

FAST ACT TECHNICAL WORKING GROUP: TRIBAL TRANSPORTATION SUBGROUP RECOMMENDATIONS

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The Fixing America's Surface Transportation Act (FAST Act) contains a number of new tribal transportation provisions including an upward trajectory in overall funding for the TTP, increased access by tribes to US DOT grant programs, and the creation of a tribal self-governance program. The FAST Act also requires studies on safety in Indian Country that may involve participation by the State. Additional information on these provisions can be found in the FAST Act Fact Sheet.

A Caltrans Tribal Transportation Technical Working Group, which was comprised of Tribal, State, and Federal representatives (see Attachment 1), met by phone conference and determined that the issues of most importance for implementation included finding mechanisms for entering into agreements with tribes and ensuring that tribes and Caltrans remain engaged as State and Federal decisions are made regarding the FAST Act. As a result, the working group makes the following recommendations.

RECOMMENDATIONS FOR IMPLEMENTATION

1) Create and Document Effective Methods for Entering Into Agreements with Tribal Governments

The FAST Act creates a Tribal self-governance program and includes a number of discretionary funding programs for which Tribal Governments are eligible applicants. While Tribal Governments are eligible, getting awarded funds to them has been time consuming and challenging, and in some cases, there are not mechanisms in place to make transfers to tribes who have been awarded discretionary program funds. As a result, Caltrans needs to identify and document efficient and consistent ways to enter into agreements with Tribal Governments.

Short-Range Action:

- **Finalize Templates for agreements using the 23 U.S.C. Section 202(a)(9) Intergovernmental Fund Transfer Process**

The Department should work with the Tribes, the Bureau of Indian Affairs, and FHWA to finalize two or three basic Intergovernmental Fund Transfer templates that can be standardized and used as models for future fund transfers to tribal governments.

- **Document the Intergovernmental Fund Transfer Process and other methods that Caltrans and Tribal Governments might use to enter into agreements**

This guidance will be a tool that can be used to help inform program administrators in divisions and districts of the fund transfer mechanisms available and the process for entering into agreements with Tribal Governments. This should increase consistency and efficiency.

Long-Range Action:

- **Propose legislation to amend Section 94 of the California Streets and Highways Code to give Caltrans broad authority to contract directly with tribal governments as needed to perform Caltrans duties**

Currently the conditions where Caltrans can directly contract with tribal governments is narrowly focused on traffic impact mitigation projects on or connecting to the state highway system or activities related to cultural resource management and environmental studies. These conditions cover only a small number of possible reasons that Caltrans might contract with tribes, and the recommendation is that the legal authority be expanded to include any agreement necessary to carry out Caltrans duties, including the disbursement of transportation funds administered by the Department. The Caltrans legal team will need to provide input for this proposed legislation.

2) **Make sure that Tribes and Caltrans Remain Engaged as State and Federal Implementation Decisions are Made**

A great deal of the tribal related information in the FAST Act is uncertain at this time, but the technical working group members agreed that Caltrans and FHWA should remain in dialogue with CA Native American Tribes as decisions are made and implementation begins. Also, the national studies on safety and data in Indian Country that are required by the FAST Act are of interest both to Tribes in the state, and to Caltrans as the issue of data is relevant to project identification, funding availability, and performance measurement. While the details of these studies are unknown, it is important for Caltrans and Tribes in the state to be engaged in this process.

Short-Range Action:

- **Form an ongoing FAST Act implementation working group for tribes, develop webinars, and otherwise provide information to and engage with tribes as the FAST Act is implemented**

The working group stressed the importance of having ongoing dialogue between Caltrans and the Tribes in the state.

- **Request that the Caltrans Native American Advisory Committee (NAAC) help keep Caltrans informed of the activity taking place with tribal transportation rulemaking and ensure the Department is involved appropriately in discussions for tribal safety data collection and integration into state databases**

The rulemaking process for the Tribal Self Governance Program and the completion of the tribal and data studies may not involve Caltrans directly, but both are significant to the work that the Department does. As a result, Caltrans will look to the NAAC for advice on how best to remain engaged in the conversations.

Long-Range Action:

- **Meaningfully include tribal governments in the development of the next California Strategic Highway Safety Plan and Implementation Plan**

Intentional consideration of tribal concerns, including data issues, may help Caltrans to proactively engage in resolving some of challenges related to safety in Indian Country.



FAST Act Technical Working Group on Tribal Transportation

Background	<p>Caltrans is in the process of analyzing the FAST act. In attempt to clarify the implications of the FAST Act on how Caltrans does business, a FAST Act Implementation Team has been formed, and that group is examining areas in which Caltrans might need to consider policy-level action.</p>
Purpose	<p>This technical working group has been formed to look at the FAST Act and develop implementation proposals for any impacts/needs related to tribal transportation. This working group will document recommendations and develop an implementation plan, if appropriate, for Caltrans executives by late March or early April.</p> <p>Issues to explore include the following:</p> <ul style="list-style-type: none"> • Effective methods for entering into agreements with self-governance tribes • Interagency fund transfer agreement (202(a)(9) process • FAST Act Data Reporting and Safety Studies in Indian Country • New opportunities for partnerships between State and Native American Tribal Governments • Expanded access to federal grant programs for Native American Tribes • Appropriate engagement of the State in rulemaking on TTP-related issues
Desired Goals	<p>This working group will develop an analysis and list of FAST-Act implementation policy recommendations that will go to Caltrans executives. This analysis will take into consideration the following:</p> <ul style="list-style-type: none"> • What action items will Caltrans or others need to take, and by when, to implement the FAST Act (with an emphasis on short-term items that must be taken in the first half of 2016) • Will implementation require state legislative action • Will Caltrans need to make changes to funding allocations or sub allocations, and if so, what is recommended • Is there anything else that needs to be done to implement the FAST Act



FAST Act Technical Working Group on Tribal Issues

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Frequency of Meetings	Phone conferences approximately every other week with possible e-mail contact in the interim.	