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Tribal Transportation Program Coordinating Committee

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September 14, 2017

Mr. Michael Black
Acting Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
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Ms. Brandye Hendrickson
Acting Administrator
Federal Lands Highway
Federal Highway Administration
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Mr. Timothy Hess
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Federal Lands Highway
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RE: Tribal Transportation Program Coordinating Committee (TTPCC) FY 2017
Annual Report and Recommendations

Dear Acting Assistant Secretary Black, Acting Administrator Hendrickson and Associate Administrator Hess,

On behalf of our respective Indian Tribes, Nations, Communities and Villages, the Tribal Transportation Program Coordinating Committee (TTPCC), expresses its appreciation to the Administration for continuing the bi-annual meeting between Committee representatives and senior Administration officials regarding the transportation accomplishments and challenges faced by the Nation's Indian Tribes. The Committee provides input and recommendations to Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) concerning Tribal transportation infrastructure needs. As is our custom, we provide a report to you regarding on-going transportation and highway safety issues important to our respective Tribal governments in the twelve BIA Regions.

The below list highlights the Coordinating Committee's accomplishments and areas the Committee believes that the respective Departments can provide on-going leadership to improve safety on every Indian reservation, sovereign territory, and in every Alaska Native village, reduce the unacceptably high rates of motor vehicle and pedestrian fatalities and serious injuries, and break down transportation barriers that hinder economic growth and greater entrepreneurial activities that are the key to community stability. These issues include the following:

The Tribal Transportation Coordinating Committee is the regulatory committee established by federal regulations (25 CFR 170.155), to provide input and recommendations to the Bureau of Indian Affairs and Federal Highway Administration concerning the Tribal Transportation Program as detailed in Title 23 U.S.C. 202.
<http://www.bia.gov/WtoW/are/BLA/OIS/Transportation/ttpcc/index.htm> ♦ <http://www.fhwa.dot.gov/programs/ttpcc/>

1. Provide Agency Training on Departmental Tribal Consultation Policies

We respectfully request that you ask Secretary Zinke and Secretary Chao to direct the BIA and FHWA, and other modal administrations within the Department of Transportation, including the Office of Innovative Program Delivery, to provide periodic training to Department personnel regarding the agencies' respective Tribal consultation policies so that it is second nature for Department personnel to inquire whether an agency action warrants, and can benefit from, Tribal consultation and coordination at the earliest stages of agency decision making. Generations of Tribal leaders have dedicated their lives to promoting the Government-to-Government relationship between Indian Tribes and the United States. The agencies' Tribal consultation policies are of little benefit if few federal personnel know or understand them.

Educating agency staff to the benefits of timely consultation with Indian Tribes will improve cooperation and Government-to-Government relations and lead to better program management and delivery of transportation programs and services.

Since President Nixon, it has been the bipartisan policy of successive administrations and Congresses to empower Tribal governments and assist Tribal elected leaders improve the economies of their reservations, territories, communities and villages, promote community stability and construct and maintain essential infrastructure, including roads, trails, bridges, ferries, airports, and transit systems. Consultation with Tribal governments regarding transportation programs and services empowers Tribes; it recognizes Indian Tribes as transportation stakeholders who bring practical experience working with, and often overcoming, burdensome federal regulations and mandates.

It is often the case that best practices come from the local, Tribal level and can be fully appreciated and disseminated when federal agency officials act with an open mind and engage in meaningful consultation with Tribes. The same is also true with respect to agency decision-making. **Rather than having agency officials revise regulations, policies, guidelines and procedures independent of Indian Tribes, which must live with such decisions for many years, federal officials have often found that better regulations, policies and guidelines can be crafted by working in close consultation and cooperation with Tribal officials at the earliest stages of agency action.**

a) Unilateral Restructuring of the Tribal Technical Assistance Program (TTAP) Centers Violates the Department's and FHWA's Tribal Consultation Policies

Last month, the Coordinating Committee wrote to FHWA's Chief Innovation Officer (letter of August 16, 2017) concerning the Department's reorganization of the seven Tribal Technical Assistance Program (TTAP) centers/Tribal Technical Assistance Centers (TTAC), to express the Committee's objections concerning the failure by FHWA's Office of Innovative Program Delivery (OIPD) to meaningfully consult with Tribes prior to overhauling the manner by which Tribal transportation officials will receive training and technical assistance. Individual

Tribal Committee representatives may support an overhaul of TTAP, but all Tribal Committee representatives are concerned with the process by which the overhaul is being implemented. No substantive changes have yet been taken by FHWA's OIPD to reexamine its conduct in unilaterally imposing a two-year pilot program that will utilize nearly \$2 million of Tribal Transportation Program (TTP) funds and approximately \$2.6 million of other Title 23 (transportation) training funds. We request a written response from the BIA, FHWA and OIPD regarding the Committee's concerns.

