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The FAST Act: Implications for Indian Country

The Affiliated Tribes of
Northwest Indians

General Assembly

Winter Convention 2016

Suquamish Clearwater Casino Resort

Suquamish, WA

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FAST Act: Implications for Indian Country

After a decade of short-term extensions and shortfalls in revenues received by the Highway Trust Fund (HTF) that created uncertainty among States, tribes and local governments, Congress passed the \$305 billion “Fixing America’s Surface Transportation” (FAST) Act by large *bipartisan* majorities. President Obama signed the legislation as Pub.

L. 114-94 on December 4, 2015.

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FAST Act: Implications for Indian Country

The legislation is significant in that it:

- Is a long term highway measure (five years);
- Provides predictability for governments and developers;
- Provides modest sustained *growth* for highways and public transit;
- Continues many MAP-21 programs (e.g., TIFIA);
- Extends the Tribal Self-Governance Program to USDOT;
- Adds new national program for freight and highways; and
- Does not remedy the long term insolvency of the Highway Trust Fund (HTF) by fully funding the HTF from user fees *only*.

FAST Act: Implications for Indian Country

The Fast Act does not:

- ✓ fund the Tribal Transportation Program at levels recommended in the President's GROW AMERICA Act;
- ✓ extend the authorization for the Tribal High Priority Project (HPP) Program, which was not funded under MAP-21;
- ✓ exempt Tribal programs from the Obligation Limitation Deduction;
- ✓ Create a *Tribal* set-aside within the Transportation Alternatives Program; or
- ✓ Rely on *increases* to the Federal fuels tax to fund transportation priorities.

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FAST Act: Implications for Indian Country

In FY 2015, Congress authorized and appropriated **\$41 billion** for highways and **\$10.7 billion** for transit. For FY 2016, the FAST Act authorizes roughly **\$43.5 billion** for highways (+5.6%) and about **\$12 billion** for transit (+10.2%). In years 2-5 of the FAST Act, authorizations for highways and transit funding will grow at a modest annual rate of about **2.0%**. Overall, funding for transportation programs increases about **11%** over five years compared to the Administration's request for a **45%** funding increase.

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FAST Act: Implications for Indian Country

The FAST Act represents a victory for Indian tribes in a very difficult fiscal and political climate and reflects the success of sustained and unified efforts by tribes and tribal organizations (such as ITA, NCAI and the TTUC). These efforts educated members of Congress concerning the benefits that accrue to Indian Country by helping tribal governments build and improve transportation infrastructure in their communities and promote highway safety and economic development. Tribal unity in the FAST Act contrasted sharply with the disunity surrounding MAP-21 when Congress rolled back funding levels for tribal programs.

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FAST Act: Implications for Indian Country

Many tribal leaders stepped forward in 2015 to spell out to Congressional leaders their goals for the Tribal Transportation Program (TTP), Tribal Transit and other federal transportation programs serving Indian Country. As Congress *struggled* throughout 2015 to craft a bipartisan, long-term highway bill, tribes were *persistent* in their advocacy efforts.

SONOSKY, CHAMBERS, SACHSE, ANDERSON & FERRELL, LLP

FORT PECK TRIBES Assiniboine & Sioux

October 20, 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and
Infrastructure
2251 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515-6256
Attn: Chris Bertram, Staff Director
christopher.bertram@mail.house.gov

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and
Infrastructure
2251 Rayburn House Office B
United States House of Repre
Washington, DC 20515-6256
Attn: Kathy Dedrick, Staff Di
kathy.dedrick@mail.house.gov

Dear Chairman Shuster and Ranking Member DeFazio,

We congratulate you and the House Transportation and Infrastructure introducing the "Surface Transportation Reauthorization and Reform Act of You are to be commended for developing a bipartisan multi-year highway national transportation priorities. We especially appreciate the inclusion transp important to tribes, including the Tribal Transportation Self-Governance Pro backlog of transportation projects we face on our reservation and the unaccepte motor vehicle and pedestrian fatalities among Native Americans, especially an we urge that the Committee consider including additional funding authori Transportation Program and the Tribal Transit Program and consider other Trib Unity Caucus (TTUC) amendments we and other tribes support when you mark on October 22nd. We respectfully ask that, at a minimum, the Committee:

- Augment STERA's Sec. 1101(a)(3)(A) funding authorization levels to THERS Act's funding for the Tribal Transportation Program (TTP). It would currently authorize \$43 million ~~per~~ for the TTP over the FY 2011 authorization period than the Senate THERS Act (S. 1176) – favor of the Senate Committee on Indian Affairs by Chairman Barraso. T additional funding we seek for the Tribal Transportation Program repre one percent of the \$38.41 billion the Committee authorizes for the Fed Program for FY 2016. The House bill would also, in all likelihood, set Program authorized funding level at the MAP-21 level (\$30 million) Fiscal Year 2021, when tribal transit needs are increasing dramatically. Senate DRIVE Act (H.R. 22) increased tribal transit funding to \$35 Tribes seek parity with States if we are to be capable transportation stak
- Fund the Tribal High Priority Project (HPP) out of the Highway Trust F 21 was enacted in 2012, Congress has failed to appropriate any funds fund of the Treasury for this very important tribal program that supplemented limited Tribal Transportation Program "tribal shares." The Tribal HPP Program was funded out of HTF. We ask you to restor program out of the Fund.

Poplar, Montana 59255

P.O. Box 1027

(406) 788-5155



Puyallup Tribe of Indians



September 15, 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and
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United States House of Representatives
Washington, DC 20515-6256
Attn: Chris Bertram, Staff Director
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Attn: Kathy Dedrick, Staff Director
kathy.dedrick@mail.house.gov

Dear Chairman Shuster and Ranking Member DeFazio,

As you continue your efforts to develop a long-term reauthorization to the current highway legislation that reflects the House's priorities, I ask on behalf of the Puyallup Tribe that Indian tribes be *fully* included in the solution you develop. The Senate passed H.R. 22, the "DRIVE Act," which includes a number of provisions important to Indian tribes and Alaska Native villages, including modest funding increases to the Tribal Transportation and Tribal Transit Programs (TTP). We ask you to build on those provisions in the House bill to further empower tribal governments so that we can improve highway and pedestrian safety and lay important foundations for economic development and growth that our communities need so badly.

Only 17 percent of roads serving Indian communities are in acceptable condition. The vast majority are in poor condition. Indian infants are eight times more likely to die in a motor vehicle crash than other children. And motor vehicle crashes are the leading cause of death among Native Americans aged 1-44 years old. Roads in Indian Country are not safe, and we are losing members in preventable motor vehicle and pedestrian crashes at an unacceptable rate. It is time to increase federal investments in transportation infrastructure and highway safety in Indian Country and further streamline the delivery of these programs by Indian tribes.

In unanimously passing H.R. 7 several years ago, your Committee worked on a bipartisan basis to include important provisions to improve tribal transportation infrastructure and save lives. Unfortunately, H.R. 7 was not passed by the full House and its beneficial tribal provisions did not make it into the final highway legislation that became MAP-21. The Tribal Transportation Unity Caucus (TTUC), a broad coalition of diverse Indian tribes from across the country, has developed a legislative package called the Tribal Transportation Unity Act (TTUA) that includes many of these same H.R. 7 proposals, as well as fair and equitable funding increases and additional common-sense program improvements. These TTUA proposals will help improve Indian Country's backlog of crumbling or nonexistent transportation infrastructure, promote Tribal economic development, and reduce the tragic and unacceptably high rate of

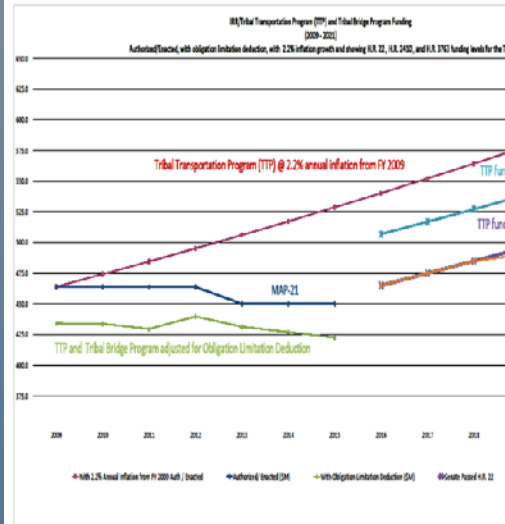
3009 E. Portland Ave.

