

**California Department of Transportation  
Native American Advisory Committee  
Quarterly Meeting Minutes  
February 21, 2007**

Chairman Joseph Myers called the meeting to order at 9:15 a.m.

Chairman Myers started the meeting with a Blessing.

**Welcome and Introductions:** Chairman Myers welcomed everyone to the first Native American Advisory Committee meeting for 2007.

**Adopt Agenda:** The Native American Advisory Committee (Committee) adopted the agenda with no added corrections.

**Approve Minutes:** Member Mazzetti moved to approve the October 11, 2006 meeting minutes as is, Member Sundberg seconded the motion. Minutes were approved.

**Roll Call:** Committee Members in attendance: Joe Sanchez, Bo Mazzetti, Joseph Myers, Dave Nenna, Jacque Hostler, Lorenda Sanchez, Garth Sundberg, LeLand Watterson, and Ed Arviso.

**Director's Representatives in attendance were:** R. Gregg Albright, Deputy Director of Planning and Modal Programs; Joan Sollenberger, Division Chief of Transportation Planning; Sharon Scherzinger, Office Chief of Regional and Interagency Planning; Cynthia Gomez, Branch Chief of the Native American Liaison Branch.

**Others in Attendance:** Tim Rochte, Caltrans District 5; Mark Bobotis, Caltrans District 11; Kathleen Sartorius, Caltrans District 1; Tina Biorn, Caltrans Environmental; Richard Olson, Caltrans District 3; Olivia Fonseca, Caltrans Civil Rights; Kathleen McClafin, Caltrans District 10; Jo Sanford, Caltrans District 8; Sandra Rivera, Caltrans District 2; Karen Nissen, Caltrans District 6; Blesilda Gebreyesus, Caltrans District 4; Nathan Smith, Caltrans State Planning; Jessie Martinez, Cultural Representative; Carolyn Yee, Caltrans Native American Liaison Branch; Jila Priebe, Caltrans Native American Liaison Branch; Valarie Smith, Caltrans Native American Liaison Branch; Kelly Myers, Staff Attorney, National Indian Justice Center; John Mason, Caltrans Mass Transportation; Cindy Chiaverini, Caltrans Mass Transportation; Tim Seward, Associate Attorney, Hobbs, Straus, Dean & Walker, LLP.

**NEW BUSINESS**

**Introduction and Welcome New Members:** Chairman Myers welcomed and introduced the newly elected Members serving on the Committee for the 2007-2008 term.

**Schedule NAAC Quarterly Meetings:** The Committee decided on the following dates for the 2007 meetings to be held at the Woodland Training Center from 9am to 3pm.

- May 16, 2007
- August 15, 2007
- November 14, 2007

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**Selection for Chairman and Secretary:** Chairman Myers opened the floor for nominations for the Chair position. Member Mazzetti nominated Mr. Joseph Myers, seconded by Member Sundberg. Member Sanchez moved to close the nomination for Chairman, Member Arviso seconded the motion. Chairman Myers was re-elected as NAAC Chairman. Vote: 9 Yes, 0 Against.

Chairman Myers opened the floor for nominations for the Secretary position. Member Masiel nominated Member Lorenda Sanchez for the Secretary position, Chairman Myers seconded the nomination. Member Arviso moved to close the nominations, seconded by Member Mazzetti. Member Lorenda Sanchez was elected NAAC Secretary. Vote: 9 Yes, 0 Against.

## **Election for Officers:**

Legislative Subcommittee- Chairman Myers asked the Committee if they wanted Ms. Gomez to continue to make the quarterly reports regarding upcoming and proposed legislation. The Committee agreed and a motion was made by Member Mazzetti, and seconded by Member Masiel. Motion passed. Vote: 9 Yes, 0 Against.

Highway Landscaping Subcommittee- Chairman Myers opened the floor for nominations for the Highway Landscaping Subcommittee. The Committee nominated Member Sundberg to be the Chair of the Highway Landscaping Subcommittee. Motion was made by Member Mazzetti and seconded by Member Masiel. Member Sundberg nominated Member Hostler to be the Co-Chair of the Subcommittee. Member Arviso moved to close the nomination, seconded by Member Masiel. Motion passed. Vote: 9 Yes, 0 Against.

