

**Native American Advisory Committee  
Quarterly Meeting Minutes  
Woodland, California  
May 25, 2016**

**Welcome and Introductions:** Chairman Joseph Myers opened the meeting at 9:00 AM. He welcomed the Native American Advisory Committee (NAAC) members and participants. Special greetings were extended to the delegation from Alaska.

**Roll:** Lonora Graves, Native American Liaison Branch (NALB) took roll call.

**Adopt Agenda:** The NAAC unanimously adopted the May 2016 meeting agenda.

**Approved Minutes:** The minutes from March 2016 were approved unanimously.

**NAAC Members in Attendance:** Joseph Myers, National Indian Justice Center (NIJC); Bo Mazzetti, Rincon Tribe; Sandi Tripp, Karuk Tribe; Scott Sullivan, Tolowa Dee-ni' Nation; Margaret Park, Agua Caliente Band of Cahuilla Indians; Jacque Hostler-Carmesin, Trinidad Rancheria; Paul Irwin, North Fork Rancheria; Elizabeth Hansen, California Indian Manpower Consortium; Larry Forst, Jackson Rancheria; David Nenna, Tule River Tribe; Virgil Perez, Iipay Nation of Santa Ysabel; Michael Hostler, Hoopa Valley Tribe.

**Caltrans Director's Representatives in Attendance:** Malcolm Dougherty, Caltrans Director; Coco Briseno, Deputy Director, Planning and Modal Programs; Katie Benouar, Chief, Division of Transportation Planning; Reza Navai, Assistant Chief, Division of Transportation Planning; Lonora Graves, Branch Chief, Native American Liaison Branch;

**Others in Attendance:** Paulette Schuerch, Alaska Governor's Office; Marc Luiken, Alaska DOT Director; Anna Bosin, Alaska DOT Tribal Liaison; Carol Farris, CalSTA; Kelly Myers, NIJC; Ben Myers, NIJC; Dion Wood, Karuk Tribe; Mike Duncan, FHWA; Elijah Henley, FHWA-CFLHD; Wade Hobbs, FHWA – CADO Program Development; Jack Lord, Federal Highways Administration (FHWA); Teresa Favila, CTC; Heather Hostler, Governor's Tribal Advisor; Gretchen Chavez, Caltrans Traffic Operations; Rahul Srivastava, Caltrans Planning; Jaime Hostler, Caltrans District 1; Kendee Vance, Caltrans District 2; Blesilda Gebreyesus, Caltrans District 4; Lorna Foster, Caltrans District 8; Brandon Fitt, Caltrans District 9; Carl Baker, Caltrans District 10; Jesus Chi Vargas, Caltrans District 11; Giles Giovanazzi, Caltrans Federal Liaison; LaNae Van Valen, Caltrans Planning; Jody Brown, Caltrans Environmental; Tina Biorn, Caltrans Environmental; Sarah Allred, High Speed Rail Authority; Bennie Lee, Caltrans Native American Liaison Branch; Chad Riding, Caltrans Native American Liaison Branch;

## **Agenda Items:**

- 1. Caltrans Director's Update.** Malcolm gave an update of Caltrans. He also welcomed the Alaska delegates and mentioned that he and Marc Luiken, Alaska DOT Director, would be attending the AASHTO meeting later in the week.

The California Transportation Commission (CTC) deleted \$754 million in projects from its program and delayed \$750 million in projects due to lowered state gas tax revenues. The Governor and each house of the Legislature have proposals for transportation, but no one solution has stood out. Chairman Myers asked what the proposals were. The governor proposes \$3.6 billion in extra funding per year, and the Legislature proposals are for even more funding, spread between local, regional, and state agencies. Another proposal is to have a three-year average determine the adjustable portion of the state gas tax. In addition to per gallon decreases in revenue due to gas prices, the federal gas tax has not been adjusted since the early 1990s, and the purchasing power of the federal gas tax is now half of what it was.

Active Transportation Program (ATP) applications are due June 15. There are \$240 million dollars in funding available for bike, pedestrian, and other active transportation projects. Chairman Myers asked if there is a set-aside for tribes. Malcolm answered that there were set-asides for rural communities with targets for disadvantaged communities, and tribes are intentionally considered in those categories.

A new Governor's Executive Order on the drought was issued in May, which calls for continued conservation. Last year, there was a mandatory reduction of 25%. Caltrans reduced water consumption by 62% in the past year. Most water is used on landscaping, and Caltrans is looking at innovative solutions like smart irrigation control. Going forward, there is a goal for a 50% reduction in water use as compared with 2013.

