

**Native American Advisory Committee
Draft Quarterly Meeting Minutes
Woodland, California
May 16, 2012**

Welcome and Introductions: Chairman Joseph Myers opened the meeting at 9:10 AM with a prayer. He welcomed the Native American Advisory Committee (NAAC) members and participants.

Roll: Kimberly Lonora Graves, Native American Liaison Branch (NALB) took roll call.

Adopt Agenda: The Agenda was adopted for the May 2012 meeting.

Approved Minutes: Bo Mazzetti moved to approve the November 2011 meeting minutes, and the minutes were approved.

Members in Attendance: Joseph Myers, National Indian Justice Center; Bo Mazzetti, Rincon Band of Luiseño Indians; Stacy Dixon, Susanville Indian Rancheria; Lorenda Sanchez, California Manpower Consortium, Inc.; Connie Reitman-Solas, InterTribal Council of California, Inc.; Valerie Stanley, Sherwood Valley Rancheria; Luther Salgado Sr., Cahuilla Band of Indians; Paul Irwin, North Fork Rancheria; Jacque Hostler, Trinidad Rancheria; Dore Bietz, Tuolumne Band of Me-Wuk Indians; Adam Geisler, La Jolla Band of Luiseño Indians; Cynthia Gomez, Tribal Liaison to the Governor.

Director's Representatives in Attendance: Martin Tuttle, Deputy Director for Planning; Ryan Chamberlain, Chief, Division of Transportation Planning; Alyssa Begley, Chief, Office of Community Planning; Lonora Graves, Branch Chief, Native American Liaison Branch.

Others in Attendance: Steve Wilkie, BIA; Heather Hostler, Trinidad Rancheria; Isaac Kinney, Yurok Tribe; Jim Glaze, Sonosky, Chambers, Sachse, Endreson & Perry, LLP; Kendee Vance, Caltrans District 2; Susan Wilson, Caltrans District 3; Richard Olson, Caltrans District 3; Maria Rodriguez, Caltrans District 10; Gus Silva, Caltrans District 11; Chris Kuzak, Caltrans NALB; Tony Snow, Caltrans NALB; Tina Biorn, Caltrans Environmental; Annmarie Medin, Caltrans Environmental; Sarah Allred, California High Speed Rail Authority; Mark McLoughlin, ICF International.

Agenda Items:

- 1. Tribal Advisor to the Governor** – Cynthia Gomez was introduced and shared a bit of background information on her position as the Governor's Tribal Advisor and Executive Secretary for the California's Native American Heritage Commission (NAHC). The Governor's Office is working to ensure that each State Agency has a consultation policy that is up to date and consistent with the Governor's executive order; these policies will outline the consultation and coordination that is to take place with the tribes and tribal communities in the State. The Governor's Office website is currently being updated so the Tribes will have links to the various agencies, the consultation policies, and other important information. NAHC is

also working with the Bureau of Indian Affairs (BIA) to update the list of all the tribes in the State so that agencies have accurate information to use when working with Tribal Governments. Appreciation was expressed to Marty and the Department for Caltrans' responsiveness to requests from the Governor's Office on the transportation issues that have come up, including MAP-21.

Concern was raised by the NAAC about development being done by Palamar College. Cynthia affirmed that the NAHC is working with the tribe and the Attorney General's Office to address this concern and would look at public resources code and other laws to find a resolution.

- 2. Caltrans Update** – Marty Introduced Ryan Chamberlain, the new Division Chief for Planning; announced that Malcolm Dougherty was formally appointed as Caltrans Director; and shared that Bryan Kelly was named the Acting Secretary for Business Transportation and Housing. Chris Kuzak, who is new to the Native American Liaison Branch, was also introduced.

Marty shared that the updated Highway Design Manual has been released. The manual was revised significantly so that it now incorporates complete streets concepts and allows design flexibility to seek ways to provide for the needs of travelers of all ages and abilities in all planning, programming, design, construction, operations, and maintenance activities on the State Highway System. It allows for all modes to be considered as integral elements of the transportation system. The updated manual is available online: <http://www.dot.ca.gov/hq/oppd/hdm/hdmtoc.htm> .

