

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

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OFFICE OF INDIAN SERVICES

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DIVISION OF TRANSPORTATION

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TRIBAL CONSULTATION ON THE NOTICE OF  
PROPOSED RULEMAKING FOR 25 CFR PART 170

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THURSDAY  
FEBRUARY 12, 2015

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The Tribal Consultation met at the  
Crowne Plaza Airport, 17338 International  
Boulevard, Seattle, Washington, at 9:00 a.m.,  
Andy Caulum, Moderator, presiding.

PRESENT:

ANDY CAULUM, Moderator  
LEROY GISHI, Chief, Division of Transportation,  
Bureau of Indian Affairs  
ROBERT W. SPARROW, JR., Director, Tribal  
Transportation Program, Federal Highway  
Administration  
SHELDON KIPP, Division of Transportation, Office  
of Indian Services, Bureau of Indian Affairs  
VIVIAN PHILBIN, Office of Chief Counsel, Federal  
Highway Administration

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Adjourn

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:12 a.m.)

3 MR. CAULUM: Good morning, everyone.

4 I'd like to welcome you to our consultation on  
5 the notice of proposed rulemaking for 25 C.F.R.  
6 Part 170.

7 My name is Andy Caulum. I'm a lawyer  
8 with the Solicitor's Office in the Division of  
9 Indian Affairs with the U.S. Department of the  
10 Interior. I work out of Washington, D.C. And  
11 one of the hats I wear is to support the BIA  
12 Division of Transportation.

13 And I'm going to just make some  
14 opening remarks and during the consultation  
15 process here, you'll be hearing from me, Leroy  
16 Gishi, Bob Sparrow and Sheldon Kipp, who's not in  
17 the room, I don't think, right at this moment.

18 We just want to welcome you to the  
19 consultation meeting here, especially to any of  
20 our Lakewood Tribal Leadership who have made it  
21 out to our meeting here today.

22 We really appreciate you traveling

1 here and spending the time to learn about the  
2 proposed rule for Part 170 that governs the  
3 Tribal Transportation Program.

4 This is formal consultation. The  
5 Assistant Secretary of Indian Affairs approved  
6 six consultation sessions on the proposed rule.  
7 Since it is formal consultation, we have a court  
8 reporter here today. The proceedings are being  
9 recorded and then will be transcribed and, then,  
10 the transcript will be available on BIA's  
11 website.

12 I don't know that we've had the  
13 transcripts put up for the other meetings just  
14 yet, but they will all be eventually available on  
15 the website, so you can take a look and see what  
16 you said.

17 As such, one of the most important  
18 things it make sure that if you do rise to speak,  
19 that you make sure you let us know who you are  
20 and if you're representing a particular tribe or  
21 company or other entity, who that might be.

22 If you're here just in your personal

1 capacity, just let us know who you are. That was  
2 we can have an accurate record so that when we go  
3 back through, we can make sure we understand like  
4 what region we're from and then the particular  
5 tribe or company or what not.

6 Questions will be taken throughout the  
7 consultation. If you have question, just raise  
8 your hand. Mr. Kipp or one of us will bring a  
9 microphone over to you and just make sure you  
10 wait until he arrives so we can make sure your  
11 comments are properly recorded.

12 They'll be handouts that you got when  
13 you came in. The handout consists of a printout  
14 of the actual Federal registered notice including  
15 the proposed rule, as well as the entire  
16 PowerPoint presentation that you'll see here  
17 today. That's all in your handouts that you  
18 received when you came in.

19 Also, a note on that, too, if you  
20 could please make sure that if you have not yet,  
21 please sign in. We use that not for purposes of  
22 like taking attendance. It really helps the

1 court reporter after the meeting if they have any  
2 questions about, you know, if they say your name  
3 didn't come out legibly in the recording, then  
4 they can go back and take a look at the sign in  
5 sheet and hopefully match that up properly.

6 Meeting expectations, we have an  
7 agenda that was published in the Federal  
8 Register. We're going to get through that entire  
9 agenda today. This is the last of our six  
10 consultations.

11 We started out in Sacramento, then  
12 went to Phoenix, Arizona. Next we went to  
13 Minneapolis, Minnesota, then down to Oklahoma  
14 City. We were in Anchorage this last Tuesday and  
15 we happily flew from Anchorage down here.

16 It was about five degrees in Anchorage  
17 most of the time we were there, so we'll  
18 definitely take 50 degrees here in Seattle,  
19 albeit a little gloomy, which is Seattle's  
20 apparent reputation for being cloudy much of the  
21 time. But 50 degrees is much enjoyable than near  
22 zero.

1           That agenda is one that we cannot  
2           change. We had a request at the meeting in  
3           Anchorage to change to agenda. And since it is  
4           formal consultation, we had to follow the same  
5           agenda at each meeting and make sure that we get  
6           the information that's on that agenda discussed  
7           and out to all the attendees at the consultation.

8           We'd like to take this opportunity to  
9           start with introductions. If you could just say  
10          who you are and if you're representing a  
11          particular tribe or, like I said earlier, an  
12          entity, let us know who that is, or if you're  
13          just here by yourself, that's fine too.

14          MR. KIPP: Good morning. My name is  
15          Sheldon Kipp, Supervisory Highway Engineer,  
16          Bureau of Indian Affairs, Division of  
17          Transportation at the Central Office in  
18          Albuquerque, New Mexico.

19          MR. ROLLAND: Good morning. I'm  
20          Richard Rolland. Last week I introduced myself  
21          as an unaffiliated troublemaker and that's pretty  
22          much it. Operating under Rolland Associates, I

1 work with tribes in the northwest on community  
2 development and transportation issues.

3 MR. GALLOWAY: Rick Galloway and I  
4 relate back to the Klamath tribes, including  
5 trying to provide a role in the council of them,  
6 trying to get the council involved. Thank you  
7 for coming.

8 MR. SMITH: Kasey Smith, I'm the  
9 Federal Transportation Director for the Organized  
10 Village of Kasaan in southeast Alaska.

11 MR. DOLLOFF: I'm Stan Dolloff. I'm  
12 the Transportation Director with the Coops  
13 Bachman Association in southeast Alaska.

14 MS. SHEPARD: Keri Shepard with the  
15 NookSack Tribe.

16 MS. HAYOO: Dezerae Hayoo, Muckleshoot  
17 Tribe.

18 MR. STROBEL: Andrew Strobel with  
19 Puyallup Tribe of Indians.

20 MS. POWELL: My name is Megan Powell  
21 and I am here representing the American Land and  
22 Title Association and I'm also sort of

1 representing the Washington Land and Title  
2 Association as the chair of their Native American  
3 Lands Committee.

4 MR. BROWN: I'm Randy Brown,  
5 Transportation Planning Technician for the Nez  
6 Perce Tribe.

7 MS. GILLELAND: Coey Gilleland,  
8 Transportation Director, Stillaguamish Tribe.

9 MR. JENSEN: Matt Jensen with the  
10 Lummi Nation, Transportation Planner, Transit  
11 Manager.

12 MR. STEVENS: Casey Stevens,  
13 Stillaguamish Tribe, Tribal Planner.

14 MR. ANDERSON: Frank Anderson, Public  
15 Works Director, Confederated Tribes of the  
16 Umatilla Indian Reservation.

17 MR. TOLLIVER: Dan Tolliver, Community  
18 Development Engineer of the Skagit Indian Tribe.

19 MR. MCKENNA: Good morning. Shannon  
20 McKenna of the Southwest Regional Office and the  
21 Supervisory Highway Engineer.

22 MR. PINKHAM: Al Pinkham, Yakama

1 Nation.

2 MR. SCHUMANN: Terry Schumann, Federal  
3 Highway Administration and Tribal Conservation  
4 Program.

5 MR. LARSEN: Adam Larsen with the  
6 Federal Highways Tribal Transportation Program.

7 MR. MERCIER: Good morning, John  
8 Mercier, public works from the Grand Ronde Tribe  
9 down in Grand Ronde, Oregon.

10 MS. MERMEJO: Good morning. My name  
11 is Christi Mermejo. I'm the Tribal Planner of  
12 Ohkay Owingeh in New Mexico.

13 MR. MANION: Sean Manion, Ketchikan  
14 Indian Community.

15 MR. AZURE: Joel Azure, Ketchikan  
16 Indian Community.

17 MR. RAMOS: Bill Ramos, The Common  
18 Good Consulting.

19 MR. CAPRI: Danny Capri, Federal  
20 Highways.

21 MR. GLEASON: Karl Gleason, Federal  
22 Highway Driver Conservation Program.

1 MR. WOLF: Troy Wolf, Red Plains  
2 Professional.

3 MR. ROBIDEAU: Good morning, Chris  
4 Robideau from Red Plains Professional.

5 MR. SPANN: Anthony Spann with Tribal  
6 Transportation Program, Federal Highway  
7 Administration.

8 MS. CARRION: Good morning, everyone.  
9 I'm Rosina Carrion. I work for the  
10 transportation office in Albuquerque.

11 MS. MANN: Good morning. I'm Minnie  
12 Mann, Management Analyst with transportation in  
13 Albuquerque.

14 MS. THOMPSON: Michelle Thompson, the  
15 Contract Transportation Planner.

16 MR. GISHI: Leroy Gishi with the  
17 Bureau of Indian Affairs in Washington, D.C.,  
18 transportation.

19 MR. SPARROW: Good morning. I'm Bob  
20 Sparrow. I'm the Director of the Tribal  
21 Transportation Program for Federal Highway in  
22 Washington, D.C.

1 MS. PHILBIN: Good morning, everyone,  
2 Vivian Philbin, Legal Counsel, Federal Lands,  
3 Federal Highway Administration out of Colorado.

4 MR. CAULUM: Okay. At this point I'm  
5 going to turn it over to Bob Sparrow, who's going  
6 to take us through our agenda and a couple other  
7 items. Then I'll be back to address the  
8 preamble.

9 MR. SPARROW: If you all notice this  
10 is blue shirt Thursday.

11 MR. CAULUM: We don't consult on  
12 fashion before.

13 MR. SPARROW: Yes, we don't.

14 MR. GISHI: Are you wearing blue or --

15 MR. SPARROW: Actually, at the very  
16 first consultation, Leroy and I had the same  
17 shirt, almost the same tie and everything else  
18 on.

19 MR. GISHI: Spending way too much time  
20 together.

21 MR. SPARROW: It's way too much time.  
22 Anyways, good morning, again. My name is Bob

1 Sparrow. I'm with Federal Highway in Washington,  
2 D.C. I'm going to just touch base on the next  
3 few slides, we're really going to have a tag team  
4 effort today. All four of us, I guess, will be  
5 presenting various sections of the NPRM.

6 As Andy indicated earlier, we will go  
7 through the agenda, the timeframes that were put  
8 into the NPRM, we historically have been  
9 finishing early.

10 The only one that came even close to  
11 4 o'clock was the one that we did on Tuesday up  
12 in Alaska because we had an awful lot of  
13 questions on a couple of the subparts. But the  
14 other's we've been finishing early.

15 In the morning, we tend to be a little  
16 bit behind, but then we've got more than enough  
17 ample time in the afternoon to catch up. So  
18 don't worry about the agenda. If it appears that  
19 we're falling behind, we'll make sure that we're  
20 finished in plenty of time for you to get out.

21 At the end, after we close the formal  
22 consultation, they'll be a very short

1 presentation on the Tribal Transportation Program  
2 now, what's going with the distribution of  
3 funding, the safety funds, reauthorization.

4 We've got an update on an acting  
5 associate administrator for Federal highway and a  
6 few other things. So we'll do that after the  
7 official consultation is closed out.

8 So why are we here? Those of you that  
9 have been in the program for a while will know  
10 that when T21 was passed in 1998, it directed  
11 Secretary of the Interior to enter into  
12 negotiated rulemaking with the tribes and  
13 development program regulations and establish a  
14 funding formula for the program, what was then  
15 called the Indian Reservation Roads program.

16 And as a result 25 C.F.R. 170 was  
17 developed through that negotiated rulemaking  
18 process and it was published in July of 2004.  
19 And it became effective in fiscal year 2005.

20 One of the things in addition to the  
21 negotiated rulemaking and the funding formula was  
22 it established a bridge program as a set aside

1 off the main program.

2 Back then there were \$13 million a  
3 year set aside off the primary IRR program. And  
4 it was devoted strictly for replacement and  
5 rehabilitation of bridges.

6 So the rule was published in 2004,  
7 became effective in 2005 and then, Congress  
8 passed SAFETEA-LU in 2005 as the next highway  
9 bill. And it made some pretty substantial  
10 changes to the Indian Reservation Roads program.

11 First of all, it provided an  
12 opportunity for tribes who were deemed eligible  
13 and met certain criteria to enter into funding  
14 agreements directly with the Federal Highway  
15 Administration.

16 It allowed the IRR funds, at that  
17 time, to be used for maintenance. They could not  
18 be used for maintenance in the past. And the  
19 section in the final rule that talked about  
20 maintenance, which was Subpart G, really  
21 pertained only to the BIA road maintenance  
22 program because back then you couldn't use IRR

1 funds for maintenance.

2 So SAFETEA-LU made that change and  
3 allowed 25 percent of each tribe's share to be  
4 used for maintenance purposes.

5 It identified the amounts of program  
6 management and oversight funds that the BIA and  
7 Federal Highway could do to carry out the  
8 stewardship and oversight of the program.

9 It allowed tribes to approve their own  
10 PS&Es, their plans, specs and estimates, after  
11 certain conditions were made. It identified the  
12 National Tribal Transportation Facility  
13 Inventory.

14 It brought the bridge program which  
15 was a set aside under T21, it made it its own  
16 stand-alone program. So it broke away from the  
17 program and funded it at \$14 million a year.

18 And it was authorized to operate  
19 through 2009, so from 2005 to 2009. But at the  
20 time we didn't know it was going to be extended  
21 nine more times through 2012.

22 So once SAFETEA-LU was passed BIA and

1 Federal Highway moved ahead and took 25 C.F.R.  
2 170 and updated that to reflect the change as it  
3 came about as a result of the passage of SAFETEA-  
4 LU.

5 But the effort, unfortunately, was  
6 stopped because as we got ready to put an NPRM  
7 out there, the existing Administration at that  
8 time because we had a Presidential election  
9 coming up said no NPRMs, no major regulations  
10 until after the elections.

11 So the operations ceased at that point  
12 until after the elections took place. November  
13 2008, the elections take place, the Obama  
14 Administration is put in the White House, new  
15 secretaries of interior, transportation are in  
16 place and the staffing is finally built back up.

17 And now that that Administration is in  
18 place, we're looking at it and we're saying,  
19 well, SAFETEA-LU's going to expire in September,  
20 because now it's like April.

21 So why go ahead and, you know, we're  
22 just going to have to change it and go through

1 this whole thing again, so let's just wait until  
2 we see what happens with the end of SAFETEA-LU.

3 And like I said previously, we didn't  
4 know that it was going to be extended many times  
5 and go out to 2012. So we just kept waiting and  
6 waiting and waiting.

7 Finally, in 2012 Congress passed the  
8 next highway bill, a two-year bill moving ahead  
9 for progress in the 21st century, MAP-21, and it  
10 made some additional changes to the program.

11 First of all, it changed the name of  
12 the program. It was no longer IRR or Indian  
13 Reservation Roads, it was the Tribal  
14 Transportation Program.

15 And I've said at every one of these  
16 consultations, the four of us or five of us with  
17 Sheldon, we have a little bucket, and every time  
18 we say IRR because we've been with the program  
19 for so long, we still say IRR instead of TTP. It  
20 just doesn't roll off the tongue the same way. We  
21 have to put a dollar in the can. And it's got  
22 probably about \$20 in it so far from the previous

1 consultations.

2 But one of the other things it did was  
3 it replaced that existing funding formula that  
4 was developed through negotiated rulemaking with  
5 a statutory formula.

6 Congress tells us now, in MAP-21,  
7 literally how every penny of the Tribal  
8 Transportation Program funding is to be spent.  
9 It increased the amount of funding that a tribe  
10 can use for maintenance activities.

11 One of the things that under SAFETEA-  
12 LU, it said it could use 25 percent of its share.  
13 Well, now that was changed to go up to a \$500,000  
14 limit. So it provided more options for the tribe  
15 that if maintenance was their most current or  
16 most critical need, they could use more of their  
17 tribal share funds, in many cases, for  
18 maintenance purposes.

19 It further clarified the National  
20 Tribal Transportation Facility Inventory. It  
21 removed the High Priority Projects Program, or  
22 set aside, from IRR and reestablished it as a

1 stand-alone program not funded with the highway  
2 trust fund, funded through the general fund.

3 This lists part of -- this came out of  
4 this high priority projects program, came on to  
5 negotiated rulemaking with a critical part of the  
6 final rule that was established. And Congress  
7 removed that, kept it in law, but no longer had  
8 it as part of the Tribal Transportation Program.

9 And because it's funded through  
10 general funds, it requires additional  
11 Congressional action. Just because we get a full  
12 year appropriations bill that funds the Tribal  
13 Transportation Program for the full year, the HPP  
14 is not funded.

15 It requires a separate Congressional  
16 action to fund the program. And that has not  
17 taken place during the time since 2012 and MAP-  
18 21.

19 It established a new set aside for  
20 tribal safety projects and activities. We had a  
21 big push in safety prior, you know, over the last  
22 seven, eight, nine years. Well, now there's an

1 actual set aside for the tribal safety projects  
2 and activities.

3 And it established authority for the  
4 tribes to be able to receive their funding from  
5 the state, the Federal aid funds that are  
6 provided to the state, it provides them authority  
7 for those funds to be provided to the tribes, all  
8 right. So, and I think out here in Washington,  
9 that's been put into place a number of times  
10 already.

11 So when MAP-21 was passed, BIA and  
12 Federal Highway got together again and updated 25  
13 C.F.R. 170 again. We kind of started where we  
14 left off with SAFETEA-LU and made the changes to  
15 reflect the current laws and the operational  
16 processes.

17 So although all parts of the existing  
18 25 C.F.R. 170 were reviewed, only those sections  
19 that are required to be changed as a result of  
20 the statute by law, this is how things operate  
21 now.

22 Updated operations, if you think about

1 the Internet and how we operated in 2002 and 2003  
2 compared to how things operate now, we made  
3 changes to reflect those operational changes to  
4 get it up-to-date.

5 Where other policy changes or  
6 clarifications that were developed by the Program  
7 Coordinating Committee and approved by them  
8 through consensus and approved by the Secretary,  
9 were the only things that were really modified in  
10 this regulation.

11 We developed a draft. We worked  
12 through the Coordinating Committee to get  
13 additional comments from them and we worked the  
14 draft through them. And then finally a draft  
15 NPRM was published in April of 2013 and three  
16 consultation sessions were held, one in  
17 Anchorage, one in Phoenix and one in Minneapolis.

18 And again, this was only for the  
19 draft. So we received comments on the draft at  
20 that point. Changes were made to the draft where  
21 we could make the changes and it was agreed to  
22 make the changes.

1           And the NPRM we're discussing today  
2 was finally published on December 19th in the  
3 Federal Register. The comments are posted or  
4 will be posted on the BIA website along with  
5 additional information.

6           So if you go to the BIA website or the  
7 Federal Highway website who will direct you to  
8 the BIA website, that's where you can gather some  
9 additional information if needed regarding this  
10 NPRM. And it's time to tag team back to the  
11 other blue shirt.

12           MR. KIPP: Go ahead.

13           MR. GALLOWAY: All right. Oh, Rick  
14 Galloway. I wanted to make a comment about the  
15 Program Coordinating Committee in our engagement  
16 in it.

17           What we say in 2013 was really quite  
18 a bit different than what this is. So you might  
19 be hearing me say things that I hadn't seen  
20 before and, you know, just don't be surprised.

21           So it did change quite a bit, I don't  
22 know how or why. But anyway, the Coordinating

1 Committee's engagement in it really kind of  
2 stopped with that involvement that they were  
3 giving. We did get a review every once in  
4 awhile, but that was that. Thank you.

5 MR. CAULUM: Okay. This is Andy  
6 Caulum. I'm back. We're going to go through the  
7 few, I guess it's somewhat housekeeping, but it's  
8 also to make sure that people here and people  
9 that will read the transcript are aware of some  
10 of the minor differences that occurred between  
11 when we sent the NPRM over to the Federal  
12 Register.

13 Which it was finally signed off by the  
14 Assistant Secretary himself after being reviewed  
15 by the Solicitor's Officer, who we call the  
16 Office of the Executive Secretariat, which in  
17 that office is the person that is the final stop  
18 for all regulations as well. So not just within  
19 Indian Affairs, but for the entire department.

20 So any regulation the department is  
21 going to issue as a proposed rule or a final rule  
22 has to go through and be approved in an Executive

1 Secretariat. And then, finally, the Assistant  
2 Secretary signs off on it, then it's transmitted  
3 to the Federal Register.

4 Between the time at the Solicitor's  
5 Office, the Executive Secretariat and the  
6 Assistant Secretary signed off on the NPRM and it  
7 was posted on December 12, 2014 on BIA's website.

8 The Federal Register, once they got  
9 it, made a few changes. They did not consult us,  
10 but this is in part what the Federal Register's  
11 job is, is they, you know, it's they're Federal  
12 Register, right.

13 They're in charge of that, so they did  
14 make some editing or format changes here and  
15 there, which, obviously, that's part of what they  
16 do there.

17 However, they did modify two sections,  
18 Subpart C at 170.202(d), the statutory reference  
19 to the date of the MAP-21 enactment in effect as  
20 of July 5, 2012 was removed.

21 That's a very important phrase because  
22 that is the snapshot of the National Tribal

1 Transportation Facility Inventory, NTTFI, that is  
2 used as one of the fundamental basis for the  
3 tribal shares formula. So that's a problem.

4 And we are going to address that as we  
5 go forward. The reference does need to stay as  
6 it further clarifies, they say here, the MAP-21  
7 fund formula used in determining tribal shares.

8 In Subpart C at 170.226(d) the word  
9 proposal was deleted from the final printed  
10 proposed rule. In this case proposed means new  
11 and not previously approved, so that will have to  
12 go back in as well.

13 So why are we here? What's the  
14 purpose of today's session? We're going to  
15 present the proposed rule and the proposed  
16 changes to 25 C.F.R. Part 170 and listen to and  
17 record your comments and concerns.

18 In respect to the work that took place  
19 on the development of Part 170 more than ten  
20 years ago, only the following are included in  
21 this proposed rule.

22 We changed the proposed rule to

1 reflect statutory changes. As Bob mentioned  
2 earlier, it's now known as the Tribal  
3 Transportation Program. So fundamentally, that  
4 had to be changed throughout the rule to begin  
5 with.

6 There are updated operational  
7 procedures, and that is really a reflection of  
8 how dramatically the way that tribes are now  
9 receiving the Tribal Transportation Program or  
10 having it delivered to them by the Government.

11 When the current rule was published in  
12 2004 no tribe at that point could contract  
13 directly with Federal Highway. Now, there's  
14 nearly 130 tribes that contract directly with  
15 Federal Highway.

16 And even as late as 2010, there was no  
17 such thing as a BIA program agreement which is  
18 now a Federal Highway's agreement. Many of you  
19 may know it as the Government to Government  
20 agreement.

21 There are now 150 tribes that contract  
22 for the Tribal Transportation Program under a BIA

1 program review. So just even in the last four  
2 years alone, and definitely going back to the  
3 last nine, you see a dramatic change in the way  
4 the program is delivered to tribes.

5 And in many ways that's become, you  
6 know, a tremendous advantage for those tribes in  
7 which to do with your program agreements.

8 However, there's still a good number  
9 of tribes, about half now, give or take, that  
10 continue to have the program delivered either  
11 through self-governance, we call it a self-  
12 governance addendum to the tribe self-governance  
13 contact, through self-determination contracting,  
14 the traditional Title 1 self-determination  
15 contracting or there's still a number of tribes  
16 that receive the program through direct service,  
17 where BIA will consult with tribal leaders and  
18 then based on the amount of tribal share  
19 available, BIA will actually carry out the work  
20 on the tribe lands.

21 So one of the other things that got  
22 changed is the policies of the Indian Reservation

1 Roads Program or now the Tribal Transportation  
2 Program according to the committee, developed and  
3 passed by a consensus, they were also only  
4 improved by the Secretary.

5 There's certain aspects of the rule  
6 that reflect the work that had been done by the  
7 Tribal Transportation Program Coordinating  
8 Committee, that one of their main roles is to  
9 recommend changes in the program to the Assistant  
10 Secretary of Indian Affairs and the Associate  
11 Administrator for Federal Lands.

12 And in using their delegated  
13 authority, they can accept or reject those  
14 recommendations. The proposed rule reflects some  
15 of those changes in the way the program is  
16 administered that the Coordinating Committee  
17 worked that whole years.

18 Finally, OMB has changed some of the  
19 rules in the Federal Register. Office of  
20 Management and Budget is within what's called the  
21 Executive Office of the President of the United  
22 States.

1           So they're actually geographically  
2 closer to the White House because they're right  
3 across the street. Interior's about three blocks  
4 away.

5           So even though the Secretary of the  
6 Interior obviously is in the cabinet, OMB is  
7 right there. So we both work for the President  
8 of the United States, the trick is though that  
9 OMB controls the Federal Register.

10           And so over the years, since 2004,  
11 there have been some changes regarding what can  
12 be included in a regulation and what the Federal  
13 Register will allow to be published as part of  
14 regulation.

