

*Tribal Self Governance
Consultation Conference
Spokane, WA
April 25, 2017*

Joe Garcia, Co-Chair Neg-Reg Committee

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Chief Sac and Fox

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Review of FAST Act

- On December 4, 2015, On Friday, December 4, 2015, President Obama signed the **Fixing America's Surface Transportation** (FAST) Act into law, expanding Self-Governance beyond the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) for the first time ever now replacing what was MAP-21
- The Tribal Transportation Program (TTP) is the largest program in the Office of Federal Lands Highway. Established in 23 U.S.C. 202 to address the transportation needs of Tribal governments throughout the United States, the program is receiving \$465 million in FY 2016, with increases of \$10M per year to \$505 million in FY 2020, as established in Public Law 114-94, the FAST Act.

Self Governance Brief as related to FHWA

- The Tribal Self-Governance Program required DOT to establish a Tribal Self-Governance Program modeled largely on Title V of the ISDEAA,
- It extended to all programs available to Tribes within the Department for Tribes; to include:
 - transit funding,
 - discretionary grant funds, and
 - federal-aid funds transferred by a state agency in their funding agreements (FAs).
- Modeled on Title V, provides Tribes with a tested and successful model to implement the principles of Tribal self-determination with protections provided under the ISDEAA.

Establishment of Negotiated Rule Making Committee

- The FHWA announced its intent to establish a negotiated rulemaking committee to develop a proposed rule to carry out the Tribal Transportation Self-Governance Program (TTSGP) as required by Section 1121 of the Fixing America's Surface Transportation (FAST) Act.
- Section 1121 of the FAST Act directs the Secretary to carry out this work through negotiated rulemaking pursuant to subchapter III of chapter 5 of Title 5, United States Code. This subchapter requires an agency head to give consideration to seven factors when determining whether a negotiate rulemaking is appropriate.

Establishment of Negotiated Rule Making Committee

- Under the Negotiated Rulemaking Act, the purpose of the TTSGP Negotiated Rulemaking Committee is to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule for the TTSGP, as codified at 23 U.S.C. 207.
- The responsibilities/objectives of the committee are to represent the interests significantly (tribal & federal) affected by the proposed regulations, to negotiate in good faith, and to reach consensus, where possible, on a recommendation to the Secretary for the proposed regulations.

Committee Members

- Tribal Co-Chair Joe Garcia, Head Councilman, Ohkay Owingeh, SW Rep
- Tribal Co-Chair Kay Rhoads, Principal Chief, Sac and Fox, OK
- FHWA Co-Chair Robert Sparrow (Federal Designee)
- List of other committee members available on FHWA website

Initial Work Sessions

- 1st & 2nd August & Sept, Sterling, VA
- Committee Protocols adopted in Tribal Caucus and provided for DOT for review and approved In Sept 2016
- **2 Workgroups established – Administration and Operations,** other committees may be established if needed
- Good balance of membership on both committees
- Developed a list of issues/tasks to be addressed in WorkGroup sessions
- Next Meetings were scheduled:
 - Oct 18-20, Shawnee, Oklahoma
 - Nov 15-17, Minneapolis, Minnesota
 - Dec 6-8, Atmore, Alabama
 - Jan , Denver, Colorado

Administration WorkGroup

- Prepare draft regulations covering the following issues:
- Secretarial findings of fact and policy
- Definition sections
- Tribal consultation and collaboration process,
- Secretarial interpretations to facilitate self-governance,
- outlines the new Tribal Self-Governance Program within USDOT
- Explains of how the Self-Governance Program works with the other USDOT modal administrations under the Office of the Secretary,
- Tribal eligibility,
- The process for developing compacts and AFAs,

Administration WorkGroup

- Transfer of recurring funds and grants from all USDOT administrations
- Final offer process
- Dispute resolution process
- Prompt Payment Act, Federal Tort Claims protection
- Flexible and innovative funding
- Contribution of funds from States and local governments under Section 202(a)(9) agreements funds
- Retrocession, Withdrawal, Reassumption
- Regulation waiver process Technical Support at FHWA
- Other Topics/Issues TO BE DETERMINED

Administration WorkGroup

Title V (Part 137) suggested references include

- Subpart A – General Provisions
- Subpart B – Definitions
- Subpart C – Selection of Tribes for Participation in Self-Governance
- Subpart D – Self-Governance Compact
- Subpart E – Funding Agreements
- Subpart F – Statutorily Mandated Grants
- Subpart G – Funding
- Subpart H – Final Offer
- Subpart J – Regulation Waiver
- Subpart K – Withdrawal
- Subpart L – Retrocession
- Subpart M - Reassumption

Administration WorkGroup

Other topics

- Discretionary/competitive grants
- **Working Relations**
 - Tribal Committee Members
 - Federal Committee Members
- Technical Support

