



Intertribal Transportation Association (ITA)

P.O. Box 1027
Poplar, MT 59255

January 25, 2018

Erin Kenley
Tribal Transportation Program Director
Office of Federal Lands Highway
1200 New Jersey Avenue, SE.
Washington, DC 20590

Dear Ms. Kenley,

The Intertribal Transportation Association (ITA) wishes to formally register its opposition to the consultation process being carried out by the Federal Highway Administration (FHWA) in implementing significant changes to the Tribal Transportation Program (TTP). Specifically, we object to:

Changes made to the Tribal Technical Assistance Program (TTAP) by senior agency officials without meaningful Tribal consultation as directed in Executive Order 13175. EO 13175 is intended to ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that affect Indian Communities. When the decision to overhaul the TTAP program was being formulated there was no process to ensure meaningful and timely input by Tribal officials in the decision making process. Rather, the changes were presented to tribes in a finished product in what can only be described as “informational meetings” without attempt to meet the threshold for meaningful Tribal consultation. This lack of consultation did not allow tribes the opportunity to weigh in on a decision that directly affects them and were thereby denied the chance to help formulate an outcome would best meet tribal needs.

The Intertribal Transportation Association asks Deputy Assistant Secretary Anthony Bedell meet with FHWA Associate Administrator Tim Hess, the ITA, Tribes, and other senior FHWA officials to designate an appropriate official with principal responsibility for the agency’s development of an accountable process to ensure meaningful and timely input by tribal officials in decisions affecting Indian Tribes, to establish training procedures to implement this program, and to clearly detail how the revised TTAP program will be delivered to Indian Tribe and Alaska Native Villages.

The Inter-Tribal Transportation Association is an organization of Tribes which advocates for legislative and policy development, discusses funding and regulatory issues, and represents the shared interests of tribal transportation programs across the nation in promoting the continued advancement of transportation initiatives in Indian Country.

As you are aware, the federal trust responsibility owed to Indian tribes and their citizens is an important legal, fiduciary, and moral obligation of the Federal Government. Those responsibilities can only be effectively carried out through meaningful government-to-government consultation. This is supported by Executive Order 13175 directing all executive branch departments and agencies to engage in meaningful tribal consultation on policies and regulations that have tribal implications in order to strengthen the government-to-government relationship with Tribes. The importance of this tribal consultation policy was endorsed by both Presidents George W. Bush and Barack Obama through Presidential Memoranda directing agencies and departments to actively engage in the implementation of EO 13175.

The principles of self-government, self-determination, and tribal sovereignty have been publicly acknowledged in Indian policy since President Richard Nixon. The idea that consultation is part of the federal government's trust responsibility toward the Indian nations has been consistently recognized in treaties between Tribes and the Federal Government and remains a Federal responsibility today. The meaningful implementation of EO 13175 is, has been, and will remain, one of the primary ways to ensure that the Federal Government is meeting its trust responsibility to Indian Tribes in the implementation of Federal programs.

The current paradigm at FHWA for tribal consultation consistently fails to meet the responsibilities of the federal trust responsibility, does not allow for meaningful tribal consultation, and does not respect tribal self-government and sovereignty.

Consultation does not mean that you invite Tribes to listen to Agency plans and decisions that have already been made, which is what is happening in the current TTP consultation process, it means that Tribes are part of the planning and decision-making process. In only that way can consultation be meaningful. Seeking tribal input after strategic decisions have already been made by senior agency officials guarantees that the outcome of agency decision making can seldom be changed and negates the meaningfulness of any discussions held between Federal agency officials and Tribal representatives.

Should you wish to undertake a meaningful tribal consultation, Intertribal Transportation Association remains open to further dialogue on these subjects. Thank you for this opportunity to provide input.

Sincerely,

A handwritten signature in black ink, appearing to read "John Healy". The signature is written in a cursive, flowing style. Below the signature, the word "for" is written in a smaller, simpler font.

John Healy

President, Intertribal Transportation Association

Cc:

Hon. Anthony Bedell, Deputy Assistant Secretary, USDOT

Timothy Hess, Associate Administrator, FHWA