The NAAC raised an issue of contracting with Tribes and suggested that there be statewide consistency in Caltrans' response to requests to enter into agreements with Tribes and in how limited waivers are handled in contracts. Bo Mazzetti, Adam Geisler, Gus Silva, and Lonora Graves will form a subcommittee to address this issue. The maintenance agreement that is currently being developed in District 11 might be a model on which a statewide template might be based.

- 3. Bureau of Indian Affairs** – Steve Wilkie shared some of the activity that has been taking place in the BIA Pacific Region Office. He celebrated a successful project that was completed by the La Jolla Band of Luiseño Indians. The Tribe received \$1.9 million in high priority funds for a project that was initially budget at \$2.9 million. The project had to be reengineered and cost savings identified, but it was ultimately completed. The Tribe did this under a programmatic agreement, which is an agreement that is supported by Title 23. It allows the Tribe to talk about how the program will operate, be overseen, and be monitored and measured. A tribe with this kind of agreement would have a 638 contract and would have program responsibility.

Steve also shared that a successful meeting took place between BIA, the Tribes in the Owens Valley, and the Caltrans District Office where ongoing questions about the IRR and Letters of Acknowledgement were answered and jurisdictional concerns about maintenance were addressed. All the meeting participants came to a shared understanding of the IRR and of how the Tribal Long Range Transportation Plans play a part in the work done by BIA and the Tribes. Caltrans agreed to provide LOAs required by the Tribes present, and as a result, about

150 miles of additional roads in the Owens Valley were added to the inventory. Appreciation was expressed for all the staff who helped put the meeting together.

The NAAC was informed of a BIA consultation session that will take place in Sacramento on June 14, 2012. The purpose of the consultation is to discuss the changes in calculation of the Relative Needs Distribution Formula (RNDF) used to allocate Indian Reservation Roads (IRR) funding among tribes; the streamlining of BIA delivery of transportation program services to tribal governments; and the implementation of "Question 10." The BIA and the Federal Highway Administration (FHWA) will also present an update on legislation involving the Indian Reservation Roads program. A Pacific Region Stakeholders meeting will take place the day before the consultation, on June 13, in order to provide an overview of the IRR program and to allow for an open discussion session in advance of the consultation. NAAC members expressed that participating in these meetings and providing comments on the proposals is very important for California Tribes.

Finally Steve shared some of the changes that BIA is making in response to findings from their program review. These changes include the creation of government to government agreements that could potentially have a big impact on how the Tribes and BIA work together, the possible creation of positions in the Pacific Region office that will focus on getting out and working with the Tribes on a more regular basis, and otherwise seeking to have a more streamlined organization that helps the Tribes identify and address their transportation needs.

- 4. IRR Program Committee Update** - Jacque Hostler gave an update on the IRR PCC meeting that took place in Sacramento February 28-March 1, 2012. She shared that the consultation that is being rolled out, including the June 14 meeting in Sacramento, will share and request input on some of the recommendations made by the PCC. The Access Roads Presentation was adopted by consensus by the PCC at the March meeting and will be presented at the consultation. The committee worked extremely hard on this and Jacque co-chaired that workgroup along with a representative from Oklahoma. This recommendation represents the best compromise on which consensus could be reached. The proposed roads recommendation was developed to help prevent the building of roads to nowhere. Milestones were set in place, and significant requirements were outlined and must be met for a proposed road to be considered. This information will be discussed in detail during the BIA consultations taking place in July.

A quality assurance letter has been sent to Echohawk requesting that the QA team go to each region to examine at the issues that exist, including those on CA roads and in some of the remote access areas, so that they can decide whether abuses are taking place. If the existing funding formula is not lost as we move through reauthorization, this examination of the inventory will take place.