TERO Update: There will be a pilot project in District 1 for hiring preferences on projects near reservations. The pilot project will be one project for each of four tribes. Scoping and pilot details are now being worked out. Kelly Myers stated that tribes should note questions that arise during the pilot project and develop some kind of evaluation. Dion Wood thanked Caltrans for working with the tribes on this project. Michael Hostler noted that there is one project that is 1 mile from Hoopa Reservation, and they would like to implement TERO on the project. Malcolm noted that because the contract has been awarded, it may be difficult to apply TERO at that stage. There is also a TERO working group being formed to examine statewide TERO policy and implementation. If you are interested in participating in the group, please contact Lonora Graves or Chad Riding.

Malcolm announced that the California Transportation Plan (CTP) has gone through public comment, and the final draft was sent to CalSTA for their approval. Malcolm noted that it is a plan with a 25-year horizon, and it is difficult to foresee that far in the future, but careful work was done to take potential new technologies into consideration. Malcolm also noted that the 2018 California State Rail Plan update was underway and has had three tribal listening sessions. The Plan update team will and will have further opportunities for engagement and input through advisory committees and of course government-to-government consultation in

Spring 2017. The Sustainable Freight Action Plan is available in draft form for comments, and the public comment period ends July 6. There is also a California State Bicycle and Pedestrian Plan being prepared.

The Tribal Transportation Safety Assessment (T2SA) program is in full swing, and that program will make its selections soon. The Road User Charge Pilot Project is underway. Currently the tracking technology is being tested, and the 5,000 volunteers are to start tracking for the project on July 1. This pilot is important because fuel efficiency is only predicted to increase, making the gas tax even more unreliable as a funding source, and the pilot will provide information to use in a report to the Legislature. Chairman Myers asked whether alternative fuel sources were being taxed. Malcolm responded not at this time, and that it is another reason to look at alternatives to the fuel tax. If nothing is done, continued decreases in fuel consumption will continue to negatively cut transportation revenue.

Chairman Myers asked about drones. Malcolm responded that drones could be beneficial in improving efficiency and safety. Hobbyists are one major concern for drones because they do not always follow the law. Options like no-fly zones for drones with hobbyists personally liable for violations are being explored. FAA is in charge of drones in general, but Caltrans Division of Aeronautics is also involved in this discussion. Larry Forst said that Jackson Rancheria has successfully used drones on their reservation for inspections to look for storm damage. Drones can go places where people cannot easily go, so they are helpful and save time. They have clearance for drones in many cases up to 500 feet.

2. **California State Transportation Agency (CalSTA) Update.** Carol Farris gave the CalSTA update. Carol briefed the NAAC about the tribal collision data collection project. Outreach will now occur on a more localized basis to allow faster, greater input into the project. CHP will host meetings in areas with the highest concentrations of tribes. Carol Farris will have a schedule next week.
3. **Alaska DOT and Alaska Governor's Tribal Advisor.** Marc Luiken thanked the NAAC for the opportunity to come to the meeting. The goal is to set up something similar in Alaska to have greater input from tribes and to inform them of transportation programs. The entire federal Alaska DOT program is \$500 million for the entire state. Over 80% of Alaska communities are not connected by road, so air and sea connections are of vital importance. Alaska DOT hopes to establish the committee within the next quarter.

Malcolm said that the NAAC was formed in 1996, and there are district and HQ staff dedicated to the liaison functions. Participation by all tribes is also key. Bo said that he has been with the NAAC from the beginning. Many tribes were looking at a multi-billion dollar suit against Caltrans over right-of-way, but the NAAC helped all parties work through this to avoid the legal struggle. It does take some time to make progress, but progress is being made. It is really a forum to work things out over the years.

Paulette Schuerch said that Alaska is divided into 12 regions for Alaska Natives, and there is a separation between tribes and shareholders. They decided to divide it by program area. The members of the Alaska Governor's office for tribal affairs are mostly tribal members and now

represent the state instead of tribes (as in the past). Malcolm noted that there will be real issues that come up, and communication will be key. Dion Wood offered his professional expertise on any TERO issues that may come up.