Tacoma, Washington 98404

253/573-7800

FAST Act: Implications for Indian Country

Tribes presented Congress with compelling evidence of funding disparities in the IRR and Tribal Transportation Program and the corresponding higher fatality rates among AIANs which Tribes urged Congress to correct in the FAST Act.



Injuries among American Indians/Alaska Natives (AI/AN): Fact Sheet

How big is the problem?

- Injuries are the leading cause of death for AI/AN ages 1 to 44 and the third leading cause of death overall.¹
- Motor vehicle crashes are the leading cause of unintentional injury for AI/AN ages 1 to 44. Adult motor vehicle-related death rates for AI/AN are more than twice that of whites and almost twice that of blacks.²
- Among infants less than one year of age, AI/AN have consistently higher total injury death rates than other racial/ethnic populations and the highest rate of motor-vehicle traffic deaths.³
- Among AI/AN 10 years and younger, motor vehicle crashes are the leading cause of injury-related death, followed by suicide, homicide, drowning, and fires.⁴

Who is most at risk?

- Children: Among ethnic groups in the United States, AI/AN children experience the highest rates of injury mortality and morbidity. AI/AN ages 19 years and younger are at greater risk of preventable injury-related deaths than others in the same age group in the United States. Compared with blacks and whites, this group has the highest injury-related death rates for motor vehicle crashes, pedestrian events, and suicide. Rates for these causes are two to three times greater than rates for whites (by some age).⁵
- Males: AI/AN as a group are at increased risk of injury, but AI/AN males are at especially high risk for many types of injuries. Compared to their female counterparts, AI/AN males ages 20 years and older are twice as likely to die from a motor vehicle crash and nearly four times more likely to die from pedestrian-related injury.⁶

What are the major risk factors?

Low seat belt use

- According to the National Highway Traffic Safety Administration (NHTSA), the overall rate of seat belt use on reservations is relatively low (55-63%). Belt use varies greatly across reservations, ranging from a low of 8.8 percent to a high of 84.8 percent. Reservations with primary seat belt laws have the highest use rates, followed by reservations with secondary seat belt laws; reservations with no seat belt laws have the lowest use rates.⁷
- More than 3 out of every 4 (76%) of passenger vehicle occupants who died in motor vehicle crashes on reservations were unrestrained at the time of the fatal crash.⁸

Low child safety seat use

- Though child safety seat use rates for AI/AN communities vary greatly, rates are generally much lower than national rates.⁹ In 2008, the national child safety seat use rate for

Tribal Funding Levels in the FAST Act for Tribal Transportation Program

MAP-21 TTP funding (FY 2015) - \$450 mil.

FAST Act TTP funding (FY 2016) - \$465 mil.

FAST Act TTP funding (FY 2017) - \$475 mil.

FAST Act TTP funding (FY 2018) - \$485 mil.