It is not too late for FHWA's OIPD to reconsider. The National Tribal Transportation Conference (NTTC) in Tucson, Arizona later this month offers OIPD an appropriate forum to brief Tribal officials concerning the agency's plans and receive Tribal input. The Committee will request that time be made available at NTTC for this important Tribal briefing by OIPD.

Should OIPD proceed with its overhaul plans for the TTAPs, the Committee strongly recommends that it must consult with Indian Tribes as concerns the final content of the contract award for the pilot program and the level of consultation the winning contractor must engage in with Indian Tribes as it delivers training and education services in a centralized training format. OIPD should detail how Indian Tribes provide written comments to it and the contractor and how OIPD and the contractor will respond to, and take into consideration, the written and oral Tribal concerns/comments made during the two-year pilot program.

The Committee recommends and encourages Deputy Assistant Secretary Bedell to attend the next meeting of the Coordinating Committee in January 2018 to address the Department's Tribal consultation obligation, and the measures he will implement to ensure that all modal administrations understand the importance to Indian Tribes of meaningful and timely consultation. Mr. Bedell should also brief the Committee concerning how the Department's pilot program will meaningfully integrate Tribal recommendations into the contractor's practices to deliver training and education services to Tribal transportation officials, the ultimate consumer of the services. As noted in OIPD's RFP, among the goals of the pilot program are the requirements to:

- ✓ Expand Tribal Governments transportation knowledge and provide new and innovative approaches for constructing, managing and operating highway systems;
- ✓ Support the Tribal capacity building in a culturally appropriate manner through training, peer exchanges, communities of practice, and collaboration; and
- ✓ Respond to the needs of Tribal communities and encourage collaboration across government and industry.

In order to succeed in building Tribal capacity to address roadway network challenges, the contractor must begin the pilot program with a thorough understanding of what meaningful

Tribal consultation practices entail and the practical limitations faced by Indian Tribes in delivering transportation services with scarce funding, which may constrain Tribal attendance at centralized TTAP training sessions.

Regardless of what decision OIPD makes with respect to the TTAP, with respect to OIPD's interim plans for on-going technical assistance training, which we understand will be provided by FHWA personnel until the consultant's training program is operational in 90 days, the Committee recommends that FHWA develop and distribute to Indian Tribes its plan by October 1, 2017. As noted above, the NTTC in Tucson the week of September 25th is an appropriate forum to release FHWA's interim plans for technical assistance and education.

Finally, no decision should be made by OIPD at the end of the two-year pilot program without OIPD providing meaningful Tribal consultation that respects Tribal concerns and recommendations concerning the delivery of training and education programs for Tribal transportation officials – the stakeholders/customers receiving the services.

2. Reconvene the USDOT Tribal Transportation Self-Governance Program Negotiated Rulemaking Committee

The Coordinating Committee respectfully asks that Department of Transportation officials brief Secretary Chao regarding the merits of the Tribal Transportation Self-Governance Program, established under the FAST Act, 23 U.S.C. § 207, and requests that Secretary Chao reconvene the Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee as soon as possible so that the Rulemaking Committee may complete its work. The Rulemaking Committee was created to extend the Tribal Self-Governance Program to the Department and its modal administrations through implementing regulations. The benefits of the Tribal Self-Governance Program are well known. Extending it to the Department of Transportation:

- ✓ Empowers Tribal governments to assume the funds and administration of federal transportation programs, services, functions and activities (PSFAs) serving Indian Tribes and their citizens, thereby improving Tribal capacity and capability to deliver quality transportation programs and services;
- ✓ Maximizes Tribal flexibility to design and deliver federal transportation PSFAs;
- ✓ Streamlines Tribal service delivery of transportation programs by creating a single award instrument (compact) for the receipt of multiple-agency program funds, reducing transaction costs while ensuring accountability and transparency in the expenditure of federal appropriations;
- ✓ Reduces Tribal administrative costs freeing up limited federal appropriations for programs and services; and

- ✓ Improves the state of good repair of transportation facilities, reduces highway and pedestrian fatalities, and provides opportunities for economic development and job creation, especially in rural areas of the country.