Operations WorkGroup

- Funds received under SG Compact, Benefit to Tribes benefit vs current process & NEG-REG outcome
- Additional discretionary funds?
- Program Redesign & Consolidation
- Access to surplus and excess of federal equipment
- Dedication of Tribal Lands & ROW Acquisition
- Educational/Informational regulations for USDOT Model Administrations for/with Agency interaction
- Construction Standard, A&E services, safety, operations, etc.
- Federal Monitoring
- 23USC 202 (a) (9) Funds Transfer Agreement
- Assumable programs, services, functioning, and activities
- Application of FOIA, Federal Records

Operations WorkGroup (cont)

- Acquisition of Goods & Services
- Program Income
- Limitation of Cost
- Matching & Cost Participation,
- Regulation Waivers
- Dispute resolution, appeal process (518 provision) declarations privy to Indian Law/Policy.
- Technical Assistance to Tribes in the NEG-REG
- Technical Assistance to USDOT Self-Governance Office

Information

- Schedule of Neg-Reg Meetings (Need Updates)
- Communications to Tribes
 - Need appropriate contact information; emails & phone numbers. (pls send to us)
 - Neg-Reg meeting results to be posted on DOT website
<https://flh.fhwa.dot.gov/programs/ttp/ttsgp>
 - Your input can be relayed to committee members
- Contact info: Joe Garcia mistylake@cybermesa.com
cell **505-660-0989** or your region's Rep

Next few slides from Website

Tribal Transportation Self-Governance Program (TTSGP)

- <https://flh.fhwa.dot.gov/programs/ttp/ttsgp/>
- The January 31 - February 2 meeting of the Tribal Transportation Self-Governance Program Negotiated Rulemaking Committee in Denver, CO is postponed. Please check back for details on future meetings.
- As required by Section 1121 of the Fixing America's Surface Transportation (FAST) Act, the Secretary shall, pursuant to a negotiated rulemaking process, develop a Notice of Proposed Rulemaking (NPRM) that contains the regulations required to carry the TTSGP. Section 1121 also requires that in establishing this committee, the Secretary will apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States. This website will contain the working documents of the committee.

Committee Documents

(from Website)

- [Tribal Self-Government Program Federal Register April 25 2016](#)
- [FAST - Section 1121](#)
- [Federal Register \(FR\) Notice For Meeting and Member Listing](#)
- [Contact Info For Committee Members](#)
- [Final Approved Committee Protocols](#)
- [TTSGP Negotiated Regulations Attachment A - Summary of Sec. 207 provisions](#)
- [TTSGP Negotiated Regulations Committee Proposed Workgroup Assignments \(Aug. 18, 2016 proposed\)](#)
- [FHWA Negotiated-Regulations Flow Chart](#)

Minutes of Meetings (from Website)

- **Meeting 1 (August 16- 18, 2016)**
- [Meeting Minutes](#)
- **Meeting 2 (September 13-15, 2016)**
- [Meeting Minutes](#)
- [Attendees](#)
- **Meeting 3 (October 18-20, 2016)**
- [Meeting Minutes](#)
- [Attendees](#)
- **Meeting 4 (November 15-17, 2016)**
- [Meeting Minutes](#)
- **Meeting 5**
- [Meeting Minutes](#)

Reference Material (from Website)

- [25 CFR Part 1000 Table of Contents](#)
- [Federal Register \(FR\) Notice 25 CFR 1000](#)
- [Indian Health Service \(IHS\) Negotiations Handbook](#)
- [Indian Health Service \(IHS\) 42 CFR 137](#)
- [Department of Interior \(DOI\) 25 CFR 1000](#)
- [5 USC 5, Subchapter III](#)

Presentations (from Website)

- [PHMSA Presentation](#)
- [Highways 101 Presentation for Tribal Self-Governance Committee](#)
- [AIP Tribal Grants Presentation](#)
- [Invitational Travelers Travel Presentation – TTSGP](#)
- [Office of the Secretary \(OST\) Presentation – Self-Governance](#)
- [Tribal Transit Program Presentation – Self-Governance](#)
- [Tribal Transportation Self-Governance Presentation](#)
- [Tribal Transportation Program \(TTP\) Brief](#)
- [Maritime Administration Overview Presentation](#)
- [Federal Motor Carrier Safety Administration Overview Presentation](#)
- [National Highway Traffic Safety Administration Safety Program Presentation](#)
- [FAA Drone](#)

Work Groups (from Website)

- Self-Governance Administration Workgroup
 - Administrative Summary Meeting 2 - Final approved
 - Administrative Summary Meeting 3 - DRAFT
 - Administrative Summary Meeting 5 - DRAFT
- Operations Workgroup
 - Operations Summary Meeting 2
 - Operations Summary Meeting 3
 - Operations Summary Meeting 4
- Operations Summary Meeting 5

Status UPDATE/ISSUES

- No meetings in January
- No meetings in February
- No meetings in March
- No meetings in April (AS OF TODAY)
- Potentially no meetings until July
- Reasons ??
 - Transition of Administration, Department (DOT), etc.
 - Budgets?
 - Hold ON TRAVEL & spending
- **Still in Ponder: Which FHWA Programs are/or will be included in the Self Governance??**

