

**Native American Advisory Committee  
Quarterly Meeting Minutes  
Woodland, California  
March 9, 2016**

**Welcome and Introductions:** Chairman Joseph Myers opened the meeting at 9:00 AM. He welcomed the Native American Advisory Committee (NAAC) members and participants.

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

**Adopt Agenda:** The NAAC unanimously adopted the March 2016 meeting agenda. Some changes were made to the agenda as the meeting was conducted (see below).

**Approved Minutes:** The minutes from November 2015 were approved unanimously.

**NAAC Members in Attendance:** Joseph Myers, National Indian Justice Center (NIJC); Bo Mazzetti, Rincon Tribe; Sandi Tripp, Karuk Tribe; Scott Sullivan, Tolowa Dee-ni' Nation; Dore Bietz, Tuolumne Band of Me-Wuk Indians; Jacque Hostler-Carmesin, Trinidad Rancheria; Paul Irwin, North Fork Rancheria; Lorenda Sanchez, California Indian Manpower Consortium; Adam Geisler, La Jolla Band of Luiseño Indians; David Nenna, Tule River Tribe; Virgil Perez, Iipay Nation of Santa Ysabel; Michael Hostler, Hoopa Valley Tribe.

**Caltrans Director's Representatives in Attendance:** Malcolm Dougherty, Caltrans Director; Coco Briseno, Deputy Director, Planning and Modal Programs; Katie Benouar, Chief, Division of Transportation Planning; Reza Navai, Assistant Chief, Division of Transportation Planning; Lonora Graves, Branch Chief, Native American Liaison Branch;

**Others in Attendance:** Carol Farris, CalSTA; Kelly Myers, NIJC; Don Barnes, Yurok Tribe TERO; Vince Mammano, FHWA; Jack Lord, Federal Highways Administration (FHWA); Laurie Waters, CTC; Cynthia Gomez, Governor's Tribal Advisor; Gretchen Chavez, Caltrans Traffic Operations; Cameron Oakes, Caltrans Transportation Planning; Jaime Hostler, Caltrans District 1; Kendee Vance, Caltrans District 2; William Velasco, Caltrans District 4; Lorna Foster, Caltrans District 8; Brandon Fitt, Caltrans District 9; Chai Vargas, Caltrans District 11; Mark Barry, Caltrans DRMT; Andy Cook, Caltrans DRMT; Giles Giovanazzi, Caltrans Federal Liaison; Jody Brown, Caltrans Environmental; Tina Biorn, Caltrans Environmental; Sarah Allred, High Speed Rail Authority; Bennie Lee, Caltrans Native American Liaison Branch; Chad Riding, Caltrans Native American Liaison Branch; Tennille Haberman, Caltrans Traffic Operations; Ann Mahaney, Caltrans Transportation Planning; Jim Glaze, Sonosky, Chambers, Sachse, Endreson & Perry, LLP; Bob Clark, Rincon Band; Steve Wilkie, BIA; April Nitsos, Caltrans Local Assistance; Jeff Arnswald, Kevin Davis, and Janice Mulanix from CHP; Tim Seward from Hobbs Strauss Law Firm; Steve Wilkie, Scarlett Ramona, and Jim Hatch, BIA.

**Agenda Items:**

- 1. CalSTA Update from Carol Farris.** The CalSTA consultation policy was adopted in June 2014. The Agency listens to the concerns at the NAAC Meeting and on working on solutions to problems that tribes have brought up. There was a consultation session in June 2015. CalSTA would like to have a consultation session this year. One change for the session is to have a specific focus, and for this year, the focus will be traffic collisions.
- 2. Bob Clark, Head of Security, Rincon Band.** Bob Clark gave a brief update on the developments in CHP and Tribal partnerships in Indian Country. Collision data on tribal roads not publicly maintained is now collected as “other improper driving,” which is not useful for data collection. Discussions have taken place to enact policy changes to allow collision factor collection. A new policy recognizes tribal sovereignty and allows CHP officers, with tribal permission, to collect GPS data and collision factors for crashes. No tickets will be issued. The 555 form will now include the tribal name on the form.