The Department of Transportation convened the rulemaking committee in August 2016 and it met five times before suspending its work in January 2017 in recognition of and out of respect for the incoming Administration's need to become familiar with the statute, its purposes, and the work of the Rulemaking Committee. It is past time to reconvene it.

Deputy Assistant Secretary Bedell notified Congress by letter on September 1, 2017 that the Department would extend the deadline to publish the draft rule by 180 days (to March 4, 2018), in accordance with the legislation. His request followed the written request of the Tribal Co-Chairs to the Rulemaking Committee and the consensus of the Tribal representatives to the Committee. Mr. Bedell's letter, however, was silent on when, and whether, the Department would reconvene the Rulemaking.

It is the obligation of each administration, consistent with the trust responsibility of the United States owed to Indian Tribes and their citizens, to assist tribal governments to promote the general welfare of their citizens and communities. The Rulemaking Committee's work is not complete. The Administration would break faith with its commitment to streamlining the delivery of federal transportation programs and services to Indian Tribes if it were to unilaterally decide to ignore the statutory mandate to extend the Tribal Self-Governance Program to the Department of Transportation.

The Administration is committed to reform the federal government, eliminate red tape, and make federal agencies more responsive to the needs of the American people. The Tribal Self-Governance Program fits precisely into this policy mandate. Both chambers of Congress overwhelmingly passed the FAST Act, including section 1121, the Tribal Transportation Self-Governance Program.

For more than 25 years, the Tribal Self-Governance Program has demonstrated the success of Indian Tribes in delivering quality programs and services to their citizens when funding and administration are placed in their control with minimum regulation. The extension of the Tribal Self-Governance Program to the Department of Transportation is the natural outgrowth of Tribal self-governance successes achieved in the Departments of the Interior and Health and Human Services since the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, was enacted in 1975. Tribal governments often augment federal appropriations with Tribal and other non-federal resources, thereby improving the quality and scope of the assumed programs, when the control and administration over federal programs are placed in their hands with minimum regulatory restrictions.

The statistics concerning highway and pedestrian fatalities among American Indians and Alaska Natives – which are two, three and four times the national average – are a national disgrace. The status quo is unacceptable. Department personnel should not be complacent in the face of the well documented unmet transportation and safety needs which persist on Indian reservations and in Alaska Native communities.

Infrastructure is an essential foundation for economic development on Indian reservations, territories, and in Alaska Native villages. Transportation infrastructure, together with quality schools, health facilities, safe housing, and water and waste water facilities all contribute to community stability and economic opportunity.

Tribal Self-Governance Program is a “success story” in Indian country which can and should be extended to the Department of Transportation and its modal administrations without delay. We urge Secretary Chao to promptly reconvene the Rulemaking Committee.

3. Quality Assurance/Quality Control Team Update

As early as 2006, the Coordinating Committee has advocated for the creation of a joint Tribal-Federal Quality Assurance/Quality Control (QA/QC) Team to ensure uniformity in the classification and data management within the National Tribal Transportation Facility Inventory (NTTFI) across Indian Country. The expenditure of Tribal Transportation Program funds on any transportation facility requires that such facility be listed in the NTTFI. Tribes nominated and the agencies selected the Tribal representatives to serve on the QA/QC Team, which is a working group of the Committee. They have met in Albuquerque, New Mexico, received training, and held several conference calls. The QA/QC Team will review anomalies in the NTTFI, the categorization of ownership of public transportation facilities eligible for inclusion, and the recommendations included in the May 2017 report by GAO (GAO-17-423) concerning the need for better data to improve road management and inform Indian student attendance strategies.

We encourage the agencies to promote the work and cohesiveness of the QA/QC Team. Due to turnover of personnel among the QA/QC Team, we recommend additional face-to-face meetings and training in Albuquerque so that the entire Team starts on an equal footing.