**Membership/Alternate Information Form:** Ms. Valarie Smith requested that the NAAC Members fill out the membership and alternate forms and return the forms to her by the end of the meeting.

**Information on Grant Programs (5310, 5316, and 5317) and Coordinated Planning Process:** Mr. John Mason and Ms. Cindy Chiaverini gave a brief presentation of the new Federal Transit Administration (FTA) grants; the Tribal Governments are eligible recipients. Mr. Mason mentioned the Job Access and Reverse Commute [(JARC) FTA, Section 5316] program, provides funding to States and designated recipients to support the development and maintenance of the job access projects designed to transport low-income individuals. The grant also allows the grantee to finance capital projects, i.e. purchase of buses, operating costs of equipment, facilities, and transit by workers with nontraditional work schedules. The second program Mr. Mason mentioned is the New Freedom Grant Program (FTA, Section 5317). This grant will provide new public transportation services and public transportation alternatives to assist individuals with disabilities, including transportation to and from jobs and employment support services. Furthermore, Ms. Chiaverini briefly discussed the FTA, Section 5310 grant program. She mentioned that this program provides capital grants for the purpose of meeting the transportation needs of elderly persons and persons with disabilities where public mass transportation services are otherwise unavailable, insufficient and/or inappropriate.

In addition, Mr. Mason briefly touched on the Coordinated Planning Process. He mentioned that the requirements for the plan must be developed through a process that includes representatives of public, private, non-profit transportation and human services providers,

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and tribal governments. The plans should be consistent with the statewide transportation planning process as required by SAFETEA-LU. To be eligible for funding, all process must be incorporated into both the Transportation Improvement Process (TIP) and Statewide Transportation Improvement Process (STIP). If anyone has any questions or concerns they can contact Mr. Mason directly.

**California Transportation Plan (CTP) Update:** Mr. Nathan Smith, Office Chief of State Planning gave a brief presentation regarding the updates for the CTP and provided information regarding workshop schedules. The first kickoff meeting was December 8, 2006. Mr. Smith stated that his office conducted two informational workshop meetings for Tribal Governments; the first workshop was conducted on February 27, 2007, at the San Pasqual Reservation, the second workshop was conducted on March 1, 2007 at the TANF Tribal Office in the Fresno. A third workshop is going to be in the Redding area and his office is in the process of finalizing the schedule and agenda. In addition, there will be three public meetings held in the bay area, Riverside and Redding. Mr. Smith also mentioned that the draft plan should be completed in July and hopefully it will be approved in October. If any one has any questions or wants more information in regards to the public meetings, please contact the Native American Liaisons, or you may contact Mr. Smith's office directly.

Ms. Sollenberger mentioned that this was a very quick update because of the statute requirements to comply with SAFETEA-LU. The consultation workshops are mainly focused on early environmental review. Another review will begin in 2008 for the entire document giving the Tribes another chance to make comments.

## OLD BUSINESS

**Tribal Employment Rights Ordinance (TERO) Update:** Ms. Olivia Fonseca, Deputy Director of Civil Rights gave a brief update regarding TERO. She mentioned that the Department has received approval to forward the formal request to the Attorney's General's (AG's) Office. After the formal request is sent to the AG's office, the AG office will assign an opinion number, and will post a notification on the AG's office website to gather input and comments from Tribes or any interested parties. Ms. Fonseca mentioned that once she receives that information she would distribute it to the Committee. Generally it takes four to six months to receive the formal legal opinion from the AG's office. Ms. Fonseca mentioned that there were two main questions that were asked in the request for the opinion.

1. Can the Department recognize and comply with the Native American TERO hiring preference and reimburse its contractor that recognizes the TERO?
2. Can the Department pay tribes that impose TERO taxes for projects, and if so can the state pay the tax on state own rights of ways on the reservations?

