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Tribal Transportation Symposium Presentation

Portland, Oregon

Environmental Justice Assessment of Transportation Projects

As presented

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An experienced environmental justice and transportation practitioner will discuss the confluence of environmental and civil rights laws as they affect transportation projects, with special application to tribes. Tribes must be treated equitably by other governments. The session will include discussion of a recent case in which $70 million in ARRA (federal stimulus) funds were withdrawn from a transportation provider by the Federal Transit Administration because of the lack of a social equity impact analysis. How to do such an analysis will be described. Recipients of federal financial assistance have special burdens to meet. Resources and recourses are available.

Thank you for inviting me here today.

I may have met some of you while working for the Wash. St. Human Rights Commission, especially when we were working on developing a Washington State Indian Civil Rights Commission. I guess it’s my job to add a dose of reality to previous presentations on the Census and Japanese-Americans. In 1942, the Census Bureau turned over information on them to the FBI, to assist in their internment under Executive Order 9066.
What is Environmental Justice?

Environmental justice is the confluence of environmental and civil rights law. It concerns preventing and avoiding adverse environmental and health impacts on low income and minority people. In their book *From the Ground Up*, Cole and Foster (2002) compare the US EJ movement to a number of streams converging to form a river. They see the environmental justice movement as encompassing civil rights and environmental racism; the anti-toxics, or environmental health, movement; Native American struggles for land, sovereignty and cultural survival; the labor movement for a safer workplace; a group of academics who had begun investigating the disproportionate contamination of certain communities based on race and class; and a few traditional legal and scientific environmentalists.

**Why is EJ important to tribes?**

EJ is important to tribes because every organization that receives federal financial assistance is supposed to pay attention to EJ, and avoid, prevent, eliminate, or reduce the adverse impacts of their activities on protected people.

Tribes have many interactions with other governments, especially the federal government. They are not just another stakeholder, but are sovereign governments and nations.

Transportation has historically had quite a few negative impacts, and low income and minority people haven’t gotten benefits and services as good as the Anglo community has gotten.

Impact on fishing.

Impact on cultural and histories properties and sites.
Impact on sacred sites.

EJ and civil rights laws can be used by tribes to help convince state DOTs and other government agencies to do the right thing.

Environmental laws can sometimes be used to stop projects. For example, the Endangered Species Act.

**Here are some examples of EJ problems w/ transportation**

Transportation infrastructure can displace residents and permanently damage community structure and integrity. Urban Renewal = “Negro Removal.” This resonates with the experience of a number of tribes being “removed” from their ancestral lands.

Both the construction and operation of infrastructure can impair (or benefit) walkability and livability.

Use of motor vehicles on roadways and rail causes air pollution, noise, and pedestrian hazards, disproportionately affecting people living near that infrastructure.

Preferential investments in auto-centered transport have generated a transit-dependent subclass that has substantial barriers to access.

Transportation systems facilitate race, ethnic- and class-based segregation, contributing to the reproduction of environmental injustice.

On-road mobile sources contribute to the highest health risks near major roadways over a large area of south Seattle.

Risks and hazards are greatest near major highways and drop dramatically about 200 meters from the center of highways.
Land use decisions should be made with an attempt to protect sensitive individuals from areas where air pollution is expected.

Consider proximity to highways or other known air pollution sources when siting new schools, daycares, retirement homes, and assisted living facilities.

**According to the African American Environmentalist Association, these are the Principles of Environmental Justice:**

1) seeks to provide environmental protection to the most vulnerable communities.

2) demands that public policy protect society’s most vulnerable communities.

3) should provide equal economic opportunities to all sectors of our society while providing equal environmental protection.

4) calls for sustainable development, efficient use of resources and the availability of abundant energy supplies at reasonable prices.

5) requests respect in policy decision-making in order to distribute production facilities that emit contaminants equitably among geographical locations.

6) demands that toxic wastes should not be targeted for and concentrated in minority communities.

7) should expand the definition of ‘environment’ and seek to redress unique environmental problems.

8) affirms a commitment to equal environmental protection for all people.
9) should provide compensation to individuals and communities who have suffered disproportionate exposure to pollution.

**An equitable transportation system** would:

Ensure opportunities for meaningful public involvement in the transportation planning process, particularly for those communities that most directly feel the impact of projects or funding choices

Be held to a high standard of public accountability and financial transparency

Distribute the benefits and burdens from transportation projects equally across all income levels and communities

Provide high quality services—emphasizing access to economic opportunity and basic mobility—to all communities, but with an emphasis on transit-dependent populations

Equally prioritize efforts both to revitalize poor and minority communities and to expand transportation infrastructure

Here are **seven factors that may result in disproportionate environmental health impacts among minority and low-income populations.**

Proximity to environmental hazards,

Susceptibility/vulnerability,

Unique exposure pathways,

Multiple and cumulative environmental burdens,
Diminished ability to participate in the decision making process, Physical infrastructure, and
Chronic community stress.
Other possible adverse effects include:
Increased traffic congestion, air, noise and water pollution;
The destruction or disruption of community cohesion or economic vitality;
The displacement of persons, businesses and farms and ranches;
The destruction or disruption of the availability of public and private facilities and services, and
The denial of, reduction in, or significant delay in the receipt of, benefits provided by Federal Highway Administration programs, policies and activities.
Lack of access to tribal enterprises.