Other Important Activities

- ✓ Letters of funding concern to DOT from Self Governance Tribal Consortium
- ✓ Letters of concern to Congressional representatives of delays and non funding for Neg-Reg Committee.
- ✓ Letter to Secretary Chau to Appoint a Deputy Assistant Secretary for Tribal Government Affairs, in the Office of the Secretary (Feb 27, 2017)
 - ✓ W. Kirk Bell Response April 6, 2017 (it will be addressed)
- ✓ Delayed progress, now basically 4 months behind, the plan was to complete Rules before August 2017.
DEVELOP new Plan of Action

Q & A

- Questions?/ Discussions
 - Recommend that Committee remain in effect until after publishing of rules
 - Extension of time for completion of Proposed Neg-Rules
 - Inclusion of other Nodal programs into Self Governance
 - Deputy Assistant Sec at DOT. President Trump should appoint a person.
 - Response from Sec, Admin from our letters
 - **Other????????????????????????????????????**
- Answers

THANK YOU FOR YOUR TIME

Reference

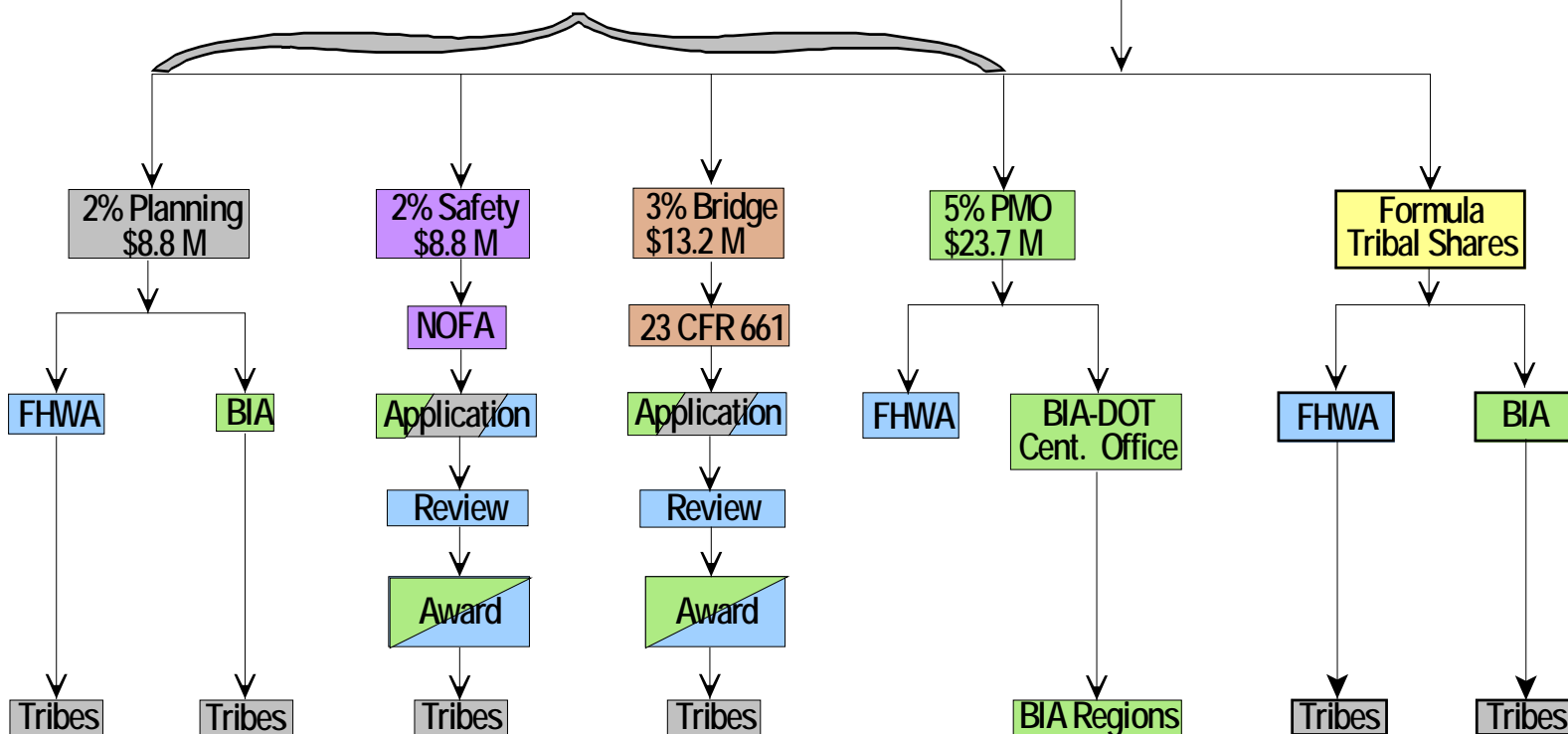
From BIA Presentation

\$465 M Authorized \longrightarrow Less Other Reductions & Lop Off \$25M = \$440

FAST Act

Tribal Transportation Program
Trans. Improvement Prog. (TTPTIP)

Set-Asides



Approximated FY16 funds