



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**  
**Washington, DC 20515**

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February 6, 2020

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Highways and Transit  
**FROM:** Staff, Subcommittee on Highways and Transit  
**RE:** Subcommittee Hearing on “Assessing the Transportation Needs of Tribes, Federal Land Management Agencies, and U.S. Territories”

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**PURPOSE**

The Subcommittee on Highways and Transit will meet on Thursday, February 6, 2020, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to “Assessing the Transportation Needs of Tribes, Federal Land Management Agencies, and U.S. Territories.” The purpose of this hearing is to examine the current state of transportation infrastructure on tribal, Federal, and U.S. territorial lands and related policy issues for consideration in surface transportation reauthorization. The Subcommittee will hear from representatives of the Virgin Islands, the U.S. Department of Agriculture, the U.S. Department of the Interior, the Ohkay Owingeh Pueblo, the Intertribal Transportation Association, and Hanson Professional Services.

**BACKGROUND**

Congress authorizes funding for highway, highway safety, transit, and other transportation infrastructure through distinct Federal-aid highway programs to American Indian tribes and Alaska Native villages (tribes), Federal Land Management Agencies (FLMA), U.S. Territories (territories), and Puerto Rico. These programs were last reauthorized by Congress in 2015 as part of H.R. 22, *Fixing America’s Surface Transportation Act* (FAST Act; P.L. 114-94), and are set to expire on September 30, 2020.

**Tribal Transportation**

According to the most recent census data, there are roughly 5.2 million people in the United States who identify as American Indian and Alaska Native.<sup>1</sup> Today, there are 573 Federally-

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<sup>1</sup> <https://www.census.gov/history/pdf/c2010br-10.pdf>

recognized tribes across the U.S.<sup>2</sup> Combined, they control roughly 100 million acres of land, making Indian Country equivalent to being the fourth-largest state in the U.S.<sup>3</sup> Approximately 20 percent of the American Indian and Native Alaskan population lives inside American Indian areas.<sup>4</sup> There are roughly 157,000 miles of roads on or providing access to Indian lands<sup>5</sup> which are managed by tribal, Federal, State, and local governments.

Tribal roads often serve as major corridors for emergency, medical, educational, commercial, and recreational uses for tribal members as well as the general public. Transportation needs vary widely between tribes due to significant differences in geography, land size, and population. For instance, the Navajo Nation encompasses 16 million acres across Arizona, New Mexico, and Utah and has a population of over 330,000,<sup>6</sup> while many smaller reservations cover less than 1,000 acres.<sup>7</sup> According to the Bureau of Indian Affairs (BIA), in 2014 only 17 percent of BIA-system roads were deemed in “acceptable” condition,<sup>8</sup> and 70 percent of Indian roads remained unpaved.<sup>9</sup> Unlike Federal-aid highways, tribes are not required to report data directly to the U.S. Department of Transportation (DOT) on the condition and performance of tribal roads, making it difficult to assess the overall condition of tribal roads nationally.

### *Tribal Transportation Program*

The primary source of Federal funding for tribal transportation comes from the Tribal Transportation Program (TTP), which was created by Congress in 2012 under MAP-21 (P.L. 112-141), to replace the Indian Reservation Roads program, which was first authorized in 1928. The TTP, which is authorized under section 202 of title 23, United States Code, is jointly administered by the Federal Highway Administration (FHWA) and the BIA and provides funding to Federally-recognized tribes for core transportation activities such as planning, design, construction, and road and bridge maintenance. Funding for the program comes from the Highway Trust Fund (HTF) and is distributed to tribes through a statutory formula based on population, road mileage, and average tribal shares under previous years. The TTP includes set-asides for various purposes, including five percent for program administration, three percent for improving deficient bridges, and two percent for safety projects. Congress reauthorized the TTP in the FAST Act at \$465 million in FY 2016 and gradually increased it to \$505 million in FY 2020.

### *Discretionary Grants*

MAP-21 authorized a Tribal High Priority Projects Program (THPP) at \$30 million per year out of the general fund, subject to appropriations. The THPP authorized funding to tribes whose annual allocation of TTP funding was insufficient to complete the highest priority project of the tribe, or to any tribe that had an emergency or disaster occur at a tribal transportation facility which rendered it unusable. The THPP only received funding appropriations in FY 2012.

