The Honorable Ron His Horse Is Thunder
Chairman, Standing Rock Sioux Tribe
P.O. Box D
Fort Yates, North Dakota 58538

Dear Chairman His Horse Is Thunder:

This letter is to formally announce the upcoming tribal consultation concerning the Indian Reservation Roads (IRR) Program scheduled for September 3-4, 2008, in Bismarck, North Dakota at the Bismarck Civic Center, Exhibition Hall (South Fifth and Front Avenue), as part of the United Tribes Technical College (UTTC) Tribal Leaders’ Summit.

This tribal consultation pertains to a number of changes being considered by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA), as well as proposals recommended by the Indian Reservation Roads Program Coordinating Committee (IRRPCC), to change the manner in which IRR Program funds are distributed to Tribes under the funding formula.

Since FY 2005, when the IRR Program regulations (25 Code of Federal Regulations Part 170) went into effect, portions of the funding distribution formula for the IRR Program have not been fully implemented because certain data in the inventory did not make a distinction as to which roads should generate 100 percent of the cost to construct (CTC) and vehicle miles travelled (VMT) in this formula. The CTC and VMT are critical elements in the funding distribution formula for the IRR Program. Additionally, available road inventory data also did not distinguish which non-BIA roads should be factored at a lower percentage for these two elements of the funding distribution formula as intended in the regulations.

There are many large land-based specific transportation issues related to the IRR program and we hope to address many of them with an emphasis on the potential impacts of the proposed changes to the IRR Program regulations 25 CFR Part 170, Subpart C, and Appendix C to Subpart C – Relative Need Distribution Factor, Question 10. The BIA has prepared a recommended re-write of question 10 and developed a matrix to coincide with the proposed re-write language. Enclosed is a copy of a briefing paper prepared by the Rocky Mountain IRRPCC members that also contains a Montana - Wyoming Tribal Leaders Council resolution which will help explain concerns over this issue, especially as it relates to large land-based tribes. It is our intent, however, to focus on the potential impacts to Tribes’ funding levels that may result from changes being considered for the funding formula for the IRR Program. Enclosed is a copy of Subpart C to the Part 170 Regulations, including its Appendices, for your reference.

This formal consultation is being undertaken in accordance with the BIA’s Government-to-Government Consultation Policy and pursuant to the President’s Executive Order 13175 of November 6, 2000.
You can access the full IRR Program regulation at www.ewu.edu/groups.cbpanwattap/irrfinalrule.pdf, which is an Eastern Washington University Tribal Transportation Assistance Program web site.

Please refer to http://www.doi.gov/bia/roadreservation.html for links to each Region’s most recent IRR Inventory available on-line. At this same site you can access the Coding Guide and Instructions for IRR Inventory which will help you interpret your IRR Inventory and the various proposed changes to the formulas which generate the tribal funding amounts.

Please refer to http://www.ttap.mtu.edu/index.php for information and documents pertaining to the IRRPCC meetings and actions taken by this body.

We enclose a copy of the proposed agenda for our pre-consultation session and the formal consultation. If you have any questions regarding the consultation process, please contact Gerry Foell, Regional Roads Engineer, Great Plains Regional Office. If you have questions regarding topics being addressed, please call the members of the IRR Program Coordinating Committee listed below:

- Pete Red Tomahawk (Primary Member) Great Plains Region, IRRPCC, Standing Rock Sioux Tribe Transportation Planning and Development Director - (701)854-7400;
- Doyle Bell (Alternate Member), Great Plains Region, IRRPCC, Three Affiliated Tribes, Transportation Planner - (701) 627-3716.

Thank you for your interest in the IRR Program and we look forward to your attendance at the scheduled tribal training and formal consultation regarding the proposed implementation of IRR Program regulation changes.

Sincerely,

[Signature]

ACTING Regional Director

Enclosure:

25 CFR Part 170, Appendix C to Subpart C – Relative Need Distribution Factor

cc: Pete Red Tomahawk, IRRPCC  
Doyle Bell, IRRPCC  
Tribal Transportation Planners
FORMAL TRIBAL CONSULTATION AGENDA
INDIAN RESERVATION ROADS PROGRAM
BISMARCK CIVIC CENTER
BISMARCK, NORTH DAKOTA

September 3-4, 2008

Tribal Pre-Consultation – Indian Reservation Roads Program - Wednesday - September 3, 2008

10:25-11:30 am – IRR Program Consultation Overview

- During this part of the general session of the Tribal Leaders Summit, representatives of the Department of the Interior and the Department of Transportation will explain the formal consultation for the Indian Reservation Roads Program to elected Tribal officials and other Summit attendees. During this time these representatives will identify the purposes and goals of the formal government-to-government consultation and the ground rules that will apply to this consultation.

1:30 - 5:00 pm – Pre-Consultation

- The goal of this meeting is to discuss topics for the consultation, potential impacts on Tribes in the Great Plains Region and Rocky Mountain Region and to generate Tribal comments for the tribal consultation.

- Presentation of topics will be done by BIA staff from the Great Plains Regional Office and the Rocky Mountain Regional Office.

- Topics:
  1) Definition of Indian Reservation Roads (IRR)
     - 23 United States Code Part 101
     - National Tribal Transportation Inventory – Safe, Accountable, Efficient, Transportation Equity Act – Legacy for Users (SAFETEA-LU)
     - Interpretations of IRR
  2) Relative Need Distribution Formula – Pre-Tribal Transportation Allocation Methodology
  3) Tribal Transportation Allocation Methodology and the Relative Need Distribution Factor
  4) IRR Inventory
     - Impact on tribal funding
     - Fairness and consistency in processing IRR inventory submittals
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- Different perspective on Regional Office reviews
- Expectations of the Bureau of Indian Affairs Division of Transportation (BIADOT) to ensure fair, uniform and consistent processing of IRR inventory submittals
- Limitations placed on routes eligible for inclusion in the IRR inventory

5) 25 CFR Part 170 Appendix C to Subpart C, Question 10 application of share percentages.

Tribal Consultation - Thursday, September 4, 2008

8:00am – 5:00pm

- Consultation means a process of government-to-government dialogue between the Bureau of Indian Affairs and Indian tribes regarding proposed Federal actions in a manner intended to secure meaningful and timely Tribal input. Consultation includes that Indian tribes are:

1) To receive timely notification of the formulated or proposed Federal action (FHWA and BIADOT will explain the recommended changes to the IRR Program regulations);
2) To be informed of the potential impact on Indian tribes of the formulated or proposed Federal action;
3) To be informed of those Federal officials who may make the final decisions with respect to the Federal action;
4) To have the input and recommendations of Indian tribes on such proposed action be fully considered by those officials responsible for the final decision; and
5) To be advised of the rejection of tribal recommendations on such action from those Federal officials making such decisions and the basis of such rejections.

- Tribal Input

- Topics:

1) BIADOT will explain proposed changes to 25 CFR 170 Appendix C to Subpart C, Question 10.

2) FHWA and BIA DOT will address projected impacts resulting from regulation changes being considered.
3) BIADOT’s and FHWA’s understanding of how the Tribal Methodology (TTAM) negotiated during the IRR Negotiated Rule Making was to be interpreted and implemented by the agencies

4) BIADOT’s and FHWA’s understanding of what Congress intended in the National Transportation Facility Inventory of SAFETEA-LU

5) IRR inventory
   - Impact on tribal funding
   - Fairness and consistency in processing IRR inventory submittals
   - Different perspective on Regional Office reviews

* Closing Comments