NAAC members expressed concern about responsiveness of the PCC to letters that have been sent, and Jacque informed the group that the PCC is working on developing a website to help ensure the PCC process is transparent. The meeting minutes, motions, letters, and other significant information will be made available to those outside of the committee so that all know where everything stands. Jacque reiterated the importance of California tribes being aware of and involved in what is happening in reauthorization, in the consultation meetings,

and in tribal transportation in general and suggested that it is important for California tribes to have a voice in the process. The next PCC meeting has not been scheduled.

- 5. Federal Reauthorization** – Jim Glaze was introduced, provided an update on the reauthorization bill that is now being developed in joint conference, reviewed some of the general provisions included in previous versions of the highway bills, and discussed talking points that were developed in support of the Tribal coalition consensus provisions that were developed with the assistance of the Sonosky Group. The purpose of these provisions is to ensure that the best components of HR-7 and MAP-21 move forward into the final highway bill. NALB agreed to e-mail the consensus provisions and sample support letters to the NAAC. Jim also provided an overview of the funding formulas included in MAP-21 and H.R.-7. This is not included in the consensus provisions because many different opinions exist and as a result, Sonosky group respectfully neutral on this subject of funding. Additional information can be found in the meeting handouts.

A question was raised by the NAAC about whether obligation authority will be eligible for High Priority Projects because for California this funding source is extremely significant and funds a number of our programs. It was unclear whether this would be the case, but H.R.-7 specifically endorsed the IRR-HPP. The motion the NAAC made in an earlier meeting to support keeping the funding formula was also mentioned during this discussion, and some representatives around the table said they would also advocate for retaining the existing formula and the HPP program.

- 6. Legislative Update** – Chris Kuzak gave a brief legislative update and reviewed some of the change since the last NAAC meeting, including updates to Assembly Bill 2092 and Senate Bill 162. Additional information can be found in the meeting materials.
- 7. Caltrans Director's Policy 19** – Caltrans is going to undertake the updating of Director's Policy 19 to ensure that it is in line with the Governor's Executive Order. Some NAAC members expressed concern because while much of the work that the Tribes do is with the counties, the consultation policies required by the executive order are at the State level. Discussion took place on how involvement in the statewide planning process can potentially impact regional and local activities. Lonora shared that Caltrans is tries to intentionally seek Tribal involvement in the development of Statewide planning processes like the California Interregional Blueprint, the California Transportation Plan, and other planning and programming activities, and Cynthia shared that Office of Planning and Research is looking at updating their consultation policies which might have an impact on the regions. Joe suggested that in addition to ensuring that agencies create opportunities for meaningful consultation and coordination, it is also important that tribes express an interest and participate in these opportunities. Jacque suggested that sometimes tribes aren't being included not because they're not invited, but because they don't have the capacity to respond. The tribal coalition model was raised as something that might be helpful in these cases. Discussion also took place on the need for BIA to be more intentional about sharing tribal TIPs and for Caltrans and BIA to partner on ensuring that IRR inventories and plans are shared locally so that funding opportunities are not lost.

There was an affirmation from the NAAC that if tribes are truly to be part of statewide planning and programming, they should be a part of the process from the beginning. The Tribes would like to see consultation be a process that allows them to have a seat at the table and to help make decisions on what moves forward instead of a process that just gives the Tribes notice after the fact. It might be possible to put some general language in the statewide transportation plan recognizing tribes as sovereign governments and stating that there would be a consultation process (i.e., consultation for cultural resources, planning, programming, etc.) as a result.

The branch requested NAAC assistance in developing guidance for implementing the Director's policy and so that some of the issues like the need for consistency and meaningful consultation might be discussed in more detail. The NALB will bring a draft of the updated DP-19 to the Advisory Committee for review and will seek input from the tribes and tribal communities in the state before finalizing the policy update.

