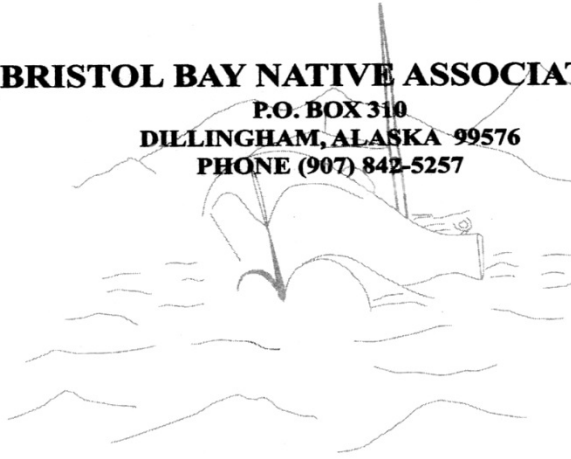


**BRISTOL BAY NATIVE ASSOCIATION**

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Office of Regulatory Affairs & Collaborative Action  
U.S. Department of the Interior  
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Washington, DC 20240

Attn: Elizabeth Appel

PROPOSED RULE COMMENT – The Bureau of Indian Affairs (BIA) is proposing a change to a provision in the Tribal Transportation Program regulations.

Dear Ms. Apple

SUBJECT: “Bureau of Indian Affairs” “1076-AF45.”

We have reviewed Proposed Rule ID: BIA - 2019-0004-0001, 2019-0004-0003, and BIA-2017-0002-0041 (RIN’s 1076-AF38, AF45). Thank you for the opportunity to submit comments regarding these proposed rule makings.

The Bristol Bay Native Association (BBNA) strongly opposes this proposed rule. In Short this is the worst of all possible proposed solutions the Department of Interior (DOI), BIA could propose – To continue this disproportional distribution of resources without requiring all tribes to plan, propose, and keep roads in the National Tribal Transportation Facility Inventory by one set of rules is irresponsible and in total neglect of your Responsibility.

The Bureau of Indian Affairs (BIA) is again proposing a change to a provision in the Tribal Transportation Program (TTP) regulations affecting proposed roads that are currently in the National Tribal Transportation Facility Inventory (NTTFI). Specifically, this proposed rule would delete the requirement for Tribes to collect and submit certain data in order to keep those proposed roads in the NTTFI. The requirement to collect and submit data to add new proposed roads to the NTTFI would remain in place.



Regulations governing the Tribal Transportation Program were published in 2016. See 81 FR 78456 (November 7, 2016). The regulations became effective on December 7, 2016, except for § 170.443, which required Tribes' compliance one year later: On November 7, 2017. Section 170.443 required Tribes to collect data for proposed roads to be added to, or remain in, the NTTFI. BIA then further delayed the November 7, 2017, deadline for compliance with § 170.443 to November 7, 2019. See 82 FR 50312 (October 31, 2017), 83 FR 8609 (February 28, 2018). The purpose of the delay was to provide BIA with time to reexamine whether revision or deletion of the data collection requirements in § 170.443 would be appropriate.

Since that time, BIA claims staff have been engaged in outreach at several regional and national meetings with affected Tribes. BIA is now proposing to apply the data collection requirements going forward to any new proposed road submission, but not to proposed roads that were already in the NTTFI as of the date of publication of the regulations on November 7, 2016, unless any changes or updates were or are made after that date. We would hazard a guess that those pushing this change are Tribes that have received the benefit of roads that cannot be approved if the additional data is required.

We believe making this revision is a terrible mistake, one which will permanently impose a discriminatory two-tier class system on Tribes, particular those within Alaska. It perpetuates a system of "Have" and "Have Not" Tribes. Approximately 20% of the Tribes in Alaska, heavily clustered in just three of twelve Alaska Native regions, receive roughly 80% of the TTP funding, largely because of proposed roads. The representatives the BIA selects for its Advisory Committee *always* seem to come from the 20%. While the current funding system is frozen in place by the current authorizing legislation, Congress only did this because it did not trust the inventory data. BBNA has been told over and over again by Congressional staff that the funding formula is unlikely to ever be changed to be more equitable to the "Have Not" Tribes unless the BIA "fixes" its inventory. This latest proposal is the opposite of a fix.

In a true effort to facilitate support for tribal people and tribal governments by promoting safe and quality living environments, strong communities, self-sufficient and individual rights, while enhancing protection of the lives, prosperity and well-being of American Indians and Alaska Natives. BIA should allow and encourage an open planning process under one set of rules. Rules that would allow all tribes to evaluate their Long Range Transportation needs; then plan, propose, and keep routes without restrictions, under the same set of rules, which will ensure connectivity to communities and other local and regional significant locations for the safe delivery of goods and services to all tribes.