15           So one of the biggest changes is that  
16 the for information only material that we  
17 included in the current 25 C.F.R. 170 is not in  
18 the NPRM. That material will also not be  
19 included in the updated 25 C.F.R. 170.

20           Use of appendices has been minimized  
21 and much of that information that was provided as  
22 for information only will likely not be available

1 on BIA and Federal Highway websites.

2 Now, since this is the same PowerPoint  
3 that we started with in Sacramento and that was  
4 our first consultation, we're now on our sixth,  
5 we've gotten a number of very good comments about  
6 taking out the reference information. And it is  
7 something that I think we will be going back to  
8 the Federal Register and trying to work with them  
9 on the outcome of it.

10 I cannot tell you what it's going to  
11 be, but, generally, the comments that we've  
12 received at the consultation sessions since  
13 Sacramento have revolved around the idea that the  
14 reference material was put in there through  
15 negotiated rulemaking.

16 It's something that the view is  
17 important for tribe transportation folks to be  
18 able to have sort of at their fingertips and as a  
19 result it should stay in.

20 I think the OMB's view is, generally,  
21 that that information is not directly required by  
22 the statute which is, and this is now, 23 U.S.C.

1 Section 202, that the Tribal Transportation  
2 Program is authorized under. While it's related  
3 to a work that tribal transportation folks knew,  
4 it's not directly required by the statute.

5 Also, some of that information can  
6 change. And, in fact, there's information that's  
7 currently in the reference section that my  
8 understanding is, is obsolete today and actually  
9 was obsolete maybe not too long after the current  
10 regulation was published.

11 So part of the view is that they don't  
12 want to have the public referring to  
13 documentation in a published rule that might be  
14 out of date.

15 Now, ironically, 25 C.F.R. 170 was out  
16 of date about a year after it was published  
17 because SAFETEA-LU, when it was enacted in 2005,  
18 automatically amended parts of the current rule.  
19 Because a regulation can never be in conflict  
20 with a statute, the statute always controls.

21 So whatever regulation says, if a  
22 statute comes in and says, you know, something

1 different than what the regulation permits, say  
2 it changes something that's allowed on a  
3 regulation that was allowed at the time the  
4 regulation was published and later on the statute  
5 changes it, whatever was in that regulation that  
6 was allowed is no longer allowed if the statute  
7 says it isn't. So statutes always control over  
8 regulation.

9 Preamble, preamble provides the  
10 background and overview of the history of Part  
11 170 since its publication in July of 2004,  
12 including, as Bob mentioned, the law has been  
13 passed that have affected the, what was formerly  
14 known as the IRR Program, now the Tribal  
15 Transportation Program.

16 Efforts that took place to clarify  
17 policies and procedures that were established,  
18 this is partially in reference to the work the  
19 Tribal Transportation Program Coordinating  
20 Committee did, consultation sessions, locations,  
21 schedules and agenda, an explanation of proposed  
22 revisions that are contained in each Subpart of

1 the NPRM, other informational procedural  
2 requirements of publishing the proposed rule.

3 In the preamble what is this NPRM in  
4 a broad overview? The NPRM revises and updates  
5 Part 170 to comply with regulation governing the  
6 program, reflect changes in the program delivery  
7 options that are available to tribal government.

8 Since I mentioned earlier, especially  
9 the advent of the program agreements that many  
10 tribes use today, make technical corrections to  
11 clarify program-related responsibilities and  
12 requirements for tribal governments, the BIA and  
13 the Federal Highway Administration, clarify  
14 requirements for proposed roads and access roads  
15 that tribes request to be added to or remain in  
16 the transportation facility inventory, formerly  
17 known as the IRR inventory.

18 And remove certain sections of the  
19 current rule that were previous included for  
20 informational purposes only while directing  
21 reader to BIA and Federal Highway websites where  
22 the most current information is going to be

1 available.

2 As to the preamble that you see in the  
3 NPRM, when the final rule is published, it's  
4 going to be a very different preamble. Some of  
5 you maybe who weren't involved in the  
6 transportation program in 2004, if you search on  
7 the Government Printing Office website or the  
8 Federal Register website you can find the actual  
9 publication of the current rule and there's a  
10 long preamble in there.

11 And that is where the Government is  
12 responsible for making a note of, say, the kinds  
13 of comments that were received. Like, say, we  
14 received a number of comments, for example, on  
15 this issue with reference material, we'd say, you  
16 know, the number of comments received about, you  
17 know, removing the reference material from the  
18 rule.

19 Then we'd have to respond and provide  
20 a reason, response for why we accepted the  
21 comment or rejected the comment or, in some  
22 cases, partially rejected, partially accepted it

1 and explain why that's the case.

2 So it's different than the preamble  
3 that you see in the proposal. It's going to be  
4 much longer. But it's also a helpful thing, I  
5 think, for transportation folks especially to  
6 understand, you know, the reasoning behind some  
7 of the changes or why some comments were rejected  
8 and other comments were accepted, et cetera.

9 So when it comes out, I encourage you.  
10 It's kind of dry reading, but it can be helpful  
11 to understanding what the final rule sure looks  
12 like.

13 As I mentioned, we've done  
14 consultation sessions in Sacramento, Phoenix,  
15 Minneapolis, Oklahoma City, Anchorage and this is  
16 our last one.

17 Comments on the proposed rule must be  
18 submitted by March 20th. You can submit them at  
19 consultation@BIA.gov. Please make sure you  
20 include this control number, that helps to make  
21 sure that it gets routed to the right place.

22 You can also mail them to Elizabeth

1 Appel. She leads the Office of Regulatory  
2 Affairs and Collaborative Action within the  
3 Assistant Secretary of Indian Affairs Office in  
4 Washington, D.C. Again, please make sure you  
5 include that control number 1076-AF19 in your  
6 submission.

7 You can go to the Internet at  
8 regulations.gov and the rule is listed under the  
9 Agency named Bureau of Indian Affairs. The  
10 docket number there is a little different BIA-  
11 2014-005 or you can hand deliver them to Ms.  
12 Appel at the Assistant Secretary's Office. Any  
13 questions? Okay. On to our next section.

14 MR. GISHI: Good morning, everybody.  
15 Can you hear me?

16 MR. GALLOWAY: Good morning.

17 MR. GISHI: Leroy Gishi, here with  
18 Division of Transportation, Bureau of Indian  
19 Affairs. Andy and Bob talked a little bit about  
20 background of the goal and notice of proposed  
21 rulemaking. What we're going to do now is --  
22 thank you.

1           We're going to start going through the  
2 actual body of the regulation. This is the  
3 regulation itself, section by section. Sometimes  
4 they're grouped into a number of sections that  
5 were referenced that either they've been replaced  
6 or reserved.

7           They may be changed. The changes,  
8 we'll identify what those changes are for the  
9 most part. In terms of those areas which there's  
10 no significant changes, we'll tell you why  
11 there's considered no significant changes.

12           But we'll go through the Subparts A  
13 through H the rest of the meeting. And when we  
14 first get started, this follows pretty much a  
15 very similar format of what was in the existing  
16 regulation.

17           We did do, early on when we got  
18 started, a side by side breakout of the  
19 comparison between the existing rule, the current  
20 rule, and this notice of proposed rulemaking.  
21 And we put that on a PDF file. It is located at  
22 the BIA website under BIA.gov under consultation.

1           It was just posted. We're hoping we  
2           could get it up when we were in Anchorage, but it  
3           posted yesterday, so it's up there. It's  
4           basically eight-and-a-half by 14, 150-some pages  
5           and, basically, it has both the regulations, so  
6           you can take a look at them.

7           And it's not based on content. It's  
8           basically based on the sections themselves. So  
9           170.226 and then what the 170.226 is just both  
10          laterally across and then in a column.

11          The idea is you can look at those to  
12          see what some of those changes are and if  
13          sometimes you see just a blank in the area of one  
14          columns because those are sections that were  
15          removed.

16          And it's important to note that when  
17          we go through this, we'll mention those areas  
18          where they removed and why they were removed in  
19          particular.

20          To start off with, 170.1, and the name  
21          of this subpart is policies, applicability and  
22          definitions. The big part of this whole process

1 here is the definitions themselves and how those  
2 were changed as a result of knowing SAFETEA-LU,  
3 but also MAP-21 and also some changes that we've  
4 encountered as we've gone through progressively  
5 looking at changes in the program over the past  
6 ten years.

7 One of the areas it doesn't add  
8 reference throughout the regulation where  
9 applicable, Department of Transportation because  
10 the Department of Transportation now, has taken  
11 on a new role since this rule was first published  
12 in 2004.

13 It has now partnered in the process in  
14 terms of implementation. It has always been a  
15 partner in terms of oversight and the program is  
16 generated and is managed through the Department  
17 of Transportation, Federal Highway  
18 Administration, the Office of Federal Lands.

19 But it references that in there for  
20 that purpose because in some cases there's  
21 actually some coordination that takes place  
22 between the tribes and Federal Highways that has

1 taken in case of DOT. And you'll notice some of  
2 those changes in the definition sections.

3 It also immediately starts adding  
4 terminology and you'll see that through. So when  
5 you see a lot of the areas in the regulation that  
6 says no significant changes, it's generally  
7 because these two changes have taken place.

8 It's including DOT into that language  
9 or it's referencing program agreements which  
10 these program agreements are the agreements that  
11 the Secretary of Transportation has with tribes  
12 and in direct contracts with tribes, and they're  
13 referred to as program agreements.

14 Other appropriate agreements are those  
15 other agreements which the Bureau of Indian  
16 Affairs enters into the tribes that are sometimes  
17 referred to as G2Gs or Tribal Transportation  
18 Program agreements.

19 And of course, preceding all of this  
20 is Public law 93-630, it's self-determination  
21 Title I and Title IV self-governance type of  
22 agreements also. So it does include those in

1 there. So you'll see those in a lot of the  
2 tables and changes in reference to those parts of  
3 the section.

4 170.2, one of the things that Rick had  
5 mentioned that there was some changes that were  
6 made when this came out of the Coordinating  
7 Committee. When this came out of the negotiated  
8 rulemaking back in 2004, one of the areas that we  
9 had that was a big part of this regulation was  
10 reference to the BIA Road Maintenance Program.

11 And most of you know, who are familiar  
12 with the BIA Road Maintenance Program, it's a  
13 program that is appropriated on an annual basis  
14 as part of the Department of the Interior annual  
15 appropriations and as such, the funds all come  
16 through that process.

17 And the unique thing is is although  
18 the programs are operated at the field level by  
19 the agencies and the bureau and, in most cases,  
20 operated by the tribe, it usually comes into two  
21 contracts, one self-determination contract for  
22 road maintenance, the other one some sort of

1 agreement that involves the use the highway trust  
2 funds.

3 And so, because those are different  
4 funds, the Administration asked us to remove  
5 those. They were included in the 2004  
6 regulations and we've been asked to remove them  
7 here because, of course, it is not funded through  
8 the TTP program.

9 And that's a preference that they've  
10 identified whether it just started with this or  
11 it's a continuous process that they've developed  
12 in all the rulemaking procedures that they've had  
13 since ten years ago. I don't know one less  
14 that's there.

15 The other area is where we had  
16 information in there that the committee felt was  
17 helpful in helping practitioners working in the  
18 field kind of understand how the programs inter-  
19 relate with other programs that DOT had or that  
20 the states had.

21 And that information was provided  
22 there and it was always referenced that this is

1 for information only. Well, we were told, again,  
2 we were asked to remove that. And Andy covered a  
3 little bit about the reasons for that.

4 We were asked to remove those  
5 references also. You'll see later on, we were  
6 able to salvage a few where we were able to  
7 convince them that there's a direct link  
8 specifically to funding. But those are in there.  
9 Yes, we've got a question there.

10 MR. GALLOWAY: Rick Galloway. As it  
11 sits now, since they've been removed and they  
12 really are a functioning part of the operating of  
13 the tribal DOTs, are they going to be somewhere  
14 else available to us or, you know, or are they  
15 just gone?

16 MR. GISHI: They will be available and  
17 when we get to those sections we'll talk about  
18 those because there's actually, in some cases, we  
19 refer to a website location where we can find  
20 those.

21 Some of these, we're going to, because  
22 we've added a number of comments in the past

1 previous five meetings, we've had some comments  
2 on the concern of that. But we're going to take  
3 a close look at that again as Andy indicated.

4 We don't know where we'll come out,  
5 but certainly we want to be able to look at those  
6 again. Because in reality they are helpful and  
7 people could use them and we want to be as  
8 helpful as we can, but obviously, final say comes  
9 from those folks that make those decisions.

10 We also update contact information.  
11 Of course, that's a big part of it. Things  
12 change, people move from one building to another,  
13 one side of town to the other side of town. And  
14 also make suggestions on the burden estimates and  
15 any aspects of information collection.

16 A separate part of this, Andy had  
17 indicated we've got a comment period on this  
18 regulation that closes on March the 20th. Prior  
19 to that, if you look at in the preamble under  
20 information collection and bid work reduction,  
21 there are references to certain functions and/or  
22 activities that are required as part of the

1 program.

2 There are some that are voluntary.

3 And those that are required have been categorized  
4 into a table that shows an estimate of how much  
5 it would take for the public to be able to  
6 perform that work. And sometimes there's even a  
7 cost associated with it.

8 This is part of every regulation  
9 that's been out there, regardless if it was  
10 transportation or not, requires that the agency  
11 address paperwork reduction and information  
12 collection.

13 So the public knows what is the burden  
14 on the public in order to gather this  
15 information. And they put a section in there and  
16 they said this is what we're anticipating for the  
17 public to be able to perform this work.

18 What you need to do is if you look at  
19 it, read that part in the preamble, if you have  
20 comments there's a specific place where you  
21 comment to, an address, email, whatever, but the  
22 comment period closes before the March 20th.

1           It's got a whole separate closing date  
2           on it, so be aware of that and then, of course,  
3           they're much more strict in their time on in  
4           terms of what they do. They make that decision.

5           The Secretary can extend the comment  
6           period on regulations that it has, but that part  
7           of it handled through that office, that it is  
8           responsible for that. So be aware of that as you  
9           go through.

10          The definitions, when you get through  
11          there was a number of definitions that were  
12          added. So when we're talking about different  
13          types of definitions, there's some that were,  
14          excuse me, that were added, there was some that  
15          were modified, there's some that were eliminated  
16          and, of course, there were some that just cross-  
17          walked, and the cross-walk requires some minor  
18          changes to it.

19          And as you begin to see some of these  
20          here that are new, one that pops out is access  
21          road, which is a big discussion that we had in  
22          our consultation session that we had back in, I

1 believe, 2012.

2 We had some up there, yes, it was  
3 right before the MAP-21 was passed. We went out  
4 and we talked about fall updates and question  
5 ten. We talked about proposed roads and access  
6 roads and kind of our proposal to make that fix  
7 as part of the current regulations at the time.

8 And then, of course, on the last day  
9 of our meeting, Congress passed MAP-21 and the  
10 discussion regarding the use of Indian lands and  
11 the formula was no longer applicable. And this  
12 was the information that was brought forward  
13 because access road is still a part of the  
14 planning process.

15 It's a part of the process in making  
16 sure that we identify the National Tribal  
17 Transportation Facility Inventory and it applies  
18 to eligibility in terms of where we can spend  
19 these dollars in terms of the taxes of facilities  
20 that are out there. So it's there for that  
21 reason.

22 And as you look on down through, some

1 of the others we'll be talking about in our  
2 remaining presentation is fiscal and financial  
3 constraint.

4 As you get through, you begin to see  
5 there's references to TTP again as opposed to  
6 IRR. These are all new ones that are part of the  
7 process because of whole names. And not only the  
8 name, but the whole process of the formula has  
9 changed from that in the existing regs to this  
10 based on the statute.

11 They've modified the number of  
12 definitions also, that were previously part of  
13 it. And this is in relation to, again, including  
14 references to the type of agreements like under  
15 construction contracts, what are construction  
16 contracts. It now includes programmatic  
17 agreements as well as other appropriate  
18 agreements.

19 Proposed rule, there's a whole section  
20 on that. Previously, there was basically, I  
21 think, one question and answer. Now, there's a  
22 number of questions and answers regarding how to

1 work with proposed rules, how to get them into  
2 the inventory and how they are to be considered  
3 and used in terms of being made eligible for the  
4 use of funds.

5 Two definitions were removed  
6 completely. The first one was IRR Program  
7 construction funds. Prior to this that's what we  
8 referred to our dollars was construction.

9 We know that there's a lot of other  
10 funds that don't necessarily or aren't  
11 necessarily considered construction when you  
12 start talking about more planning, when we're  
13 talking about transit, when we're talking about  
14 road maintenance, eligibility, which was not an  
15 eligible activity prior to these regs when they  
16 first were approved.

17 So those changed. We've taken that  
18 out. So now, it's specifically talking about  
19 each activity in each of the sections. So road  
20 maintenance is an eligible activity, it's in the  
21 road maintenance section. Transit is an  
22 eligible activity, it's in the transit section.

1           So breaking this out into those  
2 various programs that are eligible and not really  
3 talking about it from a standpoint of it's just  
4 construction funds and we didn't want to confuse  
5 people with that.

6           The other one is Office of Self-  
7 Governance. Office of Self-Governance is within  
8 the department of the Office of the Assistant  
9 Secretary of Indian Affairs. It is part of the  
10 Department of Interior.

11           And so when it references Department  
12 of Interior, it's also referring to the Office of  
13 Self-Governance where applicable. And so, we  
14 wanted to make sure that that was taken out of  
15 there also.

16           And then just to cross-walk a few  
17 definitions that kind of relate to one another,  
18 what it used to be called and what its name has  
19 changed and what it's function is now.

20           And in similar terms, one that sticks  
21 out is the IRR inventory that we used to refer to  
22 it, now it's become the NTTFI or the National

1 Tribal Transportation Facility Inventory.

2 So those definitions you'll see in  
3 there and if you go to the side by side, you'll  
4 see all of them or you'll see, like I said, some  
5 blank areas of the columns because those are the  
6 usual locations where those definitions have been  
7 removed completely or changed in terms of the one  
8 piece or haven't.

9 Any questions on Subpart A that we're  
10 going through? Again, it basically establishes  
11 the policies so you can associate it with the  
12 program definitions. Yes.

13 MR. GALLOWAY: This is Rick Galloway  
14 again. I wanted to emphasize the date on the  
15 burden information.

16 MR. GISHI: February 17th.

17 MR. GALLOWAY: Okay. Today's the  
18 12th?

19 MR. GISHI: Yes.

20 MR. GALLOWAY: You've got five days.

21 MR. GISHI: Right. Thank you.

22 MR. GALLOWAY: Where do you think the

1 opportunity of getting that extended? It sounded  
2 like there wasn't a great effort?

3 MR. GISHI: There's a reference and a  
4 person's name on there and you would have to get  
5 a hold of them to get that --

6 MR. GALLOWAY: Thank you.

7 MR. GISHI: And we'll also mention it  
8 to them also. Thank you. If there aren't other  
9 questions, Subpart B.

10 Subpart B is a section that talks  
11 about the program policy whereas the beginning  
12 talks more about definitions and the general  
13 policy of the Secretary of Transportation of  
14 Indian Affairs of the Interior and Indian Affairs  
15 on how to deal with how these regs apply to the  
16 applications of the interaction with tribes and  
17 the program.

18 Subpart B talks about TTP policy and  
19 eligibility. And basically two intersections  
20 which are headed, first and foremost, talking  
21 about consultation, collaboration and  
22 coordination.

1           So 171.01, basically in there the  
2     developing plans of projects for the safety  
3     funding were identified. Those items and this  
4     activity covered under the consultation,  
5     coordination policy simply because when MAP-21  
6     was passed, that's the one program that became a  
7     specific set aside.

8           And as a result of that it is tracked  
9     separately, it is monitored and, of course,  
10    there's a notice of funding availability notice  
11    that comes out.

12           So it is tracked separately and  
13    there's a whole process that's involved in how  
14    the secretaries will work with tribes in terms of  
15    consultation and coordination. And so from that  
16    standpoint that was added in that part to make  
17    sure that it was included in the process.

18           101 is combined as part of 102 from  
19    the previous regs. 103, the first 103 should be  
20    actually 102. If you look at the table of  
21    contents, it does reference this as 102. But  
22    when you get into the body of the regulation it

1 says 103 twice, 103 and then 103 again.

2 The first one is actually 102, the  
3 second one is 103. So just to if you're looking  
4 at that, to make sure there's no confusion of  
5 that.

6 The second one or it's actually 103  
7 that should be 103 verifies that consultation is  
8 required before obligating any TTP funds for  
9 direct service tribes.

10 This is consistent with the process  
11 that getting tribes involved in the process of  
12 making sure that there's some kind of  
13 communication and some kind of discussion between  
14 the Bureau and the tribes when the tribe chooses  
15 to go to a direct service type of arrangement.

16 And this here will be performed in  
17 work associated with the priority list along with  
18 the plan or whatever the tribal government's  
19 looking for. So that has been added in there as  
20 part of the 103.

21 104, no significant changes in 104.  
22 105 is reworded for clarification purposes,

1 again, state governments consulting with tribes.  
2 106, 107, 108 are no significant changes there in  
3 talking about the how to in consultation in terms  
4 of planning, organizations and local governments  
5 working with tribes.

6 109, this one was I wanted to make  
7 sure I bring it to your attention. This one is  
8 changed to reflect that state and local  
9 government officials shall work with tribes, has  
10 been changed to will work with tribes. And we  
11 had a lot of discussion on that in the previous  
12 locations also. Yes?

13 MR. BROWN: Randy Brown, the Nez Perce  
14 Tribe, transportation planning technician. Back  
15 to 104, it doesn't mention anything about the six  
16 percent payment of funds that were set aside for  
17 BIA as funds that we could use for consultation.  
18 Should that maybe be included in there?

19 MR. GISHI: Yes, it could be. The  
20 whole idea of the PM&O funds is those are  
21 inherently Federal funds and so it being  
22 performed by the Secretary of Transportation or

1 the Secretary of Interior, the only funds that we  
2 can use are PM&O funds.

3 MR. BROWN: I guess what we're saying  
4 is we would like to see that added in there.

5 MR. GISHI: Okay. These are generally  
6 from outside agencies in terms of whether the  
7 funds are available. When we move further down  
8 and we start looking at the PM&O activities, that  
9 might be a place to put that as opposed to here.  
10 But let's make sure that one way or another it's  
11 addressed. That it's clearly understood that  
12 that's where those funds are coming from.

13 MR. BROWN: Okay.

14 MR. GISHI: Thank you. Going back to  
15 this one right here and shall to will, most of  
16 you know that the whole discussion along that  
17 process and that's the one we were going to re-  
18 look at, maybe because there's been enough  
19 comments regarding the use of that word relative  
20 to.

21 And people interpret it differently.  
22 This is a change that came, again, the word was

1 previously shall the current regulations was  
2 required to negotiated rulemaking and part of the  
3 process that went through. And then we ended up  
4 with a request added to make it will. And we'll  
5 have to talk to those folks again about that soon  
6 because it has come up as a comment in the  
7 previous meetings.

8 Section 110, no significant changes  
9 there. That's regarding discrimination and  
10 adverse impacts. Eligible use of TTP funds.  
11 This one in Section 111, includes references to  
12 the 202(a)(1) to identify eligible uses.

13 If you recall prior to MAP-21, the  
14 section that talked about eligible activities in  
15 the statute and the law was actually contained in  
16 the portion that referred to agreements with  
17 tribes.

18 And it says, this is what the tribes  
19 can do. And what they did was, they took that  
20 section out in MAP-21 and brought it all the way  
21 to the front of Section 202 and made it the very  
22 first subsection of that Section 202.

1           And then, of course, they pretty much  
2 listed all of the activities that are eligible.  
3 I think they may be more general in terms of  
4 what's there. But nonetheless, that is included  
5 as the list that we go by in terms of eligibility  
6 for use of the TTP program funds.

7           It also represents Appendix A to this  
8 subpart as a more detailed listing of eligible  
9 activities. And that has the long list of  
10 things. Things that were actually in the  
11 existing regulations, put back into there and  
12 when we get to that part we'll talk a little  
13 about it. So some of those that were changed as  
14 a result of.

15           For instance, one of the ones we'll  
16 talk about is the very next one, 112 is for these  
17 references to maintenance activities from the  
18 list of ineligible activities because under the  
19 regs of 2004, the program rule maintenance was  
20 not eligible and SAFETEA-LU changed that, MAP-21  
21 enhanced it even more.

22           And so the maintenance activities for

1 under the program are definitely an eligible  
2 activity, so that was then deleted and moved over  
3 to the other list.

4 Clarifies that the purchase of  
5 construction and maintenance equipment must be  
6 approved by BIA and then HWA just at first to put  
7 in usage. Yes.

8 MS. CARRION: Please state your name.

9 MR. ANDERSON: Frank Anderson. Is  
10 this the time to ask questions?

11 MR. GISHI: Oh yes, please.

12 MR. ANDERSON: Purchase of  
13 construction and maintenance equipment, is this  
14 for new or is this for replacement or is this for  
15 any of the above? And is this to be included and  
16 TTIP as well?