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<sup>2</sup> <https://www.bia.gov/frequently-asked-questions>

<sup>3</sup> [http://www.ncai.org/tribalnations/introduction/Tribal Nations and the United States An Introduction-web-.pdf](http://www.ncai.org/tribalnations/introduction/Tribal+Nations+and+the+United+States+An+Introduction-web-.pdf)

<sup>4</sup> <https://www.census.gov/history/pdf/c2010br-10.pdf>

<sup>5</sup> <https://www.bia.gov/bia/ois/division-transportation/operations>

<sup>6</sup> <https://www.discovernavajo.com/fact-sheet.aspx>

<sup>7</sup> <https://www.bia.gov/frequently-asked-questions>

<sup>8</sup> <https://www.bia.gov/bia/ois/division-transportation/operations>

<sup>9</sup> <https://www.crs.gov/Reports/R44359?source=search&guid=efd581175470411cbb22a8d232b1c96c&index=0#fn13>

The FAST Act did not reauthorize the THPP and instead created a new discretionary grant program, the Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program, for which both tribal and FLMAs could compete. Under this program, authorized at \$100 million per year out of the general fund, grants are available for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing Federal and tribal lands. This program received appropriations of \$300 million in FY 2018, \$25 million in FY 2019, and \$70 million in FY 2020.

Under the NSFLTP Program, the minimum estimated project cost is \$25 million with priority given to projects costing over \$50 million. Additionally, projects with a larger percentage of matching funds rank higher than those with less, as set forth in the program criteria under Section 1123 of the FAST Act. Tribes have indicated that, in many instances, this minimum cost threshold excludes many worthy projects, and they struggle to provide a high level of matching funds in order to be competitive.<sup>10</sup>

#### *Other Programs*

Other sources of funding include the BIA Road Maintenance Program and grant programs which are open to multiple entities, such as BUILD. The BIA Road Maintenance Program funds, administered through the U.S. Department of the Interior (DOI), are intended to be used for maintaining existing roads and bridges. Annual funding for the program has ranged from \$24 million to \$28 million over the past ten years.

#### *Tribal Transportation Self-Governance Program*

In 2015 under the FAST Act, Congress directed the U.S. DOT to establish a tribal transportation self-governance program under which tribes can directly receive and administer Federal transportation funding provided through U.S. DOT. The *Indian Self-Determination and Educational Assistance Act of 1975* (P.L. 93-638) gave tribes the power to contract with the Federal government to receive Federal funds from agencies as a block grant in order to give tribes greater control and decision-making authority while reducing administrative burdens. Other Federal agencies have instituted successful tribal self-governance programs, including the U.S. DOI and the U.S. Department of Health and Human Services. Congress instructed U.S. DOT to develop the self-governance program in coordination with tribes through a negotiated rulemaking committee. U.S. DOT published a notice of proposed rulemaking on October 2, 2019.<sup>11</sup> The deadline for issuance of a final rule is set forth in statute, under 23 U.S.C. 207(n), and allows for U.S. DOT to extend the deadline, which U.S. DOT has utilized. The final rule is now expected to be published by May 2020.

#### **Transportation on Federal Lands**

Under the *Surface Transportation Assistance Act of 1982* (STAA; P.L. 97-424), all Federally-owned roads were formally recognized as “public roads” and have since received an allocation of funding from the HTF to address surface transportation infrastructure needs. Federal-aid highway funds are used for projects that improve access to and transportation within Federal lands, including national forests, national parks, national wildlife refuges, and national recreation areas.

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<sup>10</sup> <https://www.indian.senate.gov/sites/default/files/Testimony%20of%20Head%20Councilman%20Joe%20Garcia.pdf>

<sup>11</sup> 84 Fed. Reg. 52706 (October 2, 2019).

### *Federal Lands Transportation Program*

In MAP-21, Congress consolidated multiple programs that funded transportation needs on Federal lands, such as the Public Lands Highway Program, which included the Forest Highway and Public Lands Discretionary Programs, into a new Federal Lands Transportation Program (FLTP), authorized under section 203 of title 23, United States Code. This program provides funding for the construction, maintenance, and repair of transportation facilities (highways, roads, bridges, trails, or transit systems) that are owned and operated by various FLMAs including:

- National Park Service (NPS);
- Fish and Wildlife Service (FWS);
- U.S. Forest Service (USFS);
- Bureau of Land Management (BLM); and
- U.S. Army Corp of Engineers (USACE).