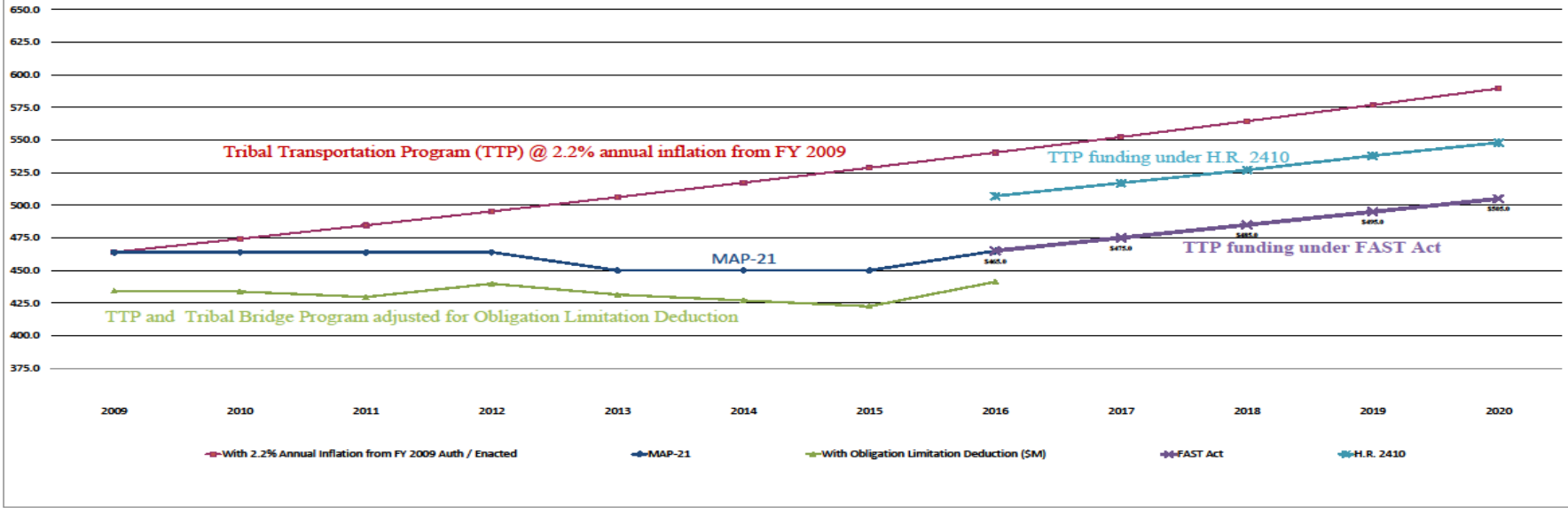
FAST Act TTP funding (FY 2019) - \$495 mil.

FAST Act TTP funding (FY 2020) - \$505 mil.

✓ Over the FAST Act's 5 years, it will provide **\$175 million** in additional funding over FY 2015 funding levels for the TTP.



IRR/Tribal Transportation Program (TTP) and Tribal Bridge Program Funding
 (2009 - 2020)
 Authorized/Enacted, with obligation limitation deduction, with 2.2% inflation growth and showing the FAST Act



Tribal Funding Levels in the FAST Act for Tribal Transit Program

FAST Act increases the Tribal Transit Program from \$30 million to \$35 million annually for the next five years, with:

- ✓ **\$5 million** available each year for the discretionary competitive transit grant program; and
- ✓ **\$30 million** available each year for the formula Tribal Transit grant component.



The FAST Act Changes BIA-FHWA Administrative Costs and Tribal Bridge Program Funding Levels

Reflecting the desire of Congress to reduce agency operating costs, the FAST Act lowered the statutory “takedown” for BIA/FHWA Project Management and Oversight and Project-Related Administrative Expenses (PRAE) from 6 to 5 percent. The Act increased the “takedown” for the Tribal Bridge Program from 2 to 3 percent. In FY 2016, Bridge funding will increase to about \$14 million.



Increased Reporting Under the FAST Act

The Fast Act increases both tribal *and* agency reporting:

- ✓ The Act requires every tribe to submit data concerning the names of projects and activities carried out under the Tribal Transportation Program during the preceding fiscal year, including i) a description of the projects and activities; ii) the current status of the projects; and iii) an estimate of the number of jobs created and retained by the project and activity.
- ✓ The Act also requires the Secretary of Transportation to submit reports on Tribal Government Transportation Safety Data (1 year) and BIA Road Safety (2years).

The FAST Act Extends the Tribal Self-Governance Program to the Department of Transportation

Tribes have long sought to extend the provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, to the Department of Transportation. The FAST Act amends Chapter 2 of title 23 United States Code to add section 207 “**Tribal Transportation Self-Governance Program**” and directs the Secretary of Transportation to initiate negotiated rulemaking with Indian tribes *within* 90 days of enactment of the FAST Act (by March 3, 2016) and publish a proposed rule *within* 21 months (by September 2017). The bill language (Sec. 1121) is very similar to legislation introduced by House T&I Ranking Member, Pete DeFazio (D-OR) and Cong. Don Young (R-AK) as H.R. 1068.