17 MR. GISHI: Yes, all of the above.  
18 And what it is is it's for new, it's for used.  
19 The --

20 MR. ANDERSON: Replacement? I mean we

21 --

22 MR. GISHI: And --

1 MR. ANDERSON: -- have existing --

2 MR. GISHI: -- replacement, yes. Now,  
3 it's for the bigger equipment. When we're  
4 talking about construction and maintenance  
5 equipment, it's for the big stuff. Once you're  
6 out there, the road graters and the scrapers and  
7 the front-end loaders, those type of things.

8 The other, in the current rule there  
9 is eligible purchase of equipment associated with  
10 planning, which would have been total stations,  
11 VIS-type stuff, computers to operate an office.  
12 All of those things were identified as being  
13 eligible.

14 And that basically clarifies that from  
15 the standpoint of included in there, and it says  
16 it is an eligible activity. And, of course, the  
17 TIP process is part of the approval process to  
18 getting that taken care of.

19 Section 113 clarifies the process  
20 regarding proposals for a new use of TTP funds  
21 must follow. Again, there is always something  
22 new, something happening out there.

1           And these provisions are there just to  
2           be able to have an avenue which tribes can ask  
3           either BIA or HWA depending on if it's a road  
4           that is specific to a 25 U.S.C. or 23 U.S.C. type  
5           of function, activity or infrastructure, a road,  
6           bridge, so forth. The address has been updated  
7           to reflect those changes there.

8           We also add that new uses will be  
9           provided in the HWA/BIA website simply because  
10          there needs to be a place if things change, if  
11          there's new uses that become eligible, a place to  
12          be able to update in between and update it to the  
13          regulations. 114 --

14                 MR. BROWN: Leroy?

15                 MR. GISHI: Yes.

16                 MR. BROWN: Question, I'm sorry.

17          Randy Brown, Nez Perce Tribe again. Back to the  
18          112, now tribes have access to title surplus  
19          scheduled equipment, right?

20                 MR. GISHI: Yes.

21                 MR. BROWN: Can we maybe get that  
22          clarified in there that the tribes do have access

1 to this? Because it's something that's fairly  
2 new, right, that they have access to title  
3 surplus and equipment. And then can we maybe get  
4 something like with the assistance of BIA and  
5 Federal Highways?

6 MR. GISHI: Okay. So you're asking to  
7 basically put something that references with the  
8 assistance of Federal Highways and BIA tribes  
9 have access to surplus equipment, that that is a  
10 process that should be included as far as  
11 acquisition of equipment, something of that form?

12 MR. BROWN: Okay.

13 MR. GISHI: Okay. Yes, it's a good  
14 comment. Because a lot of the tribes are just  
15 starting to come. You see a lot of the tribes  
16 have been last which are, as you indicated, are  
17 part of the game in recent years.

18 There's some of you down here in the  
19 lower 48 that have been running the business for,  
20 you know, ten, 15, 20 years where you can go and  
21 access equipment. But thanks for your comment on  
22 that. That is another part of the eligible areas

1 that are out there also.

2 114, use of TTP and cultural access  
3 roads. And this basically says all facilities in  
4 the National Tribal Transportation inventory must  
5 be open and available for public use and that's  
6 based on definition that's in Title 23.

7 But it also talks about when a road  
8 can be closed temporarily as well as when a road  
9 can be closed permanently, describes how that  
10 process is there. It enhances a little bit more  
11 on what was previously in the regulation.

12 115 and 116, specifically talks about  
13 cultural access roads and there's no significant  
14 changes there with regard to those particular  
15 uses. Question?

16 MR. STEVENS: Casey Stevens,  
17 Stillaguamish Tribe, tribal planner. On 114, the  
18 definition of open, is there a time issue there  
19 if the tribe would like the road to be closed  
20 like on weekends? Is that defined anyplace that  
21 we can find? Is it 24/7? Like when you say open  
22 does that mean 24/7 or can that be during

1 daylight hours, that type of thing? Because  
2 there's --

3 MR. GISHI: Open generally means it's  
4 a public road, meaning that the public is treated  
5 the same as all of the others. We know there's  
6 roads that get closed for particular reasons, be  
7 that disasters or even just management, wildfire,  
8 I think anything that can happen out there.

9 But the key here is you guys got to  
10 make sure you understand that. If it's for those  
11 reasons, yes. You have established procedures  
12 either working with the Bureau or Agency or for  
13 the tribe, that you treat public same.

14 It's not one of those things where my  
15 road is open today, but if I see Mr. Fowler  
16 coming through here and I say that's closed to  
17 him, though, and then it's not open because now  
18 you're not treating the public the same from that  
19 standpoint.

20 So when you're looking at length of  
21 time that can vary, again, there's roads out  
22 there which are signed where you're basically

1 telling people we don't maintain these roads  
2 during wintertime.

3 You could close those roads for that  
4 purpose, but everybody has to be treated the  
5 same. It's sort of a rule of thumb, felt to do  
6 that.

7 MR. STEVENS: Okay. Because I know,  
8 like in universities, they'll have an area that's  
9 open all the time, but then at certain times  
10 like, you know, nightfall, they close the road  
11 down because they just don't want --

12 MR. GISHI: And generally that's the  
13 policy --

14 MR. STEVENS: -- people there.

15 MR. GISHI: -- people don't have any  
16 business in those areas there in those evenings.  
17 So it's something where you have to be able to  
18 make sure the people are aware of it, that the  
19 sign may have notification that that process is  
20 there.

21 MR. STEVENS: Okay.

22 MR. GISHI: It's the infrequency or

1 the fact that it's not consistent that is  
2 problematic.

3 MR. STEVENS: Is it somewhat up to the  
4 tribe? I mean because we want to leave it open  
5 all the time, but we now have theft. And some of  
6 these, where these roads go down to like a dead  
7 end and there's capital equipment and we've had  
8 theft --

9 MR. GISHI: You know --

10 MR. STEVENS: -- and that type of  
11 thing.

12 MR. GISHI: Right. And we've had a  
13 number of these questions come up and it's  
14 varied. In some cases we work with tribes and  
15 it's said sure that's how we'll roll with it, but  
16 the best way to find out is to work individually  
17 with the region and the agency to make that  
18 determination.

19 In this, there's so many answers that  
20 you could have relative to that because there's  
21 too many things that can happen, so.

22 MS. CARRION: We've got one over here.

1 MR. GISHI: We got one back here?

2 MS. POWELL: This is Megan and I'm  
3 representing the American Land and Title  
4 Association. And I'm just dovetailing on that  
5 question. You seemed a little bit to the  
6 overlap, if any, between Part 169 that talks  
7 about the right of the regulation?

8 I mean does Part 170 prime that? Is  
9 there a right of way required or is it just  
10 deemed a public roadway that doesn't require any  
11 special right of way under Part 169?

12 MR. GISHI: Well, we can -- do you  
13 want this?

14 MR. CAULUM: Yes. I can go. Can  
15 everybody hear me? Okay. I'll use this. Okay.

16 MR. GISHI: Yes.

17 MR. CAULUM: Andy Caulum of the  
18 Solicitor's Officer Division of Indian Affairs.  
19 Let me try and understand your question. You're  
20 wondering if it's a public road on tribal lands,  
21 does it require a specific right of way. Is that  
22 correct? Okay. You're shaking your head yes.

1           Okay. If the road is owned by a non-  
2 tribal government, so in some reservations, say  
3 where I'm from, from Northern Wisconsin for  
4 example, there are the actual exterior boundaries  
5 of the reservation are known, but within those  
6 boundaries, there's a fair amount of fee land  
7 owned by non-tribal members.

8           And over the years, especially since  
9 the 1950s, some of that land had been sold off  
10 for the purposes of say, building a home on a  
11 lake, for example.

12           And what had happened was that roads  
13 were built to access those homes. They were  
14 maybe not built by the tribe itself, they were  
15 maybe built by other individuals. And there may  
16 or may not have been actual right of ways that  
17 were established.

18           In some cases even if there was a  
19 right of way or an easement, it was for a term of  
20 years, okay. So in a case where a road is owned  
21 by a township or other non-tribal municipality,  
22 right of way is required for that to be, you

1 know, valid thoroughfare, you know, within tribal  
2 lands, right.

3 Without valid right of way the tribe  
4 can say, you know, this road is no longer open to  
5 the public, if they wish to. Okay.

6 The way that that happens on the TTP  
7 side is the tribe has to notify us, you know,  
8 this road, in your example, you know, that you  
9 gave, the tribe decides, you know what, there's  
10 too much, you know, there's too many problems  
11 back in this dead end road. We're going to close  
12 it down to the public.

13 If the tribe's doing that on a  
14 permanent basis, they have to notify us they're  
15 going to remove it from the tribal, you know, the  
16 facility inventory. The key of that then is the  
17 tribe can no longer spend Federal Highway trust  
18 funds on that, okay?

19 But they're also saying listen, you  
20 know, they're making it clear the road's no  
21 longer open to the public.

22 As to Part 169, that is a different

1 rule altogether, okay. There was, back when 170  
2 was first in the lead-up to the publication of  
3 Part 170, the negotiated rulemaking committee had  
4 quite a bit of discussion over the right of way  
5 issue.

6 If you look at the preamble to Part  
7 170, I mentioned earlier that the preamble  
8 sometimes gives you pretty good information on  
9 why certain things were done the way they were in  
10 the rule.

11 That was specifically discussed.  
12 There is an ongoing process right now to revise  
13 Part 169. And the comment period, I'm not sure  
14 if it's closed, but it was extended a couple  
15 times.

16 So that is something that has been  
17 ongoing. Before that final rule is published,  
18 I'm sure we'll have some further interim  
19 discussions. The other people in my office  
20 actually work on that.

21 So it's an important issue. I know  
22 that in a rule being on the inventory by itself,

1 on our inventory, on Tribal Transportation  
2 inventory doesn't, by default, mean that there's  
3 a right of way under that road. Okay.

4 MS. POWELL: So if it's on the  
5 inventory, it may still require a right of way  
6 depending on --

7 MR. CAULUM: Well, yes, because keep  
8 in mind, the inventory consists of roads that are  
9 within or provide access to tribal lands, right?  
10 So roads that are outside of tribal lands, tribe  
11 doesn't have right of way for that.

12 But the tribe, in cooperation with,  
13 say, a local governments, say you have a county  
14 road that accesses tribal lands, the tribe could,  
15 and many tribe have combined their funds with say  
16 a local government to re-pave that road.

17 That's an eligible activity. That's  
18 an eligible expenditure under the Tribal  
19 Transportation Program plan. Congress provided  
20 the definition, within or provides access to  
21 tribal lands, okay.

22 It's in statute, has been there since

1 -- a long time. So I think that's an important  
2 thing to keep in mind.

3 Also the Solicitor's Office has taken  
4 the position that if a tribe is building a road  
5 that's going to be owned by a tribe across tribal  
6 trust lands where there are no other legal rights  
7 involved, say an easement, or even an utility  
8 where there are other interests maybe like, say,  
9 allotments or something like that.

10 It's simply only tribal trust lands.  
11 Tribe doesn't need a formal right of way filed  
12 with a, you know, land title record office of BIA  
13 or, well, I'm sorry, that's not true. They need  
14 a right of way themselves, but they don't need an  
15 appraisal for that.

16 Because if you think about it, who's  
17 the grantor and grantee? If the tribe is  
18 bringing itself a right of way, what's the cost  
19 going to be? It's going to be zero, right.

20 So we've taken the position that the  
21 road is going to be owned by the tribe across  
22 tribal trust lands, no other interests involved,

1 they can go ahead and do that.

2 We say that they have to have an  
3 inventory because you have a right of way, at  
4 least as to, you know, defining what the swath of  
5 the road is, right?

6 Because say they're using it for  
7 housing leases, having something like that on  
8 record is important because then when you come in  
9 and do your utilities and also say, the tribal  
10 member decides that they want to park their  
11 camper within the right of way, the tribe can say  
12 here's the right of way. This was established  
13 before we gave you your lease. It's actually  
14 part of your lease for your house, get your  
15 camper out of the right of way.

16 So it's not a simple answer, I know.  
17 This is an issue. There is issue in the upper  
18 Midwest. My understanding is some of the title  
19 insurance companies are legitimately concerned,  
20 but keep in mind that right of ways can expire  
21 too, right.

22 And that example from Northern

1 Wisconsin is a situation where they did have it.

2 And the tribe, you know, it's, you know.

3 Underneath those lands are tribal trust lands,  
4 right. Because, you know, by definition a right  
5 of way or an easement is giving access over land  
6 that's owned by somebody else, right.

7 So it's not an easy answer, but just  
8 because a road is in the inventory, it's not, by  
9 itself, dispositive of the fact that there is a  
10 right of way under that road, for sure, in favor  
11 of whoever actually owns it.

12 Because keep in mind also, the road  
13 isn't necessarily owned. You know, we use that  
14 term in our world, but in reality it's really,  
15 and correct me if I'm wrong, gentlemen, it's the  
16 public authority with maintenance responsibility  
17 for that road, right.

18 And when we're putting stuff in the  
19 inventory, that's a fundamental aspect, though.  
20 We use the word ownership, but it doesn't  
21 necessarily mean that it's owned per se, so.

22 I know it was a long answer, but I

1 hope I wasn't confusing, but it's an important  
2 point to make, especially this idea that just  
3 because the road's in the inventory doesn't mean  
4 that that by itself is dispositive who actually  
5 owns the road.

6 MS. POWELL: I appreciate the long  
7 answer. It is very helpful. Is it possible to -  
8 - sorry.

9 MR. GISHI: Hold on. Use the mic  
10 before you talking to him.

11 MS. POWELL: Sorry. Megan Powell,  
12 again, I do appreciate your long answer. It's  
13 very helpful. It provides a lot of  
14 clarification.

15 I'm just wondering if it's impossible  
16 to amend anything in the definition section to  
17 provide more clarity as to what roadways could be  
18 considered, you know, truly public rather than  
19 roadways that require a separate right of way?

20 Because I do think it is confusing if  
21 it's on the inventory to try and establish which  
22 roads on that inventory or truly open to the

1 public without the necessity of a right of way.

2 MR. CAULUM: Andy Caulum with the  
3 Solicitor's Office. The answer to that is that,  
4 again, like I said, the inventory itself doesn't  
5 establish right of way, or for people that are  
6 doing title record work, you're going to be  
7 looking at the county title record, especially in  
8 a situation like I explained in the situation in  
9 Northern Wisconsin right.

10 Where you have fee land within a  
11 reservation, there's still going to be title  
12 records, you know, at the County Registered Deeds  
13 Offices, we call them, so, that describe, you  
14 know, a legal description to the parcel, et  
15 cetera, right.

16 MS. POWELL: Right.

17 MR. CAULUM: If there's a right of way  
18 that's filed there, then so be it. That's what  
19 title insurance people are looking for, right, in  
20 part.

21 But that, you know, is controlling on  
22 the fee land side, right. There's also what's

1 known as the Land Title Records Office that's run  
2 by the Department of the Interior, which in  
3 effect is the equivalent of the registered deeds,  
4 right?

5 For example, documents from the land  
6 title records office do not have to be  
7 authenticated in court, like a deed from the  
8 Registered Deeds Office on the county side,  
9 right.

10 So those are the places where you're  
11 looking for that information. And the regulation  
12 for roads can't somehow interfere or overturn  
13 the, you know, what those offices handle for the  
14 public on the county side and also for tribes  
15 with respect to the Land Title Records Office.

16 And the documents from Land Title  
17 Records Office are generally available to the  
18 public if there, you know, are requests made.

19 MR. GISHI: Question, over here from  
20 Vivian.

21 MS. PHILBIN: Vivian Philbin, Federal  
22 Highways. I would like to make a distinction on

1 the question for our purposes here. TTP funds  
2 can only be spent on public roads, irrespective  
3 of right of way.

4 There is presently an NPRM on 25  
5 C.F.R. 169 published by the Department of the  
6 Interiors Mr. Caulum said that was out for public  
7 comment. That comment period has been extended.  
8 I don't know if it has recently closed, but it  
9 was extended at least once. That addresses right  
10 of way.

11 This regulation 25 C.F.R., the NPRM  
12 and the final rule will have references to right  
13 of way, but it is not the right of way  
14 regulation.

15 For our purposes the most important  
16 thing that everyone in this room knows, and  
17 there's been issues actually in the Pacific  
18 Northwest, is that TTP funds, formerly IRR funds,  
19 can only be spent on roads that are open to the  
20 public.

21 Can they be, at times, not open to the  
22 public, yes, and that's covered here as well.

1 But for general purposes, it can only be spent on  
2 public transportation facilities.

3 MS. CARRION: I think you had a  
4 question right here.

5 MR. GISHI: Oh, I didn't see him.

6 MR. ANDERSON: Frank Anderson, CTUIR.  
7 We have tribal cemeteries. We have access roads  
8 to those and with little parking areas. Is it  
9 not acceptable to maintain off those? Can we use  
10 funds?

11 MR. GISHI: Are they public?

12 MR. ANDERSON: They're sacred and  
13 that's mentioned as well, so.

14 MR. GISHI: Generally. I mean, a lot  
15 of them when you get to the point, and it varies  
16 without knowing what the details are. I mean,  
17 sometimes these discussions take two/three weeks  
18 based on what's there. So to come right out in  
19 general, yes, in general they are, but the  
20 specifics of it, you will have to find out.

21 And it may not be eligible, but, you  
22 know, that's probably not in a discussion for

1 here. But, again, keep it in mind, help to ask  
2 that. Do we have another comment back in the  
3 back there? Oh, are you okay? Okay.

4 But, generally, you know, if you look  
5 at the definition of a BIA road in the  
6 regulation, it says it's a road in which BIA has  
7 or intends to acquire a right of way.

8 So you can see that from that  
9 standpoint, the whole purpose of these funds is  
10 to sometimes get to the point where you're  
11 acquiring right of way, which is an eligible  
12 activity, so you can begin a formal process to an  
13 engineered standard and you can go out and the  
14 public can utilize it.

15 For that reason, not only does that  
16 reference that there's a process that these  
17 activities are eligible for, the design package  
18 that will be discussed later, that Sheldon will  
19 discuss, talks about what is important and what  
20 is considered the package for a complete PS&E.

21 It includes right of way, a legal  
22 description. And all of that has to be in place

1 before we can get to that point where we expend  
2 funds on it from the standpoint of the TTP.

3 115, 116, no significant changes  
4 there. Again, 117 combines a couple of the  
5 sections into there. Again, clarification here  
6 is needed because as we start to go through the  
7 process, we start to see more and more variations  
8 of transportation systems that are out there that  
9 are utilized on a local level.

10 And seasonal routes has become a big  
11 part of areas throughout because they're being  
12 utilized by tribes. And this just provides a  
13 little more clarification as to the eligibility  
14 of utilizing it and making this work.

15 Design standards are, again, generally  
16 local standards. And working through the folks  
17 that we need to at the region level, agency level  
18 to make sure that they are available to be  
19 utilized for health and safety uses in the tribal  
20 public.

21 Housing access road, there's no  
22 changes there. Pretty much, again, it comes

1 along the same line of it is a public facility  
2 and providing access is a logical activity.

3 Toll, ferries and airport facilities,  
4 120, is a table that includes, I say that  
5 includes Federal Highways, but if you look at,  
6 Andy mentioned on December the 12th we sent out  
7 the year tribal leader letter from the Assistant  
8 Secretary. And attached to that, your tribal  
9 leader letter, and posted on the consultation  
10 website was the NPRM.

11 This was at the same time that we had  
12 sent it previous to this to the folks at the  
13 Federal Register. And if you look at that  
14 version, that's what Andy talked about, the two  
15 versions out there, if you look at that version,  
16 that table, it includes everything including  
17 reference to FHWA agreements.

18 When you get to the NPRM, which was  
19 published a week later by the Federal Register,  
20 they must have had something wrong with their  
21 word process because it's a dead end. It just  
22 ends.

1           So that will be part of the error  
2 sheet, keeping in mind that the reference and  
3 that's one of the areas that it just ends there,  
4 but it will be included as part of the correction  
5 process to make sure that table is updated.

6           But your tribal leader letter and your  
7 packet there does have it in there, which was the  
8 word document to be sent out. And this, of  
9 course, the one that went to the Federal Register  
10 and they reformatted this into three columns and  
11 tables across. And when they did that, they  
12 missed something there and so it's something that  
13 we can kind of hold over their head.

14           121, no significant changes. 122  
15 clarifies how TTP funds can be used for airport  
16 access roads to maintain airport facilities.  
17 Again, really clear that the actual facilities  
18 that are needed for.

19           We're not experts. We don't tend to  
20 be experts in this program. People who are  
21 implementing the program aren't required to be  
22 experts in designing runways, L pads and all that

1 stuff. For that reason, those are not eligible.  
2 That has to come through another agency.

3 It's the access road that lets you get  
4 into the airport, typically, it's the one  
5 utilized and a regional one for tribes, then  
6 those are eligible activities providing access to  
7 those locations and including facilities that are  
8 associated with it also.

9 Recreation, tourism and trails,  
10 updates references to possible funding sources.  
11 Most of you know that one of the big pushes in  
12 MAP-21 was consolidation of programs.

13 When they consolidate some programs,  
14 they took programs that had a specific name and a  
15 title and they basically discontinued that  
16 program, but they may have included those  
17 activities in other programs so that you could  
18 still follow up on them.

19 The enhancement program's one to  
20 change the name and so, what this does is,  
21 particularly for recreation, tourism and trails,  
22 it includes those other locations and tries to

1 consolidate those. And the list also of other  
2 locations who are talking about funding sources  
3 also this applies to.

4 124 clarifies how tribes can obtain  
5 these recreation, travel, tourism and trails  
6 funds. 125, no significant changes. 126  
7 clarifies that roads cannot be built in  
8 designated wilderness and wild areas.

9 As far as the areas, in the lower 48  
10 there's only one location. And we put this in  
11 there just so that people are aware that that one  
12 location we can't do that, and that's in Wyoming.

13 And come to find out there's also  
14 exceptions in Alaska, but I'm not sure if it's  
15 referring to the same type of thing. But, again,  
16 that applies within Alaska also.

17 (Simultaneous speaking)

18 MR. GISHI: Tribes from that area may  
19 have some additional knowledge of it. Yes, we  
20 have a comment over here.

21 MR. SMITH: Kasey Smith,  
22 transportation director for the Organized Village

1 of Kasaan. Underneath the cultural access road,  
2 in Alaska, like, they tend, the Forest Service  
3 Management, our cultural boundaries run all the  
4 way across Forest Service land also and a lot of  
5 the roads there are logging roads. And under  
6 them, they're closing a lot of the roads  
7 underneath our traditional boundaries.

8 So in order to keep those open do we  
9 have to sign an agreement with them to keep it on  
10 our inventory to keep our funding up with our  
11 inventory on our funding agreement or is that,  
12 the roads that they're closing down, are those  
13 going to be knocked off of our inventory and then  
14 no longer going to be in our calculation the way  
15 we get our road money about our funding?

16 MR. GISHI: Yes, thank you. Regarding  
17 funding, the funding is basically in the form  
18 that like Bob will talk a little bit more about,  
19 is miles.

20 MR. SMITH: Yes.

21 MR. GISHI: And in the new form, it  
22 doesn't care whether you've got a four lane paved

1 road and there's one mile of it or you've got  
2 basically a 12-foot gravel road that's in poor  
3 condition. One mile of it is kind of the same  
4 under the formula. So it doesn't really care. So  
5 all that's been logged in.

6 Everything you're adding now is not  
7 counted in the formula, so it doesn't affect your  
8 funding location. Your funding relative to those  
9 specific roads are pretty much have been  
10 established.

11 Now, it's the activities that you  
12 choose to perform on those. And if you want to  
13 add them to the inventory, then Sheldon basically  
14 will go through that and talk about kind of how  
15 that process works, including bringing the roads  
16 onto the inventory and establishing those long-  
17 range plan. I don't know, Sheldon, do you want  
18 to comment on that?

19 MR. KIPP: Sheldon Kipp of Bureau of  
20 Indian Affairs. What we have seen in a few  
21 instances is that when Forest Service basically  
22 says that they're lagged open to public access.

1 But the roads that they use administratively,  
2 internally, add to the roads that are open to the  
3 public.

4 Sometimes they make a distinction  
5 there because as, like you mentioned, that the  
6 Forest Service basically will take off some of  
7 their road mileage from public access, which  
8 means that they don't want the public driving on  
9 this particular road anymore.

10 And that road actually comes off of  
11 the Forest Service's inventory as an open and  
12 public road. And I think that's what you might  
13 be talking about is the Forest Service is closing  
14 some of its roads that they're going to reserve  
15 for internal administrative use, but those roads  
16 are no longer open to the public anymore for  
17 vehicles.

18 What we have seen is that the Forest  
19 Service will still tell you, you want to park in  
20 the parking lot and you want to walk down that  
21 trail, your facility or your inventory basically  
22 will reflect that there's no longer a road there,

1 there is now a foot trail access.

2 And that's how a few of the tribes  
3 have resulted because they have a situation where  
4 the Forest Service is administratively taking the  
5 road off of public use. The road is still going  
6 to exist to them, but it's internal  
7 administrative use that they intend to use it  
8 for. They don't want the public driving on it  
9 anymore.

10 MR. GISHI: Thank you, Sheldon.

11 MR. SMITH: Kasey Smith,  
12 transportation director for the Organized Village  
13 of Kasaan. Thank you. That does clarify that.  
14 For example, on Prince of Wales Island we have  
15 3,000 miles of road that you were able to drive.