Whether CHP collects this data is up to tribes. The SWITRS data collected from tribes will only be available to tribes, not the public. There will be three consultation sessions throughout the state to discuss this policy. Joseph Myers asked whether there will be training in the CHP Academy. Janice Mulanix from CHP stated that there will be increased training at the Academy to provide this service. All CHP chiefs will be briefed. Consultation will occur in June. Bob noted that the CHP chiefs will have to contact all the tribal chairs. Janice also said that CHP offers several educational programs for tribes. Jim Glaze said that this effort will help tribes be on an equal playing field with other jurisdictions for safety funding. Kendee asked how consultation will occur. Carol responded that consultation will begin in the north and then proceed south.

- 3. Malcolm Dougherty, Director of Caltrans' Report.** The head of DPAC moved on to Department of Toxic Substances. The Head of Sustainability has moved on to ARB, and the temporary replacement is Marlon Fluornoy. There are several proposals for transportation funding in the legislature. The Governor's proposal is more modest than others but is a big increase in funding. To give a picture of the scale, the Prop 1B Bond raised \$18 billion over 10 years. The Governor's current proposal raises about \$36 billion over 10 years. All proposals need the 2/3 supermajority because they include tax increases. Regarding current funding, the adjustable portion of the state gas tax was adjusted down a few cents. CTC will make proposals on how to meet the new shortfall.

FAST Act included a formula freight program with \$106 million for California. These funds will be distributed for freight highway projects and projects of national significance. There is a discretionary program for freight with a due date of April 14. The key provision is that the projects must be ready for construction within 18 months. The TCIF program will serve as a model.

NEPA reciprocity is in the FAST Act. California's NEPA delegation needs to be renewed as well. The reciprocity program is if a state's environmental regulations are more stringent than NEPA, the state can apply to have the state's laws apply. The issue is that the environmental litigation process must be kept open for 2 years. Today it is only 150 days. That could prevent California from participating.

The CTP 2040 Public Draft was released for a 30-day public review. There is a representative from Tribal Governments on the advisory committee. This document is on the website. The Sustainable Freight Action Plan is being developed, and tribal input is desired. There is also the California State Bicycle and Pedestrian Plan, which will commence work soon.

The Road Charge Pilot Project is accepting volunteers to sign up for the project beginning July 1, 2016. This pilot project will look at the road user charge to raise funds when the gas tax is no longer a viable option for transportation funding. This project is entirely a paper exercise. Adam Geisler asked how tribes will fit into this pilot project and particularly if tribes will receive money back to them if they participate. Director Dougherty said that if there is a GPS unit, it can locate the vehicle on tribal lands. One option might then be to give money back to tribes. Adam then asked how tribes can best be brought on board. Director Dougherty said that leaders within the tribe can participate and encourage tribal members to join the project. Sandi Tripp asked how this is equitable for rural people. Director Dougherty said that the main factor is vehicle efficiency. High fuel efficiency vehicles will receive the disbenefit compared to low fuel efficiency vehicles. This is due to the fact that people already pay the gas tax. Director Dougherty also stated that it is possible that people would not be charged for driving on their own land.

Bo Mazzetti asked about the roundabout at the intersection of State Route 76 and Valley Center Drive. Director Dougherty said that 3,000 roundabouts have been built around the United States in the past 10 years, and there have been huge safety benefits. He said that roundabouts are not good at every location, but they are very good at many locations. He will follow up with the people in District 11.

- 4. Vince Mammano, FHWA.** Vince Mammano said that information about the FAST Act and other federal funds and programs can be found at the FHWA website. Vince also announced that earmarks over 10 years old with less than 10% allocated can be repurposed for some other projects subject to limitations.

Vince commended the NAAC and its partners for coming together for tribal transportation. He has noted that other states have held the NAAC up as an example of good tribal-state coordination.

- 5. Giles Giovanazzi, Caltrans Federal Liaison.** Giles reported on the FAST Act. There is a new apportionment program under the FAST Act for freight. The FASTLANE Grant Program is a \$800 million discretionary program for innovative programs nationwide related to freight (minimum grant of \$25 million). The due date for this is April 29. Tribes are potentially eligible. There is a separate page about FAST Act and Caltrans available online at: [http://www.dot.ca.gov/hq/transprog/map21/map21\\_reauthorization.htm](http://www.dot.ca.gov/hq/transprog/map21/map21_reauthorization.htm). There are also sections about performance management.