Under the FAST Act, Congress continued the FLTP and expanded its eligibility to include the Bureau of Reclamation (BOR) and other independent Federal agencies with public land management responsibilities. The FLTP was authorized at \$335 million in FY 2016 and gradually increased to \$375 million in FY 2020. Of these amounts, certain agencies receive set-asides of program funding, including NPS (\$300 million in FY 2020), FWS (\$30 million in FY 2020), and USFS (\$19 million in FY 2020). The remainder is available to the other FLMAs.

### *Federal Lands Access Program*

MAP-21 also replaced programs that previously directed funding to specific types of public lands with the Federal Lands Access Program (FLAP) which supports transportation projects that are on, adjacent to, or provide access to Federal lands. Funds are distributed by formula to States based on the number of recreational visitors they receive, Federal road mileage, and the number of Federally-owned bridges within the State. Congress reauthorized FLAP in the FAST Act starting at \$250 million in FY 2016 and increasing gradually to \$270 million in FY 2020.

### *Deferred Maintenance Backlog*

The FLMAs report a significant backlog in needed repairs and maintenance to roadways and transportation infrastructure. According to estimates by the USFS, the backlog of deferred maintenance for roads, trails, bridges, and tunnels on national forest lands is \$5.2 billion.<sup>12</sup> The NPS similarly estimates that the deferred maintenance backlog for bridges, tunnels, parking areas, and roadways in the national parks is nearly \$6.2 billion.<sup>13</sup>

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<sup>12</sup> This information was provided to the Committee by USFS on January 13, 2020, via email.

<sup>13</sup> <https://www.nps.gov/subjects/infrastructure/deferred-maintenance.htm>

## U.S. Territories

### *Territorial Highway Program*

In 1970, Congress established the Territorial Highway Program (THP) to provide Federal assistance for highway construction to the Virgin Islands, Guam, and American Samoa.<sup>14</sup> In 1978, Congress expanded eligibility to include the Commonwealth of the Northern Mariana Islands. In 1982 under STAA, Congress restructured the THP by setting its authorization amount at one-fifth of one percent of total Federal-Aid Highway Program funds, rather than a fixed amount. THP funds were allocated to the four territories by the following formula: 1/12 each for American Samoa and the Northern Mariana Islands, and 5/12 each for Guam and the Virgin Islands.<sup>15</sup>

In 1992, at the request of one of the territories, FHWA reviewed the THP allocation formula.<sup>16</sup> Based on considerations of population, land area, and road mileage, the formula was changed to allocate more funding to the smaller territories. Since then, THP funding has been allocated by the following formula: 1/10 each for American Samoa and the Northern Mariana Islands, and 4/10 each for Guam and the Virgin Islands.<sup>17</sup>

In 1998, under the *Transportation Equity Act for the 21<sup>st</sup> Century* (TEA-21, P.L. 105-178) Congress changed the THP funding allocation from a percentage set-aside to a fixed amount of \$36.4 million per year. In the most recent reauthorization under the FAST Act, Congress authorized the THP at \$42 million annually for FY2016-FY2020.

### *Puerto Rico Highway Program*

Prior to the passage of TEA-21, Puerto Rico was treated as a State for purposes of apportioning Federal highway funding.<sup>18</sup> In TEA-21, Congress established the Puerto Rico Highway Program (PRHP) and changed Puerto Rico's highway funding from an apportioned share to a fixed amount. In the FAST Act, Congress authorized the PRHP at \$158 million annually for FY 2016-FY 2020.

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<sup>14</sup> Federal Highway Administration, "Territorial Highway Program," in *A Guide to Federal-Aid Programs and Projects*. 162-164. <https://www.fhwa.dot.gov/federalaid/projects.pdf#page=157>

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Federal Highway Administration, "Puerto Rico Highway Program," in *A Guide to Federal-Aid Programs and Projects*. 1631-133. <https://www.fhwa.dot.gov/federalaid/projects.pdf#page=157>

**WITNESS LIST**

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