5), Certification**, "The Secretary shall assure that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once every 3 years. The Secretary may make such certification only if (1) a metropolitan planning organization is complying with the requirements of this section and other applicable requirements of Federal law, . . ."

Section 135, Statewide Planning, on the other hand, includes numerous references to a State's requirement to include Tribal Governments in transportation planning. **Para. (d), Additional Requirements**, "Each State in carrying out planning under this section shall, at a minimum, consider the following: . . **(3)** The concerns of Indian tribal governments having jurisdiction

over lands within the boundaries of the State." **Para. (e), Long-Range Plan**, "The State shall develop a long-range transportation plan for all areas of the State. . . . With respect to areas of the State under the jurisdiction of an Indian tribal government, the plan shall be developed in cooperation with such government and the Secretary of the Interior."

Regulation

Code of Federal Regulations (CFR) 23, pursuant to Title 23, U.S.C., provides regulatory guidance relative to the planning requirements.

Part 450, Planning Assistance and Standards:

Subpart B, Statewide Transportation Planning, § 450.202 Applicability: "The requirements of this subpart are applicable to States and any other agencies/organizations which are responsible for satisfying these requirements."

Subpart B, § 450.208, Statewide transportation planning process: Factors, (a)(23): "The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State."

Subpart B, § 450.210, Coordination,

(a): "In addition to the coordination required under § 450.208(a)(21) in carrying out the requirements of this subpart, each State, in cooperation with participating organizations (such as MPOs, Indian tribal governments, environmental, resource and permit agencies, public transit operators) shall, to the extent appropriate, provide for a fully coordinated process including coordination of the following:

(2): "Plans, such as the statewide transportation plan required under §450.214, with programs and priorities for transportation projects, such as the STIP;"

(5): "Transportation planning carried out by the State with transportation planning carried out by Indian tribal governments, Federal agencies and local governments, MPOs, large-scale public and private transportation providers, operators of major intermodal terminals and multistate businesses;"

Subpart B, § 450.214, Statewide transportation plan,

(a): "The State shall develop a statewide transportation plan for all areas of the State."

(c): "In developing the plan, the State shall:

(2) "Cooperate with the Indian tribal government and the Secretary of the Interior on the portions of the plan affecting areas of the State under the jurisdiction of an Indian tribal government:"

Subpart C, Metropolitan Transportation Planning and Programming, § 450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination,

(i): "Where a metropolitan planning area includes Federal public lands and/or Indian tribal lands, the affected Federal agencies and Indian tribal governments shall be involved appropriately in the development of transportation plans and programs."

Subpart C, § 450.324, Transportation improvement program: General,

(f): The TIP shall include:

(1): "All transportation projects, or identified phases of a project, (including pedestrian walkways, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., (including Federal Lands Highway projects) . . "

Guidelines

California Transportation Commission (CTC), Regional Transportation Plan Guidelines, December 1999.

Chairman Edward B. Sylvester, in his letter to Regional Transportation Planning Agencies (RTPAs) highlighted "Interests of Indian Tribal Governments - The RTP process shall meet the federal and state requirement to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs,

including funding of transportation projects accessing tribal lands through state and local transportation programs."

The Guidelines are somewhat confusing, however, because they include the need for Consultation under "Public Involvement": **Appendix A, Regional Transportation Plan Checklist, B. Public Involvement, 1:** "Where there are Native American Tribal Governments within the RTP boundaries, the tribal concerns have been addressed and the Plan was developed in cooperation with the tribal Government(s) and the Secretary of the Interior (Bureau of Indian Affairs) . ." (Technical correction to the placement of Tribal Government Consultation will be addressed in the next revision to the Guidelines.) Regardless, Federal requirements apply.

TRIBAL GOVERNMENT CONSULTATION vs. NATIVE AMERICAN PUBLIC PARTICIPATION

When involving Tribal Governments in the planning and programming process, transportation agencies need to consult with them---in addition to the need to include Native Americans in public participation. Establishing and maintaining Government-to-Government relations with Federally-recognized Tribal Governments through consultation is separate from, and precedes, the public participation process.

Consultation with Tribal Governments

Federally-recognized Tribes are familiar with the federal "consulta tion" process that requires agencies to identify when the agency is *formally* consulting with the Tribe.