There are biweekly meetings about FAST Act implementation. There are also subgroups about topics with one about tribal issues in FAST Act. There were white papers, with Lonora writing one about tribal transportation.

Lonora Graves spoke about the technical working group and the larger FAST Act group. Sandi Tripp, Jacque Hostler-Carmesin, and Kendee Vance are helping with FAST Act. One recommendation was to finish the 202(a)(9) fund transfer process. Much work is being done on this process. A bill, AB 1987, is proposed to allow contracting between Caltrans and tribes without the restrictions. As self-governance programs are developed, Caltrans will try to monitor, but the NAAC will be vital in keeping these together.

Adam said that many tribes have safety plans or would very much like to have a safety plan. Adam said that there should be an appendix or addendum that includes tribal safety plans in the Strategic Highway Safety Plan (SHSP). Coco said that she would bring that proposal back to the executive committee over the SHSP. Kelly Myers said that many tribes have complained that there has not been much involvement with tribes about the SHSP. Director Dougherty asked what the SHSP should include from tribes. Adam said that tribes should be considered separately because they are sovereign and are funded and governed separately from the State. Kelly said that the lack of data and of a clear planning process hinder tribal funding. Bo reiterated the fact that tribes lack data, which is necessary for funding.

- 6. Cynthia Gomez, Governor's Tribal Advisor.** As AB 52 (Gatto) implementation is proceeding, Native American Heritage Commission (NAHC) staff are compiling information submitted by tribes and found in cultural surveys for the maps. These maps will be finished by July 1. Appendix G of the CEQA Guidelines is being updated to reflect the tribal consultation requirements. This Appendix G contains the checklist of items for lead agency staff to review. The requirement of AB 52 is that lead agencies must inform tribes of projects and invite them to consultation. The tribes must then request consultation for consultation to occur. There is a technical advisory document being drafted to help lead agencies conduct consultation better.

Tribal court orders for custody will now be honored by courts in California. The Franchise Tax Board (FTB) is working on clarifying and publishing its policy about taxation for tribal members on tribal lands. FTB is making it easier to prove that a tribal member is not subject to state income, sales, or use taxes. The broadband efforts are continuing with a tribal member on the state broadband council.

Tim Seward from the law firm of Hobbs Strauss made an announcement. He was there to explain the self-governance program under FAST Act. This ground-breaking extension of the Indian Self-Determination and Educational Assistance Act is the first time self-governance has been expanded to an agency other than BIA. It will expand some protections that were not previously available. There will be invitations to nominate people for the negotiated rulemaking process.

- 7. Jim Glaze, Sustainable Transportation Planning Grant Fund Transfer through 202(a)(9).** Jim Glaze, attorney for the Karuk Tribe, thanked all involved for the effort on the FAST Act and on those working for the benefits from tribal transportation. The next rulemaking is an opportunity to partner together and find common solutions. There will now be agreements made with tribes in mind.

The 202(a)(9) process is being made so future transfers are much easier. Waivers of sovereign immunity are not necessary under this process because the federal government can provide oversight. This policy will be a benefit because there will be one mechanism with the funds changed to be tribal TTP funds. This will make money management much easier. Funds will also come much faster now that the template is finished. Adam said that the support within California State Government made this possible. His tribe's project is much more complicated because it involves construction. Kendee asked more about the process. Jim answered that this is beneficial because it is permissive and allows another way to transfer funds for projects that are of mutual benefit. Also, the 202(a)(9) process develops a single template for others to add addenda to them for project-specific clauses. The State has rights under the agreement but no liability. If funds are not used correctly, the State can go to the federal government, which controls funds for tribes.

Sandi gave background information on how the 202(a)(9) process came about. The addendum was first developed with everything about the grant in it. Lawyers from FHWA, Caltrans, and Karuk held several phone conferences to work out details and come up with a mutually acceptable template that will work for future projects. Lonora commended Jim for his work on the process. Michael Hostler noted that Hoopa Valley Tribe also had success in the limited waiver of sovereign immunity process, and the key was the proper scoping of the limited waiver. Adam said that his tribe has no interest in a waiver of sovereign immunity, and Jim said that there is no need for a waiver under 202(a)(9). Kelly Myers said that other states are very interested in this process and would like to find out more about how the process can work.