4. **FHWA Update.** Mike Duncan gave the FHWA update. He said that the first 202(A)(9) interagency fund transfer agreement is getting close to being finished. There are several new reports coming out, and the appropriations process is due at end of fiscal year on September 30. Some earmarks have been out there for several years, and those funds could potentially be used for other purposes if changes are made. Performance management is a major topic now, and the NPRMs for several items have gone out for comments. Expect the planning final rule this week.
5. **Federal Liaison Update.** Giles Giovanazzi repeated that the deadlines for many federal grant programs have passed. Caltrans submitted 3 applications for TIGER Grants and 3 for FASTLANE Grants. This information is all on the Caltrans FAST Act implementation website ([http://www.dot.ca.gov/hq/transprog/map21/map21\\_implementation.htm](http://www.dot.ca.gov/hq/transprog/map21/map21_implementation.htm)). The NPRM for performance management is over 100 pages, and draft comments will be developed soon, with outreach most likely in July. The implementation white papers and other documents should be online soon.
6. **Governor's Tribal Advisor.** Heather Hostler gave the update from the Advisor's office. She welcomed the Alaska delegation and explained Governor's Executive Order (EO) B-10-11, the consultation EO. The drought task force met and discussed water resources and the impact on timber and potential forest fires. Heather noted that Tribes need to submit their maps of Tribal Cultural Resources (TCRs) (as defined under AB 52). The Governor's Office is developing a database and tools, and the maps are required so tribes can be included and so lead agencies know whom to consult with on projects. There will be training on CalNAGPRA with greater information exchanges so museums can return their objects.
7. **Western Tribal Technical Assistance Program (WTTAP) Update.** Kelly Myers gave the WTTAP update. WTTAP now has an employee on board for the Safety Circuit Rider program, which is under the CDC. The bulk of her work in California will begin in the Fall. The focus areas include distracted driving, DUIS, and seat belt and safety restraint use. The CHP contact is a good resource to help tribes become competitive for funding. There will be a roadway departure workshop in June at Rincon. The BIA programmatic meeting was rescheduled and will be on June 21-22 in Sacramento at their agency office. The T2SA program will have its last workshop in Morongo on June 1. This program will perform 15 safety assessments for California tribes, and these assessments are an important step in the process of creating safety plans. The traffic data gathering project is proceeding apace under David Ragland, who is developing an online tool for Tribal data. Tribes will be able to access this data to make them more competitive for grant funding. This data will become even more valuable as CHP begins to put tribal crashes in SWITRS.

Tribal GIS training for youth is up for a national award. NIJC is also mobilizing youth for a safety application challenge with a training camp for young people to develop safety apps for smart phones to gain safety data for tribal use. The National Tribal Transportation Conference

is coming up. TTAP wants a panel on the NAAC at the conference, and the tribal-regional agency partnerships in the state, particularly with SANDAG, highlighted.

8. **CTC Update.** Teresa Favila updated the NAAC on the CTC. The financial situation is difficult, but there is a hope that new solutions will be found. The new CTC Director is Susan Bransen, and the new Chief Deputy Director is Kristina Assouri. David Van Dyken, formerly tribal liaison for High Speed Rail, is now at CTC.
9. **Tribal Transportation Program Coordinating Committee Update.** Jacque Hostler-Carmesin reported on activities of the National Committee. There was a meeting at Niagara Falls hosted by the Seneca Nation. Many Northern California Tribes were in attendance. They discussed the changes to TTP under the FAST Act. There is a push to get bridges on the inventory to ensure that they are inspected. Bo noted that anything over 20 feet could be considered a bridge for legal purposes. Jacque said that the High Priority Program was eliminated under FAST Act, which is a detriment to California tribes. The end-of-year reporting requirements have come into effect. The reporting requirements and mechanisms have changed, so there is some confusion. They are even more confusing because the requirements vary by FHWA and BIA tribes. Kelly noted that the penalty for not reporting will fall on FHWA. Margaret Park said that getting information to FHWA under the new system will be easier.

Nationally Significant Tribal and Federal Lands Projects – this program may not be funded, but if it is, it would be a great help to tribes. This \$25 million is for construction only, not design or planning. The Nationally Significant Freight and Highway call for projects closed in April. TIGER also closed in April. Jacque noted the need for a tribal set aside.

Tribal Transportation Self-Governance Program – the eligibility is similar to FHWA program agreements. The Secretary will issue negotiated rule-making. There will be representatives from each BIA region, amongst others. Margaret Park volunteered. Her Tribe may nominate her for the committee. There will be one meeting per month for the committee. The Deputy Assistant Secretary for Tribal Affairs at US DOT is Kenneth Martin.

There will be beta testing for the GIS-based IRR Inventory to create the database for queries. They would like to have some data in there to run reports. There was a discussion about the IRR database. Elijah Henley from FHWA asked about access to the data. Kelly Myers said that there is annual security clearance for the database. Coco stated that the interfaces are involving with federal guidelines.

Jacque announced that the next TTP Coordinating Committee meeting will be in Seattle on August 22.

