



DRAFT Minutes March 21st, 2018 GTAC Transportation Sub-Committee Meeting 1:30-4:30PM

Atwood Building 1st Floor Training Room 104

Highlights= action items

1:30PM **Adopt Subcommittee Charter:** Circulate for adoption electronically within 2 weeks. See bottom discussion on Charter

1:45PM **Overall MOU among Tribes/State- Will Ware, C. Luiken**

- MOU letter template was provided by Will Ware in first meeting modeled after the Forest Service.
- Commissioner's March 6th, 2018 letter now fulfills the Acknowledgement for Public Authority and Responsibility (APAR) requirement in 25CFR170 for adding existing routes related to owning and maintaining the existing road.
- When tribe is ready and wants to perform maintenance on State owned route or route owned by others, there needs to be an agreement that paves the way for that to happen to the satisfaction for all parties.
- March 6th, 2018 Letter not cover proposed routes.
- Landowner must acknowledge the proposed project. Need DNRs input to provide right of way. Regulations state that agreement must be published to the public. May need Governor's office involved to bridge both departments

Concerns:

- 25CFR170443 Requirements for proposed facilities with a November 7, 2019 deadline.
- Would still like to put together an MOU as to how the State and the Tribes are going to go about meeting the 3 requirements that involve the State if it is coming across State land or within State right of ways
 - Need to create a timeline or framework for addressing issues
 - Need a mechanism to encourage partnership
 - Proposed roads are not built, designed or engineered, NEPA not yet involved. All have to happen but without a mechanism in place to trigger where people could explore that and actually sit down to get into a partnership, it will not happen. A "soft" statement that does not commit to anyone to anything specifically but indicates future cooperation meets minimum standard for now.
 - There is a requirement that the State lists those projects on one of its transportation planning documents which should be easy to meet.
 - The requirement (eighth) however of who is going to maintain the facility once it is constructed might be more difficult to address. Will need to allow some time to work this one out because it might be difficult. Cannot have a blanket type agreement because of this.
- With respect to all three requirements, the State will need to know which projects are being discussed. It will need additional information from the tribes to identify what those projects are (ie. are they roads versus trails, location, etc). Just some general information even though that information may change since it is only proposed. Who has the dollars to operate and maintain road and are they willing to take it on.



- Must be on case by case basis. Also have plenty of Federally owned land too. BIA does not have any examples. Alaska is the alpha test. Will learn a lot from Albuquerque's upcoming inventory update.
- 2 years is not a lot of time. If tribes are expecting the State to respond, we will need to get the word out to the Tribes in a timely manner with clear instructions on what they need to do to get the State to be that supportive partner in it.
- Stuart from BIA: suggested "Yes this road might go in some day; Yes I am the land custodian; When this road does get built, we are going to cooperate to maintain it."
- Generic letter like the above-LAW will draft and send to DNR/DOT. Give DNR chance to review. Have BIA review prior to GTAC accepting. Commissioner on board. Heather can serve as liaison for Governor's office
- Would like existing trails incorporated in a letter also. Elizabeth will work with Heidi on providing a separate letter for trails similar to the Commissioner's March 6th letter.

2:45PM

Break-15 Min

Additional Topic not on Agenda:

Change in Tribal Liaison

- Anna relocating to Washington, DC for one year. Will be working with AASHTO who surveys different states for policy input and may be working on Capitol Hill.
- Edith McKee will take over as Tribal Liaison duties while she is out. She has been with DOT since 2010, is an engineer with Central Region DOT working on traffic projects. She has also worked in the private sector with WH Pacific on Tribal projects and their communities and is a tribal member herself (CIRI).

3:00PM

Kuskokwim Ice Road- Mark Leary- Napaimute

- Mark Leary is the Director of Development of Operations for Native Village of Napaimute and gave a ~30 minute presentation on the Kuskokwim Ice Road. Presentation distributed to GTAC and posted to DOT Liaison website. Key takeaways:
- Everyone is benefitting but the work being done is by volunteers and funded mostly by Tribal Transportation Program (TTP)
- About the Kuskokwim Ice Road:
 - It is 250 miles long, 200 miles above upstream from Bethel
 - Plowed and maintained and has signage
 - Average season is December to April
 - Helps the economic development for region
 - Many people benefit from the ice road
 - Private individuals and companies
 - US Government (ie. Postal Service)
 - State Agencies (ie. State Troopers, School District)
 - 4-wheelers which every family in the region has
 - Trucks
 - Used as a means to be able to haul: Bypass mail, US postal mail, Fuel (including fuel for DOT to village airports for maintenance equipment), Students and supplies