Environmental justice movements have commonly campaigned around six main issues:
poverty, race, institutional change, law and policy, land tenure and management of natural resources, health and pollution.

Legal Foundations
The 1969 National Environmental Policy Act (NEPA) and 23 USC 109(h) require that social, economic, and environmental consequences of programs be considered when contemplating any
action having federal financial support. However, many of the statutes discussed below are not under the umbrella of NEPA, but have a separate legal existence, with their own enforcement rights.

**Title VI of the Civil Rights Act of 1964**

Title VI and Environmental Justice apply to all planning and project development programs, policies and activities. In project development, environmental justice should be considered in all decisions whether they are processed with an Environmental Impact Statements (EIS's), Environmental Assessments (EA's), Categorical Exclusions (CE's), or Records of Decision (ROD's). Potential impacts to the human environment should drive the processing option decision as much as potential impacts to the natural environment. Impacts to both the natural and human environment are to be given comparable consideration throughout transportation decision making.

At the scoping stage in the NEPA process, there should be adequate consideration of Title VI and environmental justice. Minority and low-income populations should be identified as early as possible and their concerns should be examined and addressed, preferably in planning. Because the nondiscrimination requirements of Title VI extend to all programs and activities of State DOTs and their respective sub-recipients and contractors, the concepts of Environmental Justice apply to all State projects, including those which do not involve Federal-aid funds, whether Advance Construction, Design Build, or not.

It is important to note that EJ needs to be considered, regardless of whether there is an EIS, an EA, or an Exclusion.

**EJ EO**
Executive Order 12898 requires that federal agencies identify disproportionately high and adverse human health or environmental effects on minority and low-income populations that may result from their programs, policies, and activities, and take action to address such disparities. The concept of disproportionate environmental health impacts and burdens refers to the finding that some populations systematically experience higher levels of risk than the general population. This perspective recognizes that multiple factors, including social, psychosocial, economic, physical, chemical, and biological determinants, may contribute to disproportionately high and adverse human health or environmental impacts. Therefore, population-level disparities in these burdens and health impacts may be attributable to one or more combinations of inequities related to harmful exposures or differentials in the ability to withstand or mitigate harms.

**USDOT EJ Order**

The USDOT EJ Order requires components of USDOT to do the following:

1. Explicitly consider human health and environmental effects related to transportation projects that may have a disproportionately high and adverse effect on low-income or minority populations; and

2. Implement procedures to provide “meaningful opportunities for public involvement” by members of those populations during project planning and development (USDOT 1997, §5[b][1]).

On December 2, 1998, the Federal Highway Administration (FHWA) issued its own order. The FHWA Order sets policies for integrating environmental justice principles into existing operations, preventing disproportionately high and adverse effects, and actions to address disproportionately high and adverse effects
on low-income and minority populations.

According to this Order, when determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancements measures and potential offsetting benefits to the affected minority or low-income populations.

USDOT Order 5610.2 and FHWA Order 6640.23 direct recipients to apply two criteria to determine whether low-income or minority populations would experience a disproportionately high and adverse effect:

1. Low-income or minority populations would predominately bear the effect; or

2. Low-income or minority populations would suffer the effect, and the effect would be considerably more severe or greater in magnitude than the adverse effect suffered by the general population.

According to USDOT 5610.2 and FHWA Order 6640.23, a USDOT or FHWA program that has disproportionately high and adverse effects on low-income or minority populations may be carried out only if:

A substantial need for the program, policy or activity exists, based on the overall public interest; and

**Alternatives** that would have less adverse effects on protected populations have either:

- adverse social, economic, environmental, or human health impacts that are more severe; or
-would involve increased costs of an extraordinary magnitude.

This is more than just “taking into account.” The standard is higher.

**How to enforce EJ rights:**

Filing a Title VI complaint with the federal agency, alleging discrimination.

The standard of proof is a preponderance of the evidence—a simple weighing of the material and relevant evidence. Which ever side has 51% prevails.

Providing comments and input on environmental impact statements.

Filing lawsuits under NEPA.

Taking advantage of public involvement opportunities.

**MPO’s: Is everyone familiar with Metropolitan Planning Organizations?**

The USDOT’s planning regulations (23 C.F.R. 450) require metropolitan planning organizations (MPOs) and states to "seek out and consider the needs of those traditionally underserved by existing transportation systems, including, but not limited to, low-income and minority households."

**States and Metro Planning Organizations are supposed to certify that the transportation planning process complies with Title VI and 23 CFR 450.316(b)(2)**
It is easy to attract complaints about environmental impacts after a project begins construction. Unfortunately by this time it's often difficult (or very expensive) to address inequities in the distributions of benefits and costs.