16 As of 2004, they started shutting down  
17 the roads. As proposed, by the end of it we're  
18 going to have 300-and-some miles of road miles  
19 that it's going to be.

20 So it's a lot of road miles it's  
21 starting to be taken off of our inventory. And  
22 signing Government contracts with the Forest

1 Service to start maintaining these roads. And I  
2 just wanted to clarify that some walk trails are  
3 considered an access road and can stay on my  
4 inventory, correct?

5 MR. KIPP: Yes, the facility can stay  
6 in the inventory, but the classification will  
7 change from a road to a trail. And so you really  
8 can't be using your funding to maintain the road  
9 facility because it's not a road anymore as far  
10 as the inventory is concerned.

11 The access to the public is only for  
12 trail purposes only. And that is the catch-22  
13 that we've run into with some tribes in the  
14 mountainous areas as far as when their area  
15 overlaps with the Forest Service.

16 MR. SMITH: Kasey Smith with the  
17 transportation director for the Organized Village  
18 of Kasaan. Isn't that kind of conflict, though,  
19 because in 2004 when they started shutting these  
20 roads down the inventory wasn't reflecting our  
21 funding agreement in the miles that way.

22 So now that we've ixnayed all these

1 miles off our road is going to basically cut a  
2 lot of the tribes inventory in half when it comes  
3 to the funding agreement because these roads have  
4 already been shut down.

5 In order to go back through and open  
6 up now, is not, you know, even fundable to do. I  
7 mean, going into these old roads now to open them  
8 up that's been on our inventory. And the Forest  
9 Service, unfortunately, so poorly got these roads  
10 poorly marked, they can't even tell you which one  
11 is an access road and why.

12 They can't tell you which one's an  
13 access road for to drive out on a four-wheeler.  
14 They basically won't even write you a ticket  
15 because they don't have it marked themselves.

16 And so for us to go out and look at  
17 everything on our boundaries and the Forest  
18 Service, when they can't find the roads, it's  
19 hard for us to come in there and use grip maps  
20 and everything to get everything into the BIA  
21 inventory for us to keep it on our inventory.

22 Be able to go out and kind of come up

1 with the cost analysis to say, hey, I can redo a  
2 couple culverts, a couple slides, now, I figure  
3 every ten years. I can keep this road open, but  
4 the ones with the bunch of red culverts, just  
5 great extent, you'd slide every year, I can't  
6 afford to keep open.

7 It's just kind of now that this  
8 funding formula is created like this is really  
9 going to take the smaller entities and really  
10 hurt them really bad. And for the State of  
11 Alaska I feel that that does not help.

12 MR. GISHI: Thank you. Thank you. I  
13 appreciate your comment. It points out a lot of  
14 things that are happening and specifically in  
15 unique areas like yourself.

16 Highway safety functions, highway  
17 safety, again, is the two percent that came down.  
18 It's a separate set aside now, that's included in  
19 there. It's a separate program of its own.

20 It's a part of Subpart B, highway  
21 safety functions that included Sections 141  
22 through 145 that have been replaced with a TTP

1 safety funding set aside and part of MAP-21 and  
2 also referencing 202(b) of Tab 23.

3 127 provides what funds are available  
4 for safety activities. It goes through and talks  
5 a little bit about, consistent with what's  
6 basically been coming out in the notice of funds  
7 availability, the application process that many  
8 of you have seen come out in 2013, 2014 and 2015.

9 128 describes eligible activities for  
10 safety funds. Most of you know the four E's are  
11 primarily looking at. In this part of it, the  
12 enforcement, the education, the emergency  
13 response and the engineering, which generally  
14 translates to one project or another at one time.  
15 And that'll be discussed in the funding portion  
16 in Subpart C.

17 129 describes how the TTP safety funds  
18 will be received. Again, the process as defined  
19 is consistent with what's been happening. And  
20 regs in this case affects some procedures that  
21 have been developed and have been over the past  
22 two years.

1                   130 describes how the tribe could  
2 obtain non-TTP funding for safety projects and  
3 activities. We know that they're slotted other  
4 programs that are out there have an emphasis one  
5 way or another of safety. And this just  
6 describes how those other TTP funds can be  
7 acquired.

8                   Transit facilities, a big part of  
9 what's been in the statute since 1998. Transit  
10 facilities and as, obviously, it has grown to the  
11 extent that now FTA has a separate Tribal Transit  
12 Program there.

13                   This talks about, obviously, the fact  
14 that this is an eligible activity on the program,  
15 but also it can be used in conjunction with funds  
16 that are provided under the DOT's Other  
17 Transportation on Indian Reservations Program,  
18 which is a former program associated with that  
19 and available UFTA that we had an annual call for  
20 funding requests on that.

21                   133 identifies that TTP funds can be  
22 used to satisfy the local match requirement in

1 various Federal funds. Again, that's the TTP  
2 funds can be used in general for a lot of the  
3 programs that are out there that require local  
4 match. Yes?

5 MR. CAULUM: They match the program.

6 MR. GISHI: Okay. 133, 134, transit  
7 operational cost is eligible use of TTP funds.  
8 Essentially, that's just an explanation of a lot  
9 of the questions we've had over the past ten  
10 years about can we use these for operational  
11 costs.

12 MR. RAMOS: Bill Ramos, consultant.  
13 I just have a question on that because it has a  
14 parenthetical in here that says excluding  
15 operating costs. So it's a little confusing  
16 whether it includes operating costs or not. So  
17 under J.

18 MR. GISHI: Thank you. If I had a set  
19 of construction standards, I'd give it to you.  
20 But I ran out, so when we find new ones that  
21 we've got, we'll take a look at that.

22 MR. RAMOS: And I didn't get --

1 MR. GISHI: And that is consistently

2 --

3 MR. RAMOS: -- you see what I'm saying  
4 that under the --

5 MR. GISHI: Right. Yes, I see that.  
6 Yes, property at page --

7 MR. RAMOS: I agree with that. So  
8 what are you saying? You've got to clarify that  
9 answer is what you're saying?

10 MR. GISHI: Right.

11 MR. RAMOS: Because that's the old  
12 one. It used to be that way --

13 MR. GISHI: Right.

14 MR. RAMOS: -- and so they say now  
15 it's changing.

16 MR. GISHI: Yes.

17 MR. RAMOS: Okay.

18 MR. GISHI: And most of you know that  
19 --

20 MR. RAMOS: Thank you.

21 MR. GISHI: -- there's been work as a  
22 transit program, has happened. We've had tribes

1 who've actually established facilities to support  
2 the transit program. And in conjunction with the  
3 maintenance you utilized it for multiple  
4 purposes.

5 And so it has been something that's  
6 from the operational standpoint has been  
7 available, we just need to catch up with it here.  
8 But thank you very much for pointing that out.  
9 The guy that wrote that these expired.

10 The TTP Coordinating Committee, most  
11 of you might be aware there's been a meeting we  
12 shared with the Coordinating Committee. It's a  
13 committee established of tribal representatives  
14 from the 12 BIA regions. It has been in  
15 operation since 2006. It has been a program in  
16 which we had bid.

17 To be very clearly, it is a supplement  
18 to consultation. It allows us to be able to work  
19 with tribes on issues specifically that come up  
20 on a regional level and brought to a national  
21 level that can be addressed.

22 And, of course, as program changes

1 happen and things happen mid regulation updates,  
2 that's the group that we use to bounce things off  
3 of.

4 And 135, the big thing there is we  
5 used to have 24 members, 12 alternates, 12  
6 primaries, now we have 24, essentially,  
7 primaries, so that they have the ability to all  
8 function as a group because they have, with the  
9 exception of one or two meetings since 2006, the  
10 alternates have been to all the meetings, have  
11 participated, they sit at the table, they make  
12 comments.

13 The only difference was is they've  
14 been elected as officers in the committee is when  
15 it came to voting, it was basically one vote per  
16 region and this will address it from the  
17 standpoint of people, consistent with how the  
18 program's been run. Someone had a comment up  
19 here, on that?

20 MR. BROWN: Randy Brown, Nez Perce  
21 tribe. I just wanted to submit a resolution that  
22 was passed on 1890 last week regarding TTP's EC

1 and the concerns that have been brought up with  
2 the way it's ran currently.

3 MR. GISHI: Okay. Thank you.

4 MR. BROWN: I have it right here.

5 MR. GISHI: Can you give that to  
6 Rosina? And if you have any other documents that  
7 you have like that you want to submit for the  
8 record, if you get them to Rosina. And she has a  
9 scanner and we scan them and then we make sure we  
10 get a copy to the reporter as well as make sure  
11 they're available and we post them on the  
12 website. Thank you very much.

13 When we referenced all its  
14 representatives, of course, requires that the  
15 clarifies the travel officials must be employees  
16 and updates the election terms. When the current  
17 procedures are for to establish the Coordinating  
18 Committee. That's been established that we pick  
19 up those references that of how people basically  
20 get started in the committee.

21 136 identifies that committee members  
22 are responsible to make sure information gets out

1       there on the activities of the committee within  
2       their region. Just another way of being able to  
3       get information on the tribes that are not able  
4       to attend that know what's going on.

5               And then, 137 identifies process by  
6       which the committee will submit a schedule.  
7       Currently the meeting times are, and we felt was  
8       inconsistent. They needed approval of a year-  
9       long meeting schedule so they can not only plan  
10      on their end, but that the tribal public could  
11      also plan on one of those meetings where they  
12      could attend.

13              Unfortunately, the one thing that  
14      really kills this whole process, and it's a good  
15      idea, and in a perfect world we'll continue to  
16      operate that way. One of the things that kills  
17      us is the fact that we get piecemealed money in  
18      terms of the CRs and sometimes their budget is  
19      not enough.

20              You know, they get 30 days or so of  
21      funding, that's not really enough for them to be  
22      able to have a meeting. And they'd have to wait

1 until there's an extension of 71 days or 243 days  
2 or whatever, so. But that's there so that  
3 there's a mechanism to be able to do that.

4 The TTACs, the Tribal Technical  
5 Assistance Centers, also known as TTACs, provides  
6 a description of these centers and where the  
7 additional information can be found.

8 This is one of the ones that the whole  
9 section that was in there was for informational  
10 purposes only. It was removed. We ask that this  
11 be left in there because the funds that are  
12 provided under the TTP program are made available  
13 for these centers.

14 But, obviously, the procedures and how  
15 the organization of the agreement is all handled  
16 through Federal Highways through a cooperative  
17 agreement. And so we're able to get at least  
18 this portion in there for references of the  
19 centers and their roles and responsibilities.

20 Appendix A to Subpart B, this lists  
21 it's corrected to show the statutory references  
22 again because under this process of eligibility

1 there's certain things that have now been changed  
2 to a different citation and law.

3 There's consolidation. We used to  
4 have information in 202 and 204 and some in 201  
5 in the old regulations. Now, everything we have  
6 is in 202. So bringing those across has made  
7 some changes. Yes.

8 MR. ROBIDEAU: Chris Robideau, Red  
9 Plains Professional. Can I get an explanation of  
10 why there's a difference as far as building  
11 transportation facility as far as buildings to  
12 support programs, why is it eligible without any  
13 additional approval or requirement for transit,  
14 but not for transportation programs?

15 MR. GISHI: What do you mean? In  
16 terms of --

17 MR. ROBIDEAU: If the tribe wants to  
18 use the TTP funding to construct a building or an  
19 office that might have a maintenance facility or  
20 garage associated with it, is that an eligible  
21 function? And why does that need additional  
22 approval from the BIA or Federal Highway?

1           MR. GISHI: The approval generally is,  
2 if you're looking at from a feasibility  
3 standpoint initially, that is something that is  
4 common sense. You know, if your funding doesn't  
5 support that type of an operation, maybe that's  
6 not the thing to do.

7           There's obvious things like that. But  
8 for the most part if it's in the TIP and it's a  
9 long-range plan, it's part of the process, those  
10 are going forward.

11           And so we need to be made aware of,  
12 and as Sheldon pointed this out in one of our  
13 other meetings, is one of the things you need to  
14 make sure is the insurances that have to come  
15 from the tribe is that you've considered in terms  
16 of the public access and American's with  
17 disability.

18           All these things and other things that  
19 require in the building of a building, it's not a  
20 transportation structure. And we don't have  
21 anything in these regulations that tell you how  
22 to build a building, but there's things that need

1 to be there.

2 So it's sort of that ability to be  
3 able to say, okay, we're looking at these, you've  
4 considered these things. And that's part of a  
5 process of making sure that that happens.

6 MR. ROBIDEAU: Thank you.

7 MR. GISHI: Thank you. Purchase,  
8 leasing and renting equipment is eligible. It's  
9 things that are approved and purchased must be  
10 covered by a cost analysis. And this goes back  
11 to, as for as appendices, the clarification on  
12 the approval of BIA on purchase of equipment.

13 And again, this was not in there  
14 before. We've seen that. We did it under the  
15 ARA contracts. And we're seeing more and more of  
16 it and it's part of the TIP process and it is  
17 part of the cost analysis process. It's usually  
18 what gives the approval to go ahead and do that  
19 and improve the TIP.

20 Okay. We'll take a break for about  
21 ten minutes and then we'll start with Subpart C.  
22 Thank you.

1                   (Whereupon, the above-entitled matter  
2 went off the record at 10:59 a.m. and resumed at  
3 11:17 a.m.)

4                   MR. SPARROW: All right. If we could  
5 started here, I want to talk about Subpart C.  
6 Folks, if we're going to keep talking, can you  
7 please step outside?

8                   (Simultaneous speaking)

9                   MR. SPARROW: Okay. Subpart C, again,  
10 for those of you that are familiar with the  
11 existing regulation, that's where the funding  
12 formula was included. And that was the formula  
13 developed through the negotiated rulemaking.

14                   All of the tables, the cost tables,  
15 the cost to construct, the incidentals, all the  
16 formulas and everything used to be in this  
17 subpart.

18                   And when Congress passed MAP-21 it  
19 replaced that funding formula with a statutory  
20 formula. So as a result all of those references  
21 and calculation formulas and tables and costs  
22 that were associated with the old funding

1 formula, including the population adjustment  
2 factor, the relative need formula, the cost  
3 tables and others have all been removed because  
4 they're no longer part of the calculation in the  
5 new formula.

6 And all that language has been  
7 replaced, pretty much cut and paste. What you  
8 see in here is statutory language taken out of  
9 Title 23 and put in the NPRM.

10 So 170.200 describes how the Tribal  
11 Transportation Program funding amount is  
12 determined. And what that does is it talks about  
13 the set asides, okay.

14 What set asides come out of the Tribal  
15 Transportation Program? And you could see it  
16 talks about transportation planning, the bridges,  
17 the bridges that initially this morning I said,  
18 T21 established a bridge program as a set aside,  
19 then SAFETEA-LU broke it away and made it a  
20 stand-alone program and now, MAP-21 brought it  
21 back in as a set aside.

22 So it talks about the bridge program.

1 There's discussion about the tribal safety  
2 funding, the administrative expenses or the PM&O  
3 and the Tribal Supplemental Program. So that's  
4 all described in this particular section.

5 And in addition to that it also talks  
6 about the transition. Although MAP-21 was a two-  
7 year bill and we're now extended into the third  
8 year, Congress put a four-year transition from  
9 the old formula to the new formula in MAP-21.

10 So this section also contains the  
11 information on how the old formula works and what  
12 percentage of the funding goes towards the old  
13 formula calculations and what percentage of the  
14 funding goes to the new formula calculations and  
15 how the new formula takes more and more control  
16 over the four-year transition period.

17 170.201 actually contains the funding  
18 distribution formula and it identifies the new  
19 factors. So you can see this is the formula  
20 itself and 27 percent has to do with the eligible  
21 road mileage. Yes?

22 MR. GALLOWAY: I'm --

1 MR. SPARROW: Identify yourself,  
2 please.

3 MR. GALLOWAY: Oh, Rick Galloway.

4 MR. SPARROW: Thank you.

5 MR. GALLOWAY: A lot of the  
6 information that was removed, all of those tables  
7 and everything were very beneficial in describing  
8 what kind of road would be useful for its ADS and  
9 along with the geographic cost factors that are  
10 included for each one.

11 You know, all of these things are gone  
12 now and, so, it's kind of difficult, really, in  
13 order to be able to make estimates. Some of the  
14 functioning tools that we used to be able to use  
15 in order to develop what standard we should be  
16 using, what to expect in the way of cost, where  
17 to go to get that information.

18 Is there going to be some place where  
19 we're going to be able to reference that? In,  
20 you know, I mean, I --

21 MR. SPARROW: You fall into the for  
22 reference purpose only again that we dealt with.

1 But this isn't the first time we've heard this  
2 comment and it's a very good comment and we'll  
3 address that, okay. Thank you.

4 So 201 then, again, talks about the  
5 new formula, 27 percent of the total eligible  
6 road mileage and Congress tells us exactly what  
7 the total eligible road mileage is.

8 It was included in the BIA Indian  
9 Affairs system inventory prior to 2004 or if it's  
10 a tribal or BIA route it was in the inventory in  
11 2012.

12 Interestingly, the 2004 timeframe is  
13 just before the final rule went into effect in  
14 2005, that negotiated rulemaking. So if it's not  
15 BIA or tribal, it had to have been in the  
16 inventory prior to fiscal year 2005. It had to  
17 be part of that 2004 inventory.

18 Thirty-nine percent in the total  
19 population which is the NAHASA population and  
20 then the 34 percent, what we're calling an  
21 historic shares. It's distributed based on the  
22 historic shares that your tribe got within a

1 region between 2005 and 2011.

2 170.202 talks about the tribal  
3 supplemental program funds, which is one of the  
4 set asides. And it describes what amount of  
5 money goes into this supplemental pot of funds.  
6 And then it also defines how that funding is to  
7 be distributed out to the tribes.

8 The primary intent of the supplemental  
9 funding is to try to offset or minimize the  
10 negative impacts that a tribe would experience  
11 between the funds it received under the old  
12 formula and the funds that it receives under the  
13 new formula.

14 So as you transition more and more  
15 from the old formula to the new formula over this  
16 four-year period, if you're being negatively  
17 impacted by this new formula, you're not  
18 receiving as much money under the new formula as  
19 you did under the old formula in 2011.

20 This pot of money was set aside and is  
21 ultimately distributed out to the tribes in the  
22 12 regions to try to minimize that negative

1 impact and provide additional funding beyond what  
2 the formula would provide.

3 So if you say you get a \$200,000  
4 difference between the old formula and the new  
5 formula, this supplemental funding might provide  
6 \$80,000 or some amount of money to you so that  
7 you're not experiencing that full negative  
8 impact.

9 And that changes every year because of  
10 the way it's calculated is based on what your  
11 tribal share is that year compared to 2011. And  
12 then, again, because the new formula is  
13 transitioning over a four-year period, your  
14 negative or positive impact will be different  
15 every year as compared to 2011.

16 So it's complicated, but the basic  
17 intent of what Congress did with the supplemental  
18 funding was to try to minimize the negative  
19 impact to the tribes.

20 203 clarifies how the TTP planning  
21 funds are distributed. Basically, all that did  
22 was update the references that how the planning

1 funds are to be used to represent the most  
2 current references in 23 U.S.C. Now, the TTP  
3 Program, for instance, is under 202 instead of  
4 204, so just things like that. But primarily the  
5 rest of it is the same.

6 One thing I need to mention here is  
7 this last one. And that's something we talked  
8 about earlier this morning and that in Subpart C  
9 is where the IRR high priority projects used to  
10 be located. It was part of the funding formula  
11 prior to MAP-21.

12 But since it is no longer part of the  
13 Tribal Transportation Program, it has been  
14 removed from this reg. There is one Q and A, the  
15 very last Q and A in Subpart H references this  
16 program.

17 But it can be found in 23 U.S.C., the  
18 thought is if Congress does bring it back in,  
19 it'll identify. In essence what they did, quite  
20 honestly, was they cut and pasted what was in the  
21 old regulation and put it in MAP-21 as a separate  
22 program.

1           So we're envisioning that they would  
2 bring it back in, but not knowing, regardless, we  
3 would have to make some sort of amendment or  
4 change to the reg and we'll wait and see what  
5 Congress does and what sort of action is needed  
6 to be taken.

7           But for now, since it is no longer  
8 part of TTP, no longer part of Title 23 where the  
9 TTP funding comes from, it's been removed from  
10 this reg.

11           MR. STEVENS: So, excuse me.

12           MR. SPARROW: Yes, question.

13           MR. STEVENS: Yes, Casey Stevens,  
14 Stillaguamish Tribe. So why does it exist at all  
15 if it's not funded? I mean, if this struck it.  
16 It's an unfunded program.

17           MR. SPARROW: I don't know. Congress  
18 made that decision.

19           MR. STEVENS: Okay.

20           MR. SPARROW: I could tell you  
21 personally, but.

22           MR. CAULUM: Not on the record.

1 MR. KIPP: Not on the record.

2 MR. SPARROW: You can see me at lunch.

3 All right. And quite honestly, there was a  
4 pretty heavy duty discussion about this, do you  
5 leave it in, do you take it out?

6 And the result, you know, what we were  
7 directed was it's not funded with Title 23 funds,  
8 so it's not part of the highway trust fund, it's  
9 not part of TTP that it stays out of this reg,  
10 but it's in the law in case Congress wants to  
11 fund it.

12 So 170.204 -- excuse me while I flip  
13 over my page here. 170.204 identifies that  
14 Tribal Transportation Program funds can only be  
15 expended on activities and projects that are  
16 identified in the appendix to Subpart B which  
17 Leroy just covered at the very end of that.

18 It was an appendix that identified all  
19 those eligible activities. And that the projects  
20 had to be contained and Federal Highway approved  
21 too.

22 205 identifies the timeframe by which

1 funds must be made available to the tribes.  
2 Again, statutory language that says that within  
3 the 30 days of the receipt of the funds by the  
4 Secretary, they need to be made available to the  
5 tribe.

6 Tribal Transportation Program  
7 inventory and the long-range transportation plan,  
8 a lot of this is primarily covered in Subpart D,  
9 which Sheldon will talk about here shortly.

10 But there is one section that  
11 describes the correlation between the inventory  
12 and the long-range transportation plan and that  
13 the routes are, you know, basically, the routes  
14 that are in the inventory are established through  
15 the long-range transportation planning process.

16 There is a reference though, after we  
17 just said that we've taken out all references to  
18 the high priority projects, suddenly after it  
19 went in there we realized that there was still a  
20 reference to HPP in this section and it'll be  
21 removed.

22 Formula data appeals, 170.226, this

1 identifies what data can be appealed by the  
2 tribe. Primarily in the calculation of the  
3 tribal shares, we're looking at the population  
4 data because everything else is frozen.

5 The mileage, Congress says it had to  
6 be in the 2005 inventory or the 2012 inventory.  
7 The historic shares, which is the third factor of  
8 the formula is based on FY'11 and FY'05 to FY'11  
9 tribal shares, so that's all pretty much set in  
10 stone.

11 The only part that would be appealable  
12 per se from the formula perspective is the  
13 population numbers that are provided to us by HUD  
14 within the housing numbers.

15 But this section also makes reference  
16 to where you can find other appeal processes  
17 within the regulation with regards to other  
18 actions. So that's a good section to take a look  
19 at with regards to appealing some of the actions  
20 and the processes within the regulation.

21 Flexible financing is the last part of  
22 this section and it provides information on the

1 use of flexible financing and how you can  
2 leverage funds, how you pay the loan back, how  
3 it's to be shown on a TIP, what the loan payback  
4 amount is and how long it has to be shown on the  
5 TIP and also about the tribes ability to apply to  
6 a state infrastructure bank.

7 And that's Subpart C. This used to be  
8 the most complicated and longest part of the  
9 regulation because of everything that went into  
10 the cost to construct factors of the old funding  
11 formula.

12 Now that Congress has said no, that's  
13 out, here it is, here's how it's to be  
14 implemented, here's your set asides, here's  
15 everything, it's become a very simple and  
16 straightforward section. Question? Question,  
17 please. Thank you.

18 MS. GILLELAND: Coey Gilleland,  
19 Stillaguamish Tribe. Can you tell me in 170.201  
20 how or why the October 1st, 2004 date is used for  
21 eligible road mileage?

22 MR. SPARROW: It is in there because

1 that's what Congress told us to put in there or  
2 that's what Congress said.

3 MS. GILLELAND: Okay.

4 MR. SPARROW: Okay. It is, like I  
5 say, when MAP-21 was passed and they put in a  
6 statutory formula, they identified in the law  
7 exactly what goes into each one of those factors.  
8 And they referenced the 2012 and the 2004, okay.

9 Now, that being said, we've continued  
10 to encourage tribes to improve their inventory,  
11 but keep their inventory updated. It's not to  
12 say that Congress could not or might, when they  
13 pass son of MAP-21 or MAP-21A or the return of  
14 MAP, whatever they call it, that they could say,  
15 all right, you know what, the BIA and the tribal  
16 mileage that we said in FY'12, because that's  
17 when the law was passed and so, let's make it  
18 FY'14 or let's make it FY'15.

19 And it's not to say that they couldn't  
20 change the date on the others, but they have  
21 specifically identified those dates. And if you  
22 don't update your inventory and they do change

1 the dates, then, potentially, you could lose  
2 funds in the future. Okay?