4. Dual language signage on Federal-Aid Highways.

The issue of dual language signage on Federal-Aid Highways which provide access to or which are located on Indian lands is a critically important issue for Indian Tribes. The recognition of Indian Tribes and Alaska Native Villages as governments – expressed in bilingual signage – is an essential component of Tribal sovereignty. For all Tribal Nations, language is culture and culture is language. Use of Native language is a point of pride and expression of our heritage. Bilingual signage not only promotes local Tribal economies and tourism, but identifies Tribal lands, territories and Tribal jurisdiction over such lands.

With passage of the Native American Tourism and Improving Visitor Experience Act (NATIVE Act), Congress expressly recognized and promoted the sharing of local Native American heritage through the development of bilingual signage. Among the statute's goals are:

“To share local Native American heritage through the development of bilingual interpretive and directional signage that could include or incorporate English and the local Native American language or languages.”

The Committee is sensitive to the concern for public safety and the mission of the Department of Transportation to reduce crashes and congestion, and improve the efficiency of the surface transportation system. The Coordinating Committee recommends that the Department, through the office of the Deputy Assistant Secretary Bedell, encourage officials in FHWA's Manual on Uniform Traffic Control Devices (MUTCD) to explore opportunities for innovation and cooperation with Tribal governments to advance bilingual interpretive and directional signs, consistent with the safety concerns shared by all governments.

The NATIVE Act also requires every agency to develop a management plan to implement its objectives. The Committee reiterates its request to be briefed by the Departments concerning their respective management plans, including the Department of Transportation's National Advisory Committee on Travel and Tourism Infrastructure (NACTTI).

5. Enhance and Disseminate Road Maintenance Data for BIA System and Tribally-Owned Public Transportation Facilities

As of 2016, there are approximately 17,500 miles of existing Tribally-owned transportation facilities included in the National Tribal Transportation Facility Inventory (NTTFI). Two-thirds of these public routes are earth routes. Level of Service (LOS) data concerning Tribally-owned routes, ranging from excellent to failing, is not currently reported by Indian Tribes or the BIA on a periodic basis as part of their asset management systems. This must change if Tribally-owned routes are to be maintained in a good state of repair.

The FAST Act requires Indian Tribes and the BIA to annually report on the expenditure of Tribal Transportation Program (TTP) funds, including the use of such funds for “maintenance purposes,” as permitted under the legislation. The BIA, pursuant to Government Performance Results Act (GPRA) and the Secretary's requirements to develop a Deferred Maintenance Report (DMR) on a quarterly basis, generates reports on the condition of BIA System roads and bridges, but not Tribally-owned routes. This data has proven invaluable in reporting to Congress and Indian Tribes regarding the unmet road maintenance needs – and the resulting safety hazards – created by the unacceptable Level of Service (LOS) of many BIA System routes. According to BIA, only 16% of BIA System routes and 67% of BIA-owned bridges are in “acceptable condition,” defined as having a LOS of excellent (LOS 1) or good (LOS 2). More than 24,000 miles of the BIA System's 29,000 miles have an LOS of 3 (fair), 4 (poor) and 5 (failing).

In 2015, the Coordinating Committee asked the BIA to examine the state of Tribally-owned public routes and to develop an estimate of the unmet deferred road maintenance needs for such routes. Using a methodology identical to the criteria used by BIA to develop the quarterly DMR for BIA System routes, the BIA has most recently estimated that the deferred maintenance needs on Tribally-owned routes is \$209.6 million annually/\$52.4 million quarterly (2016). More than 91% of Tribally-owned routes are earth and gravel, 15,007 miles and 1,518 miles, respectively. Such routes require a higher amount of funds to maintain in a “good state of repair” than paved routes, which account for less than 10% of the Tribally-owned inventory of routes in the NTTFI. This is a data “gap” that is not being reported to Tribal governments, the agencies or Congress. The Committee’s goal is to increase the awareness among Indian Tribes of the importance of road maintenance data and its impact on road safety in Indian communities.