CFR 23, Subpart A, § 450.104, Definitions: "*Consultation* means that one party confers with another identified party and, prior to taking action(s), considers that party's views."

Tribal Government refers to the recognized government, or political unit, of a Tribe.

CFR 23, Subpart B § 450.208(b): "The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation problems, land use, employment, economic development, environmental and housing and community development objectives . . ."

Issues may also include Tribal Governments' concerns about projects outside their jurisdiction that have the potential to impact their communities or cultural resources.

It is important to know with whom you are consulting and what methods are most effective:

Each federally recognized Tribe is a sovereign government. Each Tribe has its own form of government and protocol for how business is to be conducted. There is no singular approach. Unless directed otherwise by the Tribe, correspondence should be addressed to the Tribal Chairperson.

Tribes differ in their ability to finance leaders, spokespersons or administrative support. Tribal leaders are frequently participating on their own time and money. Agencies need to be cognizant of this and act accordingly, e.g., be flexible when and where meetings are scheduled. A meeting with the Tribal Government (most often referred to as the Tribal Council) is usually the most effective way to communicate.

Providing enough time for the Tribal Government to respond is important. Most Tribal Governments meet once a month, and it may be difficult to put additional items on the agenda if not given enough time.

Public Participation

Public participation provides for public involvement of all citizens (including Native Americans), affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties of the community affected by transportation plans, programs and projects.

All Native Americans as individual citizens---regardless of whether they are members of Federally-recognized Tribes---can contribute to the public participation process. They belong to a minority, they may be low income and they may be associated with a community based organization or be among the groups shown above. Within public participation forums, as individuals, they are not representing Tribal Governments.

DIRECTOR'S POLICY

Number: 21
Effective Date: 11-05-01
Supersedes: New

TITLE Environmental Justice

POLICY

The Department of Transportation (Department) incorporates Environmental Justice into its programs, policies, and activities to ensure there are no disproportionate adverse impacts, particularly on minority and low-income populations. The Department emphasizes the fair treatment and meaningful involvement of people of all races, cultures, and income levels, including minority and low-income populations, from the early stages of transportation planning and investment decision-making through construction, operations, and maintenance.

The Department's mission is to improve mobility across California; this includes providing transportation services in an equitable manner to all segments of society. The Department strives for equity and balance in transportation investments, economic prosperity, and environmental protection.

INTENDED RESULTS

The intent of this policy is to ensure that the public, including minority and low-income populations, are not discriminated against, treated unfairly, or made to suffer disproportionately from transportation decisions. This policy directs the Department to encourage the public to express its needs and concerns so that transportation decisions better reflect community values and interests.

RESPONSIBILITIES

Department Management: Supports this policy and its implementation.

Deputy Directors for Civil Rights, Planning and Modal Programs, and Project Delivery: Develop overall departmental guidance, develop policies and programs in statewide planning, and develop procedures for project delivery, respectively. They coordinate their efforts to successfully promote and implement Environmental Justice.

Managers and Supervisors:

- Exemplify and actively support Environmental Justice.
- Ensure that their subordinates understand and comply with departmental policies regarding Environmental Justice.
- Establish a positive climate in their work unit, including mechanisms and procedures, to eliminate or reduce any obstacles to achieving Environmental Justice.

Employees:

- Support and implement this policy in performing their jobs.
- Ensure that the public, including minority and low-income populations, have a fair opportunity to express their needs and concerns in planning and transportation investment decisions.
- Set a positive example of public service and concern for the communities they serve by following the principles of Environmental Justice in their work.

APPLICABILITY

All who work for the Department in any capacity.

Jeff Morales

JEFF MORALES
Director

11-5-01
Date Signed

DIRECTOR'S POLICY

Number: 22

Effective Date: 11-29-01

Supersedes: New

TITLE Context Sensitive Solutions

POLICY

The Department uses "Context Sensitive Solutions" as an approach to plan, design, construct, maintain, and operate its transportation system. These solutions use innovative and inclusive approaches that integrate and balance community, aesthetic, historic, and environmental values with transportation safety, maintenance, and performance goals. Context sensitive solutions are reached through a collaborative, interdisciplinary approach involving all stakeholders.