3 MS. GILLELAND: Yes.

4 MR. SPARROW: Thank you. Any other  
5 questions? Mr. Kipp?

6 MR. KIPP: All right.

7 MR. SPARROW: You're probably going to  
8 have to break --

9 MR. KIPP: Okay.

10 MR. SPARROW: -- in a half-hour.  
11 Okay.

12 MR. KIPP: Get us started here by  
13 12:00.

14 MR. SPARROW: Leroy, you know what, we  
15 need to change, sorry.

16 MR. KIPP: Does this work?

17 (Simultaneous speaking)

18 MR. KIPP: Does this work? Can you  
19 hear me?

20 MR. CAULUM: You've got to turn it on.

21 MR. KIPP: Test. Can you hear me?  
22 No. Can you hear me now?

1 MR. CAULUM: Yes.

2 MR. KIPP: Yes, okay. Good morning,  
3 everyone. Like I introduced myself before, my  
4 name is Sheldon Kipp. I'm a supervisory highway  
5 engineer for the Bureau of Indian Affairs,  
6 Division of Transportation in the Central Office.

7 I'm going to be reviewing Subpart D.  
8 Subpart D has several groupings of questions that  
9 as we go through here we'll be reviewing and then  
10 I'll be identifying some key words that have been  
11 added to the new proposed regs, some of the  
12 distinct changes that as far as the existing regs  
13 versus the new one.

14 The first grouping of questions is  
15 going to be transportation planning, how it takes  
16 the relationship of transportation planning to  
17 the TTP.

18 401 now includes FHWA and updates the  
19 listing of planning activities that BIA and FHWA  
20 carry on. In 401, you're going to see a lot of  
21 the questions and answers in Subpart D are going  
22 to be expanded to say BIA in the existing regs

1 and now it's going to say BIA and FHWA.

2 And this is going to be an example of  
3 one of those questions because like we identified  
4 earlier this morning that we have almost 130  
5 tribes that basically have a Federal Highway  
6 agreement.

7 And for those particular tribes, their  
8 primary point of contact as far as the Federal  
9 Government is Federal Highway. So you'll see  
10 that expansion above, those acronyms from BIA to  
11 BIA and FHWA in a lot of these questions.

12 402 updates tribal list of planning  
13 activities to reflect program changes. And like  
14 Mr. Gishi said, a lot of these questions and  
15 answers now add the word program agreements to a  
16 lot of the answers for the questions in some of  
17 these grouping of questions. But again, adding a  
18 program agreements to some of the answers.

19 404 defines how a tribe can use their  
20 unexpended plan funds after all planning  
21 activities have been completed. For this  
22 particular one, 404, just want to be cognizant of

1 all that.

2 In the existing reg there was a  
3 limitation identified as far as what amount of  
4 construction funds could be used to support  
5 transportation planning.

6 And if you've ever utilized some of  
7 your construction funds to supplement plan, you  
8 probably have heard the reference of 35,000 or  
9 five percent is the limitation.

10 In this particular question in our  
11 proposed reg that restriction is now gone. And  
12 that's kind of the primary change for 404.  
13 Basically, there's no restrictions on how much  
14 construction funding you can use to supplement  
15 transportation planning.

16 405 identifies how the tribes must use  
17 their planning funds. As far as the general  
18 question and answer, they're very similar to the  
19 existing regulations, not a lot of change there.

20 You'll notice here that 405 jumps to  
21 410 and you'll notice in the regulation that it  
22 does say that 406 to 409 is reserved. Those

1 particular questions and answers have basically  
2 been removed or those questions and answers have  
3 been combined into some other question. But  
4 there is a gap there, 406 to 409.

5 410 and 11 defines the purpose of  
6 long-range transportation plan and what it should  
7 include. My primary comment there for 410 and  
8 411 is going to be that the long-range  
9 transportation plan does say a 20-year timeframe.  
10 And traditionally, that's what the state DOT's  
11 developed their long-range transportation plan is  
12 in 20-year timeframe.

13 So it doesn't designate that you're  
14 which tribe in your long-range transportation  
15 planning process then. That is applicable  
16 through the tribes also, the 20-year timeframe.

17 412 identifies how the tribes LRTP is  
18 developed and approved. The general answer to  
19 this questions, again, expands to identify BIA  
20 and FHWA. Both have some sort of role in the  
21 development of that with the tribes.

22 413 identifies the public road and

1 developing the long-range transportation plan.  
2 And this is another example of where you're going  
3 to see some of the words in there, shall, must,  
4 will.

5 The example here is the first sentence  
6 of the answer, "BIA, FHWA, or the tribe must  
7 solicit public involvement." And you probably  
8 heard us in various presentations identifying  
9 that the LRTP is intended to engage the public  
10 and the use of the Tribal Transportation Program  
11 funds. But again, there is a few words in there  
12 that basically identify things that must be done.

13 414 describes how the LRTP is used and  
14 updated. This particular question and answer  
15 does identify just like Mr. Sparrow said, the  
16 relationship between the long-range  
17 transportation plan, the document and the  
18 National Tribal Transportation Facility  
19 Inventory. They are basically together.

20 And I think as far as the answers to  
21 414 I do want to identify that in this particular  
22 answer it does identify that the LRTP must have

1 the NTTFI in it.

2 And you've probably heard us in the  
3 inventory update cycle, we identify that your  
4 long-range transportation plan is intended to  
5 identify your public facilities that serve your  
6 Indian community.

7 And the key word there is public.  
8 Your state roads are open to the public. Your  
9 county road are open to the public. The city  
10 roads are open to the public. The bureau roads  
11 are open to the public. The BIA roads are open  
12 to the public. Tribal roads that you designate  
13 may not are open to the public.

14 And as we go through and we identify  
15 this, when we reiterate this we always use the  
16 word public. It's got to be completely  
17 understood by you and your staff as far as  
18 transportation, your administration, your  
19 leaders, specifically when you start adding  
20 tribal facilities to the inventory.

21 MR. GALLOWAY: Question. Rick  
22 Galloway. See I'm wondering is this going to

1 open up the national inventory to include  
2 operational characteristics or, you know, like  
3 signals, signalization, roundabouts, those sorts  
4 of things, so that we can start keeping track of  
5 those within this inventory or is there any  
6 improvements that's going to happen to the  
7 inventory aspect of the program?

8 MR. KIPP: You might have to rephrase  
9 that question because I don't quite get what  
10 you're asking.

11 MR. GALLOWAY: Right now, you would  
12 have to be cleared a facility, I guess, for a  
13 signal and I don't know of any way to really  
14 actually identify that on the road system. And  
15 there isn't any way to be able to explain it  
16 specifically.

17 But I do think that you need to have  
18 more characteristics of the tribe's inventory  
19 that they have to keep track of, that they have  
20 to do expenditures on, that they have to do  
21 maintenance on, other than just the road  
22 characteristics. There's operational

1 characteristics that need to be included within  
2 that too.

3 MR. KIPP: I'm going to answer that  
4 question as far as identifying whether those  
5 operational activities are either project level  
6 or they're just a road maintenance activity.

7 MR. GALLOWAY: Okay.

8 MR. KIPP: Because, again, when you're  
9 doing your long-range transportation process, one  
10 of the very first key things that you're going to  
11 do is you're going to identify the public system  
12 necessary in your community regardless of who  
13 owns it.

14 And most of those public facilities  
15 should have some sort of public corridor whether  
16 it's 60 feet wide or it's 300 feet wide. And  
17 once that is designated, everything that's inside  
18 of that corridor is eligible for Tribal  
19 Transportation Program use.

20 Whether you perform replacing a sign  
21 under road maintenance as an activity for your  
22 road maintenance project or you create a project

1 as reservation-wide safety signing project and it  
2 becomes an actual project where you have to put  
3 together a plan, specification. Those types of  
4 activities of upkeep to the pertinence to the  
5 roads, the bridges, whatever facilities you  
6 identify are eligible.

7 MR. GALLOWAY: Well, I was just  
8 thinking about the CS detail, the \$300,000 is not  
9 an unusual cost per signal and roundabouts can be  
10 1.3 million, 1.5, it can be a big number if  
11 you're using high-speed intersections.

12 So these you have entered as projects  
13 and they aren't really identified within the  
14 road. They're a way of, you know, operating.  
15 They're a different characteristic than just the  
16 physical, it's the operation.

17 I was just learning if you were going  
18 to do something with that, make it easier for us  
19 to keep track, you know, of our systems and also  
20 it would be much easier to be able to include it  
21 in that.

22 MR. KIPP: Okay. I'll take that as a

1 comment. I'm not quite sure if there was a  
2 question in that. Okay. But the comment is  
3 taken.

4 414, again, I think for this  
5 particular answer just be cognizant that your  
6 tribal NTTFI must be in your long-range  
7 transportation plan.

8 It kind of goes back into as we  
9 discussed in a lot of our own training sessions,  
10 the LRTP, your road inventory, the chicken or the  
11 egg, which one comes first. This is one of these  
12 questions and it basically attempts to try to  
13 clarify that.

14 Because we have a lot of tribes always  
15 asking I want to build this parking lot, but it's  
16 not in my long-range transportation plan and it's  
17 not in my inventory. But I've got to build this  
18 parking lot.

19 It goes back into some of these  
20 questions I, basically, and again, we referred  
21 back to. The parking lot isn't a public facility  
22 yet because your LRTP doesn't say it's a public

1 facility, neither does your inventory. It goes  
2 back within just the semantics of trying to get  
3 those things in A, B, C, D order. Yes.

4 MR. JENSEN: Okay. Matt Jensen with  
5 the Lummi Nation. About the LRTP and the 20-year  
6 horizon, this year's 2015, if we approved our  
7 LRTP in 2035, next year it'd be, then, a 19-year  
8 LRTP. Is that now an invalid LRTP?

9 MR. KIPP: I will say no, it's not.  
10 Because right now, in your long-range  
11 transportation planning process which basically  
12 never stops, it's an ongoing process all the  
13 time, but at some point-in-time your document is  
14 going to be deemed final, right.

15 It's a snapshot in time as far as my  
16 LRTP is approved today, this is our  
17 transportation plan. But what most  
18 transportation departments do, that's the plan of  
19 what they want to do, but they still do and look  
20 at future projects and adjust it as you go on.

21 And I get further down here, there's  
22 another question that basically pertains to the

1 responsibility of when do I review it, when do I  
2 update it and that'll be a few minutes down.

3 MR. JENSEN: Okay. When I was working  
4 for an NBO, it came up quite often that at the 19  
5 years the LRTP is ineligible and therefore, your  
6 formula of funds for the NPO were jeopardized.

7 And so then our LRTPs were always 25  
8 years. So then you would update it every year or  
9 whatnot or every two years and so that we were  
10 always maintaining that we went out at least the  
11 20 years.

12 MR. KIPP: Okay.

13 MR. JENSEN: So that was on the NFHWA  
14 site with NBOs.

15 MR. KIPP: And that is still the case.  
16 The FHWA does identify the 20-year timeframe that  
17 any LRTP, as you go through it as a public  
18 entity, that's the timeframe that it should be  
19 envisioned.

20 But again, there is another question  
21 and that's coming up and that basically says  
22 every five years you grab that document that you

1 approved five years ago, you review it and you  
2 certify that this is still the plan.

3 When you tear the cover sheet off and  
4 put another year on top of it and you approve it  
5 again, that's your choice. But again, the 20-  
6 year timeframe is something that is every LRTP  
7 that's the timeframe that you're looking for as  
8 far as the general LRTP document. Okay. Okay.

9 415 adds project identification  
10 studies as part of the overall funding process.  
11 Again, this is just one of the minor changes as  
12 far as what is eligible and what may be required  
13 under certain documents.

14 Before we go on to 420, you'll see  
15 here that there's another gap in the proposed  
16 regulations. 416, 417, 418, 419 don't exist in  
17 the proposed reg. But you'll note that in the  
18 regulation there is no little note that says  
19 reserved. That will be added. So there is  
20 reasons why there is a gap between 415 and 420.

21 And mentioning 420, defines the tribal  
22 priority list. No significant changes there to

1 the tribal priority list, but you will notice  
2 that in the existing regs, they basically  
3 answered the question in Parts A, B.

4 The answer to this question in the  
5 proposed regs basically combines A and B into one  
6 paragraph. So anytime those type of things  
7 happen just be aware that, you know, the  
8 interpretation of what a tribal priority list  
9 could be or what it can be interpreted to be  
10 could change just a little bit. That's just an  
11 additional comment for the answer to Number 420.

12 The next grouping of questions pertain  
13 to transportation improvement programs or TTIPs.  
14 421 updates the definition and use of the TTIP to  
15 better align with planning requirements.

16 This particular question and answer is  
17 very similar to the existing regs with one  
18 exception and the answer to the proposed regs the  
19 term is financially constrained is now added to  
20 the answer.

21 In the proposed reg there is a  
22 reference to saying that your TTIP is financially

1 constrained. And for the context of financially  
2 constrained for this question and answer, it  
3 basically means that your tribal share. It  
4 basically means your tribal share as far as in  
5 the context of this question and answer. It does  
6 add that to the actual answer.

7 422 updates the definition and use of  
8 the TTP, TIP to better align with planning  
9 requirements. One note here that I want to make  
10 a mention of is that if you see some of these  
11 references to the TIPS, in the existing reg it  
12 says three to five years, in the proposed regs  
13 that we're talking about today, all the  
14 references are to a four-year TTIP, not a three  
15 to five year, but a four-year TIP.

16 As most of your are familiar with that  
17 because we've kind of been implementing that  
18 four-year TIP requirement for the last probably  
19 three to four years anyway.

20 But again, that is a change as far as  
21 the grammatics of some of these questions and  
22 answer.

1           An additional note on 423, I'm sorry,  
2           422 is the answer, is that there is a Part B now  
3           to the answer. And as part of the Part B, it  
4           basically says, the last sentence says, "However,  
5           all other requirements associated with that  
6           project or activity must be satisfied before  
7           expenditure actually occurs." That is an  
8           addition to the answer to that question.

9           And basically what that is intended to  
10          is that if you submit a four-year TTIP and you  
11          have a road maintenance project, and as part of  
12          your road maintenance project you wish to  
13          purchase a piece of equipment, simply because the  
14          BIA investors said we're only going to approve  
15          the TIP, doesn't allow you to go down to the  
16          local vendor and buy your motor grater.

17          There's still red tape that has to be  
18          done as far as getting the approval in an actual  
19          document. It's the same context as if we approve  
20          a construction phase of your project and you have  
21          an approved TIP that said that your construction  
22          phase of your project is approved doesn't mean

1 you can go off and start pushing dirt around,  
2 right.

3 They're still plans, specification,  
4 estimates, archaeological assessment,  
5 environmental assessments, right of way documents  
6 pertaining to temporary construction easements  
7 and long-term road maintenance easements must be  
8 done before you actually start moving dirt,  
9 right?

10 That's basically what that second part  
11 of that answer is intended to identify. But  
12 again, that is an addition to what is currently  
13 in the regulations.

14 423 updates the process of how  
15 projects are placed on the TTPTIP to better align  
16 the planning and statutory requirements. Again,  
17 there, a little bit of an expanded answer to the  
18 question there, but again, the primary thing  
19 there is three to five years has changed to four  
20 years.

21 424 describes the public involvement  
22 process in the TTPTIP development. The actual

1 question of 424, how does the public participate  
2 in development of TTPTIP?

3 And the general answer there, you will  
4 notice that the change from the existing reg to  
5 the proposed reg is that the BIA, the acronym is  
6 not in this answer anymore.

7 The answer basically says the tribe  
8 must publish the notice in their local or tribal  
9 newspaper. It used to say the tribe or BIA.  
10 Just a little bit of a change there as far as  
11 general things being removed and added. But  
12 again, the BIA is basically removed in both parts  
13 of the A and B for that particular answer.

14 425 provides information on how the  
15 TTPTIP annual update is carried out. Again, 425  
16 makes a reference to the TTIP as a four-year  
17 document.

18 I think for here, this particular  
19 question, 425, what it leaves out from the  
20 existing regs is the reference to the  
21 requirement. I believe the requirement used to  
22 be July 15th, I believe, your TTIP was required

1 to be submitted. And the answer for the proposed  
2 regulation, that is no longer a date for the  
3 TTIPs to be submitted and approved. A little bit  
4 of change in 425.

5 426 updates how the TTPTIP is  
6 approved. This general answer and question  
7 basically identified to tell you once you have  
8 created your TTIP and you submit it to the BIA or  
9 you give it to your Federal Highway contact, what  
10 happens to it? It basically just identifies our  
11 program oversight as far as BIA and FHWA, what do  
12 we do with it, how do we improve it?

13 427 described how a tribe can amend  
14 its approved TTPTIP. The general answer and  
15 question there is similar to the existing  
16 question and answer in the existing regs. But I  
17 just want to reiterate that it does identify  
18 that.

19 Once your TIP is approved and a  
20 project comes out of nowhere, and now you need  
21 another project to expend your TTP funds, which  
22 is not on your TTIP, a public process must be

1 involved.

2 You can't just grab your TTIP, add the  
3 new TIP C.O. project in there and send it to the  
4 BIA for approval. The public process, is  
5 reiterated, must be followed in adding a brand  
6 new project to your TIP.

7 This question and answer doesn't have  
8 anything to do with if you have four projects and  
9 you only want to spend your money on three  
10 projects that are already approved on TIP.

11 This question and answer basically has  
12 to do with primarily, if you have a brand new  
13 project which isn't on your tribal priority list,  
14 which isn't on your approved TIP. How do you get  
15 that new project on the TIP.

16 Because, again, it does reiterate that  
17 the public process must be involved some way,  
18 some how. And that could be difficult.

19 Question.

20 MR. GALLOWAY: Rick Galloway. Well,  
21 it says that the same public involvement process  
22 that was used to develop. Well, the same might

1 have been for a long-range plan and then now, you  
2 want to use that same public involvement in order  
3 to just amend a TIP or is it like what you just  
4 said that some public involvement needs to be  
5 included? I think the same is. I think that  
6 could be overkill on some stuff.

7 MR. KIPP: That's a good comment. But  
8 again, as we go through the presentation, I'm  
9 basically identifying the changes from what's in  
10 the existing reg to what's being proposed.

11 So like I said as we implement these  
12 new regulations, new things may be required. And  
13 like you said before is that if your public  
14 process, if they put a notice out and have a  
15 evening meeting and roll out your long-range  
16 transportation plan, roll out your National  
17 Tribal Transportation Facility Index and say here  
18 is our public inventory, here is our tribal  
19 priorities of projects of what we want to  
20 identify as the use of our funds.

21 If that's the only public process that  
22 you have, then you have an approved TIP. It's

1 almost like Mr. Galloway did say, you know, do we  
2 have to follow that same process?

3 As long as the public is involved,  
4 that's what this question and answer is saying.  
5 And that's going to be difficult for a lot of  
6 tribes because adding a project under an  
7 emergency.

8 Last week, we just had a, for example,  
9 we had a bridge wash out last week, public  
10 process, do we have to schedule a meeting and  
11 give a three day notice and then have the meeting  
12 and then, you know, those type of things, that's  
13 kind of what I believe Mr. Galloway's question  
14 was or comment was intended to kind of bring out,  
15 so again, it is a good comment.

16 428 describes how our state will  
17 receive the TTPTIPs. No significant change  
18 there. Just be aware that as we, the BIA and  
19 FHWA, as we approve your TTIPs on a state by  
20 state basis, Federal Highway basically provides  
21 those documents to be included into the STIP as  
22 far as expenditures of highway trust funds.

1                   But again, that's just a reiteration  
2 of an existing question and answer in the  
3 existing regs.

4                   Okay. As far as the grouping for the  
5 next one, the public hearing, we're probably  
6 going to take a break right now for lunchtime and  
7 then I will continue with public hearings right  
8 after lunchtime. And do you want to designate  
9 what time we're going to get back?

10                  MR. GISHI: We're going to get back at  
11 1:15. We're a little bit ahead of schedule, I  
12 mean, in terms of where we want. So we'll get  
13 the most of it, so if we can get back at 1:15 I'd  
14 appreciate it.

15                  Now, those of you who had ordered  
16 lunches, just go to the restaurant area, I guess,  
17 and they'll have them there for you. So thank  
18 you.

19                  (Whereupon, the above-entitled matter  
20 went off the record at 11:59 a.m. and resumed at  
21 1:19 p.m.)

22                  MR. KIPP: They're ranked groupings of

1 questions in Subpart D. I believe we left on  
2 where we were going to start talking about public  
3 hearings questions, 435 to 441.

4 Update to reflect current actions and  
5 requirements, no significant changes. For those  
6 particular questions and answers, as far as  
7 identifying when a public hearing is required,  
8 who is to access or find over those, are  
9 basically questions of 435 to 441.

10 And they are very similar to what's in  
11 the existing regulations. But again, there's  
12 more than a few questions that add BIA, that add  
13 FHWA as far as the roles and public hearings.

14 And again, like 435 says that "the  
15 tribe, BIA or FHWA after consultation with the  
16 appropriate tribe or other involved agencies,  
17 determines whether or not a public hearing is  
18 required for our TTPTIP, a long-range  
19 transportation plan or for a specific project."  
20 We're back into the significance of those  
21 particular items.

22 The next grouping of questions pertain

1 to the TTP facility inventory. The first  
2 question there, 442 describes the NTTFI and what  
3 is included.

4 Again, question 442 has identified  
5 what is basically eligible to be included as a  
6 facility in your inventory. And what is  
7 significant there is basically the identification  
8 that our traditional, what we used to consider  
9 our BIA road inventory, goes well beyond roads  
10 and bridges.

11 We now have boardwalks, board roads,  
12 actually, we have two classifications of board  
13 roads, barge docks, pier docks, public docks. We  
14 have transit-related facilities pertaining to  
15 transit bus stops. We have educational bus  
16 stops. We also have parking lots.

17 As long as they meet the definition  
18 and all open to the public, they can be related  
19 to transportation, they are allowed to be in the  
20 inventory.

21 Particularly for 442, what is the  
22 National Tribal Transportation Facility

1 Inventory, several subsections in there.

2 One last item on 442, the last portion  
3 under Part B of that answer basically identifies  
4 that bridges that meet the NBI, national bridge  
5 inventory, definition as a bridge, they must now  
6 be inspected.

7 The data from those inspections must  
8 be retrieved, formatted and sent to Federal  
9 Highway, so that they can be included in the  
10 national bridge inventory.

11 And so when we're talking about  
12 bridges being inspected and submitted in the  
13 data, that now includes your tribal bridges. And  
14 MAP-21 basically requires that. It was never  
15 required of tribes to do that before MAP-21.  
16 Question.

17 MR. ANDERSON: Frank at CTUIR. A  
18 accepted road is a right of way of a right of  
19 way, asphalt sidewalk, is there any specific  
20 interpretation or is it interpretation of site?

21 MR. KIPP: As far as a reference to an  
22 actual road being one mile in length that can

1 actually be identified in the inventory, but  
2 there's different fields that define that  
3 facility. And one of the fields for the road, is  
4 you identify the right of way width.

5 So if you identify one of your roads  
6 or streets to be one mile long, you have to  
7 identify it is for the tribal facilities. What  
8 is the corridor width? Is it 60 feet left, 60  
9 feet right? Then your public corridor is now 120  
10 feet width. That's part of the inventory  
11 submittal.

12 Because for most states the right of  
13 way is pretty much defined, right, because  
14 there's a fence out there. For a majority of  
15 your county roads that might be the same  
16 situation. There's a fence out there that  
17 defines the right of way, right?

18 For a majority of your BIA roads that  
19 have been constructed in the last 20 years, more  
20 than likely there's a fence out there, right?  
21 And that fence delineates the right of way  
22 corridor from private land.

1                   What about your tribal roads? More  
2 often than not, I do not see fences on tribal  
3 roads. But if it's in the inventory you must be  
4 able to identify the width of that corridor  
5 because that gives you an approximate right of  
6 way situation.

7                   Because, again, and requiring right of  
8 way that helps define your facility, it does  
9 something for you as a public agency. The fence  
10 defines liability. It defines the public  
11 thoroughfare.

12                   And that's why as we see more and more  
13 tribal roads coming into the NTTFI, a lot of the  
14 roads that are designated tribal ownership, they  
15 don't have fences.

16                   And that's why I was saying before,  
17 when you go through and you do your long-range  
18 transportation plan, you start identifying your  
19 public facilities that comprise your NTTFI, one  
20 of the fields is you have to identify that public  
21 corridor width.

22                   And via the BIA and Federal Highway,

1 we don't define your right of way within your  
2 tribal road, you do that because you're defining  
3 your area of liability.

4 Are you responsible for that tree  
5 that's 15-foot from the center line of the road.  
6 Well, if you designate your right of way to be  
7 outside of that tree, that's now a part of your  
8 liability if somebody hits that tree, right?

9 So it does go up into identifying.  
10 Like I said when you're identifying your  
11 facilities there's certain fields that help  
12 define that facility and basic requirements and  
13 basic liabilities that are in there. I hope that  
14 answers your question.

15 MR. ANDERSON: Along with maintenance.

16 MR. KIPP: Yes. Yes, a right of way  
17 corridor. That's why when you see state and  
18 counties, they're mowing grass, right? They're  
19 taking care of the right of way corridor and  
20 maintaining fences because you might have  
21 wildlife crossing the road. And maybe the  
22 fencing in some sort of way corrals them, abates

1 that.

2 So if your fence is always down, you  
3 know, you might have wildlife crossing your road  
4 quite often. It's mending fences and stuff like  
5 that could be a road maintenance responsibility,  
6 protecting your liability and making the facility  
7 more safe for public use.