The BIA is ostensibly making this proposal because Tribes added the proposed roads to the NTTFI under regulations that were in effect at the time which did not specifically require the significant data collection. Moving forward, BIA wants to require that new proposed roads include the back-up documentation identified by § 170.443 (a)(1)-(8) in order to be added to the NTTFI. However, this is a very incomplete and misleading argument that covers up the enormous blunder the BIA made in allowing many of these "proposed roads" in to begin with. The constraints the BIA should have been following were statutory – including the definition of "public roads" and a requirement that BIA transportation planning follow the same time horizon



the states use. The BIA was, after all, a Federal Lands Highway agency and its road inventory was a federal, not tribal, database. The BIA had issued its own transportation-planning guide, largely consistent with other transportation planning publications throughout the industry, which the vast majority of Tribes followed. Yet the BIA threw its hands up in the air when some Tribes ignored standard practice and developed Tribal plans that were completely unconstrained. This resulted in those Tribes that followed the BIA's own guide – and the intent of the statute - to be swamped by inventory of Tribes that were so constrained. There was eventually a massive reallocation of funds to the new "Have" Tribes as thousands of miles of proposed roads impacted the funding formula. Yet there was nothing to prevent the BIA from, say, looking at a map and determining that some roads just aren't feasible or cannot legally be built. A tribal "proposed road" that crosses miles of ocean or is within a federal Roadless wilderness area or wildlife refuge cannot be built, and doesn't belong in a federal road inventory.

The latest Proposed Rule is the worst of all possibilities scenarios; it is not just that the continuous vacillation is offensive to those of us operating within the previous rules and now the proposed rule. It is the most ineffective, unequal, and unmerited way forward the BIA could propose; if the goal is to have an equitable and level playing field for roadway management and the unbiased distribution of funds.

Simply put, BIA is punishing those that operated within the previous conservative expansion mindset (20 to 30 year long range planning) and who complied with the original statutes and the proposed rule justifying roads by the criteria set forth, and rewarding those that disregarded the federal standards and the BIA's own guidance.

BBNA suggests that in a true effort to facilitate support for tribal people and tribal governments by promoting safe and quality living environments, strong communities, self-sufficient and individual rights, while enhancing protection of the lives, prosperity and well-being of American Indians and Alaska Natives. BIA should allow and encourage an open planning process that would allow all tribes to evaluate their Long Range Transportation needs and plan and propose routes without restrictions, which will ensure connectivity to communities and other local and regional significant locations for the safe delivery of goods and services to all tribes. Tribes, obviously, can engage in whatever planning processes they want for their own purposes. But, to the extent these open planning processes are incorporated into the federal inventory system, all Tribes need to follow the same rules for both the existing inventory and for future additions and there should some verification of data.

Although we have supported the imposition of additional and retroactive data, we too have run into some circumstances where we would prefer more flexibility. Bristol Bay Native Association (BBNA) followed the first newly proposed rule and updated our Tribes LRTP's to reflect only those roads that met the new criteria. However, in the beginning process it was our hope and intent to begin to identify and explain the overwhelming need to connect Bristol Bay communities. Connecting our communities' maybe the very means that we here in Rural Alaska can survive the ever escalating costs of the delivery of goods and services we face.



"Transportation planning means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs." That should be the criteria by which we are constrained.

We need to plan connect our communities in the region and the region to an urban point of significance. We need to have the ability to plan and promote some proposed roads that will not be able to qualify for the NFFTI as the last three proposed rules listed above require. With the "proposed roads" issue there are essentially three choices:

- First, the BIA can apply the higher data submission requirements to all proposed roads including those already in the inventory. This is the most constrained approach and the most defensible if the goal is an accurate and fair inventory that can be used for funding formula purposes. This has been BBNA's preference in the past.
- Second, the BIA can relax the requirements – essentially let proposed roads come into the inventory without constraints as was done by some Tribes before; or alternatively adopt some other more relaxed standard. BBNA would not oppose this approach – the key here is apply one set of standards apply to the existing inventory and new inventory.
- The third option – grandfathering in existing proposed roads while imposing greater standards on new proposed roads – is the worst possible outcome both in term so fairness and the integrity of the data. It penalizes Tribes that followed the rules and perpetuates a two-class system of Have and Have Not Tribes. It also leaves the NTFFI as essentially junk information – filled with proposed roads added under completely different standards depending on which Tribes submitted them.

The BIA cannot promote or protect any of its programs by elevating some tribes while oppressing others. We are not necessarily advocating to require that old or new proposed roads include the back-up documentation identified by § 170.443 (a)(1)-(8) in order to be added to the NTTFI. That would be the preferred method, as that was the intent of the USC. We can go either way, we just want an equitable method by which the rule is applied. We ask that a truly equal method of establishing an inventory be established; one that would be equitable without unrealistic qualifying inventory requirements being put forth. An inventory with the constraints intended by USC or a free for all, we would live with either method.

We propose as one option that the BIA and FHWA have each tribe analyze current and future needs and create a full list of roads needed to insure the success of the Tribe with the possibility and viability of a sustainable community for many years to come. In other words, allow all of us (at least one time) to evaluate and make Long Range Transportation Plans that reflect the actual need (now and in the and in the reasonably foreseeable future), which will reflect all our true Tribal Transportation Program needs. The inventory could work either way – either constrained or expansive – but we suggest if it is so expansive and inclusive of all the junk that is there now, it doesn't really record any useful information. Some roads now included are like roads to the moon -they are not realistic or buildable, ever.

The current proposal is in error in both intent and policy – at some point you need to stand up and fix it. Either constrain it as originally proposed and as the inventory system was originally



intended, or relax it and opt for minimal constraints. But do not leave it relaxed for the "Have" Tribes and constrained for everyone else!

Sincerely,

9/24/2019

X

Dan Breeden

Dan Breeden  
Director, Transportation & Infrastructure De...  
Signed by: Dan Breeden

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