Therefore, FHWA and FTA encourage MPOs and regional transportation planning agencies (RTPAs) to consider EJ early. To enforce the encouragement, EJ is now part of the self-certification process for MPOs. USDOT guidance suggests that the Feds are looking for evidence that EJ is explicitly addressed during development of regional transportation plans as well as during selection of projects for the Transportation Improvement Program. Federal Aid support for local projects may be withheld for failure to address EJ considerations adequately. This happened with the BART case in the San Francisco Bay Area.

**How to Analyze an EJ Situation:**

In the 2000 *Proposed Rule for Statewide Transportation Planning and Metropolitan Transportation Planning*, the EJ requirements for Statewide Transportation Planning provide detailed guidance for EJ analysis in statewide transportation planning. The Rule requires that EJ procedures in statewide planning include the following:

1. The development of a discrimination assessment for the state;
2. Consideration of comments received during public involvement processes; and
3. Identification of prior and planned efforts to address any disproportionately high and adverse effects found.

As described by the Rule, a discrimination assessment does the following:
(1) It provides a geographic and demographic profile of the state that identifies low-income, racial minority, elderly and disabled populations (henceforth referred to as target populations);

(2) It describes the transportation services available to or planned for these population segments;

(3) It identifies disproportionately high and adverse environmental impacts to these population segments; and

(4) It determines the denial of or reduction in benefits to these population segments.

A general methodology for EJ analysis can be characterized by:

(I) a screening analysis to identify target populations likely to be exposed to the impacts of transportation plans, programs or projects, and,

(II) an impact analysis to quantify (or otherwise characterize) the impacts of plans, programs or projects on target populations.

**Key factors influencing EJ analysis:**

(1) The selection of the benefits and burdens to be evaluated;

(2) The identification of target populations;

(3) The choice of spatial scale for the analysis;

(4) The choice of impact thresholds for identifying disproportionately high and adverse impacts; and

(5) The manner in which data uncertainty is addressed.
Does this community have the access to jobs, health care and other services comparable to other communities?

Are the noise and safety impacts comparable between communities?

What are the travel times across modes?

Is there equity in the way transportation facilities (roads, noise barriers, lighting, transit stops) are maintained?

**How early can issues which give rise to Title VI/Environmental Justice concerns be addressed?**

At the start of the planning process, planners must determine whether Environmental Justice issues exist and use data and other information to:

1. determine benefits to and potential negative impacts on minority populations and low-income populations from proposed investments or actions;

2. quantify expected effects (total, positive and negative) and disproportionately high and adverse effects on minority populations and low-income populations; and

3. determine the appropriate course of action

**EJ concerns increase** as the

number of contaminated sites increases

multi-media concerns increases

number of contaminants within each site increases
degree or seriousness of contaminant impact increases at each site level of cultural impact increases overall.

**Gray Areas of Defining EJ**

Any and all Tribal EJ issues become important in any environmental process, especially when multiple cultural resources or activities are impacted or potentially impacted.

Tribal EJ issues are not always well defined, as social, cultural, spiritual components are not easily assessed and are rarely adequately considered during environmental processes.

**Special Concerns of Tribes**

The redesign will need careful review because **Native American cultural materials** have been discovered nearby. Section 106 of the National Historic Preservation Act (NHPA) and its accompanying regulations define how such resources must be identified, evaluated, and considered during a Federal undertaking, such as this Federally funded highway improvement. Section 106 requires that these tribes be informed of and involved in any decision-making process that may affect their historic and cultural legacy. Tribal participation in discussions about these resources will become a part of the official record for the project and will be reflected in the project's environmental impact documents.

For tribes, issues of multiple and **cumulative risks and impacts** cannot be separated from the **historical legacy of habitat loss**. A proactive approach towards cumulative risks and impacts in a tribal context must include assessments of the ecosystem and pursue the goal of ecological restoration. EPA has begun to explore issues of cumulative risks and impacts in the Native American context through what are sometimes referred to as “tribal traditional lifeways.” Tribes have consistently raised
concerns that EPA’s programs, risk methodologies and regulatory approaches are not sensitive to tribal traditional lifeways, and don’t give a comprehensive view of the health of the people or their environment.

**International Issues**

Some tribes, especially those along the Northern Tier of the United States, have members and relations on both sides of the border with Canada. Special issues include crossing, identification, marine fisheries, oil spills, whaling, hazardous wastes, and other environmental issues, including rivers that flow across international borders, such as in Eastern Washington. Issues on the Pacific rim, on the Islands, and on the border with Mexico have also been raised.

About 12% of the world’s marine pollution originates from vessels, and of that only a small percentage is from oil spills. The trans-boundary nature of maritime activities. Since the 1950s the international community has systematically addressed issues concerning pollution of the marine environment, particularly vessel-source pollution, such as oil spills.

Under the current UN Human Rights Council Universal Periodic Review of the United States' actions towards fulfilling its human rights obligations under international human rights law. The US Human Rights Network is coordinating the production of reports on specific human rights issues and sought out advocates to produce a report on environmental justice. The report focuses on three broad recommendations:

1. Restoring the ability of private parties to enforce Title VI disparate impact regulations and making the Title VI complaint process more effective.
2. Reforming the National Environmental Policy Act to require consideration of cumulative impacts of environmental hazards in environmental decision-making.