8 But again, 442, it does add a section  
9 there identifying the bridge inspection and  
10 requirements. That is a change from the existing  
11 regulations.

12 The next one, 443 defines a proposed  
13 facility and includes the process and  
14 requirements to successfully include it into the  
15 NTTFI.

16 443, that question in the regulations  
17 that's being proposed does not exist in the  
18 existing regulation. This is a brand new  
19 question. Question?

20 MR. ROBIDEAU: Yes, I've got a  
21 question on Item C --

22 MS. CARRION: Your name, please?

1           MR. ROBIDEAU: -- referring to right  
2 of way. I'm sorry. Chris Robideau, Red Plains.  
3 Item C says that we need to have right of way  
4 documentation or a written statement of  
5 willingness to provide a right of way from each  
6 necessary landowner.

7           I was under the impression that the  
8 inventory and putting proposed roads on the  
9 inventory was more of a planning process as  
10 opposed to the design process. Are we mixing the  
11 two here?

12           And if the road can't get into the  
13 inventory in order to start the design process  
14 and apply money to a design process because we  
15 can't get it into the inventory because we don't  
16 have the right of way yet. And usually your  
17 right of way limits and temporary construction  
18 easements and all that come from your design  
19 process.

20           So basically you're asking for right  
21 of way documentation without their being a design  
22 process during the inventory process. It's going

1 to make it very difficult to get proposed rules  
2 in the system and get those rules on your TIP.

3 MR. KIPP: That comment, I will agree  
4 with that as a comment. But as far as  
5 identifying a facility to be included in the  
6 inventory versus a facility becoming an active  
7 project in a tribal priority list, that's where I  
8 think the distinguish need to be made.

9 Adding a road to the inventory, I hate  
10 to say that we don't require a right of way plat  
11 per realty standards, but we need to make sure  
12 that the person who owns the land or the entity  
13 that owns the land provides some sort of  
14 documentation to you as a tribe, stating that  
15 the current facility that you want to add the  
16 inventory is open to the public.

17 And that pertains more to your tribal  
18 roads, a little bit to your BIA roads because  
19 most of those roads go across trust line. And  
20 those roads that exist on your trust line, they  
21 might have been there for 25 years, right, no  
22 formal realty document saying everybody can use

1 this. It's a bus route, I'm okay with it.

2 Law enforcement patrols it, I'm okay  
3 with it. All of the tribal program people drive  
4 up and down the road, I'm okay with it. But if  
5 there's no formal right of way in place  
6 identifying that the landowner allows that use,  
7 we're basically running the road program like  
8 this hoping that nothing ever happens.

9 And that goes back to some of the  
10 questions that allow the non-tribal, non-BIA  
11 entities pertaining more to realty, have that  
12 question.

13 Why don't the tribal roads have right  
14 of way documents certifying that this particular  
15 facility is a public facility, it has a defined  
16 width and it is truly open to the public.

17 So it goes back into, like I said, I  
18 think that's kind of assumes that I would make  
19 there is that to get a road or a facility on the  
20 inventory you are basically asking that the  
21 landowner must provide some sort of documentation  
22 saying that that facility is open to the public.

1           The example that we had talked about  
2 a little bit that kind of referenced some of the  
3 questions this morning pertaining to the Forest  
4 Service, right?

5           You can go to just about any Forest  
6 Service agent and they'll tell you the Forest  
7 Service lands are open to public access. But  
8 does that mean you can drive every single road  
9 that looks like a road on there within their  
10 jurisdiction?

11           No, because they do decide at certain  
12 points of time that some of the roads that look  
13 like roads are not open to public access to  
14 vehicles.

15           You want to park your car and walk  
16 down their road, fine and dandy, their land is  
17 open to the public. But they do restrict some of  
18 their facilities to non-vehicular traffic.

19           And so when we identify this, we're  
20 looking to make sure that we have some sort of  
21 documentation from the true landowner that they  
22 acknowledge whatever facility is on their land,

1 they give you a document saying that, yes, it is  
2 open to the public.

3 But, specifically, when you're on  
4 trust land, it's either owned by what two  
5 entities? It's either owned by your tribe or the  
6 individual entity. And by having a road on that  
7 trust line, you're using their land. Thus, some  
8 sort of documentation.

9 It may not be a formal right of way,  
10 but some sort of identification saying I'm  
11 allowing public access through my property. And  
12 you could put it in your inventory. I think  
13 that's what that answer is intended to  
14 distinguish between two.

15 MR. ROBIDEAU: Again, Chris Robideau,  
16 Red Plains. I agree with that for roads off of  
17 trust property. For roads on trust property, I  
18 think this is overkill, just to comment.

19 MR. KIPP: Comment taken. Next  
20 question.

21 MR. JENSEN: Matt Jensen of the Lummi  
22 Nation. What about trust land that's with

1 undivided interest and if you have multiple  
2 owners of that land that's undivided, do you need  
3 to get signatures from each of the landowners?

4 MR. KIPP: I am going to answer that,  
5 I think, from a realty point-of-view is that use  
6 of the land has to require at least 51 percent of  
7 the owners to say yes.

8 And that's usually all that grants  
9 realty within the Bureau of Indian Affairs  
10 identifies that, is that if you can get  
11 signatures from 51 percent of the owners in  
12 fractionated interest, you are allowed, in the  
13 superintend able support, the use of it.

14 Now, that doesn't mean that you're  
15 free and clear because there could be 49 percent  
16 that'll stand up in front of you and say we don't  
17 want this use. But if 51 percent of the owners  
18 basically say, yes, we agree that this can be  
19 used in this event, the other 49 percent,  
20 according to our existing rules really have been  
21 outnumbered.

22 But yes, that is the -- it comes down

1 to when they're dealing with individual allotted  
2 lines, the fractionated interest, you're going to  
3 need some sort of documentation because, again,  
4 it's about identifying the use of trust land.

5 And the owners must be made aware of it and they  
6 must be on board that it's open to the public.

7 Yes?

8 MS. POWELL: Megan Powell for the  
9 LTAs. So when you say it may not be a formal  
10 right of way, it may be something else, I know  
11 you gave the Forest Service example, do you have  
12 any other examples that you could provide of what  
13 other documentation might indicate that consent?

14 MR. KIPP: To the best of my knowledge  
15 as far as the facilities that are tribally owned  
16 that are in the inventory I'd have to answer that  
17 as a no.

18 Because usually it is either a formal  
19 right of way document that is actually performed,  
20 it's surveyed, it's a stake valid in the field,  
21 it's sent into the regional office, it goes to  
22 the LTRO office and it's recorded there. And the

1 recording may be used the wrong context, but they  
2 record that use.

3 Now, the other document that basically  
4 says I, as a tribe, acknowledge that the road  
5 from here to here is open to the public, those  
6 documents are not sent to the realty office or  
7 the LTRO, Land, Titles and Records Office. But  
8 they are basically held and should be available.

9 And if anything, that's where we kind  
10 of lose the ability to verify tribal facilities  
11 that are tribally owned on tribal land is because  
12 tribes haven't historically had to do those  
13 documents stating that the roads starting here  
14 and here are open to the public and then give it  
15 to their tribal realty department and they start  
16 keeping track of it. That's not really done all  
17 the time.

18 And again, the tribal roads are  
19 probably the most difficult to address when we're  
20 talking about realty-type documents. But again,  
21 when you're talking about access where it  
22 requires to go through trust land, that's where

1 it gets really difficult.

2 And we've had more than a few of those  
3 instances where somebody that wants to get over  
4 here, but has to go through trust land and we say  
5 there's a tribal road here because it's on our  
6 inventory and we can't produce a document to a  
7 fee landowner saying, hey, you know, you have the  
8 ability to go through our trust land because it's  
9 a public road.

10 And most of the time it has to do with  
11 real estate type stuff. Somebody wants to buy  
12 land and build a home. And the only way that  
13 they can get there is through Indian trust land.  
14 So they've got to acquire documents that  
15 basically say that they have unrestricted access  
16 through trust land.

17 Now, that's a determinant there isn't  
18 it? Yes. And that's why I think, perhaps, your  
19 question kind of comes to that point is that we  
20 have a lot of that. And that is an issue that we  
21 have to deal with.

22 But again, 443 is a brand new question

1 to these regulations and it has to do with  
2 proposed facilities require documents. You have  
3 to provide documentation in justifying the  
4 proposed facilities that are already in the  
5 inventory and you have to provide documentation  
6 for what you want to add to the inventory as  
7 proposed facilities.

8 And if you read through some of those  
9 requirements as far as what's going to be  
10 required to keep your proposed roads in the  
11 inventory or add one, it's going to be that there  
12 is a lot of administrative work there and a lot  
13 of requirements there, so I wanted to make sure  
14 that that one is reviewed.

15 Next question, 444 describe how the  
16 NTTFI is updated. As far as this particular  
17 question, if you've ever heard about dates for  
18 the inventory of November 1st, March 15th, May  
19 15th, you'll be very familiar with this question  
20 because that's where these dates derive from.

21 What is the difference between these  
22 proposed regs and what's in the existing regs is

1 that this particular question now has a series of  
2 answers for adding a new road to the inventory,  
3 updating an existing one and the appeal process  
4 for if it's not accepted.

5 And that is a big difference between  
6 what is in the existing reg and what's in the  
7 proposed reg right now. Question.

8 MR. ROBIDEAU: Chris Robideau, Red  
9 Plains Professional. I recommend on 170.444(a)  
10 that we'd add Item 7 that would include either  
11 the BIA, DOT or Regional Office getting back to  
12 the tribe if a record is sent back from DOT.

13 MR. KIPP: Okay. Comment's taken.

14 MS. MANN: Can you repeat that for us?

15 MR. KIPP: Can you repeat your  
16 comment?

17 MS. MANN: Can you repeat that? I  
18 apologize.

19 MR. ROBIDEAU: Section 170.444, Item  
20 A, where we have 1 through 6, I think we need to  
21 add an Item 7, which will include either the BIA  
22 or DOT if they disapprove of a route. And then

1 we're turning it back to the region that at that  
2 time the tribe be made aware of that.

3 MS. MANN: Thank you.

4 MR. KIPP: One more question.

5 MR. GALLOWAY: Rick Galloway. I'm  
6 curious, I just wanted to ask why is there a  
7 March 15th deadline? Why, when inventory really  
8 doesn't generate funding, which is really what  
9 this segment is about is describing that.

10 And I know that some regions use that  
11 date as a date that if you do not notify them and  
12 do something by that date, that they will not  
13 review any updates that you have and they'll use  
14 that as the critical measure.

15 And I'm wondering why there is a, you  
16 know, has to be entered by date when it doesn't  
17 generate anything, it doesn't do anything. So  
18 why can't you do it all year-long? Why can't you  
19 just enter it and notify them?

20 MR. KIPP: Okay. As far as the answer  
21 to that, if you look at the last portion of that  
22 particular question, Part D. It basically reads,

1 "To be included in annual NTTFI update used for  
2 administrative and reporting purposes for any  
3 given fiscal year, submittal of new facilities  
4 and updates for existing facilities must be  
5 officially accepted by BIA and FHWA by September  
6 30th."

7 And we basically have that in there  
8 because we are constantly submitting data calls  
9 for tribal roads, data calls for BIA roads, data  
10 calls for mileage, for facilities in the  
11 inventory.

12 And at some point-in-time, they  
13 sometimes ask is this from your final year  
14 inventory. And we say, well, we are still  
15 working on our 2014 inventory. It's not  
16 finalized, but this is the data that we have.

17 And I think perhaps pertaining to  
18 that, they want to be able to identify that  
19 September 30th of every year the inventory must  
20 be final, so that when we request reports you can  
21 say the final inventory.

22 Otherwise we are going to be like we

1 were 15 to 20 years ago where we might have 60  
2 official road inventory numbers in a year.  
3 Because every Friday we save it with all the  
4 information that comes in. We might have 60  
5 final databases based on what day you ask.

6 And again, it goes back into I want to  
7 say that, I believe, when the negotiated  
8 rulemaking took place back in the very early 2000  
9 timeframe, that they wanted to have an inventory  
10 cycle started and they want to be able to have  
11 one ended.

12 And I think that's kind of why where  
13 the November 1st deadline, this kind of begins  
14 the inventory update cycle and September 30th  
15 will end it. And hopefully that answers your  
16 question as to why it's still in there.

17 Because March 15th deadline was a  
18 deadline that was negotiated through the  
19 negotiated rulemaking when the 2004 regs were  
20 finalized.

21 MR. GALLOWAY: But it had a purpose in  
22 those days. I mean, now it's being used as a

1 restriction --

2 MR. KIPP: Yes.

3 MR. GALLOWAY: -- as a, you know --

4 MR. KIPP: And that --

5 MR. GALLOWAY: -- as a workload --

6 MR. KIPP: And I think your comment  
7 there for myself as the presenter of this portion  
8 is that you are tying the mileage into the  
9 formula. And right now under MAP-21 they are  
10 not.

11 As you update your inventory, that's  
12 a process that keeps going and the formula that  
13 we run is not related to our continual update in  
14 the approval of the inventory anymore.

15 So I think that may be a thought  
16 process that needs to be separated that, as Mr.  
17 Sparrow was saying that, inventory, we still need  
18 to review. We still need to be tightening the  
19 screws on it and making it as accurate as we can.

20 Yes, the formula's still going to use  
21 two-year old and ten-year old mileage, but that's  
22 what the law says. So it kind of goes back into,

1 hopefully, that kind of addresses the March 15th.  
2 But then, like I said, I think that was something  
3 that kind of is a part of the inventory starts  
4 and it basically ends and there's a final 2014  
5 mileage. Question.

6 MR. ROBIDEAU: Chris Robideau, Red  
7 Plains Professional. Would there be a way to add  
8 a statement in here that throughout the year, not  
9 following these deadlines at the discretion of  
10 BIADOT, routes can be accepted into the  
11 inventory?

12 MR. KIPP: If the comment is  
13 submitted, it will be reviewed and addressed,  
14 hopefully, and could be included, yes. But  
15 again, just kind of recall that 444 basically has  
16 three distinct sections, what to do with the new  
17 facility, what to do with an existing facility  
18 and the appeal process is now included in the  
19 actual answer.

20 445 and 446 describe the strip map and  
21 the minimum attachments required. 445 is  
22 basically what is a strip map. Question.

1                   MR. ROBIDEAU: Sorry. I'm talking  
2 about 446, the required attachments. Chris  
3 Robideau from Red Plains again. Under ADT  
4 documentation the wording, as it sits, needs to  
5 be revised a little bit to include the  
6 requirement of ADT when adding a class road.

7                   MR. KIPP: Comments taken and I'll ask  
8 you a question when I get there.

9                   MR. ROBIDEAU: I'll hope.

10                  MR. KIPP: Okay. 445, what is a strip  
11 map. Basically, the question and answer, very,  
12 very similar to what's in the existing regs. The  
13 only exception there is that the answer in the  
14 proposed regs references a TTP. It's a Coding  
15 Guide.

16                  So the existing 2007 IRR Coding Guide  
17 will be revised and we'll be referencing that as  
18 a TTP Coding Guide. And so there is a reference  
19 to the TTP Coding Guide in the answer there  
20 somewhere.

21                  But you're going to see that in that  
22 Coding Guide, it's not going to be so much road

1 and bridge oriented. It's going to have the  
2 ability to add a parking lot. It's going to have  
3 the ability to add formally a pier dock, a barge  
4 dock, board walk, ice road. It's going to have a  
5 lot of references to non-traditional roads and  
6 bridges.

7 And you can kind of relate that to  
8 why, perhaps, the Indian Reservation Roads  
9 Program is now called the Tribal Transportation  
10 Program. We're more facility oriented, well  
11 beyond roads and bridges.

12 But just make a note of that, that  
13 does reference the TTP Coding Guide in the answer  
14 for 445.

15 446, basically 446 is a brand new  
16 question. 446 does not exist in the existing  
17 regs. The question states, "What minimum  
18 attachments are required for an NTTFI  
19 submission?"

20 If you're familiar with the road  
21 inventory and the updating of the road inventory  
22 in the past probably eight to nine years, you may

1 have heard us reference a Pat Ragsdale document.

2 Back in 2007 when he submitted out a  
3 document from the Assistant Secretary's, the  
4 document's say these are the minimum attachments.  
5 And we've been implementing that policy per that  
6 memo.

7 And this 446 basically replaced that  
8 policy memo. So these minimum attachments are  
9 actually listed in the regulations now. Yes.

10 MR. STROBEL: Andrew Strobel, Puyallup  
11 Indians. On Section 446, Section G, it makes  
12 reference to the Indian Reservation Roads  
13 Facility. I figured you want to change that to  
14 TTP Facility.

15 MR. SPARROW: You put a dollar or two  
16 in the bucket.

17 MR. KIPP: I think --

18 MR. STROBEL: I'm going to put a  
19 dollar in the kitty for that one.

20 MR. KIPP: Yes, that is a good comment  
21 because I added that to my cliff notes after the  
22 third presentation. I didn't catch that myself.

1 If we had a prize, Leroy, you're --

2 MR. STROBEL: I'll be here all day.

3 MR. KIPP: But, again, that is a good  
4 catch. That is one of their instances where one  
5 of the old acronyms or one of the old terms are  
6 basically still included in the regs, so. And  
7 that was under Part G.

8 And as far as Part G, the memorandum  
9 of an agreement or the letter of acknowledgment,  
10 when, in Part C when the formula portion was all  
11 taken out of the regs as Mr. Sparrow is  
12 identifying, this memorandum of agreement or this  
13 letter of acknowledgment from the public agency  
14 is basically, really, if there is remnant from  
15 Question 10, it's that.

16 Because the memorandum of agreement  
17 used to be a requirement for adding to the  
18 inventory. But we grabbed it out of that  
19 Question 10 answer.

20 So basically this memorandum of  
21 agreement or acknowledgment is basically the last  
22 remnant of that. But again, it goes back into if

1 you want to add a trail or a road in the park  
2 service that they currently had open to the  
3 public, you need a document from them, from the  
4 Forest Service, Corps of Engineers, Bureau of  
5 Land Management, Bureau of Reclamation, the City,  
6 the Bureau, the State.

7 You need that document that identifies  
8 that they, as a public agency, know that you're  
9 putting their facility into your inventory. Yes,  
10 question.

11 MR. ROBIDEAU: Again, Chris Robideau,  
12 Red Plains Professional. In reference to Item G  
13 that we're discussing, we just heard a minute ago  
14 that typically one of the statements that comment  
15 one of these MOAs will be a authority  
16 responsibility and that's responsibility for  
17 maintenance including the STIP taking place or  
18 TTP funds they spent on that road.

19 With that statement being signed off  
20 on to include road in the inventory, from a  
21 tribal standpoint are they then not, you know, we  
22 had a conversation earlier about right of way,

1 does not hold legal precedence to also say that  
2 that is the entity owner of that really?

3 Because there are tribes that have  
4 entered into MOAs for roads that they wanted to  
5 add into the inventory, have done so, coded those  
6 roads are county ownership, got one of these MOAs  
7 signed and agreed and now have the county coming  
8 back just because of that document, even when  
9 right of way documentation does not exist, saying  
10 that they now have authority over those roads.

11 Where it was never established by one  
12 side or the other through the whole process to  
13 date, this one letter didn't sign to put  
14 something in the inventory is causing legal  
15 issues on Indian land.

16 MR. KIPP: I agree. That is the case.  
17 Because what he's basically talking about, I  
18 guess, if I interpret your comment right is that  
19 counties from a realty standpoint, for the most  
20 part, may not have a realty-type document from  
21 the tribe, as a landowner, giving the county  
22 right of way, right?

1           But they're going to swear up and down  
2           and backwards that that's their road, right? And  
3           for the most part, read the BIA, read the  
4           inventory, we are basically saying, yes, that's a  
5           common road.

6           And we need to have some sort of  
7           document from the county stating that they are  
8           acknowledging that you are putting a county road  
9           that may have no other prior document, they need  
10          to submit that.

11          And that does cause situations to  
12          occur where people on the other side of the table  
13          start moving further and further apart. Because  
14          there are a lot of tribes that have a legitimate  
15          argument saying we never gave the county that  
16          road, but everybody is against us in saying that  
17          it is a county road. And that is true what he  
18          just brought up.

19          MR. ROBIDEAU: Again, Chris Robideau.  
20          What do you do if you can't get one of these  
21          signed? And for political reasons the tribe is  
22          moving forward with some type of plan to do some

1 development or something. And they want to get  
2 these roads on the system to improve them and  
3 help the entity approve them as they need the  
4 support for development.

5 And because of that said development  
6 the town or state or whoever says, no, we're not  
7 signing off on that, therefore, we're not going  
8 to allow you to spend your Tribal Transportation  
9 Program dollars on this project.

10 MR. KIPP: Did you asked one or two  
11 questions there. I think you asked two questions  
12 there. The first one, basically, is what do we  
13 do if the other entity just doesn't want to give  
14 us that document?

15 The first action should be let the  
16 Regional Office know that County A, Bureau B, the  
17 state of blah, blah, blah is not going to give  
18 you a document.

19 The Regional Office will know to get  
20 a hold of myself. I'll get a hold of Leroy, Bob  
21 Sparrow and we discuss it at that point because  
22 it does say this document can be a letter or

1 similar notification by the public authority.

2 What does notification by public  
3 authority mean? If a county, if you're having a  
4 problem with a county giving you a letter stating  
5 that that's their road, we found instances where  
6 the county puts their maps on the Internet.

7 And you go to Adams County on the  
8 Internet for some particular state and there's a  
9 county map on there, on the Internet, right? Way  
10 at the bottom right it says county mileage.

11 You grab that document and say, hey,  
12 if the county's willing to put a map of their  
13 county roads on the Internet, it's a public  
14 document. They've just now told the general  
15 public that this is their road system, right?

16 Could we not use that? It goes back  
17 into being able that, I think that's where that  
18 or similar notification by the public authority.  
19 And then that's basically where we would catch  
20 them because I do realize that there are  
21 entities, local government, that will not work  
22 with tribes. They may not communicate with

1 tribes. In some cases, they ignore you.

2 But again, it goes back to your answer  
3 of the first part is you've got to let the  
4 regional office know so that we can know.

5 Because it goes back into one of the very first  
6 questions that Mr. Sparrow got up this morning.

7 State and local Government's what? Do  
8 you recall that? There was a little bit of  
9 discussion between will and shall work with  
10 tribal governments. It was the very question in  
11 the entire regs. But hopefully that answers your  
12 question there.

13 MR. BROWN: Randy Brown, Nez Perce  
14 Tribe. So we went through that process, but  
15 those roads, I mean, I think we did the process  
16 in 2011 and we still have umteen miles of roads  
17 there on inventory that have been sitting at the  
18 region because of that reason right there.

19 So do we need to resubmit or how do we  
20 go about that? Do we need to resubmit them and  
21 state that again, that we can't get the MOA or is  
22 it something that's just going to be updated now,

1 and then that's kind of what I meant?

2 MR. KIPP: You're going to have to  
3 pardon my ignorance because I'm not aware of that  
4 situation for your tribe. Because right now,  
5 what kind of disturbs me right now is that you  
6 said that they were returned to the region.

7 And in the inventory update process  
8 that means that they must have been submitted by  
9 the tribe, reviewed by the region, sent up to  
10 BIADOT which is our office.

11 And the only way somebody could say  
12 return to the region is if we in BIADOT meeting  
13 in Albuquerque, we returned it back to the  
14 region.

15 And that's why I'm kind of hesitant to  
16 say that I have to pardon because I'm not aware  
17 of that right now. But I will check into that  
18 and see what we can do as far as resolving that.  
19 And I apologize again.

20 Any more questions on 446? Because  
21 like I said before just recall that 446, the  
22 minimum attachments question and answer is brand

1 new to this inventory. This is brand new, those  
2 roads. Oh, I'm sorry. 446 is for the minimum  
3 attachments.

4 Moving on to the next category of all  
5 the groups of questions pertains to the  
6 environment and archeological requirements. 450  
7 identifies that the TTP environment and  
8 archeological requirements are located on the BIA  
9 --

10 PARTICIPANT: Oh 446, okay, got it.  
11 Go ahead.

12 MR. KIPP: -- and FHWA websites.  
13 These particular questions and answers are  
14 basically identified very much in the same format  
15 as the existing reg.

16 But one of the things here, as Mr.  
17 Gishi and Mr. Sparrow and Mr. Caulum basically  
18 said is that there used to be appendix, right,  
19 where it's going to be the grouping in parts with  
20 listing all the archeological laws, all the  
21 environmental laws, all the regulations for the  
22 DOT and the DOI, BIA, all those references are no

1 longer in the proposed regs.

2 It's one of those things where we have  
3 been kind of instructed that that listing is no  
4 longer going to be in the regs, but we're going  
5 to give you a website address where you can go  
6 get them if you want to look at them  
7 specifically.

8 So, again, this is one of the  
9 groupings where the actual appendix was taken out  
10 of these proposed regulations and they're going  
11 to be on the Internet.

12 One of the particular questions, 452,  
13 indicating that TTP funds can be used for  
14 compliance and other activities.

15 452 is basically a brand new question,  
16 "When can TTP funds be used for archeological and  
17 environmental activities?" The basic answer is  
18 when your project is under an approved TIP. But  
19 just be cognizant that 452 is a brand new  
20 question and answer.