The FAST Act Extends the Tribal Self-Governance Program to the Department of Transportation

Tribal eligibility to participate in the Tribal Transportation Self-Governance Program is similar to the existing FHWA – Tribe TTP Agreements in effect since 2006 (no uncorrected significant and material audit exceptions in the tribe’s title I self-determination contracts or self-governance agreements), with the addition of:

- ✓ Demonstrating transportation program management capability;
- ✓ Eligibility to include Federal-aid funds apportioned to States in AFAs, in addition to “Tribal shares” of TTP funds, Tribal Transit Program formula funds (5311(c)) and funds to tribes from discretionary and competitive grants administered by USDOT for all programs made available to tribes);
- ✓ Funding Agreements shall include provisions for flexible and innovative financing;
- ✓ Tribes have authorities and duties similar to Title V Self-Governance Agreements; and
- ✓ New Self-Governance Program does not alter validity of existing FHWA agreements or authority to transfer funds to tribes under 23 U.S.C. §202(a)(9).

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New Tribal Transportation Self-Governance Program to Require Negotiated Rulemaking Committee to Draft NPRM

Consistent with the Government-to-Government relationship, the Secretary of Transportation must initiate rulemaking to implement the Tribal Transportation Self-Governance Program within USDOT with the *active* participation of Indian tribes.

New Tribal Transportation Self-Governance Program to Require Negotiated Rulemaking Committee to Draft NPRM

- ✓ The Secretary must “initiate procedures” to negotiate and promulgate regulations within 90 days of enactment (by March 3, 2016);
- ✓ The FAST Act mandates that proposed regulations be issued not later than 21 months after enactment (by September 2017);
- ✓ The Negotiated Rulemaking Committee is to be comprised of only Federal and Tribal government representatives, a “majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this title [title 23]”;
- ✓ The lack of promulgated regulations “shall not limit the effect of this section.”

FAST ACT'S OTHER PROGRAMS

- ✓ Section 1105 of the FAST Act creates the “**Nationally Significant Freight and Highways Projects Program**” funded at \$4.5 billion over five years (starting with \$800 million in FY 2016), to improve the safety, efficiency and reliability of the movement of freight and people, generate national or regional economic benefits, etc. (grants must be at least \$25 million in cost, although there is a “small projects” set-aside (10 percent) for projects costing at least \$5 million and a 25% set-aside for projects located in rural areas. The Federal share cannot exceed 80%;
- ✓ Section 1123 of the FAST Act calls for the establishment of a “**nationally significant Federal lands and tribal projects program**” to construct, reconstruct, or rehabilitate nationally significant Federal lands and tribal transportation projects. Projects must have a cost of at least \$25 million, with priority for projects with an estimated cost of \$50 million. The Federal share cannot exceed 90%. Title 23 and 49 funds, such as TTP and Tribal Transit Program funds, cannot be used for the Tribe’s cost share requirement, but other federal funds made available to Tribes may be used.

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FAST ACT'S OTHER PROGRAMS

- ✓ The Fast Act amends the **National Priority Safety Programs** of Section 405 of title 23 United States Code, to alter the percentages of grant awards to States for occupant protection (13%), State traffic safety information system improvements (14.5%), impaired driving countermeasures (52.5%), distracted driving (8.5%), motorcycle safety (1.5%), State graduated driver licensing laws (5%), and non-motorized safety (5%). The Act clarifies that a State may provide funds awarded under Sec. 405 to “Indian tribal governments.” The FAST Act authorizes \$274.7 million for the Program in FY 2016.
- ✓ The FAST Act restructures the Surface Transportation Program (Sec. 133 of title 23) by renaming it the “**Surface Transportation Block Grant Program.**” STBGP funds may be used for the construction of highways, bridges, tunnels, ferry boats and terminal facilities, transit capital projects, operational improvements, environmental measures, highway and transit safety infrastructure improvements and programs, recreational trails projects, pedestrian and bicycle projects, protection for bridges, etc. STBGP funding is authorized at \$835 million for FY 2016 and FY 2017, increasing to \$850 million for the three years thereafter. Tribal governments are eligible applicants for STBGP competitive grant awards made by a State or MPO.