3. Incorporating the precautionary principle into domestic environmental laws such as the Toxic Substances Control Act.

**Other Laws that Contribute to EJ:**

**Clean Air Act:** Under Section 309, the EPA was charged with ensuring that the involved agency has fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects.

Each Federal agency shall ensure that the public, including minority communities and low-income communities, has adequate access to public information relating to human health or environmental planning, regulations, and enforcement when required under the

**Freedom of Information Act, 5 V.S.C. section 552,**

**Emergency Planning and Community Right-to-Know Act, 42 V.S.C. section 11044.**

Several State and Federal laws provide protection for cultural, historical, and traditional resources that might be affected by government action such as road repair and construction. In summer 1999, the regulations implementing one of those laws, the **National Historic Preservation Act (NHPA),** had been amended to place a major emphasis on the role of Federally recognized tribes, in the process of reviewing any Federal action that has an impact on historic resources linked to the tribe. The proper treatment of historic, cultural, and traditional resources associated with a tribe or minority group is an important aspect of environmental justice.
National Historic Preservation Act, Section 106, Expanded Opportunities for Tribal Involvement

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies (and Federally funded State partners) to take into account the effects of their actions on historic properties. Historic properties are locations, structures, or objects that are listed on, or eligible for inclusion in, the National Register of Historic Places. The role of tribes in reviewing historic items of concern to them has been clarified and strengthened.

The Impact Analysis for the regulations states, "The Section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties."

Federal transportation agencies should consult with local Federally recognized tribes at the earliest stages of a project, inviting them to participate in the scoping of the EA and the design of the archaeological assessment. State agencies should also consult with state-recognized tribes.

[[Social equity analysis: Handout]]

Perform various equity analyses (e.g., demographic characteristics of corridor/travel shed; origin/destination studies; and existing transit options/alternative driving routes, including commitments to collect data and/or monitor effects for years into project operations).

How should Environmental Justice be addressed in the NEPA process?
Environmental Justice should be considered and addressed in all NEPA decision making, and appropriately documented in Environmental Impact Statements, Environmental Assessments, Categorical Exclusions, or Records of Decision.

Analyzing environmental effects, on minority populations and low-income populations when such analysis is required by NEPA;

Ensuring that mitigation measures whenever feasible, address disproportionately high and adverse environmental effects or proposed actions on minority populations and low-income populations;

Providing opportunities for community input in consultation with affected communities and improving accessibility to public meetings, official documents, and notices to affected communities.

**Transportation Improvement Plan (TIP)**

The program for transportation projects, developed by an MPO, in conjunction with a state, for a three- to seven-year period.

**ARRA/SFMTC case**

The first time that ARRA funds were withheld for social equity purposes.

Facts
Background
Outcome
Social Equity Impact Analysis needed

**Recommendations:**
Initiate Community-Based, Collaborative, Multi-Media, Risk Reduction Pilot Projects:

Develop Toolkit of Implementable Risk Reduction Actions

Provide Resources for Community-Based Organizations

Develop and Utilize Tools for Targeting and Prioritization of Communities Needing Urgent Intervention:

**Equity is supposed to be one of the legs of the sustainability stool**, but is often ignored.

The Three Es of Sustainable Development are prosperous economy, quality environment and social equity. The ethical principle of equity, particularly intergenerational equity, is central to the concept of sustainable development.

**How things can go very wrong: A case study in how environmental justice shouldn’t be done**

Environmental impact statements are supposed to contribute to reality and prevent bad things from happening. But socio-economic impacts are often de-emphasized in environmental impact analyses and statements, to the detriment of the final product. This lack can lead to harmed people, acrimony and litigation.

**Before I get into this, is there anyone here who was involved in the Port Angeles Graving Yard controversy?** If so, I’d like to provide them an opportunity to tell us what they observed and felt.

In Washington State, a graving yard—a big onshore drydock-- in Port Angeles for construction of the new Hood Canal Floating
Bridge, built by the State Department of Transportation turned out to be built on a not-so-ancient Indian village and graveyard belonging to the Lower Elwha S’Kallam Tribe.

The State Department of Transportation had given consideration earlier to building the graving yard on Makah land. The Makahs had been consulted when WashDOT had earlier considered building the graving dock project in Makah territory but, because of the road conditions and the distant location, they chose not to have it done there.

It was expected to generate more than 100 family-wage jobs as part of a project to build anchors and pontoons for the replacement of the eastern half of the Hood Canal Bridge. Lower Elwha Klallam tribe chairwoman Frances Charles asked the state to walk away from more than $70 million in public money already spent on the project and find a new site. The 22-acre parcel had been an industrial site for more than 150 years when state transportation officials bought it from the Port of Port Angeles in 2003. More than 30 feet of industrial fill covered portions of the village. There had been a high level of Native American development along the harbor shoreline preceding the city's birth in the mid-1800s.