8. **Kelly Myers, WTTAP Overview.** The National Tribal Transportation Conference (NTTC) is coming up in October. The conference is looking for panel topics. There will be discussion about the NAAC, and the 202(a)(9) process will also be a hot topic. Registration will open soon. A webinar on Safe Routes to School with Hoopa, La Jolla, and CDPH participation will take place. This webinar will focus on how to set up a successful program.

The safety circuit rider program is functioning with a focus on injury prevention and distracted driving. That program will spread down to California from Nevada soon. The coordinator can hold bike rodeos and other events, and that can be arranged here in California. The Tribal Transportation Safety Assessments (T2SA) is starting soon. There is a desk assessment to be compiled from surveys to tribes, and then there will be on-site visits to 15 locations. The April 1 meeting is canceled, with it replaced by San Diego and Southern California events. They are still looking for venues for Central and Northern California. California Transportation Safety Project will look at 20-30 tribal communities. Tribes that receive T2SA evaluations will then be in a good position to turn the assessments into safety plans. The goal is eventually for all tribes to have safety plans so they can access funding. Dore Bietz offered Tuolumne as a potential location for a T2SA meeting location. Jacque said that she has been working with Afsaneh to set up a location in Redding. There is a draft agenda and some documents circulating.

Chad Riding, who administers the contract for Caltrans, spoke about T2SA. The summits in Southern California will be on April 4<sup>th</sup> for SANDAG tribes with another summit to-be-determined geared toward Riverside and San Bernardino tribes. There will be 15 assessments,

with 10 in-depth assessments and 5 less in-depth assessments. Chad also introduced NAAC to the “About Division of Transportation Planning” document. This document was in the packet for the group’s review, and comments can be sent to Chad at his email address.

- 9. Steve Wilkie, BIA Update.** Steve Wilkie from Pacific Region of BIA gave the BIA update. The BIA recently hired an employee in transportation, Scarlett Ramona, present at the meeting. Jim Hatch, program manager for road maintenance, also accompanied Steve and Scarlett to the meeting. There are still several positions open. Program agreements will be made to further tribal projects.

They are trying to bring Andy to California to have a meeting about programs. There should be further meetings on coordination. Template agreements were drafted and are available now. Jim Glaze said that their funds have to be held in a separate bank account to be tracked separately. This practice could potentially lead to non-compliance. Adam said that tribes should attend the T2SA meetings so safety plans can be more easily approved. That is mostly where funds will be in the future.

- 10. April Nitsos, Active Transportation Program (ATP) Update.** April Nitsos from Caltrans Division of Local Assistance gave the update on the ATP. There will be an electronic form for the ATP, and all projects on tribal lands will be considered projects in disadvantaged communities. There is one seat open for tribal representatives for the ATP Technical Advisory Committee, and a tribal representative is needed to fill the seat that Lonora has been temporarily filling. There is a video online about Tuolumne County efforts at active transportation, and Tuolumne County received a grant for the program. The video is available online at: <https://youtu.be/n0f1uP9vwKw>

- 11. Michael Hostler, Hoopa Valley Tribe and North Coast Tribal Employment Rights Ordinance (TERO) Office Group.** Michael came with a message from North Coast TERO offices. The first recommendation is to revive the working group that had been formed. The feeling is that Caltrans has not followed the agreements about TERO. Kelly said that TERO is permissive, so Caltrans is not required to apply TERO. Michael said that the question is about near tribal trust lands and about how contractors follow TERO off trust land but still near it. Bo noted that the question is how to apply it near reservation.

Lonora said that because it is permissive, the department decided to go with near reservation lands. The pilot project is about setting up a few projects where TERO is enforced off reservation. There are two pieces: if the contractor does not live up to the agreement, and the draft projects.

Don Barnes from Yurok Tribe spoke about his experiences with the TERO MOU and off-reservation activities. In April 2015 Yurok Tribe invited Caltrans employees to Yurok lands to see tribal lands. The group might be reconstituted. Yurok Tribe recommended 5 miles from reservation land as a buffer for off-reservation application of TERO.

Kelly Myers said that the on-reservation policy was the best option that could be gotten at the time. The pilot project is a good opportunity for moving this forward. Michael Hostler said

that there are several other policies that are near reservation, such as environmental consultation, and these policies show that near reservation can work. A Memorandum of Agreement (MOA) would allow tribes to enforce TERO on tribal lands.