FAST ACT'S OTHER PROGRAMS

- ✓ The FAST Act amends the **ERFO Program** to expand the authority for the Department of Transportation to expend emergency relief funds to include “projects eligible for assistance under this section located on tribal transportation facilities, Federal lands transportation facilities, or other federally owned roads” open to public travel.
- ✓ The FAST Act funds the **TIFIA** (Transportation Infrastructure Finance and Innovation Act) Program at \$275 million in FY 2016, increasing to \$300 million by FY 2020. The TIFIA program provides credit assistance (direct loans, loan guarantees, and lines of credit) to fund surface transportation projects of national and regional significance.

NON-FAST ACT PROGRAMS

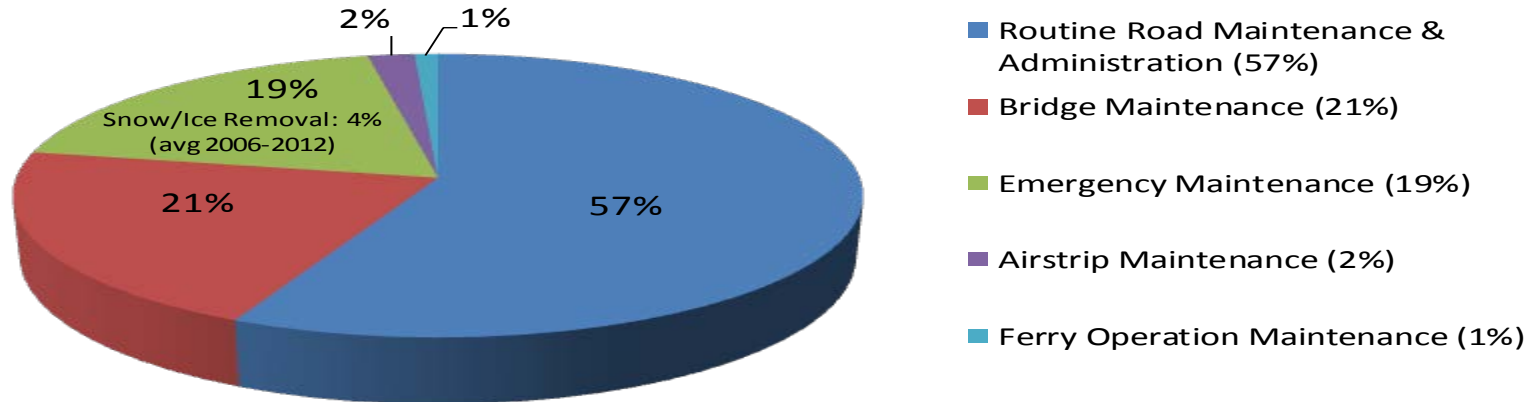
✓ Although the FAST Act did not reauthorize the Transportation Investment Generating Economic Recovery (**TIGER**) grant program, the FY 2016 Omnibus (Continuing Appropriations Act) restored funding for the TIGER grant program at \$500 million (the same as in FY 2015). Tribes are eligible applicants for the highly competitive TIGER grant;

✓ **BIA Road Maintenance Program** funding: although the greater of 25% or \$500,000 of a tribe's TTP funds can be used for maintenance, BIA is still obligated by law to request adequate funding through the annual Interior, Environment and Related Agencies appropriations acts (23 U.S.C. §202(a)(8)(A)). However, Interior fails to do so, resulting in flat funding levels for more than 30 years. As a result, tribes "repurpose" TTP "tribal shares" that could be used for design and construction for maintenance. Tribes need to work together to increase BIA Road Maintenance funding as a Congressional priority going forward.

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NON-FAST ACT PROGRAMS: BIA Road Maintenance Program

How Annual BIA Road Maintenance Program Funds are Divided



FAST Act: Implications for Indian Country

Without adequate funds to maintain existing BIA System and Tribally-owned transportation facilities (roads, bridges, transit buildings), these facilities deteriorate at a far faster rate and require large sums to reconstruct or replace. Inadequate maintenance shortens the “useful life” of Tribal Transportation Facilities. This makes them less safe and puts tremendous financial strain on tribal governments to repair or replace them.



Questions?

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