This was within the known memory of residents. The Klallams' waterfront ancestral villages had been documented in the general area of the project by scholars, historians and journalists since the 19th century. The tribe had for generations passed along knowledge of a settlement at Tse-whit-zen. Why didn’t the EIS discover this? It was supposed to cover history, archeology, and human impacts. Who was at fault? Did the scientists and contractors fulfill their ethical and professional responsibilities in identifying the Native American graveyard and village? WashDOT thought they had notified the Klallams by talking with the Port Gamble Tribe.
An archeologist employed by WSDOT to conduct a "cultural resources survey" reported that "no evidence of significant prehistoric or historic archeological resources was found."

Contract archaeologists often undertake their projects on or near Indian reservations without taking into account the oral history and contemporary testimony of the native peoples living in the immediate area. Worse yet, tribal recommendations not to excavate or disturb the earth are ignored, despite compelling data otherwise.

Glenn Hartmann, the archaeologist hired by the state to examine the property, didn't go to the site himself but sent staff to dig test trenches in wet ground with state equipment that repeatedly broke. Hartmann did file a report full of warnings: He warned that paving prevented examining some areas, especially where undisturbed sediments were likely to be encountered; and that auger samples might not have detected buried archaeological deposits. The Lower Elwha Klallam Tribe had no cultural resources office or tribal archeologist, and basically agreed with the survey but strongly urged caution due to the proximity to their ancestral village. This argues for tribes having their own resources and experts and closely reviewing work that may have connections to them.

Not a single cultural-resources expert was on the interagency team reviewing the permits and construction sites for the project. Nor were they invited to the team's discussions. By contrast, state and federal agencies thoroughly vetted environmental concerns. Every biologist in the transportation department worked on the project, checking for impacts on eelgrass, bald-eagle nests, salmon and more. Resource agencies on the inter-disciplinary team focused the team’s efforts primarily on Endangered Species Act concerns, particularly concerns about listed salmon species. There are more protections for endangered animals than endangered humans.

Site alternatives were summarily dismissed due to these concerns.
By looking so closely at some concerns, others weren’t paid enough attention to. The Area of Potential Effect was not adequately defined prior to the initial site assessment in November 2002. This argues for a balanced and thorough review.

Port Angeles is protected by the long sand spit of Ediz Hook jutting into the Strait of Juan de Fuca. It was founded in 1862, a few years after the first handful of American settlers took up residence among the Klallam villagers. The sheltered harbor, a prime location, has been inhabited for more than 2,700 years. For at least 400 years, two major Klallam villages shared the harbor area. I'e'nis was located on the east side, at the mouth of a salmon stream now called Ennis Creek -- both the creek and Ediz Hook derive their names from "I'e'nis," reported to mean "good beach."

No one — not state officials, the archaeologists they hired or the tribal council — consulted with tribal elders before work got under way. If they had, Bea Charles, 86, and Adeline Smith, 87, might have told them of the burial ground there, knowledge they say was entrusted to them by the late tribal leader Sam Ulmer. "He told us about the cemetery in Tse-whit-zen, that it was there, and we were to remember it." Tribal traditions have long held that the Elwha people have always lived here, since the time of their creation on the Elwha River. An 1853 government map, and other sources identified the site as part of Tse-whit-zen, one of more than a dozen Klallam winter villages along the shores of the Strait of Juan de Fuca. Tse-whit-zen was farther west, near the lagoon at the base of Ediz Hook. Archeological investigation in 2004 documented six longhouses in the village, along with a stockade similar to that observed at I'e'nis. Near Tse-whit-zen was a large cemetery, probably the burial place for a number of villages. With burial canoes hung from trees or from scaffolds erected for the purpose and decorated with blankets and other possessions, the cemetery was a prominent feature into the late 1800s.
The first American settlers came in 1856 or 1857. The men staked Donation Land Act claims near the Klallam villages. Sampson located his claim in the cemetery near Tse-whit-zen and residents resisted his intrusion until he worked out an agreement with a local leader that allowed him to build a home on the condition that he not disturb the graves. So the graving yard situation has deep roots. And there is terrible magic in a name—graving yard.

In 1914 when millionaire developer Michael Earles built a sawmill on the site, pilings were driven through Klallam graves. Burials were unearthed, and remains were used in backfill for pipes and utility lines. Bones and fragments of adults and children were scattered. Memories of being forcibly removed from the village area by white townspeople are a bitter part of tribal lore. In another twisted part of the story, the Elwha River was dammed to provide power to the mill, and the dam destroyed the salmon run. All these events are tied together with the knots of disrespect for tribal people.

In 1919, the Zellerbach Paper Company of San Francisco invested in a planned pulp mill at Ediz Hook. The company began production newsprint and paper at the Port Angeles pulp mill in 1921. During construction of the mill in 1920, "hundreds of Indian bones were disturbed" according to a history of the area, a fact widely reported at the time but largely forgotten over the years.