10. **Advance Mitigation (Biology) Efforts.** Jody Brown from the Division of Environmental Assessment gave an update on the Advance Mitigation program. These mitigation efforts are in advance of other projects. The projects that are being chosen are identified in Regional Transportation Plans and other long-range plans. The goal is to have early identification of projects and promote more effective mitigation. Chairman Myers asked if this impacted tribal

sovereignty. Jody answered that the tribes will have input into wildlife crossings. Chairman Myers noted that tribes have fishing and hunting rights on tribal lands and that wildlife mitigation could impact tribal rights. Michael Hostler noted that Hoopa Valley Tribe has very current and accurate data and laws that deal with the environment. Caltrans should contact the tribal departments and have consultation with the tribes.

Chairman Myers said that Caltrans should look to anticipate possible conflicts so that DEA is prepared to address these issues as they come up. Jacque said that before people enter tribal land that the tribal leadership should be aware of the investigation. The Tolowa Dee-ni' Nation and Hoopa Valley Tribe have highly developed programs that should be consulted.

The qualifications for the projects for the advance mitigation efforts are that they must be stand-alone, compliant with SHOPP requirements, and compliant with federal guidelines. There are set priorities for projects. This pro-active approach will help score prime mitigation lands before they are developed or overly expensive. They will coordinate with other units in Caltrans, other agencies, and tribes. CEQA and NEPA processes will be done for the advance mitigation projects. Stuart Kirkham is the contact for questions on advance mitigation. People can also contact Jody, who will forward the question to Stuart.

Chairman Myers noted that tribes should be considered partners in advance mitigation and that tribes should be given a decision-making role whenever possible.

- 11. Regional Transportation Plan (RTP) Update Process.** LaNae Van Valen from Caltrans Regional Planning presented on the RTP Guidelines update process. The Guidelines are being updated under direction of the CTC. Senate Bill 375 of 2008 precipitated the previous update in 2010. There will be a June 30<sup>th</sup> kick-off meeting for stakeholders, with a draft released at that time. NAAC members were given sections of existing guidelines to view current language about Native American consultation. Workgroups will form after the June 30<sup>th</sup> meeting, with workgroups meeting telephonically. The final guidelines should be adopted at the December 8 CTC meeting.

Bo asked whether the guidelines are reviewing how regional agencies are working with tribes. Mike Duncan from FHWA answered that they have raised the issue with agencies about how they work with tribes. LaNae noted that the guidelines outline requirements, so tribes can review it for consultation language and provide suggestions for updates.

- 12. FHWA Central Federal Lands Highway Division Long-Range Transportation Plan.** Elijah Henley from Central Federal Lands Highway Division in Colorado explained that FHWA is doing a transportation plan for federal lands in the western US. It is a 20-year plan for federal lands, with an emphasis on linking various federal lands together across disparate agencies. If an asset is on federal lands, then it is eligible. Tribal lands have TTP, so they are not eligible for Federal Lands Transportation Program but are eligible for the Federal Lands Access Program. There will be \$38 million for California. Bo noted that since there is no tribal set aside, tribes will not be able to compete. Mike Duncan noted that because the stakeholders include anyone or any agency that could provide access to federal lands, more stakeholders are included in outreach. Jacque noted that the Karuk Tribe got a grant, but in

general tribes have a lesser chance at getting funded than larger well-funded agencies. Michael Hostler said that tribes need to be involved and advocate a separate tribal section in the long-range plan. Elijah stated that they can take a look at this. Jacque reiterated Michael's point that there should be a separate tribal section.

**13. Strategic Highway Safety Plan (SHSP).** Gretchen Chavez from Caltrans Traffic Operations explained the recent developments in the SHSP. The SHSP is for all public roads in California, including tribal roads. Chairman Myers asked if the SHSP can help solve the data problem. Gretchen said that while the SHSP cannot solve the data gap problem, the listening sessions about the SHSP noted that gap. Kelly said that Ken Kochevar and David Ragland have been working on data validation. Gretchen said that there was good Tribal representation at the safety summits. Action items from the safety summits support data gathering on tribal lands. The Implementation Plan for the SHSP helps spur actions to meet SHSP goals. The goal is to include tribal governments in decision-making. Chairman Myers noted that there should be true partnership with tribes on SHSP-related activities. Bo also said that tribes' certifications should be respected by the state. Carol Farris said that CalSTA officials can ensure tribal representation at its decision-making meetings. Coco reiterated those comments. Lonora said that there is room for tribal membership on the SHSP Steering Committee, and asked that interested tribes contact Gretchen. Jacque noted that a travel reimbursement would be helpful, and Gretchen said that many of the meetings are webinars. Michael said that there should be a way to more easily get state funds to tribes. Paulette Schuerch said that waivers of sovereign immunity are an emerging area. Chairman Myers said that it should be a two-way street with the state waiving immunity as well as tribes waving immunity. Bo said that it may be worth it to have limited waivers of sovereign immunity if funding is involved that the tribe wants.

**Meeting Adjourned at 12:40 PM.**