The context of all projects and activities is a key factor in reaching decisions. It is considered for all State transportation and support facilities when defining, developing, and evaluating options. When considering the context, issues such as funding feasibility, maintenance feasibility, traffic demand, impact on alternate routes, impact on safety, and relevant laws, rules, and regulations must be addressed.

INTENDED RESULTS

In towns and cities across California, the State highway may be the only through street or may function as a local street. These communities desire that their main street be an economic, social, and cultural asset as well as provide for the safe and efficient movement of people and goods. In urban areas, communities want transportation projects to provide opportunities for enhanced non-motorized travel and visual quality. In natural areas, projects can fit aesthetically into the surroundings by including contour grading, aesthetic bridge railings, and special architectural and structural elements. Addressing these needs will assure that transportation solutions meet more than transportation objectives.

The Department can be proud of the many contributions it has made to improve highways that are main streets and the aesthetics of its highways and structures; however, there is a strongly expressed desire across California for this concept to be the norm.

Appendix S

Context sensitive solutions meet transportation goals in harmony with community goals and natural environments. They require careful, imaginative, and early planning, and continuous community involvement.

The Department's *Highway Design Manual*, Federal Highway Administration (FHWA) regulations, FHWA's *Flexibility in Highway Design* publication, and the American Association of State Highway Transportation Officials' *A Policy on Geometric Design of Highways and Streets* all share a philosophy that explicitly allows flexibility in applying design standards and approving exceptions to design standards where validated by applying sound engineering judgment. This design philosophy seeks transportation solutions that improve mobility and safety while complementing and enhancing community values and objectives.

RESPONSIBILITIES

Director:

- Creates an environment in which innovative actions, such as context sensitive solutions, can flourish.
- Recognizes and highlights individuals, teams, and projects that advance the goals of this policy.
- Encourages staff to conduct and participate in meetings and conferences to expand the knowledge of context sensitive solutions internally and externally.

Chief Counsel: Evaluates and provides opinions on legal issues associated with context sensitive solutions.

Deputy Director, Maintenance and Operations; Chiefs, Divisions of Traffic Operations and Maintenance:

- Support context sensitive solutions in the maintenance and operation of transportation facilities.
- Revise manuals and procedure documents to facilitate the application of context sensitive solutions.
- Initiate and coordinate research to enable context sensitive solutions.

Chief, Division of New Technology and Research:

- Conducts research and develops and improves techniques and materials to enable context sensitive solutions.
- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief Engineer (Deputy Director, Project Delivery):

- Supports context sensitive solutions in the design and construction of transportation facilities.
- Encourages innovation and flexibility in design.
- Ensures projects are well coordinated to support the application of context sensitive solutions through the life of projects.

Chief, Division of Engineering Services:

- Conducts research and develops and improves techniques and materials to enable context sensitive solutions.
- Trains staff in the application of context sensitive solutions.
- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief, Division of Project Management: Ensures resources are distributed to enable implementation of context sensitive approaches.

Chiefs, Divisions of Right of Way and Construction:

- Train staff in the application of context sensitive solutions.
- Revise manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief, Division of Design:

- Works in cooperation with district and other functional units to develop guidance on design flexibility.
- Identifies good examples of the application of context sensitive solutions to share with departmental and local agency staff.
- Initiates and coordinates research to enable context sensitive solutions.
- Trains staff in the application of context sensitive solutions.

- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief, Division of Environmental Analysis:

- Facilitates coordination with resource agencies to assure facilities and activities are in harmony with the surrounding environment.
- Ensures communities have the opportunity to be actively involved in the environmental stage of the project development process.
- Ensures context sensitive commitments are sustained, as warranted, as a project moves through the environmental approval process.
- Trains staff in the application of context sensitive solutions.
- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief Financial Officer (Deputy Director, Finance); Chief, Division of Transportation Programming:

- Support the inclusion of context sensitive solutions when programming transportation projects.
- Communicate the importance of context sensitive solutions to the California Transportation Commission.
- Facilitate district development of funding partnerships for context sensitive solutions.

Deputy Director, Administration: Supports context sensitive solutions in the planning, design, construction, maintenance, and operation of offices, maintenance stations, and other departmental support facilities.

Deputy Director, Planning and Modal Programs: Supports context sensitive solutions in the planning of transportation programs and facilities.