During the Great Depression of the 1930’s, the federal Works Progress Administration built the headquarters for the Coast Guard Air Station at Ediz Hook in 1935. The Coast Guard base forced a second relocation of Klallam families originally from Tse-whit-zen who had moved out onto the spit as mills were built over their old village location. The federal government moved them to land along the Elwha River west of the city, which later became the Lower Elwha Klallam Reservation.
A tribal advocate has said, “Racism ran rampant in Port Angeles… as angry whites blamed the Tribe for the loss of much needed jobs. The city’s timber and fishing economy had crashed a couple decades before. Tensions hadn’t been this high since the Makah Tribes whale hunt.

Death threats were made against the Tribal Chairwoman. She had to endure racism and insults as signs bearing her name were put up throughout the town. A cowardly anonymous caller told the Tribal staff that he could sit on top the hill and shoot Tribal members as they came out of their houses.

A Tribal member parked her car in downtown Port Angeles for a few minutes. She returned to find that someone had thrown bones into the backseat. Testing showed that they were from barbecued ribs.” Obviously, a local Anglo was mocking the Native people.

The Anglo and Native American communities don't know each other's history. Transportation Secretary MacDonald said, "It's got to be dawning on someone that there are some folks in the community who have not been talking to each other for the last few months, for the last few years—or for a century." He urged those present and their community leaders to open an overdue dialogue with tribal members and to listen to their concerns. Unfortunately, the issue dissolved into acrimony and lawsuits, and the Governor’s office had to step in to mediate the matter.

Nobody has completely clean hands in this. The cooperative plywood mill on the site was worker-run for 30 years until the owners sold it to ITT in 1971. It was bought by Klukwan, Inc., an Alaskan Native village corporation in 1989, and is now known as K Ply. So even another Native American group was involved.

As part of a settlement with WashDOT to shut down the project, the city of Port Angeles received $7.5 million for economic
development, $500,000 to recruit and retain businesses and $480,000 to hire an archaeologist who now monitors shoreline projects.

The Port of Port Angeles, which sold the property to WSDOT for $2.9 million, also received a shoreline slice of the site to link port properties on both sides of it. The Lower Elwha received the central 11 acres of the site, a low-cost lease from Transportation on six acres where a museum will be built, plus $2.5 million to help build it.

The discovery of Tse-whit-zen yielded a rich archaeological find -- more than 13,000 artifacts and 335 complete burial remains. But this wasn’t just archeology, but a people’s history and remains. The village's re-discovery cost taxpayers more than $100 million when the Hood Canal Bridge work had to be moved to Tacoma and Seattle. The graving yard had an original price tag of $17 million. A book on this is Breaking Ground: The Lower Elwha Klallam Tribe and the Unearthing of Tse-whit-zen Village, by a Seattle Times reporter, Lynda Mapes.

A State auditing panel found that WSDOT’s project and contract management, geological and cultural resources assessments, and communication and consultation practices were lacking on this project and fell short of industry standards for best management practices. They also concluded that the Department of Archaeology and Historic Preservation could pursue a more active role to work with stakeholders to revise archaeological guidelines and testing protocols, and mapping of potential deeply buried sites in the state.

Other recommendations include that WSDOT should continue to pursue the implementation of a formal plan as required by the Millennium and Centennial Accords signed by both the State of Washington and the State of Washington’s federally recognized
tribes. WSDOT has already developed a formal plan as outlined in Executive Order 1025.00 and should continue to build on this plan as they continue to implement procedural Programmatic Agreements with tribes living in or having ancestral homelands in Washington. WSDOT should consider coordinating with the FHWA when and where possible with continuing to develop procedural Programmatic Agreements with tribes who have ancestral homelands in Washington and live in or outside of the state. Some of these programmatic agreements with tribes have been signed or are under development. **But it is interesting to note that the audit report does not require more consultation with tribes or development of tribal expertise.**

Some changes have been made by the Governor, including that all managers of capital construction projects also must complete classes on the government-to-government relations established between tribes and state agencies in the 1989 Centennial Accord, and more review by state agencies. The State Archaeology Department must review all agreements between agencies and tribes before projects can receive state grants or loans. The Department, and Craig Bill, director of the Governor's Office of Indian Affairs, each have $50,000 to study legal processes surrounding cemeteries. Rep. John McCoy, D-Tulalip, is working on a bill in the legislature to provide more protections.

The Tse-whit-zen case involved an often bewildering array of agencies, laws, and players at all levels of government. There were safety and time pressures, as well as economic pressures from labor unions and the town. Good archeology is unfortunately not the answer. Sir Mortimer Wheeler noted in his 1954 book *Archaeology from the Earth* “Archaeology is destruction” (Wheeler 1954:15). Be it surface collecting or excavation removing ancient Indian history from its original context, destroys the integrity of that history. Curtiss R. Hoffman in his 1994 article “Archaeology Under the Gun: Data Recovery, Salvage, and the
Conservation Ethic” said, “…the ethics of conservation dictate that information about past cultures is best protected by being left in the ground” (Hoffman 1994: 225). There is no substitute for traditional learning, communicating, and respect.