The Tribal-Interior Budget Council (TIBC) has made great strides concerning road maintenance needs in Indian country. Together with GAO, greater attention is now being paid by the BIA concerning the need to evaluate BIA System and Tribally-owned public roads and bridges. The Committee encourages BIA and FHWA to continue their collaborative work with Indian tribes and adopt existing systems so that Indian Tribes can also evaluate the Level of Service (LOS) of Tribally-owned roads and bridges on a consistent basis and document Deferred Maintenance needs for such routes as is the case for BIA System facilities.

The Committee further recommends that BIA and FHWA provide technical assistance to Indian Tribes to facilitate the collection and reporting of such data to improve road management and safety on Tribally-owned routes and bridges similar to the manner in which such data is collected, evaluated and reported on BIA System roads and bridges. By working collaboratively, the Committee is confident that this data “gap” can be overcome.

6. Continue to Streamline the TTP Funding Delivery Process

Since 2005 (SAFETEA-LU), federal law has directed that no later than 30 days after the date on which funds are made available to the Secretary of the Interior, Tribal Transportation Program (TTP) funds must be distributed to, and made available for the immediate use, by Indian Tribes in accordance with the statutory formula for distribution of the TTP funds. 23 U.S.C. § 202(b)(4)(A).

The BIA has improved its performance in obligating TTP funds to Indian Tribes as required by law under its existing finance system. The Coordinating Committee acknowledges the BIA’s improvement in the timely obligation of TTP funds to Indian Tribes and encourages the BIA to examine its internal “approval” process to speed the transfer of TTP funds to Indian Tribes from its receipt of TTP funds from FHWA to the obligation of the funds to an Indian Tribe’s contract, compact or agreement, within the 30-day statutory time frame.

7. Post on Websites BIA and FHWA Rollout Materials Regarding the Revised 25 CFR Part 170 Regulations for the Tribal Transportation Program

The Coordinating Committee appreciates the technical assistance provided by BIA and FHWA officials regarding the revised rule for the Tribal Transportation Program (TTP), 25 CFR Part 170, through roll-outs in various BIA Regions.

The Committee recommends that the roll-out materials be made available on BIADOT and FHWA TTP websites so that Tribal officials, who may not have attended a roll-out session, may access and review the information.

8. Making Competitive Transportation Grant Funds More Accessible to Tribes

Tribes and tribal projects often struggle to secure discretionary grant program awards due to their small population bases, rural characteristics and funding thresholds. Until such time as the Department establishes a Tribal set-aside within modal administration grant programs, the Committee requests that Deputy Assistant Secretary Bedell coordinate with FHWA, FTA, NHTSA, FAA and other modal administrations, to formalize a process by which an Indian Tribe can request a debriefing on an agency-funded grant application which did not result in a discretionary grant award and evaluate how the Indian Tribe can more successfully compete for such grants. We ask the same of the BIA. The issue of grant accessibility is especially challenging for smaller Indian tribes with limited funds and personnel to effectively compete for discretionary and competitive federal grants. Until such time as Tribal set-asides are implemented by the Department, federal officials should frequently examine the actual number of Indian tribes and grant funds awarded for Tribal transportation and highway safety projects.

In addition, the Committee requests FHWA and BIA to detail “best practices” from successful applicants which highlight their grant submissions. The Committee further requests that FHWA and BIA conduct dedicated Tribal outreach (webinars) with successful Tribal grant recipients.

We are pleased to see that FHWA has arranged a Tribal and rural technical assistance webinar on September 22, 2017, regarding the recent publication of the TIGER grant, prior to the close of the application submission date on October 16, 2017. We further understand that FHWA officials administering the TIGER program may develop the cost-benefit analysis component for such grants, when requested by an Indian Tribe, which will greatly benefit all Tribal applicants.

9. BIA’s Final Rule on Rights-of-Way (25 C.F.R. Part 169)

The BIA published a Final Rule updating regulations regarding rights-of-way over Indian lands (25 C.F.R. Part 169) in 2015. The Committee appreciates the training provided by BIA and the Interior Department’s Office of the Solicitor regarding the requirements of Part 169 and its implications for the Tribal Transportation Program. The Committee, however, is concerned over

the manner in which the Part 169 right-of-way regulations are being complied with by States, counties, local governments, railroads, pipelines and other non-Tribal entities.