21 The next grouping of questions  
22 pertains to design. 454 identifies the

1 requirement of design and where they can be  
2 found. It also describes how the use of a new  
3 design standard can be proposed, question 454.

4 That particular answer also has a  
5 website that can be used to reference what design  
6 standards that are applicable to the use of the  
7 TTP funds. Question? Okay. But again, that was  
8 454.

9 455 clarifies what other factors  
10 influence the project designs. Basically right  
11 there, 455, basically identifies the design like  
12 from the designing a road or your designing a  
13 bridge.

14 Twenty year design for roads, the  
15 regulations say 75 years for a bridge. But just  
16 realize that even though it says project design  
17 as you've discussed and asked questions about  
18 earlier today, you have other things that you're  
19 designing.

20 You're designing things beyond roads  
21 and bridges, right? And I think Mr. Gishi made  
22 reference to the designing and the constructing

1 of vertical constructions, facilities, whether it  
2 be for your transportation department, your  
3 maintenance department, your transit department,  
4 your transportation planning department.

5 There's other type of project designs  
6 that this question and answer probably is  
7 interpreting that it doesn't apply to. This  
8 question and answer is purely for roads and  
9 bridges. And it pertains to the design like of  
10 those facilities. Question.

11 MR. ROBIDEAU: Chris Robideau from Red  
12 Plains. Back to Item 170.452, I heard you say  
13 that a facility must be on the inventory in order  
14 to spend money for archeological or environment  
15 activities.

16 Back when we were adding proposed  
17 roads to the inventory, you recommended  
18 environmental processes required to get that  
19 approved.

20 That contradicts. How do they get  
21 roads on the inventory if they can't spend TTP  
22 dollars? Do you expect the tribe to fund their

1 inventory updates out of tribal funding?

2 MR. KIPP: I'm going to do my best to  
3 answer that question the same way that I did two  
4 days ago because that very same question came up.  
5 But it came up as far as me answering the  
6 questions that when you're identifying a route to  
7 be added to the inventory, you're not doing a  
8 full-blown archeological assessment. You're not  
9 doing a full-blown environmental document.

10 But when you're identifying proposed  
11 facilities to be added to the inventory, it is  
12 important that you, in running your program and  
13 moving forward the project, that you know  
14 environmentally is it going to be a categorical  
15 exclusion, is it going to be an environment  
16 assessment resulting in a FONSI or is it going to  
17 be a full-blown environmental impact statement?

18 Because when you start tying a dollar  
19 amount to those three things, and environmental  
20 impacts there that cost are much, much greater  
21 than a categorical exclusion.

22 So when we're talking about that

1 particular item there, adding the road to the  
2 inventory is more of a pre-planning type stuff.  
3 You're not talking about actually building the  
4 project. It's more of a concept project. But  
5 you still need to know is there a categorical  
6 exclusion. How many days and how many man hours  
7 is it going to take to do that?

8 It's going to be one-one hundredth of  
9 doing an environmental impact study because that  
10 could take years. It could take years. So going  
11 back into that's kind of the primary difference  
12 is we're not expecting a full NEPA document to  
13 get the facility into the inventory. We're  
14 simply going to be identifying that, hey, this  
15 particular facility which is being added to the  
16 inventory has no environmental document.

17 If and when that we actually move into  
18 the construction phase and start doing  
19 preliminary engineering, we anticipate that this  
20 is going to result in an environmental assessment  
21 resulting in a FONSI, minimal funding required.

22 It goes back and kind of being able to

1 distinguish between that and actually when the  
2 project is in front of you and you start  
3 surveying the alignments and going through the  
4 public process of we have three options here. We  
5 surveyed three things in the field. This one's  
6 going to cost more than this one.

7 Because then you start expending  
8 actual preliminary engineering dollars to help  
9 you find where is the most likely placement of  
10 those facilities. But hopefully I answered your  
11 question there because like I said, there is a  
12 significant difference dollar expenditure-wise  
13 there.

14 Okay. 455 basically, like I said  
15 before, identifies the design life by the call.  
16 It's only for roads and bridges.

17 456, 457 states how tribes can request  
18 design exceptions and the appeal process if your  
19 request is denied. Those question and answers  
20 are very similar to what's in the regulation now,  
21 as far as if you request a design standard and  
22 there happens to be, you know, question, what

1 happens, where to get your answers from.

2 The next grouping of questions, oops,  
3 what happened here, review and approval of plans,  
4 specifications and estimates, 460, 461. 460  
5 identifies the composition of a project package  
6 and the procedures for a tribe to approve their  
7 PS&E.

8 This particular question, similar to  
9 the existing regulation. The comment I want to  
10 provide to you in reviewing this particular  
11 question, which is what must a project package  
12 include.

13 It's very important for you as far as  
14 when running your Tribal Transportation Program  
15 to be able to distinguish between project  
16 packages and the PS&Es, what a project package is  
17 versus a PS&E.

18 Because even in general some people  
19 will use them interchangeably. And when you're  
20 looking at this particular question, they are not  
21 the same thing.

22 The project package as in when you

1 look through that document basically identifies  
2 you've got your plans, you have your  
3 specifications that go with those plans, you have  
4 an estimate, your archeological document, your  
5 NEFA document, your rights of way document  
6 pertaining to whether you have a temporary  
7 construction easement and/or a long term road  
8 maintenance easement.

9 That comprises the project package.

10 A PS&E is simply that, your plans, your  
11 specifications and estimate. Just be sure to be  
12 able to distinguish between those two.

13 Do you recall about three, four years  
14 ago, we got the special funding from the Stimulus  
15 Act? Remember they were asking for what type of  
16 project were we asking for initially?

17 (Simultaneous speaking)

18 MR. KIPP: Shovel ready projects.

19 That's what a project package is. Your plan,  
20 specification, your estimate, your archeological,  
21 environmental, all of your right of way easements  
22 that are required to actually perform the project

1 and procure a contractor, that is a shovel ready  
2 project. That's what consists of your project  
3 package. Just kind of take that into  
4 consideration when you're looking at that  
5 question.

6 461, "May a tribe approve plans,  
7 specifications, and estimates?" Just recall that  
8 this particular answer is reflecting what  
9 SAFETEA-LU and MAP-21 put into place. And it is  
10 different than what the 2004 regulations  
11 identified.

12 The 2004 regulations basically  
13 identified a second level review. When you get  
14 an engineer to certify and sign your set of  
15 plans, the existing regs say that you have to get  
16 another PE to review those plans and certify that  
17 they're okay. That's what the negotiated  
18 rulemaking put into place in the existing regs.

19 SAFETEA-LU basically took out the need  
20 for the second level review. MAP-21 basically  
21 carried them forward. These proposed regs now  
22 have it in place. Because you'll see no

1 reference to second level review for this  
2 particular answer.

3 So it's something that has been  
4 implemented by a lot of tribes, it's just that  
5 it's now getting into written form as far as part  
6 of the regulations.

7 The last question identifies the  
8 actions to be taken of the secretary, identifies  
9 the design deficiency. That question and that  
10 particular answer, very similar to what's in the  
11 existing regs.

12 Construction and construction  
13 monitoring is our next grouping of questions.  
14 470, 471 identifies the construction standards  
15 that must be used and how projects are to be  
16 administered.

17 Those particular questions, at least  
18 those two, are almost exactly the same as what's  
19 in the existing reg. They're almost exactly the  
20 same.

21 472 clarifies what construction  
22 records must be kept and accessible for review on

1 construction projects. This particular answer  
2 basically comprises of a small explanation and a  
3 table of what type of documents are required to  
4 be in place.

5 And you'll see there that it does  
6 identify the construction records as far as who's  
7 supposed to be doing what and to what must the  
8 tribe keep in place and what must the BIA keep in  
9 place.

10 Next question, 473 provides  
11 information on when a project is considered  
12 complete and how and by who a project closeout is  
13 conducted, 473.

14 When you're looking at that question  
15 and answer, you might want to basically review  
16 that, specifically if you're in a program  
17 agreement.

18 If you're in charge of the program  
19 agreement with Federal Highway, if you're in  
20 charge of the program agreement with BIA just be  
21 cognizant of that this particular question  
22 identifies who has what responsibility when a

1 project is complete and what makes a project  
2 complete. Question in the corner.

3 PARTICIPANT: I think that it is clear  
4 as I'm reading through.

5 MR. KIPP: Okay. No comment there.  
6 Although the PowerPoint up here on the board  
7 doesn't show it, there is a question, 474, that's  
8 in the proposed regulations. Who conducts the  
9 project closeout is the question.

10 Again, there's a small explanation  
11 there with a table of who has what  
12 responsibilities for the project closeout. And  
13 just recall that there a question, 474, to close  
14 regs even though the PowerPoint up there on the  
15 screen doesn't show it.

16 Only a couple of groupings left here  
17 to talk about. Management systems is the next  
18 one. In general, program reviews were removed  
19 from this section as this work is now included in  
20 national business plan.

21 In the existing regs there was a few  
22 questions and answers about program reviews.

1 Regional offices have their programs reviewed  
2 because back ten years ago there was a lot of  
3 direct service work being performed by the  
4 Regional offices.

5 So Central Office, that they're liable  
6 to go into the Regional Office and do a program  
7 review of how is the region performing in  
8 acquiring services for survey, for design, for  
9 construction inspection, making sure all the ins  
10 and outs as far as construction were being  
11 performed.

12 But that question is basically taken  
13 out and it is included in the national business  
14 plan that I understand once it's complete it will  
15 be posted to Federal Highway and BIA website  
16 because that is still an ongoing document that's  
17 currently being written now.

18 But 502 is a question in the proposed  
19 regs. It identifies the requirements for  
20 national management systems as well as what funds  
21 the tribe could use if it desired to have its own  
22 management systems.

1           The question and answer basically says  
2           that you, as a tribe, are allowed to purchase  
3           software programs that assist you in running the  
4           program on a day to day basis.

5           If you're running a road maintenance  
6           program using TPA road maintenance funds and  
7           you're using some of your Tribal Transportation  
8           Program funds to supplement that program and you  
9           think you need to buy software that helps you  
10          track the personnel, tasks completed, equipment,  
11          supplies, this question and answer basically says  
12          that you're allowed to buy software products to  
13          assist you in that.

14          The last few questions pertain to the  
15          bridge program, 510, 514. Identify the TTP  
16          bridge programs as a source of funding for bridge  
17          work. Where our additional regulations can be  
18          found, all funds are made available to tribes,  
19          and also updates the bridge inspection  
20          requirements that have been set in place by MAP-  
21          21.

22          Question 510 itself is very similar to

1 the existing regs, not a lot of change there.

2 511, the question, "What activities are eligible  
3 for Tribal Transportation Facility Bridge funds?"

4 Now, there's a new acronym, Tribal  
5 Transportation Facility Bridge program. What Mr.  
6 Sparrow and Mr. Gishi referred to this morning is  
7 that there was a set aside of funding out of our  
8 Indian Reservation Roads program and we basically  
9 called it our IRR Bridge program.

10 The IRR Bridge program still exists  
11 today. But the IRR Bridge program regulations  
12 are not in the 23 C.F.R. under the Secretary of  
13 Interior. The IRR Bridge program regulations are  
14 under the Department of Transportation, the  
15 Secretary of Transportation's regulations.

16 And I think you'll hear it from Mr.  
17 Sparrow at the end of the day when he does his  
18 TTP update, identify that those Indian  
19 Reservation Roads Bridge program regulations for  
20 the Secretary of Transportation, they're going to  
21 go through this same process.

22 They're going to go through an update.

1 And the IRR Bridge program somewhere down the  
2 line the official name will be changed to the  
3 Tribal Transportation Facility Bridge program.

4 And again, that's question 511.  
5 You'll see that at the acronym or the wording  
6 change is actually in the question itself.

7 512, "How will Tribal Transportation  
8 Facility Bridge funds be made available to the  
9 tribes?" That very same question and answer  
10 other than the reference to the bridge program  
11 itself, very much similar to the existing regs.

12 513, as far as that particular  
13 question, "When and how are bridge inspections  
14 performed," question is the same, answer changes  
15 a little bit.

16 When it does reference to the fact  
17 that MAP-21 now requires tribal bridges that are  
18 in the NTTFI that meet the NBI definition of a  
19 bridge, must be inspected and the data submitted  
20 to the Federal Highway.

21 And that's important to understand  
22 what I basically just said there is that what

1 meets the definition of an NBI bridge. If you  
2 have a tribal bridge that is 19 feet long  
3 abutment to abutment, you don't have to inspect  
4 that. You don't have to submit that information  
5 because it doesn't meet that definition of a  
6 structure by the Federal Highway. It's 20 feet  
7 or greater.

8 But it's still a facility that could  
9 fail, right? Even a 19 foot bridge could fail.  
10 And bad things can happen when a bridge fails,  
11 right?

12 So that doesn't mean that you should  
13 inspect it and retain the information internally  
14 so that you know whether you have solid bridge or  
15 not.

16 But if your tribal bridge is 21 feet,  
17 you will inspect it, you will provide the data to  
18 the National Bridge Inventory because it meets  
19 their definition of a bridge.

20 Now for the BIA we're going to be  
21 taking it a little bit one step further because  
22 we are going to be trying to keep track of the

1 pedestrian bridges that we have out there in  
2 Indian country.

3 Some of you have walkways, right?  
4 Some of you have bike paths, walkway paths and  
5 some of them have bridges on them, right? If  
6 that walkway is a BIA trail, we are going to  
7 start numbering those bridges and we're going to  
8 start inspecting those pedestrian bridges.

9 But we are not going to submit that  
10 information to the NBI because Federal Highway  
11 doesn't want that information. But it's still a  
12 structure that could fail.

13 So it goes back to this particular  
14 question and answer on 513, like I said before,  
15 very similar to what's in the existing regs, but  
16 again, it goes back into the implementation of  
17 some of this stuff. It may take a little bit  
18 more information to actually get what we want as  
19 far as taking care of the data in the field.

20 The last question under Subpart D,  
21 514, "Who reviews bridge inspection reports?"  
22 That particular question and answer is the same

1 as what's in the existing reg.

2 And that particular information,  
3 although it identifies primarily for BIA bridges,  
4 it is my understanding that Federal Highway may  
5 be sending out a memo from Federal Highway to the  
6 BIA and Federal Highway to basically all the  
7 tribes identifying that when you inspect your  
8 tribally owned bridges they still want you to  
9 submit that data to the BIA and we will submit it  
10 to the NBI for you.

11 But again, that's forthcoming in the  
12 policy as far as that particular incident. But  
13 other than that, that's the bridge program as far  
14 as the last grouping of questions. And that's  
15 basically pretty much all of Subpart D, so any  
16 questions on anything I've asked you yet?

17 MR. GALLOWAY: Rick Galloway, and I'm  
18 looking back at 461. And I'm sorry that I went  
19 backwards on this, but I know you talked about  
20 part of it, but you didn't mention anything about  
21 in Part C, Paragraph A of this section to the  
22 where.

1           It talks about a Deputy Assistant  
2           Secretary for Tribal Government Affairs,  
3           Department of Transportation or the Assistant  
4           Secretary of Indian Affairs in DOI. Does that  
5           mean that we're going to get one of those?

6           MR. KIPP: I'll leave that question up  
7           to my supervisor here.

8           MS. PHILBIN: Thank you. Vivian  
9           Philbin, Federal Highways. Thank you, Mr.  
10          Galloway. As you know, that position has never  
11          been independently filled. It has been a  
12          collateral duty first by, Joanna Turner, and now  
13          by Maria Elena Juarez, who's -- it is a  
14          collateral who'll be in the Office of the  
15          Secretary, U.S. DOT in the Office of Governmental  
16          Affairs.

17          MR. KIPP: Okay. We have one other  
18          question. Okay.

19          MS. POWELL: Yes. Back to our  
20          analysis. This is Megan Powell again. Back  
21          partly to this discussion about, you know,  
22          needing an acknowledgment from the county for,

1 you know, their maintaining a road that's open to  
2 the public.

3 What involvement would they have if a  
4 decision was made to pull that road off the  
5 inventory after they've made such an  
6 acknowledgment of that responsibility? Does that  
7 make sense?

8 MR. KIPP: Can you repeat the first  
9 part of that?

10 MS. POWELL: Well, if they are, you  
11 know, consenting to it being a county road and  
12 acknowledging responsibility for maintenance and  
13 things like that, do they have a say if the road  
14 ultimately gets pulled off the inventory? Are  
15 they involved in that process at all or --

16 MR. KIPP: The NTTFI doesn't impact  
17 their status of how they treat the road because  
18 that's their road that's on their inventory. But  
19 how it impacts it is, and this happens likewise  
20 for the same reason that comment was made earlier  
21 that sometimes it may be to the advantage of the  
22 county to impose things prior to you getting any

1 work done because it's identified it as a public  
2 road and it's in the NTTFI.

3 From that standpoint, they can only do  
4 what work they can with consent of tribal  
5 government. Because it's tribal government's  
6 inventory and so if the tribal government wants  
7 it on there, then that's what we're talking  
8 about, getting it on there and getting some  
9 cooperation.

10 But if they don't want it on there, it  
11 comes off. And so for that reason, but that  
12 doesn't change its status either as a public road  
13 in the eyes of whoever the facility owner is. It  
14 just changes it from the standpoint of  
15 eligibility and using these funds on that road  
16 for purposes of improvement and other things.

17 MS. PHILBIN: Thank you.

18 MR. ROBIDEAU: Chris Robideau, Red  
19 Plains Professional. Does the county have to do  
20 anything when they're identifying their roadway  
21 system if it does happen to fall on historic  
22 trust property or historic reservation property?

1 Can they communicate with the tribe and get the  
2 same authorization or deterrent?

3 MR. KIPP: In terms of if it's on  
4 trust property? Again, that situation is  
5 probably better handled when we get to 169 and we  
6 have had instances like that in which the  
7 acquisition or the termination of an easement was  
8 improperly provided or did not exist.

9 And for years we were participating  
10 with the tribe and then someone says no, this  
11 doesn't exist. There was never any notification  
12 or any consent given in this process. Then, of  
13 course, that process has to start all over.

14 And it works both ways, so at that  
15 point you'd have to take a look at it. But  
16 ideally, as Sheldon indicated, you don't start  
17 spending these dollars on it until you have the  
18 product package. And that means you have a  
19 resolution or tribal consent from the tribe. You  
20 have the right of way that's been recorded.  
21 That's basically you're saying this is a public  
22 road.

1           So all those things have to be in  
2 place before you can go. And when you're doing  
3 pre-project planning you're trying to get to that  
4 point and in some cases you need to have that in  
5 the inventory for that purpose and you could be  
6 able to expend some months or else you're  
7 spending it on a road that's not in the inventory  
8 which is one of the biggest no-noes that we have  
9 in the program.

10           MS. PHILBIN: Excuse me, Vivian  
11 Philbin, excuse me, Federal Highway  
12 Administration. I just wanted answer Mr.  
13 Galloway more fluent and one of the topics.

14           Because I know the U.S. Department of  
15 Transportation takes its interest and matters in  
16 any country very seriously. So the individual  
17 that is assigned the collateral duty of which  
18 Joanna Turner had, her full name is Maria Elena  
19 Juarez and she's the associate director for  
20 Governmental Affairs. Thank you.

21           MR. CAULUM: Okay. I apologize that  
22 we had to go a little bit out of order there. I

1 had to take a call with one of the regional  
2 directors on an issue that had to be addressed.

3 So --

4 MS. CARRION: We didn't go out of  
5 order there.

6 MR. CAULUM: We didn't?

7 MS. CARRION: No.

8 MR. CAULUM: Oh good. Okay. Never  
9 mind. Honestly, I said that -- can we go off the  
10 record for a moment?

11 (Whereupon, the above-entitled matter  
12 went off the record at 2:25 p.m. and resumed at  
13 2:26 p.m.)

14 MR. CAULUM: All right. Subpart E,  
15 funding process. 170.600 has been updated to  
16 reflect how tribes are notified of annual funding  
17 amounts as well as the timeframe by which those  
18 funds must be made available to tribes.

19 This, in part, was done as a result of  
20 the continued resolutions that we've been dealing  
21 with for many years now. It also is a little  
22 clarification to help tribal expectations of, all

1 right, the CR was started or the CR was passed  
2 and according to past work in some other cases  
3 the transportation authorization's been extended  
4 as we've experienced.

5 So when can you expect generally funds  
6 being made available? And what are our  
7 obligations on the Government's side to get those  
8 out to you.

9 Obviously, you always want to try and  
10 do that as soon as possible. And that's some  
11 that, from the solicitor's office, I know from  
12 Vivian's point-of-view is that's something we  
13 have tried to be pretty adamant with. And I know  
14 that BIA is trying to improve that substantially  
15 over the years. And I think we've done a decent  
16 job. It's not quite where we should be, but it's  
17 gotten a lot better, so.

18 170.602 identifies that under existing  
19 statutes no additional funding is available for  
20 tribes for unforeseen construction costs. Since  
21 it is a tribal share program, the shares that are  
22 available to tribes are the extent of what is out

1 there and there's no other, sort of, secret pile  
2 of money that has funds available.

3 Under miscellaneous in Subpart E,  
4 170.605 describes the force-account methods being  
5 used in the Tribal Transportation Program. This  
6 is something that has gained great deal and  
7 importance with the advent of the program  
8 agreements because there are more tribes out  
9 there that have developed their own tribal  
10 transportation departments and have their own  
11 directly employed people doing the work.

12 And that's what's generally considered  
13 to be force-account. On the BIA side that's also  
14 considered force-account.

15 170.606 identifies the legislation and  
16 procurement requirements of the Tribal  
17 Transportation Program and there weren't any  
18 significant changes there.

19 170.607 to 609 describes use of funds  
20 for contract support costs and startup  
21 activities.

22 So Part E continued. 170.610

1 identifies the functions the tribes may assume in  
2 their agreements with BIA and Federal Highway.  
3 This was updated again to reflect the fact that  
4 you have many more tribes who are involved with  
5 the program agreement world that didn't exist  
6 when the current regulation was published in  
7 2004.

8 170.611 describes the special  
9 provisions that apply to self-determination  
10 contracts. There's no significant changes here,  
11 but we definitely wanted to look at that to make  
12 sure that we were up-to-date on tribal preference  
13 issues and things of that nature.

14 612 describes that non-contractible  
15 activities that are funded out of the funds  
16 identified in 23 U.S.C. 202(a)(6), which is the  
17 program management and oversight funds. And they  
18 can be used only by BIA and Federal Highway.

19 And identifies that the uses of the  
20 funds can be found in the appendix of the  
21 subpart. In other words, this is considered the  
22 inherently Federal functions. The activities are

1 not contractible out to tribes that the Federal  
2 Government has to assume and carry out.

3 170.615 to 618 updates the  
4 availability of advance payments, receiving  
5 additional funds if they become available to TTP  
6 on a nationwide basis, contingencies and savings  
7 to one of these statutes.

8 For example, the receiving additional  
9 funds as they become available with TTP, one  
10 aspect of that might be considered the recovery  
11 act. Where Congress said we're going to  
12 appropriate \$310 million, I believe it was, to be  
13 administered consistent within the IRR program.

14 Contracts and agreements, 170.619 can  
15 identify as when a tribal preference and Indian  
16 preference supply the Tribal Transportation  
17 Program. Other than no changes were made there  
18 other than referencing program agreements.

19 170.620 clarifies that reimbursable  
20 and other agreements with state and local  
21 governments for Tribal Transportation Program  
22 project may include a self-determination act,

1 Indian preference provisions. And 621, no  
2 significant changes were made there other than to  
3 add Federal Highway and BIA program agreements as  
4 a reference.

5 Contracts and agreements, 622, there  
6 weren't any significant changes there. 623 to  
7 625, no significant changes other than for  
8 clarification.

9 626 identifies so a tribe can request  
10 a waiver of regulation. And finally, in the  
11 appendix, it's the list of the non-contractible  
12 activities. There weren't any significant  
13 changes there.

14 Subpart F, program oversight and  
15 accountability describes what the TTP stewardship  
16 plan and national business plan is. Stewardship  
17 plan has not been updated in quite some time.  
18 There is a continuing effort to update and  
19 finalize what is known, actually, as the National  
20 Easement Strategy, I believe.

21 The Tribal Transportation Program  
22 Coordinating Committee has given us some great

1 input into the national business strategy. And  
2 we had a question at one of consultations on  
3 whether we are planning to consult on the  
4 upcoming national business plan and the answer is  
5 no.

6 The reason for that is that, that  
7 national business plan or strategy is, in effect,  
8 it's an interagency agreement in effect or agreed  
9 upon between the Secretaries of Transportation  
10 and the Department of the Interior for how  
11 certain functions are going to be carried out,  
12 who's going to be responsible for what within  
13 program management oversight aspect of the Tribal  
14 Transportation Program.

15 So it's effect on tribes overall we  
16 think is for a limited, but as we said the info  
17 we got from the Coordinating Committee has been  
18 very helpful.

19 170.701 clarifies what, that a tribal  
20 or BIA MOU may be used to identify work that the  
21 BIA will carry out at the tribe request. This is  
22 an effort to ensure that tribes and BIA are going

1 to be on the same page as BIA does direct service  
2 for tribes.

3 So everybody's on the same page with  
4 what the regional road engineers are going to  
5 carry out if they're delivering program to the  
6 tribe directly rather than try and contracting it  
7 through a self-determination contract or a  
8 program agreement.