Ms. Fonseca mentioned both questions are stated in Caltrans' legal opinion; she did not bring any copies but if anyone would like a copy of the opinion she would be happy to distribute it. Mr. Albright asked Ms. Fonseca to distribute all the information that was submitted to the AG's office to the Committee Members by tomorrow. Ms. Fonseca also stated that her office would provide clear written guidelines to the Districts when assisting the Tribes on TERO issues. The guidelines will be more specific as to if, or how the District can apply TERO. Once the guidelines are written she will make sure the Committee Members receive a copy. Furthermore, her office is also working with the Districts to schedule consultation meetings with the Tribes.

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Member Mazzetti mentioned that at the last Committee meeting there were discussions regarding this issue, and concluded that Proposition 209 only applied to the State and stopped at the reservation boundaries, so why is this issue coming up again?

Ms. Myers mentioned that the problem is the interpretation that the State right-of-away is within state jurisdiction within reservation boundaries. There is not much documentation on the status of the State's right-of-away, however to assume State jurisdiction may imply looking at federal law and tribal jurisdiction, which may cause a problem considering Public Law 280. At a minimum it would be concurrent jurisdiction.

Member Mazzetti asked if the TERO policy is in place. Ms. Fonseca stated that the TERO policy is in place and active on the website with additional clarification. The additional clarification is defined as; if the Districts have a contract that is on or near a reservation they are to work with the Civil Rights Office and herself to determine if the State may apply TERO on the contracts. Member Mazzetti mentioned that the policy is quite clear; the Department is advising the contractor that the Tribes have TERO. This is the standard language of the contract "advising" them of TERO. Ms. Fonseca stated that she understood that the policy was only advising the contractor; however, it would still be case by case.

In addition, Ms Fonseca mentioned that her office would continue to work with the Tribes. There will be a meeting with the tribes in Humboldt County on March 21<sup>st</sup>, to provide information on how to do business with the State of California, local governments, and Tribal Governments. At this meeting John Navarro will be providing information in regards to a new grant from Federal Highway Administration (FHWA) on business opportunity and workforce development. Ms. Myers mentioned that Mr. Navarro asked FHWA's program person to make this grant happen because of the concerns brought to his attention. Mr. Navarro is very informed of the revolving issue and situation, and he is willing to facilitate consultation on this issue.

## Follow-Up Discussion on California's Wavering Position on TERO

Chairman Myers introduced Tim Seward an attorney with Hobbs, Straus, Dean, & Walker, LLP. Mr. Seward thanked the Chairman and the Committee for giving him the opportunity to address the Committee. Mr. Seward created a memo as a follow up to the National Tribal Transportation Conference meeting regarding TERO, and it also serves as a response as a follow up discussion on California's wavering position on TERO. Mr. Seward gave a brief summary of the TERO meeting held at the National Tribal Transportation Conference as well as a brief summary of the TERO issues. He mentioned that during the conference there was a session discussing the formation of an informal working group to address issues related to the Caltrans TERO policy. Specifically this informal work group gathered to address issues raised by Caltrans' legal opinion advising that the Department's current TERO policy DD-74 is inconsistent with State laws because Indian hiring preferences violate the California Constitution. This informal workgroup meeting followed a panel discussion on TERO, which included Mr. Gregg Albright, Deputy Director of Planning and Intermodal Programs for Caltrans; Ms. Kelly Myers staff attorney for the NIJC; and Vivian Philbin, Assistant Chief Counsel, Federal Lands, FHWA. Mr. Seward stated that Ms. Vivian Philbin presented the history of TERO and federal policies that strongly support TERO.

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Mr. Seward stated that the Caltrans TERO policy DD-74 encourages Native American employment opportunities on transportation projects and supports TEROs adopted by federally recognized Tribal Governments. However the Caltrans' legal opinion concluded that Caltrans current TERO policy is inconsistent with the California Constitution, Article I, Section 31(a), commonly known as "Proposition 209." Mr. Seward stated that based on his analysis Caltrans could implement TERO in State contracts without violating Proposition 209 (a copy of Mr. Seward's analysis was provided to the Committee).