Coco Briseno said that while progress may be moving forward slower than many would like, it is still progressing. Sandi said that she supports Michael Hostler's points, especially about MOAs.

Jamie Hostler was at the April meeting on Yurok Land. There was a Caltrans job 10 feet from the Yurok boundary, and the Yurok Tribal leaders pointed this out. It makes the tribe feel like Caltrans is purposefully not putting the project on tribal land to avoid TERO. Adam said that his tribe is having an easier time with TERO than other districts. Kelly said that this is a permissive policy, so there are no legal avenues to solve other than to work with Caltrans. Coco asked what the main questions are about TERO so they can be addressed. Emergency situations can be discussed separately.

Tennille Haberman asked how this can be moved forward. Kelly Myers answered that this is to be brought forward at the Caltrans level. Coco recommends that a meeting be held where Malcolm makes the decision. Kelly noted that developing protocols will be of particular importance. Adam said that a Joint Powers Authority (JPA) is one way to accomplish this.

- 12. Laurie Waters, CTC Report.** AB 1987, which removes restrictions on Caltrans contracting with tribes, was recently proposed and is being analyzed by staff. The director of CTC, Will Kempton, recently stepped down and a new director is being chosen.
- 13. Jacque Hostler-Carmesin, Tribal Transportation Coordinating Committee.** A letter was sent to FHWA with specific recommendations, such as on dual language signs. Jacque said that all comments should be sent in so tribal voices are heard in Washington.
- 14. Andrew Cook, Caltrans California State Rail Plan.** Outreach is beginning on the Rail Plan. Adam said that tribes should participate in the outreach sessions being offered, and that particular attention should be paid to Southern California tribes in general. The website is found at: <http://www.dot.ca.gov/californiarail/>.
- 15. Cameron Oakes, California Sustainable Freight Action Plan.** This plan will develop 70 or so action items related to sustainable freight. Adam said that tribes are good at producing electricity, and tribes can play a significant role in supplying electricity. See the website for the project at: <http://www.arb.ca.gov/gmp/sfti/sfti.htm>
- 16. Sarah Allred, High Speed Rail.** Environmental documents are being prepared for the project, with all documents scheduled to be done by the end of 2017. The shift is from planning to project development. Comments are being accepted about ancestral territories for tribes so consultation and environmental can be more effective. Work is moving forward for mitigation so when remains are found they can be handled appropriately. Station agreements are allowing several cities to go forward with station planning. Tribes can participate in the station planning process.

**17. Gretchen Chavez, Strategic Highway Safety Plan.** The implementation plan is beginning with performance measure development for each of the challenge areas. The executive committee has approved the action plans. Regional summits were conducted to permit regional coordination on safety. The big push is on regional safety because there are opportunities for coordination there. Safety plans are necessary for HSIP and OTS funds, so these regional summits were helpful. Chairman Lawson from San Pasqual Band of Mission Indians spoke with Gretchen about coordination opportunities. In early April there will be other regional summits.

**18. Ann Mahaney, Caltrans Smart Mobility Branch.** Ann introduced Smart Mobility Branch to the NAAC. The purpose of the branch is for promoting all modes of travel in Caltrans facilities and for promoting sustainability in transportation planning. Smart Mobility Branch would like to help tribes with developing transportation systems. The Smart Mobility 2.0 book is being updated to reflect recent developments in transportation planning and project development, particularly in project selection criteria. Adam Geisler asked if someone can send a list of all the plans that are ongoing.

**19. Scott Forsythe, California State Bicycle and Pedestrian Plan (CSBPP).** The CSBPP is being drafted as one of the modal plans under CTP 2040. It is the first of the kind in the state. It is being developed by the Technical Advisory Committee (TAC), and the next meeting is on May 26. Statewide workshops and an expanded TAC will be held in late April through early May. The location will be statewide. The plan is more of a goals, objectives, and strategies plan. There is a website at [www.cabikepedplan.org](http://www.cabikepedplan.org) and information can found there. There is a survey available online for the plan.

Tennille Haberman said that the fourth Friday of September is Native American Day, and it will be on Friday, September 23.

**Meeting Adjourned at 3:30 PM.**