- Social uses include: Attending sports games, Shopping, Dining, Attending funerals, Going to the hospital, Attending conferences
 - Connects 15000 people, there are about 20 communities in region
- Ice roads are treated as highways by Alaska State Troopers. They respond to accidents and DUI's on them as if they were regular highways.
- Would really help if villages are given the opportunity first to purchase surplus items (ie graders).
- Population of Alaska is decreasing by around 8000 people but lower Kuskokwim is booming. In 6 years since last census, it is growing by 8 %.
- State used to fund ice roads in the past. City of Bethel would put out to bid and someone would get award. And their ice road would be maintained.
- Current funding/assistance available or pending
 - TTP available for seasonal roads.
 - Tried to address concerns regarding standards for construction and maintaining ice roads in program delivery guide on FHWA website under TTP
 - Ice roads are eligible for transportation funding because it is passable by a 4-wheel vehicle. This is the only eligibility needed for FHWA for safety funds and evaluating it for safety consideration.
 - There is a question of authority. It is considered a winter trail. DNR is current authority over winter trails but does not identify funding necessarily.
 - Napaimute and other tribes have applied and received small grants but nothing sustaining.
 - Traffic data on ice roads,
 - Conditions change so rapidly, traditional tubes for collecting data would be damaged.
 - A research needs statement has been proposed thru the Research Division
 - Purpose is collecting one time traffic data count and classification of traffic out there. Various vehicles being used would be captured.
 - This is an experimental exercise. It will probably miss this year's window to do data collection due to funding cycle.
- Marcie Sherer, VP of the Napaimute Traditional Council estimates \$52,000 from IRR money was used on the ice road this season has totally been spent and they are now asking for more money for building and maintaining the ice road for just their section of it. She estimates that \$50-80K is needed to build and maintain the ice road for a season. **She will provide more accurate costs associated with constructing and maintaining the ice road to Anna.**
- Commissioner Luiken: we should be partnering with the tribes on how to find a way to augment what they are doing because it is an impact to a lot of villages along that river

3:45PM

Ferry System- C. Marc Luiken

- Averted potential significant impact by passage in both Houses of the Governor's Supplemental Bill that included \$24 million in operating funds for the ferry system which means that no interruption for FY18. Still working w/ legislature on next year's budget to work on getting some certainty to AMHS budget so that there can be better long range budgeting & scheduling that will help significantly with the ridership.
- House Transportation Committee passed last week a resolution that recommended that a bill be created that will transfer AMHS from DOT to a public corporation.
 - No timeline yet
 - It is an encouraging sign and shows legislature is:



- Paying attention to AMHS system and acknowledges that it is an important part of transportation system, especially in coastal Alaska
- Recognizing the need to have the ferry system sustainable in the long run.

Updates:

- About to get back the Malaspina ferry boat back in water and on its regular runs by end of next month.
- Matanuska ferry boat is still in its re-power work. Hope that it will be back in Fall.
- Having both above ships back in pretty good shape will help for Summer schedule for 2019.
- Have two new Alaska Class Ferries
 - Anticipate bigger shipyard taking possession of first ship sometime in May or June with intent of having sea trials on that ship completed so it is at least ready by Summer 2019. Still deciding on how best to use that ship.
 - Delivery of second ship still being negotiated but anticipate receipt by October, 2018 per original contract which will hopefully mean it will be available in revenue service for Summer 2019. No final details yet.
- Would tribes have ability to contribute to AMHS system? Tribes currently are not allowed to add AMHS routes into their inventory. No current mechanism in place to partner with the State.
 - How could transportation funds be used towards AMHS system ...maybe maintenance funds from Tribes to AMHS?
 - Would like to add water miles to inventory because of the potential to generate funding but there are other opportunities tribes can consider
 - Potential examples:
 - A tribe on the east coast has TTP funds to subsidize ferry service and contribute to maintenance and result have reduced fares for tribal members
 - Shoreside facilities is already adding docks transfer buildings in inventory
 - Have agreements with tribes in southeast to maintaining weigh facilities in smaller communities to serve as examples also
 - Would ultimately help lower costs to AMHS
 - Agreement amongst BIA, WFL, Tribes and DOT to allow DOT to receive funds from TTP and come up w/ an MOA.
 - DOT may not need to receive funds. Just transfer maintenance responsibility to tribe and they can use their TTP funds
 - Mechanism to receive partial funds tribes only have partial funds. This will be up to FHWA & BIA.
 - TTP funds allowed to be used as a federal match.
- Numbers of travelers using AMHS.
 - Per SE Conference Website at Amhsreform.com, <http://www.amhsreform.com/sites/amhsreform.com/files/AMHS%20Reform%20Report%2015%20February%202018.pdf>