“We could take care of all he wrongs, all the disturbances over the years, all the mills, all the digging them up and throwing them back,” said Tribal Council member Phil Charles. “It brought us as a community together to a conclusion to take care of our ancestors and not allow them to be disturbed anymore.”

**Cumulative Effects**

The concept and measure of cumulative effects are unfortunately not sufficiently emphasized in transportation and other projects, resulting in stacked environmental insults to the adversely affected population in an area.

Cumulative effects or impacts are impacts on health and the environment which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of which agency or entity (Federal or non-Federal) or person undertakes such actions.

**Permitting decisions** should include:

a. Evaluation of long-range impacts by adoption of the Native American model where permitting decisions might consider the impacts on future generations (such as seven generations).

b. Evaluation of the cost of adverse health outcomes on the community that may result from permitting decisions.

c. Evaluation of cumulative impacts of permitting and other environmental decisions.
Examples of issues of interest to Tribes:

EJ study done on 520 project

The Interstate 5 (I-5) to Medina: Bridge Replacement and High-Occupancy Vehicle (HOV) Project is part of the State Route (SR) 520 Bridge Replacement and HOV Program (SR 520 Program)

The Muckleshoot Indian Tribe and Snoqualmie Nation serve as cooperating agencies for the SR 520: I-5 to Medina Bridge Replacement and HOV Project. In accordance with Section 106 of the National Historic Preservation Act, WSDOT consulted with the Confederated Tribes and Bands of the Yakama Nation, the Muckleshoot Tribe, Snoqualmie Tribe, the Tulalip Tribes, the Suquamish Tribe, and the Duwamish Tribe. WSDOT met with these tribes eight times in 2008 and 19 times since 2004.

Tribes were also invited to attend and participate in Regulatory Agency Coordination Process and Technical Working Group meetings, along with regulatory agencies.

Both the Anderson & Middleton and Aberdeen Log Yard alternatives are within the federally protected usual and accustomed fishing area of the Quinault Indian Nation. The usual and accustomed fishing area includes Salmon Management Area 29 within Grays Harbor and its tributaries. The Confederated Tribes of the Chehalis and other Native American tribes have gathering interests in federally owned upland areas. The Tribes that are participating in the environmental review of the pontoon construction project are the Confederated Tribes of the Chehalis Reservation, the Hoh Tribe, The Quileute Tribe, the Quinault Indian Nations, the Shoalwater Bay Tribe, the Skokomish Tribal Nation, and the Squaxin Island Tribe.
Key points of this report

Low-income populations would experience disproportionately high and adverse effects because of tolling. The cost of the tolls would present a burden to low-income populations and social service agencies that serve those populations.

Despite mitigation efforts undertaken by WSDOT, some low-income populations—especially car-dependent populations and populations living in areas with limited transit service—would continue to experience disproportionately high and adverse effects.

Analysts identified four other effects that would have disproportionately high and adverse effect on low-income, minority, or LEP populations, all of which would be offset somewhat by mitigation:

Native American tribes would experience disproportionately high and adverse effects because of construction activity on ancient tribal burial grounds on Foster Island.

Some commenters expressed concerns about the project’s effects on Foster Island. They had concerns that construction of the bridge would disrupt ancient burial grounds. These commenters requested that WSDOT take measures to avoid or minimize impacts on Foster Island.

Native American tribes would experience disproportionately high and adverse effects because of construction activity on usual and accustomed tribal fishing areas. However, WSDOT and the contractor would take measures to avoid or minimize adverse effects on tribal fishing areas. Furthermore, the 6-Lane Alternative would include treatment of stormwater runoff, which
would improve fish habitat in tribal fishing areas.

Native American tribes would experience disproportionately high and adverse effects because the new bridges will have a substantially wider footprint than the existing Evergreen Point Bridge, reducing access to usual and accustomed tribal fishing areas. WSDOT would continue to coordinate closely with the Muckleshoot Tribe to understand the extent to which the wider bridges would affect access to their usual and accustomed fishing areas. WSDOT would also work with the Muckleshoot to develop a plan for mitigating adverse effects on access.

Representatives from one tribe expressed general concerns about protecting the environment, preventing the degradation of cultural and natural resources, and honoring and respecting the tribes. They also emphasized the importance of enhancing and protecting fisheries, habitats, and water quality to Tribes and to all individuals.

At the time of publication of this document, WSDOT was conducting additional oral history interviews with tribes. One of the objectives of those interviews was to determine if there is sufficient reason to consider Foster Island a traditional cultural property (TCP). Regardless of whether or not Foster Island is determined to be a TCP, if construction unearths any physical evidence of the burial ground on Foster Island, those remains would be considered an archaeological resource. WSDOT would consult with the Washington State Department of Archaeology and Historic Preservation and the tribes to create and implement a treatment plan. The preferred mitigation strategy would be to take measures to avoid unearthing any additional remains.

The requirements of electronic tolling would present a burden to low-income and LEP populations
Columbia River Crossing

Environmental justice advocates aren’t satisfied with a proposed down-scaling of a new I-5 Bridge, maintaining that the public works project is still deeply flawed for its massive size and a potential health threat to people.