8. **Section 106 Programmatic Agreement** – Tina Biorn and Annmarie Medin, from the Caltrans Environmental Division, gave a presentation on the Section 106 process and the Caltrans Programmatic Agreement. They came to the NAAC because the current Section 106 Programmatic Agreement expires in 2013, and the Environmental Division is going to start work on reviewing and revising it. Since the NAAC is an advisory committee for the Department, they were hoping to get input on how well the existing agreement is working and on how much outreach needs to be done as it is updated. While the Programmatic Agreement does not change the need to consult with a THPO when on tribal lands, there are other areas of the PA that might be of interest to the tribes.

In response to the question of what kind of consultation needs to be done for the programmatic agreement update, the NAAC suggested that various Tribal committees and coalitions be contacted and coordinated with. A suggestion was made that a dispute resolution process be included in the updated programmatic agreement as well. Tina and Annmarie agreed to keep the NAAC informed of the action that takes place in the future and to work with existing tribal transportation committees to distribute the information.

9. **California High Speed Rail** - Mark McLoughlin Gave an overview of the High Speed Rail (HSR) Authority including a high-level look at their organization and their business plan. He shared a bit of information on the planned phases of the project and said that one of HSR's goals is to have all environmental clearances for the project completed in the next five years.

Sarah Allred, the Senior Environmental Analyst for HSR, was introduced. She was hired in January and is the person to contact with HSR issues related to Section 106. Sarah briefly reviewed the Statewide Section 106 programmatic agreement for HSR, which is the framework for how the authority is implementing Section 106 for the project and includes roles and responsibilities for FRA and for the authority and outlines Native American consultation policies. A request for review and comment on the draft PA was sent out in 2010, and the document was finalized in 2011. Sarah expressed concern with the fact that Tribes don't feel as if they've been consulted in the process and let the NAAC know that she is available. Because the first segment of the HSR project is the Merced to Fresno segment, Sarah's focus

has been on meeting with the Tribes in that area, but she is there to work with the Tribes statewide.

In addition to concerns on cultural resources, the NAAC raised the issue of needing a strategy for recruitment for jobs created by the HSR project. Hiring goals have been set for HSR, and Sanctions will be put in place for large contractors to meet the hiring goals. Pedilla and Associates, a consulting firm, is helping HSR Authority work out the details for a small business advisory council to ensure that the project is inclusive of minorities, small businesses, and DBEs. Adam Geisler reiterated that tribes are unique government entities and mentioned www.nativehire.org as a resource for high speed rail in working with the tribes on employment.

Bo Mazzetti affirmed that the HSR Authority needs to remember tribes are not the same as stakeholder groups; instead, tribes are government entities that reside within the state, and there is a need to understand and respect tribal sovereignty as HSR work moves forward. A suggestion was made that HSR make contact with Steve Wilkie from the BIA because the bureau deals with all of the Tribes in California. There was also a request that the tribes be involved in the development of future policies for working with Native American Tribes. Connie Reitman-Solas stated that ongoing communication and updates are important to the Tribes as is follow up. The NAAC asked that requests for information or participation be clearly articulated and that feedback be provided to the tribes and tribal organizations after they contribute requested information. HSR agreed to participate in future NAAC meetings to provide ongoing updates on the project.

10. **Tribal Employment Rights Ordinances** – Lonora gave a brief update on the activity that has taken place since the last NAAC meeting which included the delivery of a TERO 101 Workshop in the north region in March. Smith River Rancheria hosted this meeting and the majority of the tribes with TERO in the area were represented. Caltrans staff, including the liaisons and project delivery representatives were also present. During the meeting, Caltrans presented information on the development of and content included in the deputy directive on TERO and explained the contracting process. Group discussion focused on how all parties could work collaboratively to implement this policy. A request was made to have a similar TERO workshop in Southern California, and one will be scheduled. Rincon has tentatively offered to host this workshop. Now that the guidance is complete, future TERO activity includes developing the MOU and TERO Highway Construction Permit templates and this will be done with input from the TERO Workgroup.

The meeting was adjourned at 1:17 pm