Alaska Resident Details

- Fairbanks North Star Borough
 - 3,316 passengers
 - 1,409 vehicles
 - From Fairbanks, Fort Wainwright, North Pole, Eielson, Salcha, and more
- Bethel Census Area
 - 218 passengers, 52 vehicles
 - From Aniak, Kipnuk, Kwethluk, Sleetmute, and more

Continue Market and Revenue Analysis

- Need to understand markets to deploy resources effectively
 - Bellingham = 44% of operating revenues
 - Non-residents = 42% of revenues
- Passengers have statewide impacts
 - Non-residents travel throughout road system
 - 51% visit Anchorage
 - 36% visit Denali
 - 25% visit Fairbanks

4:00PM

Off Agenda Request: Eagle Village's Jim Stephens serves on the Tribal Council for Native Village of Eagle on the Yukon river at request of Commissioner for innovative ideas/pilot projects

- Tribe has access to 477 training program where they contract funds directly from Feds that get pooled in a single pot. Maybe Eagle could use 477 funds to pay for equipment operator training program if they could use State equipment since there is a State Hwy maintenance facility. They could potentially improve maintenance of local roads and build an evacuation route to take care of flooding events... seems to be a win-win solution. Training money can pay wages for State trainers. There is year round maintenance for local roads but Taylor Hwy is not year round. If State wants to save money this might be an avenue to help offset costs. They can receive money for labor. **Judy, Planner for NR is in for Ryan, Regional Director who oversees maintenance group. She will forward the suggestion.**
 - Example: in lower 48, the State partnered w/ a tribal organization who built a driving course for driving training for law enforcement. Law enforcement needed a track. 477 money was used to hire local tribal members to train how to operate graders, dozers, etc. They learned to build, lay and maintain the track. Agreement works well. Used each year.
 - Agreement w/ the State could include the use of equipment but if you break it, you buy it. Tribe would fuel equipment and maintain it preferably thru a qualified training program.
 - **Concern:** do not want to have it come across that jobs are not being outsourced. **Solution:** State workers can get paid as instructors.
 - Need to follow up w/ SEF since they own and maintain equipment.

4:15PM

Airport Maintenance and Equipment (Follow up regarding equipment use off of airport)-FAA/DOT See reference section below

- Regulation that FAA purchased equipment *must* remain and used only on airport
- Propose/Approach FAA to lease that equipment off-airport as opposed to letting others use it for free.
- State maintains airports/roads with equip purchased by FAA. Tribes would like access to it.
- Leasing would prevent duplication of efforts.
- FAA is a tough customer on this issue. However, have an example in Birchwood where joint use of a snow removal equipment building that was paid by FAA but used to house highway equipment. Might be a way forward. Might be possible to use the snow removal equipment buildings to work maintenance or even house some of the equipment that has been surplus. It will be tough though because FAA is really very firm on this matter.
- Possible congressional fix to this. FAA reauthorization bill is in play and have kicked it down the road. Maybe work w/ congressional delegation to insert language to be able to use rolling stock to be used



off-airport and not on road system. Congressional delegation is currently very savvy about airports and DOT leadership is in constant communication with them.

- AIP handbook governs this subject. How AIP funds gets used were tightened when the handbook was updated in 2014 with no public input.
- Most tribes would be more in favor in leasing as opposed to a straight no, if it is even an option.