The Committee also wishes to identify an issue when the Part 169 regulations do not apply. The Part 169 regulations make clear that when an Indian Tribe is the 100% beneficial owner of the Indian Lands involved in a transportation project, the right-of-way regulatory requirements of Part 169 do not apply to the Tribal government. In such instances, however, the Tribe may still want to memorialize its decision to dedicate Tribal Lands for a public transportation corridor, provide detailed information regarding the location and other relevant data associated with the route, and have that information recorded in the BIA's Land Title Record Office (LTRO) or other appropriate records office.

The Committee encourages the BIA to work with it and interested Indian Tribes to identify the minimum requirements to include in such recording so that Tribally-owned public routes can be recorded in the LTRO or appropriate records office so that Indian Tribes can document to BIA or FHWA that the Plans, Specifications and Estimates (PS&E) package for a Tribal project is complete as per the Part 170 regulations. The Committee also seeks confirmation by FHWA that it will recognize the right of Indian Tribes to proceed with TTP projects when Tribal dedications are appropriate and documentation of the dedication is included in the Tribe's PS&E package.

As reflected in the Committee's letter of September 22, 2016, the Committee requests that the AS-IA direct staff from the Office of Trust Services and the Office of the Solicitor to attend a Committee meeting and brief and work with the Committee on the process by which Indian Tribes may dedicate lands for public highway purposes and the process by which Tribes can record these Tribal public highway dedications in the BIA Trust Asset and Accounting Management System (TAAMS), LTRO or other appropriate records office.

10. National Business Plan Strategy Update

A National TTP Business Plan is a requirement of the revised Part 170 regulations. It is a strategy by which BIA, FHWA and Indian Tribes, as partners, manage the TTP. The Plan makes clear that both agencies are committed to uniform program administration and delivery, and that the agencies will act in a consistent manner regarding policies and communications to Tribes and federal staff as to what the processes and procedures are for the joint administration of the TTP. The Committee is working with the agencies on the Business Plan and its components (Memorandum of Agreement (MOA), Communications Plan and Operations Manual).

A National Business Plan strategy also addresses findings or corrective actions that will be necessary as a result of the recent Office of the Inspector General (OIG) audit, such as improvement in management and compliance through better data collection, processing, analysis, sharing of information, and distribution.

Development of a universal business plan will facilitate examination of current processes which could lead to progressive solutions such as the possibility of streamlining processes for increased efficiency and effectiveness.

11. Use of GIS-Based NTTFI

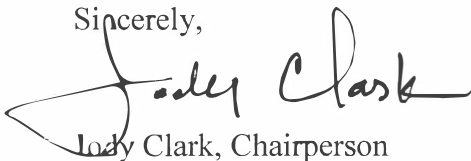
As part of the Committee's FY 2018 work plan, and in an effort to move the Tribal Transportation Program forward, the Committee is evaluating the ability of the National Tribal Transportation Facility Inventory (NTTFI) to move to a GIS-based data system. The Committee has previously asked the BIA to assess the feasibility of converting the NTTFI from the existing Oracle database to an Arc-GIS database System, including at a minimum, the compatibility of Arc-GIS data for the NTTFI. The benefits of an Arc-GIS database system are to reduce redundancies by allowing Tribes to use the Arc-GIS data system as a tool for asset management. The Committee looks forward to working with BIA and FHWA to accomplish this important objective.

12. Approve the Coordinating Committee's 2018 Meeting Schedule

By separate letter, the Coordinating Committee is submitting for your approval the upcoming schedule for the Committee's 2018 meetings. Your prompt approval of the meeting schedule and locations will facilitate the Committee's work.

In conclusion, the Committee remains committed to working with our Federal partners to improve the effectiveness and safety of transportation systems in Tribal communities. The Committee has made significant strides to improve the Tribal Transportation Program in every BIA Region. These achievements are made possible through our collaboration with federal officials. We look forward to continuing our close working relationship with the Administration and improving the delivery of this important program to Indian Tribes.

Sincerely,



Jody Clark, Chairperson

Tribal Transportation Program Coordinating Committee

cc: TTPCC Representatives

Anthony Bedell, Deputy Assistant Secretary for Government Affairs

Hankie Ortiz, Deputy Bureau Director, Office of Indian Services

LeRoy Gishi, Division Chief, BIA, Division of Transportation

Erin Kenley, Director, Tribal Transportation Program

Robert Sparrow, Designated Federal Official, FHWA

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