Chairman Myers mentioned that consultation is more of educating Tribes and Caltrans staff in regards to Public Law 280, and what TERO means. He said the TERO issue is becoming a nationwide issue and maybe the Committee should start or continue to inform the Tribes regarding this issue. Chairman Myers requested the Native American Liaison Branch (NALB) put packets together, with a cover letter stating the issue, Caltrans' legal opinion, and the responses from NIJC and Hobbs, Strauss, Dean and Walker. Mr. Albright mentioned this was a great idea, the Department is moving in the right direction and feels that there is progress in motion. Ms. Fonseca stated that her office will work with NALB, but her office is responsible for providing information to the Tribes.

**Indian Reservation Roads Program (IRR) Coordinating Committee Update Report:** Member Mazzetti gave a report regarding the Coordinating Committee. Member Mazzetti mentioned that the Coordinating Committee was established to oversee the Bureau of Indian Affairs' (BIA) implementation of 25CFR Section 170. The Coordinating Committee has been meeting for 18 months. They have set guidelines for the minimum attachment requirements for a transportation plan, which are: Tribal resolution, a cover page, and a list of roads. A major concern is SAFETEA-LU has some provisions that conflict with the current 25CFR Section 170. The Coordinating Committee is trying to clear explanation of what can go on the IRR system. Member Mazzetti mentioned the way SAFETEA-LU reads, every type of road (i.e. state routes, interstate, counties, city routes) can be put on the IRR system. Many of the larger Tribes are opposed to adding all of these routes.

The Native American Liaison Branch set up a conference call at the request of tribes to disseminate information in regards to IRR Coordinating Committee discussions on these issues, allowing immediate feedback from tribes who participated. The Coordinating Committee made a recommendation for the technical standards section to add interstate, county, and state roads. There could be a limitation, such as the traffic counts could be restricted to 15 miles in either direction on/off the reservations. The Coordinating Committee is trying to come up with a compromise to get a consensus, but it is uncertain if it will pass. Member Mazzetti mentioned that the conflict regarding what can be added to the BIA IRR inventory is what the BIA wants and what the law actually states. The next meeting is April 23<sup>rd</sup> in Phoenix, Arizona.

**Office of Traffic Safety (OTS) Program Final Report:** Ms. Kelly Myers gave the final OTS report to the Committee. She mentioned that there were three primary tasks. The first was to meet with the NALB to go over in detail the scope of work, and meet with the Committee during their quarterly meetings to get input from them and incorporate their concerns and suggestions into the work plan. The second task was to implement the outreach program and develop pre and post surveys in concurrence with the curriculum components. The surveys measured the impact of the curriculum on baseline knowledge, attitudes, and beliefs concerning transportation safety issues addressed in the curriculum presentations,

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materials, and power point slides. The final task was to coordinate project activities and reports. Ms. Myers mentioned that the curriculum was tailored to meet the needs of three audiences: (1) those in need of transportation (driver, passenger and pedestrian) safety awareness; (2) those who will teach transportation safety awareness; and (3) those who will conduct transportation safety data collection within the community. During the course of this project protocols concerning transportation safety data collection, developing relationships and collaborative opportunities between Tribes and California Highway Patrol (CHP) increased awareness among Tribal community members. There has been a significantly change in safety awareness.

**Legislative Analysis Report (Informational):** Ms. Gomez provided the Committee with information regarding the upcoming Legislative bills and information regarding the legislative process.

### **Announcements:**

Member Sanchez presented Ms. Gomez with a plaque on behalf of California Indian Manpower Consortium (CIMC) for her positive contributions to Tribal Governments and Native American communities. She mentioned that her work exemplifies outstanding service. Chairman Myers mentioned that the NAAC appreciates Ms. Gomez's character, leadership, and her courage to take on controversial issues on behalf of Native Americans. Mr. Albright also congratulated Ms. Gomez on her accomplishment and stated that she is a champion in this organization, which is not always easy. We value her courage and passion she brings along with her direction, she is a marvelous resource and an asset to us all. Ms. Sollenberger mentioned that Cynthia has brought us a long way towards successful relationships with the tribes, and she has also been nominated as the Chair of the Transportation Research Board (TRB) Native American Issues Committee, we are proud of her and her accomplishments. Member Dave Nenna mentioned that she is such a strong advocate for tribal governments, and has helped numerous people around the state.

Chairman Myers closed the meeting with a prayer

Meeting adjourned at 12:45 p.m.