4:25PM

Pilot Projects with MOUs between Tribe/DOT-Open discussions

- MOU - need one per pilot project
- Types of pilot projects might be interested in
 - Petersburg: sidewalk/pathway 800ft or so that would connect in front of post office from sidewalk they will be constructing on city street maybe this summer or next and last leg connection
 - Petersburg Indian Assn: DOT offered support and some assistance to help develop a project within the State ROW. Looks like they will not have funding for a couple of years.
 - Working with them to try and develop a project they can design, build and maintain for better community access to the post office.
 - Good project because it touches on design, construct and maintain in a State right of way and might serve as a good example.
 - Would like to see a draft MOU that State would be proposing to the tribes.
 - DOT regularly enters into similar agreements with municipalities so would not be starting from square one but there would probably be some additional considerations
 - Draft could be created but each project should decide what they want their deal to be and then go to LAW.
 - There was a question w/ BIA with regards to sovereign immunity on this one so that is going to be part of this pilot project. Waiver of sovereign immunity will be an issue.
 - Design has not been done yet. It has to get in their plan before they can do any work. On tribe side, has to go into inventory first.
 - Getting into the NTFFI inventory is proposed idea and includes planning. It might even include scoping or should be before MOA
 - In order to get to construction (trigger), looking at PS&E which includes row
 - Is in their inventory but just not in their TTIP
 - DOT wants to partner during entire process since in public row
 - Lots of tribal communities have sidewalks that could be maintained. Should put a call out to tribes to collaborate with the State for snow removal in conferences but should first hash out sovereign immunity. Need to get Governor, Lieutenant Governor and everyone to sit in a room to say we are going to respect each other's sovereignty or have a mutual limited waiver of sovereignty, (which most tribes may still not want to do). Otherwise, we will never have collaboration. Now is the time that maybe we should figure out what waiver would be so we do not go down path of adding inventory and NEPA process only to find out they cannot do that agreement. Central Council is not eager to waive sovereign immunity but willing to collaborate and partner. Comes down to getting tribal leaders sit down with state leaders in sub-committee meeting and say the end result is important.
 - Working on this right now with Rampart. Writing out an agreement with the State to maintain some of our roads because they are not high enough on the priority to take



care of them in the winter time. Not sure what has been resolved but if get to a resolution, might be a good example.

- Tribal constitution and bylaws require vote by tribal members. The tribe is working on that right now. Have no timeframe.
- Dene Tene Pathway and Bridge at Chickaloon on State ROW on Glenn Hwy. WFL was part of that how was tribal sovereignty established on that? Ultimately the state and the tribe could not come to an agreement due to the limited waiver of sovereignty being required so WFL had to manage the project.
- Even tribes that do not work w/ Federal Hwy under TTP can still ask for services from WFL
- Waivers of sovereign immunity is much bigger than this committee
- Suggest LAW can be engaged and folks that can deal with them much better than Jeff (per Jeff). No templates-instead case-by-case. Each waiver is going to be different because they are done under tribal constitutions and each constitution is different.
- 229 tribes in AK although different have many similarities. All dealing with construction projects. Tribes that are contracting out the work and are not doing a force account, all liability should fall with the contractor.
- Maybe sub-committee not the place to address this. Maybe should be at full GTAC since many of the seats will come across same issue
- However, sub-committee cannot make a recommendation without first exploring it
- **Can Will get examples where this has worked as a starting point?**
- Issue is not about not respecting sovereign immunity, just the opposite. When state goes into contract with tribes, not enforceable. When entering limited waivers, we are looking at what are the obligations going back and forth in the contract. What is exposure of the State? What do we need that we feel comfortable that we can enforce this agreement in some respect? Always contract specific. What is this particular deal? Correct that if contractor involved and they have insurance and adds State as additional insured, that covers many of the States concerns but not all.
- Will depend on framework on how this is going to work. Find what are planning characteristics, what are construction characteristics, at what point in time do you start discussing MOU. All these things will help define what exactly the risks are, problems, and issues. Planning can be done without waiving sovereign immunity. Construction and maintenance are where the risks are.
- Petersburg will touch on construction and maintaining that new piece of infrastructure
- Rampart which tribes are interested in, touches on maintaining existing infrastructure
- There are monetary concerns but there are other things as well that may want to be enforced.
- Maybe TTP dollars can fund the bond that would be some use to the State that could take place of sovereign immunity?
- Present at next meeting examples from other States/tribes that have worked thru this issue successfully. (maybe New Mexico) that have had their concerns satisfied. If we can look at that, some tribal attorneys have had some really creative ideas. Maybe they can show up at next meeting?

4:30PM

Adjourn

Action Items from Last Meeting



1. **Letter of Support from Road Authority for EXISTING infrastructure to be added to NTTFI.** *Posted to DOT&PF planning website and sent to Stu Hartford at BIA 3/7/18*

http://DOT.alaska.gov/stwdplng/areaplans/other_lrp/ttp.shtml

- a. Thank you Anna, Commissioner Luiken, Dept. of Law & GTAC sub-committee group in general
 - i. For helping facilitate letter from State to the BIA. It shows forward progression and is something tangible that GTAC sub-committee can hold on to
 - ii. Letter created a stir this week in a positive way
 - iii. Currently reviewing inventory submittals which require eight to nine documents. Letter fulfills one of those document requirements.
 - iv. LAW was able to review and sign off on document quickly; realizing that tribes had only until March 15th to use document to support uploading inventory
- b. At least these two tribes are planning to add additional inventory based on this letter.
- c. Letter has been distributed to all Alaska Tribes