9 170.703 and 704 describe what program  
10 reviews the secretaries conduct and how  
11 improvements are identified and acted on. And  
12 that's it, yes. Anybody have any questions?

13 It's a little bit of a dry area, but  
14 it's the sort of the fundamental ways that the  
15 program is, you know, is run, especially these  
16 program agreements.

17 And we wanted to make sure that we  
18 updated those sections so they're consistent with  
19 how the program kind of works. So no questions  
20 on that? All right. Mr. Gishi?

21 MS. CARRION: I believe we need a --

22 MR. CAULUM: Oh.

1 (Simultaneous speaking)

2 MR. CAULUM: All right. We'll take a  
3 ten-minute break and we'll come back and Mr.  
4 Gishi will --

5 (Whereupon, the above-entitled matter  
6 went off the record at 2:34 p.m. and resumed at  
7 2:49 p.m.)

8 MR. GISHI: At this point we have two  
9 more subparts left, G and H. And if you had a  
10 chance to review these and take a look at them,  
11 particularly if you're familiar with the regs in  
12 part you'll notice that there's a significant  
13 change now in the length of content of these two  
14 particular subparts.

15 So we'll talk about that at this point  
16 and then afterwards that'll conclude our  
17 consultation, then we will answer questions you  
18 may have, not just on these in particular, but  
19 any that you have, maybe from earlier in the day.

20 And then we will close the  
21 consultation officially and then we will take a  
22 small short, short break and we will go back into

1 the TTP program update and talk a little bit  
2 about what the program is, the options that are  
3 out there and kind of what's happened with re-  
4 authorizations and things of this nature. So  
5 that'll be later, but I want to get started and  
6 talk a little bit about Subpart G.

7 Subpart G formerly was the road  
8 maintenance portion of the regulation. The big  
9 change here in general is that it removed  
10 reference to the BIA Road Maintenance Program and  
11 focus strictly on maintenance activities and  
12 functions under the TTP.

13 If you're familiar with what we've  
14 been talking about all day long here, the  
15 National Tribal Transportation Facility Inventory  
16 includes those which are the responsibility, the  
17 authority, jurisdiction of other authorities  
18 which includes state and local governments, the  
19 BIA, tribes and so forth, then you'll know that  
20 what that means is that under this particular  
21 subpart that BIA roads are included under this  
22 process by virtue of fact that they are in the

1 National Tribal Transportation Inventory.

2 But there's some qualifiers in there,  
3 early on, that talk about how relationship is in  
4 terms of those funds themselves.

5 170.800, specifically that first one,  
6 just talks about what funds are available for  
7 road maintenance activities. First and foremost  
8 that we mentioned earlier that on SAFETEA-LU  
9 maintenance became an eligible activity that was  
10 actually after these regs were put together and  
11 finalized.

12 So that's a change in the regulations  
13 as a whole that maintenance is now an eligible  
14 activity, but it must follow the limitations.  
15 And limitations are 25 percent of the tribal  
16 shares, the TTP shares per tribe or 500,000,  
17 whichever is greater is what is eligible for use  
18 for purposes of maintaining roads.

19 The exclusion to that limitation, just  
20 the funding limitation, is road sealing. Road  
21 sealing previously was established back in, I  
22 believe, in '91 under ISTEA-91.

1                   That road maintenance as a  
2 preventative maintenance activity was not  
3 considered maintenance because, of course, at  
4 that time road maintenance was not an eligible  
5 activity.

6                   But made it eligible for under the old  
7 IRR program because it was a preventive  
8 maintenance activity. It did allow for the  
9 extended life of a road, particularly, if you  
10 were looking at it from a preventative  
11 maintenance standpoint. And of course, there  
12 just was no real maintenance dollars available  
13 under the program.

14                   And so that continues to be in force.  
15 If you do 25 percent of your funds using TTP  
16 funds and you go out and you do road maintenance  
17 on tribal roads, BIA roads, whatever roads that  
18 are in the NTTFI and then use the remaining 75  
19 percent on road sealing projects, that's fine.

20                   There's no limitation on that and so  
21 the idea is it helps to, again, extend the life  
22 of the systems that are out there.

1           It also talks a little bit about that  
2           BIA's to retain responsibility. This is actually  
3           what's written in the statute and so we had to  
4           make sure we included it in here. Maintain  
5           primary responsibility for annual funding  
6           requests for the BIA roads under the DOI  
7           appropriations.

8           And E, under that same section, talks  
9           that Secretary of the Interior shall ensure that  
10          funding is made available under this program for  
11          maintenance of tribal facilities and that, in  
12          this case, to make sure that it is supplementary  
13          to and not in lieu of.

14          And when someone mentioned that  
15          sometimes the concern of getting a road on the  
16          inventory, there might be some problems with  
17          getting cooperation from the county, we do see  
18          some of those, but, generally, it's the other way  
19          around.

20          It's they're will to get them on there  
21          because the next thing they want to do is they  
22          want to come to you and say, well, we sure wish

1 you guys would maintain those roads for us.

2 And if 90 percent of the traffic on  
3 those roads is your tribal members and people in  
4 your community, you're most likely going to go  
5 out there and do that.

6 And, so, what this tries to do is try  
7 to keep emphasizing to the public out there that  
8 these funds that are used for this purpose are to  
9 be used to supplement any of the road maintenance  
10 activity by those public authorities who have  
11 responsibilities for those roads. And so it's  
12 emphasized here in the regulations.

13 801 clarifies that can road  
14 maintenance funds be used to improve a road  
15 facility? The answer to that, of course, is no.  
16 Of course, the qualifier identifies it as,  
17 "improve roads or other TTP facilities to a  
18 higher classification, standard or capacity."

19 Essentially it's saying you can't take  
20 your gravel road that's ten feet wide and say I'm  
21 going to do some real good maintenance on this  
22 road and if I do it good enough I might have a

1 32-foot road and it's elevated in this page.

2 And that's an improvement and so you  
3 can't do that, it's not an eligible. That  
4 qualifies in all those areas of improving  
5 capacity and higher classification and so forth.  
6 So maintenance is primarily that's maintained in  
7 the road template and in the as-built or in  
8 existing condition.

9 802 verifies that tribes can carry out  
10 maintenance activities and, again, just sites  
11 where tribes have the ability to enter into  
12 agreements, the self-governance, self-  
13 determination in the other appropriate  
14 agreements, in this case with BIA under the 638  
15 or so forth.

16 Under TTP, obviously, you can enter  
17 into agreements with Federal Highway as well as  
18 BIA and the other appropriate agreements is  
19 basically the same.

20 803, what standards must they  
21 maintain? It identifies that there will be sub-  
22 standards, a reference to sub-standards that are

1 out there.

2 And so although BIA Road Maintenance  
3 Program was taken out of here, the way the  
4 program is set up, particularly at your level and  
5 the tribal level, if you have BIA roads out there  
6 and you're contracting to do road maintenance on  
7 those BIA roads and you have a crew out there,  
8 you're not going to up there and tell these guys,  
9 okay, you guys are doing a BIA road, so you would  
10 use these standards and tomorrow you're going to  
11 be out on a tribal road, so you want to use these  
12 standards.

13 The standards you use are going to be  
14 things that you feel comfortable with or that  
15 your crew feels comfortable with and so you're  
16 going to go out and utilize those.

17 So from that standpoint, a lot of  
18 these things that are in this appendices are  
19 basically designed to also address the BIA roads  
20 from the standpoint of what the BIA would expect  
21 as a public authority for its roads.

22 The idea being that the only thing we

1 can't put in there is reference to the program.  
2 And, of course, that forces them now to come back  
3 through and do some things to find ways and  
4 guidance on BIA roads that we have to publish  
5 again as a result of that.

6 But it does consider standards that  
7 are out there that may be state and local  
8 standards, tribal standards that have been  
9 modified. They will do those things. The idea  
10 being it meets the definition of maintaining a  
11 road.

12 804, describe the actions that are  
13 taken if maintenance is not deemed adequate. In  
14 this case, this is primarily from the tribal  
15 perspective would be in those areas where it'd be  
16 other public authorities, roads owned by others  
17 on Indian lands or communities or so forth, where  
18 they're not being maintained and they're  
19 requiring you to spend more of your money that  
20 you don't want to or that are just not getting  
21 maintained as a whole.

22 This is the procedure that you would

1 go through and it references in there indirectly.  
2 There is a section in 316 in Title 23 that  
3 basically says this is what the secretaries will  
4 do if people are not maintaining the roads which  
5 have been built and funded with highway trust  
6 funds.

7 And a similar action is described here  
8 in notify that owner and also going through the  
9 process of doing that. In addition to that,  
10 making sure that the affected tribe is informed  
11 so they're aware that there's a follow up process  
12 in place.

13 Section 170.805 identifies that BIA  
14 and the associated websites are there. And, in  
15 particular, where you can find eligible  
16 maintenance activities.

17 Again, we've heard enough comments on  
18 that so that we will take a real close look at  
19 some of the comments we received on that of  
20 trying to get that back into regulation. Yes.

21 MR. GALLOWAY: Rick Galloway. 804, I  
22 was just wondering in here that the findings of

1 the maintenance funding which is a DOI funding  
2 tool, right, on B, you report these findings back  
3 to the Secretary of Transportation, why would  
4 that be if it was the DOI money?

5 MR. GISHI: No, this isn't referring  
6 to DOI money, this is referring to TTP money --

7 MR. GALLOWAY: Okay.

8 MR. GISHI: -- and the process that  
9 you would go through in terms of if it wasn't  
10 being maintenance by ownership of others. For  
11 the most part that would be the non-BIA and the  
12 non-tribal.

13 MR. GALLOWAY: Okay. So this is just  
14 highway trust funding.

15 MR. GISHI: Yes, exactly. And it  
16 shows the websites where those things can be  
17 found in terms of those eligible activities. Any  
18 questions on the road maintenance aspects of  
19 section?

20 I'd say it's very short. It used to  
21 be quite lengthy. It had a long, long, appendix  
22 that was associated with it, but those have all

1       been taken out.

2                   Miscellaneous, this Subpart H is sort  
3       of a catch all in the regulation. It served the  
4       purpose of trying to make sure we included  
5       reference to those functions, activities that are  
6       associated with transportation that may have been  
7       indirectly part of the program or that was  
8       necessary information that was needed in case  
9       things like a hazardous waste spill occurred to  
10      provide information where people could go, at  
11      least by reference.

12                   And it didn't give you all the details  
13      of what you needed to do. It was basically  
14      information that could get you started on who to  
15      contact and where to look.

16                   That information was removed and, in  
17      particular, hazardous nuclear waste  
18      transportation. The other one that was removed  
19      was emergency relief. Emergency relief is a  
20      program funded under the Federal Aid program  
21      inside primarily for the State Emergency Relief  
22      Program.

1           There's a portion that is made  
2           available for Federal road management agencies,  
3           but it is all administered and maintained by the  
4           Federal Highway Administration under the Chapter  
5           1, which is the main part of the Federal Aid  
6           Program.

7           And the funds that come over are  
8           managed and maintained and monitored and approved  
9           by the Federal Lands Program and not in the TTP  
10          program that is under Federal Lands, but the  
11          Federal Lands Program at the leadership level of  
12          Federal Lands.

13          So for that reason that information  
14          that was in there relative to that was removed.  
15          Now, if you want to know about emergency relief  
16          you can find the latest peripheral manual that is  
17          posted on the FHWA, Federal Land Title website.

18          And it's a pretty good thick manual  
19          that you could go through and pretty much answer  
20          all the questions that you need to regarding  
21          submitting projects, the follow up steps that are  
22          necessary for emergency relief of federally-owned

1 roads.

2 In reporting requirements under an  
3 Indian preference, Section 910, scratched out the  
4 BIA and FHWA must provide information to tribes  
5 after receiving written request.

6 Again, very general in terms of follow  
7 up procedure, getting information to tribes when  
8 requested identifying in the regulation within a  
9 reasonable timeframe.

10 Section 910 to 917 pretty much talks  
11 about Indian preference and employment. But it's  
12 pretty much the same information that was  
13 previously in those sections regarding Indian  
14 preference and employment. There's no  
15 significant changes that were there other than to  
16 update the current statutory and program  
17 preference.

18 As I mentioned, in the old 23 U.S.C.,  
19 United States Code, it was scattered all through  
20 three sections, now it's all under one section.  
21 And, of course, by doing that we had to make sure  
22 we update those. And so those are the changes

1 that are there.

2 918, what applies to the collection of  
3 the Secretaries collection of data. I mentioned  
4 earlier there was that reference in the preamble  
5 about information collection.

6 I want to make sure that, in  
7 particular, here, these are very critical areas  
8 because they are subject to either, in terms of  
9 the statute and the law, requirements that impact  
10 data collection under the TTP program.

11 First and foremost is the  
12 certification of public miles. And that's why we  
13 have to continue and do continue to maintain the  
14 National Tribal Transportation Facility  
15 Inventory.

16 We just actually completed that  
17 request of Federal Highways recently. And that's  
18 another reason why that information is really  
19 important and have some of those dates are really  
20 important because, generally, that occurs at a  
21 time when the same time of year for every agency  
22 including, I believe, the state's at Federal

1 Highways want those and so we have to, basically,  
2 take a snap shot in time of our road inventory,  
3 and then people use those numbers.

4 So when you see a report coming out  
5 from the Secretary, either testimony or  
6 otherwise, that's the numbers they're using and,  
7 generally, at any one time during the year you  
8 can take another snapshot of the inventory.

9 And most likely, you're probably one  
10 to two percent off in terms of the total mileage,  
11 which is big when you're looking maybe just one  
12 classification of road or you're looking at one  
13 ownership of road or one surface type of road can  
14 be a big difference.

15 So it is one of the areas where we  
16 have to make sure we report that. But we always  
17 have qualifiers and that's why Sheldon was saying  
18 sometimes we end up qualifying as we go along.

19 And we try to make that September 30th  
20 deadline a date that we can say that's the  
21 snapshot in terms of reporting because that  
22 coincides with our fiscal year.

1           But it doesn't restrict us from saying  
2           if we had a road on October 1, it's official and  
3           it's in the inventory. And if you want to do  
4           work on it and it's in the inventory, you can do  
5           that. It doesn't prohibit you from doing that.  
6           So a little bit of background information.

7           But the other one is the bridges. We  
8           have to be able to report that data for the  
9           National Bridge and Tunnel Inventory. And it's a  
10          requirement that it's reported April 1st of every  
11          year.

12          Tribes with bridges are now required  
13          to be inspected and reported. So that's a  
14          process that we have to make sure that we get  
15          validation and an update on bridges that are out  
16          there to make sure that we get those inspected,  
17          make sure we notify the tribe that they need to  
18          be inspected, working with, as it says in the  
19          law, the consultation of the Secretary of  
20          Transportation.

21                   MR. CAULUM: Leroy?

22                   MR. GISHI: Yes. I have question back

1 over there.

2 MR. CAULUM: Oh, you don't need the  
3 mic, but --

4 MR. ROLLAND: Yes, Richard Rolland for  
5 Rolland Associates. A little miscellaneous  
6 comment on reporting. We've got a number of  
7 categorical programs now that we didn't have  
8 before, safety being one.

9 Are you going to be able to report out  
10 the safety projects that are funded under that  
11 category? Are you going to be able, from your  
12 control schedule, be able to report out other  
13 safety projects that are funded or implemented?

14 And the same thing goes for  
15 maintenance projects. Are you going to be able  
16 to report out how many dollars are spent, you  
17 know, out of that limitation on maintenance so  
18 that we can get an idea of, you know, what the  
19 real need for maintenance dollars is to preserve  
20 the current inventory.

21 MR. GISHI: Very good. And in terms  
22 of the safety projects and the bridge programs

1 alone that have specific set asides that are  
2 there, that information is updated.

3 There's two ways to find that  
4 information. First, one of the things you do is  
5 you give Sheldon a call because he's probably  
6 already got it and you'd want to save yourself  
7 some time.

8 Other one is, it's generally after an  
9 announcement comes from Federal Highways of the  
10 projects that are awarded. They have a huge  
11 spreadsheet that says what tribe was awarded, how  
12 much, what type of project it was that's out  
13 there, and state and location and all that  
14 information is there.

15 We get the same information and we're  
16 able to maintain that. And Federal Highway  
17 actually is the one that initiates and maintains  
18 it, but that information is there.

19 So from that standpoint, there's a  
20 running total of how much money we spent, how  
21 many tribes applied as opposed to how many tribes  
22 were actually awarded. That kind of information

1 is available if you need that.

2 We're hoping to get a resource paper  
3 going as part of this whole effort of the unity  
4 function and some of the other tribal  
5 transportation groups that are trying to get  
6 information, so we can get that data out there so  
7 people have the same set of data, at least, from  
8 the perspective of the data we have.

9 The road maintenance is a real  
10 interesting one because we've been gathering that  
11 information for BIA for the last ten/15 years as  
12 part of the GPRA. But it's only for the BIA  
13 roads.

14 What the Coordinating Committee has  
15 got planned for their next meeting coming up in  
16 Phoenix is to go through a formal process of  
17 starting to establish at least some criteria to  
18 start looking at how that information, what kind  
19 of information can be requested, obviously, that  
20 is useful, but maybe not to the extent that it is  
21 somewhat harmful in a way also.

22 So that's something we'll be working

1 on. But it's important it we're heading in that  
2 direction of asset management, as a whole from  
3 over here, from the revisions to MAP-21 that the  
4 Federal Lands has already got us started in that  
5 direction. Not just as the park service and the  
6 other Federal Land Management Agencies. So good  
7 question --

8 MR. ROLLAND: Right.

9 MR. GISHI: -- on that. Tribal  
10 transportation departments, 930 to 933, there's  
11 no significant changes. This was established in  
12 the regs early on simply because tribes wanted to  
13 know if it's something that they could do, to  
14 develop a program, not only a program with a  
15 department to address that.

16 And, of course, I've heard a number of  
17 you introduce yourselves from that perspective  
18 that you are working, even if it's a two or three  
19 man shop, it is a tribal transportation  
20 department. So this is kind of just a follow up  
21 to that and make sure it says in the regulation.

22 Resolving disputes, no major changes

1 in that other than to make sure that reference to  
2 FHWA program agreements was included in that  
3 discussion on alternate dispute resolution.

4 Other miscellaneous provisions, 941  
5 and 942, again, discussion that transportation  
6 research is an eligible activity for tribes.  
7 Quality of life programs are a number of things  
8 that are transportation-related that are very  
9 much -- it's an activity that's eligible under  
10 Chapter 1 of Title 23. It's eligible under here.

11 And, of course, there are some unique  
12 solutions in Indian country that are out there  
13 and this encourages the use of the funds and  
14 programs available to do those things also.

15 And then the last one, 943 just  
16 describes where the information on the high  
17 priority projects can be found. And the intent  
18 is to put that information on the websites, what  
19 we normally had under the old proposed draft.

20 We've had so many drafts out there.  
21 The proposed draft which was in 2013, we had  
22 actually included it in Subpart I. And when we

1 submitted forward they told us to take that out.

2 But that information is still  
3 available and it'll be on those websites. But it  
4 just emphasizes that high priority projects is  
5 not in this regulation, but where the information  
6 can be found.

7 That, like I said, that pretty much  
8 takes care of those two subparts. G and H are  
9 very short. The overall regulations have been  
10 somewhat short and then as a result of none of  
11 the appendices, but also from the fact that all  
12 the Subpart C requirements regarding the funding  
13 formula are pretty much just importing it from  
14 the statute into Subpart C.

15 So with that, do we have any  
16 questions, any follow up question or any comments  
17 that you want to make? We have a comment right  
18 here. Do you got a mic? If not, we've got  
19 another one over here.

20 MS. CARRION: Okay.

21 MR. ANDERSON: Frank, CTUIR. Is there  
22 going to be any more discussion on the tribal

1 high priority projects? I had a lot of  
2 questions, comments mentioned to me about that.  
3 So is it real clear at those sites on how that  
4 process works?

5 MR. GISHI: Yes. In fact, take a look  
6 at that. It basically is another program that  
7 was in part of the Subpart C where it talks about  
8 high priority projects.

9 It's that section basically moved on  
10 over and rewritten and put in subpart, it used to  
11 be Subpart I, and that will be posted there. I  
12 don't know if we have them on there right now. I  
13 think we're waiting for this whole process to  
14 kind of filter through.

15 But if you go through even the  
16 proposed draft, which is dated like June 2013,  
17 Subpart I in that proposed draft, it is in there.  
18 And that is posted on the website. You'll be  
19 able to find information on high priority  
20 projects there. Another question?

21 MR. GALLOWAY: Yes. Rick Galloway.  
22 Actually, what I'm wondering about is the

1 constrained TIP on a portion of the rewrite. I'm  
2 not sure that it was really clear on what the  
3 constraining will do to a tribal's total funding.

4 I'm wondering is there still going to  
5 be carry forward, the availability of that, or  
6 will it be spend out on each one of the  
7 authorizations?

8 Because if you look at the other codes  
9 of Federal regulations, the other programs aren't  
10 really able to do that. And I'm not real clear  
11 and what will happen in that.

12 MR. GISHI: Okay. If I understand  
13 your question right, it was under same  
14 limitations or restrictions that apply to other  
15 programs regarding use of highway trust funds  
16 applicable to this program, in terms of a tribe  
17 developing a TIP and putting it on.

18 And the whole terminology of  
19 financially constrained, limiting a tribe from  
20 putting more projects on there if they have the  
21 funds? Is that what you're saying?

22 MR. GALLOWAY: Having a project that

1 you won't even be able to do for ten years. And  
2 you'll be able to do little parts of it maybe.  
3 And there was a, kind of, an alluding to the fact  
4 that in each authorization there was going to be  
5 a spend out on each of the tribal programs.

6 And so then the tribe would have to,  
7 in their constrained program, they would have to  
8 spend out the money within, what, a couple years  
9 after the authorization's done.

10 And I was wondering if that happens,  
11 then there won't be any of these larger projects  
12 for smaller tribes. They'll be spending their  
13 money on, you know, smaller --

14 MR. GISHI: Right.

15 MR. GALLOWAY: -- things.

16 MR. GISHI: Right. I understand.

17 And, you know, at some point, you know,  
18 individually in the tribe, you're going to have  
19 to come to that conclusion as to what you can do.  
20 They're funds, as they're made available from  
21 federal agencies are one less for the year that  
22 it's made available, plus three years.

1           But we follow the concept that Federal  
2 Highways does, first in, first out, so if it's a  
3 six year authorization, then we can generally run  
4 it three years beyond the end of that  
5 authorization. Which means if it's six years, if  
6 you got the first year, then you have it into  
7 something, they're looking at the overall numbers  
8 from a program level. And we're generally safe.  
9 We've never had that problem.

10           But when we get past that other point,  
11 there's a point where they won't even send us  
12 documentation to say what's the status of these  
13 funds because they've wiped it off their books.

14           And if that's the case then we, in  
15 term, start working with you folks and saying you  
16 need to get these funds expended. Because if  
17 there's for any reason a de-obligation, which can  
18 occur, then they're no longer available.

19           So from that standpoint it's a funding  
20 management process. But for the most part,  
21 within a reasonable time, you know, of projects,  
22 there's going to have to be some decisions made

1 as to moving things up and moving things around.

2 MR. GALLOWAY: Okay. Thank you. Also  
3 I'm a little concerned about directing. Within  
4 this regulation you're directing, and instead of  
5 putting the information in, you're directing  
6 people to a website, you know, addresses and  
7 stuff.

8 And that leaves a big door open for  
9 elimination of consultation by just changing the  
10 website information. And I'm wondering how that  
11 is going to be approached.

12 And then I'm wondering if there's  
13 going to be some, you know, some time that  
14 there's a stamp on some of these things that we  
15 get to do so we don't have to keep going and  
16 looking in the website and saying oh no, that  
17 isn't any good anymore, you have to go look at  
18 something else.

19 And, you know, it's going to be 566  
20 different rules if you do that. And I think it's  
21 going to be hard to manage, not only for us, but  
22 it might be just easier to fill in the blanks

1       instead of going to websites.

2                   MR. GISHI: Thank you. And that is  
3 consistent with some of the comments we received  
4 in the previous five also. So thank you very  
5 much. That's a good comment.

6                   Any other comments or questions,  
7 discussion, any type? If not, on behalf of the  
8 team here, Sheldon, Andy, Vivian and certainly  
9 Bob who had to leave, Rosina and Minnie back  
10 there, we want to thank you for taking time to  
11 come out today and listen to this stuff.

12                   I know that you're hearing a lot of  
13 stuff over and over again. I certainly  
14 appreciate you coming to listen to this and  
15 hopefully we get your comments.

16                   Remember March 20th timeline, looking  
17 on the consultation website to find any new  
18 material that's been added. And we're trying to  
19 get material as it comes in, after we get  
20 clearance of it, post it on there.

21                   And we're hoping to get some of the  
22 early minutes onto the website so that you people

1 can look at what happened in Sacramento or  
2 Phoenix out there too. So with that I don't have  
3 any other comments or questions. At this time  
4 the consultation and the formal consultation for  
5 the NPRM 25 C.F.R. 170 is closed.

6 (Whereupon, the above-entitled matter  
7 went off the record at 3:20 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Notice of Proposed Rulemaking for  
25 CFR Part 170 Tribal Consultation

Before: US BIA

Date: 02-12-15

Place: Anchorage, AK

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate record of the proceedings.

  
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Court Reporter

**NEAL R. GROSS**

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