Chief, Division of Local Assistance:

- Facilitates training of local agencies in the principles of context sensitive solutions.
- Trains staff in the application of context sensitive solutions.

- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.

Chief, Division of Transportation Planning:

- Develops and maintains community planning guidance.
- Trains staff in the application of context sensitive solutions.
- Revises manuals and procedure documents to facilitate the application of context sensitive solutions.
- Works with regional transportation planning agencies, metropolitan transportation organizations, counties, cities, and the private sector to support and incorporate context sensitive solutions in planning, programming, and developing transportation facilities and services.

District Directors:

- Provide leadership in the application of context sensitive solutions in all planning, programming, project development, construction, maintenance, and operational activities of the district.
- Proactively ensure early and continuous involvement of stakeholders.
- Are responsive to requests by local communities, resource and other agencies, and the general public for context sensitive solutions.
- Assure that context sensitivity is applied to local and other projects within the State right-of-way.
- Train staff in the application of context sensitive solutions.

APPLICABILITY

All employees and others involved in the planning, development, construction, maintenance, and operation of State transportation and support facilities.

Jeff Morales

JEFF MORALES
Director

11/29/01

Date Signed

DEPUTY DIRECTIVE

Number:	DD-74
Refer to Director's Policy:	19 – Working with Native American Communities
Effective Date:	10-07-02
Supersedes:	New

TITLE Tribal Employment Rights Ordinances (TEROs)

POLICY

The Department encourages Native American employment on transportation projects and supports the development and application of TEROs asserted by federally recognized California Native American Tribes (Tribal Governments) on or near Reservations / Rancherias.

DEFINITIONS/ BACKGROUND

Indian Employment and Contracting (23 USC §140(d)) – Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), federal code does not "preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations."

Near Indian Reservations – As it relates to Indian employment preference, the Federal Highway Administration (FHWA) issued guidance that defines "near" an Indian reservation as "within a reasonable commuting distance from the reservation." For the purposes of this Deputy Directive, "near" provisions shall not be applied to tribal aboriginal territories.

Indian Reservation Roads (IRR) – Includes roads within or providing access to an Indian reservation or Indian trust lands and roads on the Bureau of Indian Affairs Road System.

Proposition 209 – Article 1, California Constitution, Section 31(a), provides: "The state shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

Tribal Employment Rights Ordinances (TEROs) – Tribal Governments, as domestic dependent nations, may exercise their sovereign rights to establish and enforce employment requirements on employers that conduct business on their Reservations / Rancherias. Tribes may enact TEROs requiring Indian preference in business, employment, training, contracting, and subcontracting. Tribes also may levy taxes on employers doing business within the boundaries of federally recognized sovereign tribal land. TERO is also used as an acronym for Tribal Employment Rights Office.

RESPONSIBILITIES

Deputy Director, Civil Rights: Develops, implements, and oversees departmental policy on issues regarding Civil Rights, TERO, and Disadvantaged Business Enterprise (DBE) as it relates to Native Americans and Native American communities.

Deputy Directors: Develop procedures to ensure the effective implementation of this policy in their respective functions.

Native American Liaison (TERO), Civil Rights:

- Is the primary contact for Divisions and Districts on TERO issues.
- Provides analysis, procedural guidance, technical assistance, and training to support:
  - The effective implementation of this policy,
  - Transportation related employment opportunities for Tribal Governments, and
  - Contractor understanding and compliance with TERO provisions.

Disadvantaged Business Enterprise (DBE), Civil Rights:

- Identifies Tribal Governments as potential resources for contractors recruiting employees for work on or near Reservations / Rancherias.
- Conducts outreach programs to certify eligible DBEs owned and controlled by Native Americans to increase participation on federal-aid projects.

Native American Liaison Branch, Division of Transportation Planning: Coordinates the presentation of TERO issues before the Department's Native American Advisory Committee.

Chief, Division of Engineering Services: Provides special notices of contracts on or near Tribal Government Reservations / Rancherias with TERO provisions.

Chief, Division of Local Assistance:

- Provides guidance to local governments in support of transportation employment opportunities for Tribal Governments on or near Reservations / Rancherias.
- Notifies local governments of TERO provisions related to State projects and services on or near Tribal Government Reservations / Rancherias.