2. **LAW to review draft Charter and make suggested changes**

- a. Have members approve it (sign in person or via electronic signature)
- b. **Concern:** currently structured to have GTAC Transportation Representative assigned to sub-committee. Maybe Tribal representative should be decided on Tribal level instead.
 1. Governor's Office had discussed with Tribal Liaisons of each department. Suggestion was to keep the language that established GTAC which is that the pool shall consist of representatives nominated by Tribal councils. Keeps pool limited to people selected by their respective communities and maintains the consistency in language.
 2. Keeping the language is a good idea but need to be extremely clear to the tribes that representation for the sub-committee is not mistaken for the GTAC itself.
 3. New language to have Tribal councils make nominations could work. Will Ware solicited Tribal representatives for current sub-committee but has been asked by some tribes why folks from their tribe were not chosen. However, people were picked from each Region.
 - a. Original language may also be okay since Governor appointed current GTAC seats and the chairs of those seats may want to choose the team they work with.
 - b. Only official DOT member is the Commissioner in terms of signatories along with the Governor's office representative. Everyone else is just invited as if it is a public meeting because they are the people we do business with and are familiar with the program so if the seats were to change, we would invite whoever the new representative that we do business with.
 4. Sub-committee is an advisory body. At some point it will need to make decisions on what it wants to recommend. Charter is currently written so that only the Tribal members can vote on those decisions.
- c. **Concern:** Charter provides for two-year terms. Might want to stagger two-year terms so that half of sub-committee can turn over every year. Some of current members may only be able to serve one year. It provides that current members may be reappointed. GTAC currently set up this way which allows for continuity and is pretty standard.



- d. Would like to execute within next couple of weeks. This is an election year and reason to have a charter is to have group stay for a longer period of time. Want to make sure organization is structured.

Action Items for Next Meeting

1. Execute charter within next couple of weeks. Will pass draft around within a week.-Anna
2. LAW to draft MOU for consideration for DOT/Tribes
3. Jeff will work on generic letter of cooperation for Proposed Roads and give DNR a chance to review
4. Elizabeth will work with Heidi on providing a separate letter for existing trails similar to the Commissioner's March 6th letter.
5. BIA to consider how to add water miles to inventory and/or allow tribes to contribute towards AMHS maintenance
6. Judy Chapman to follow up w/ SEF and NR M&O on how Eagle might be able to use State equipment for training/maintenance
7. Nazune, Heather and Anna to discuss in next tribal liaison meeting with other State agencies if their agencies are using the ice roads
8. Check with SEF when next turnover of equipment (of particular interest is equipment near Napaskiak) to give tribes opportunity to purchase surplus. Anna/Edith
9. Marcie Sherer (Napaimute) will provide more accurate costs associated with constructing and maintaining the ice road to Anna.
10. Rich Sewell will get a written response from FAA on possible use of airport equipment off away from the airport.
11. Present at next meeting examples from other States/tribes that have worked thru waivers of sovereign immunity issue successfully. Tribal Reps. (maybe New Mexico) that have had their concerns satisfied. If we can look at that, some tribal attorneys have had some really creative ideas. Maybe they can show up at next meeting?
12. Anna will distribute Bill Willard's New Mexico Examples Provided

Reference:

25 CFR 170 Appendix Subpart B- Allowable Uses of TTP funds:

TTP funds must be used to pay the cost of those items identified in 23 U.S.C. 202(a)(1), including:

(49) Purchasing, leasing or renting of construction or maintenance equipment. All equipment purchase request submittals must be accompanied by written cost analysis and approved by FHWA or BIA. When purchasing construction or maintenance equipment, a Tribe must:

(i) Construction—Develop a lease/purchase cost analysis that identifies the overall benefit of purchasing the piece of equipment versus leasing. This analysis must be submitted to BIA or FHWA for approval per § 170.113. If approved, the funding must be identified on a FHWA-approved TTIP in order to be expended in accordance with 23 U.S.C. 202(b)(4)(B).

(ii) Maintenance—The equipment costs are considered part of the funding identified in 23 U.S.C. 202(a)(8) and must be identified on a FHWA-approved TTIP in accordance with 23 U.S.C. 202(b)(4)(B) in order to be expended.

170.805 What maintenance activities are eligible for TTP funding?

TTP maintenance funding support a wide variety of activities necessary to maintain facilities identified in the NTTFI. A list of eligible activities is shown in the appendix to this part.

Appendix to Subpart G- List of Eligible Maintenance Activities Under the Tribal Transportation Program

12. Leasing, renting, or purchasing of maintenance equipment.