

## Bureau of Indian Affairs, Interior

## § 170.111

(h) General funds of the tribal government; and

(i) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

### **§ 170.106 When must State governments consult with tribes?**

Each State must develop the State Transportation Improvement Program (STIP) in consultation with tribes and BIA in those areas under Indian tribal jurisdiction. This includes providing for a fully coordinated transportation planning process that coordinates transportation planning efforts carried out by the State with transportation planning efforts carried out by tribes. The statewide and metropolitan planning organization requirements are in 23 U.S.C. 134 and 135. Regulations can be found at 23 CFR part 450.

### **§ 170.107 Should planning organizations and local governments consult with tribes when planning for transportation projects?**

Yes. The Department's policy is to foster and improve communication, cooperation, and coordination among metropolitan planning organizations (MPOs), regional planning organizations (RPOs), local governments, municipal governments, and tribes on transportation matters of common concern. Accordingly, planning organizations and local governments should consult with tribal governments when planning for transportation projects.

### **§ 170.108 Should Indian tribes and BIA consult with States' planning organizations and local governments in the development of their IRRTP?**

Yes.

(a) All regionally significant IRR Program projects must be:

(1) Developed in cooperation with State and metropolitan planning organizations; and

(2) Included in appropriate Federal Lands Highway Program transportation improvement programs for inclusion in state and metropolitan plans.

(b) BIA and tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments, on

transportation matters of common concern.

### **§ 170.109 How do the Secretaries prevent discrimination or adverse impacts?**

In administering the IRR Program, the Secretaries ensure that non-discrimination and environmental justice principles are integral program elements. The Secretaries consult with tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

### **§ 170.110 How can State and local governments prevent discrimination or adverse impacts?**

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials should consult and work with tribes early in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

(1) Impeding access to tribal communities or activities;

(2) Creating excessive access to culturally or religiously sensitive areas;

(3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;

(4) Harming indigenous plants and animals; and

(5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

### **§ 170.111 What can a tribe do if discrimination or adverse impacts occur?**

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

(a) Take reasonable steps to resolve the problem directly with the State or local government involved;

(b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and

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seek assistance in resolving the problem.

**ELIGIBLE USES IF IRR PROGRAM FUNDS**

**§ 170.115 What activities may be funded with IRR Program funds?**

- (a) IRR Program funds may be used:
  - (1) For all of the items listed in appendix A to this subpart;
  - (2) For other purposes identified in this part; or
  - (3) For other purposes recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and §170.156 and approved by FHWA or BIA pursuant to §170.117.
- (b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

**§ 170.116 What activities are not eligible for IRR Program funding?**

IRR Program funds cannot be used for any of the following:

- (a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;
- (b) Structures and erosion protection unrelated to transportation and roadways;
- (c) General reservation planning not involving transportation;
- (d) Landscaping and irrigation systems not involving transportation programs and projects;
- (e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;
- (f) Purchase of equipment unless authorized by Federal law or in this part; or
- (g) Condemnation of land for recreational trails.

**§ 170.117 How can a tribe determine whether a new use of funds is allowable?**

- (a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eli-

gible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4058-MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the IRR Program or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the IRR Program Coordinating Committee before denying a request. BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA Regional offices.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that specific project.

**USE OF IRR AND CULTURAL ACCESS ROADS**

**§ 170.120 What restrictions apply to the use of an Indian Reservation Road?**

Indian Reservation Roads (IRRs) must be open and available for public use. However, the public authority having jurisdiction over these roads may:

- (a) Restrict road use or close roads temporarily when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as contained in §§170.122 and 170.813;
- (b) Conduct engineering and traffic analysis to determine maximum speed