Chief, Division of Procurement and Contracts: Notifies contractors of TERO provisions related to State projects and services on or near Tribal Government Reservations / Rancherias.

District Directors:

- Are aware of TEROs within their respective districts.
- May enter into Memoranda of Understanding that acknowledge the existence of TEROs relating to State and federal transportation projects, permits, and services on or near Tribal Government Reservations / Rancherias.
- Support the employment of Native Americans on State and federal transportation projects on or near Reservations / Rancherias.

District Native American Liaisons: With Tribal Governments, negotiate Memoranda of Understanding that acknowledge the existence of TEROs related to State and federal transportation projects, permits and services on or near Tribal Government Reservations / Rancherias.

Project Engineers, Permits Engineers, Project Managers, Contract Managers: Assure transportation project Plans, Specifications, and Estimates (PS&E), contracts, and permits include notification of TEROs that may be in effect.

Resident Engineers, Permit Inspectors, Project Managers, Contract Managers: On projects, contracts, and permits, notify contractors of the existence of TEROs that may be in effect.

APPLICABILITY

All employees involved in transportation projects, permits, or services on or near Tribal Government Reservations / Rancherias.

Tony V. Harris
TONY V. HARRIS
Chief Deputy Director

10/7/2002
Date Signed

State of California

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: Native American Advisory Committee
Environmental Subcommittee

Date: September 10, 2002

From: Ron Helgeson, Manager
Intergovernmental Review (IGR) Program
Division of Transportation Planning

Subject: IGR/Encroachment Permit Policies

In 1996, the Native American Advisory Committee (NAAC) was established to advise the Director on transportation issues affecting Native American communities. Due to numerous environmental and cultural concerns voiced by the Tribes, the NAAC established an Environmental Subcommittee to assess the issues. One of the subjects that the subcommittee requested clarification on was the Department's role in protecting cultural resources outside of Caltrans' right-of-way, and our policy regarding the issuance or denial of encroachment permits.

The specific questions presented for clarification by the NAAC Environmental Subcommittee were: (1) What are the Department's obligations regarding projects outside of Caltrans' right-of-way? (2) Does CEQA require Caltrans to address all potential environmental impacts resulting from land use development, including offsite impacts on archaeological, historic, and natural resources? (3) If a lead agency fails to adequately mitigate any impact, must the Department - in its role as a responsible (permitting) agency - either deny encroachment or else take over as CEQA lead agency to ensure that offsite mitigation is implemented? and (4) Are archaeologists who are working in behalf of the Department required to uphold their professional and ethic responsibilities by notifying the lead agency when they are aware of a cultural site outside of the Department's right-of-way?

Caltrans procedures regarding the review of local development projects, requests for mitigation, and the issuance of encroachment permits are based upon CEQA statutes, the Department's authority under Streets and Highways Code, and the Supreme Court rulings contained in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. It is the Department's position that it is restricted by statute to assessing impacts and requesting mitigation only for that portion of a project, which directly or indirectly affects the state highway system. Also, the Department cannot assume the role of the lead agency unless there are potentially significant impacts on the SHS that are not being addressed by the lead agency, and the Governor's Office of Planning and Research (OPR) concurs

with the assumption. This position has been determined by Legal and OPR to be in full compliance with the law.

There is, however, a matrix in CEQA (Appendix B) that identifies the "Statutory Authority of State Departments." The purpose of this matrix is to show specific areas of expertise where the departments have authority to make substantive comments. Since Caltrans is identified as having expertise in the area of "historic and archaeological sites", it is departmental policy to notify lead and/or responsible agencies, Tribes/and interested parties during the CEQA review process when district IGR coordinators and functional reviewers discover a potential impact on resources outside of the Department's jurisdiction. If you have any questions or need further clarification of this issue, please call me at (916) 653-9966.

c: Brian Smith
Joan Sollenberger
Joe Hecker, Traffic Operations
Gary Winters, Environmental
Micki Ferguson, Legal
Tina Biorn, Environmental
Carol Roland, Environmental
Paul Cavanaugh, Encroachment Permits
Bill Costa, DOTP
Cynthia Gomez
Jila Priebe, DOTP
Karen Lockhart, Legal
Dwight Dutschke, Office of Historic Preservation