According to numerous studies, two of the most toxic parts of the city for air quality and ground contamination are in north and northeast Portland where I-5 cuts a swath on its connection to Vancouver. Winds push fumes, many of them carcinogenic, from the freeway into surrounding neighborhoods, contributing to the region’s high asthma rates.

Critics argue that expanding the I-5 Bridge will only put more tailpipes on the road and more pollutants into the neighborhoods. Jeri Sundvall-Williams, a longtime community advocate, and Native American, has been involved in the criticism.

The Oregon Central Valley Tribal Environmental Justice Project is a collaborative effort between the eight valley Councils of Governments (COGs) to develop a report containing tribal input on transportation, cultural preservation, participation in decision-making and environmental justice as part of the region’s Blueprint process. At the three workshops have been tribal representative (with over 45 tribes represented) and representatives from local COGs and County Association of Governments (CAGs). The underlying topic for this group remains to be fleshed out: how to create more structural tribal involvement in local government.

The tribal participants have made several recommendations and requests to the County officials of the region. Among them are the following:
Creation of an educational or information-sharing system between tribal and non-tribal people; maps are too risky, but increased and established consultation may be the solution.

Tribal issues of transportation and resource access/preservation which are exacerbated by their isolation in rural areas must be addressed by planning officials.

There must be a proactive approach to tribal involvement in government planning and actions.

Tribes need expert help and new ideas to address the specific issues that affect them, such as health concerns and resource preservation.

The COG and CAG representatives at the workshops also made requests to the tribes, the most important being intertribal communication and collaboration to allow for easier coordination with non-tribal entities.

**An example of a more established system is in place in the San Diego area, with tribes organized into a Regional Transportation Authority** that places representatives on the board of the San Diego Association of Governments (SANDAG).

**CA Central Valley Tribal Environmental Justice Transportation Collaborative Project**

Goal: Promote preservation of cultural heritage while adding certainty to the timely delivery of projects in the region by developing a **Cultural Sensitivity Tribal Resource Map** and protocol for tribal monitoring the SJV Eight Counties – through meetings, analysis, workshops, and collaboration.

Explore the possibility of creating a tribal coalition for the region that could encourage streamlined participation of tribal nations in
government planning and delivery of projects and services – through workshops, and meetings.

Success of this project will result in the following deliverables/outcomes:
• Knowledge building of Tribal EJ Transportation
• Culturally Sensitive Resource Mapping
• Tribal EJ Transportation Report -Working Collaborative Model for other Tribes and Counties
• Tribal led project will also ensure understanding of culture and tones of all key stakeholders.

**California DOT has had grant projects explicitly combining EJ and CSS, aimed at helping low-income, minority, and Tribal communities.** Examples of funded projects include The Dry Creek Rancheria Transportation Plan in Sonoma County. The project involves developing a long-range transportation plan that addresses the needs of Indian families and other low-income and minority families in the Dry Creek geographic area. This will enable the Dry Creek Rancheria community and local stakeholders to address existing transportation issues and plan for future economic growth and development. It was funded for $125,845.

The Picayune Rancheria of the Chukchansi Indians Development Project in Madera:
seeks to create a strong, viable, and livable community on more than 800 acres of land by creating a multi-use economic development plan that incorporates sustainable development and transportation systems and the community's interests and environmental concerns. This project will build on a previously funded survey and Five-Year Strategic Plan that identified the needs of the tribal members and an action plan.
$135,000
South Beach Trails Connector
Interstate 101 bisects Tribal properties and national and state parks. Trails on either side of the route are disconnected, which limits economic and recreational activity. The project involves developing a planning study that would establish how to safely connect the trails for pedestrians, cyclists, and horseback riders, and encourage recreation, ecotourism, and economic development. The final plan will include up to two feasible locations to cross I-101 along with concept drawings.
$75,272

Del Norte
Elk Valley Rancheria
Middle Klamath River Community Transportation Plan
The Karuk Tribe is proposing to develop a comprehensive community-based transportation plan that improves mobility, access, and safety and promotes environmental justice and economic opportunities for the underrepresented communities of Orleans, Somes Bar, and Happy Camp. The Middle Klamath River Community Transportation Plan will be used to prioritize future transportation improvements.
$165,968

Humboldt
Siskiyou
Karuk Tribe
Trinidad Rancheria:
Comprehensive Community-Based Plan
The project involves developing a master plan for the Trinidad Rancheria that focuses on multimodal transportation planning and integrates land use, community facilities, sustainability, and development standards. A two-phase public participation process, which includes a charrette and a community image survey, will be used to gather input from project stakeholders. The final project will include integrated development standards. $175,520
Gathering tribal data is important, as these data may not be accurately reported in the Census. Timely coordination and government-to-government consultation with tribal leaders and councils can aid in the research for tribal data and even gaining community support for public meetings. Community planners or state DOT staff should be able to identify the percentage of limited-English proficiency on reservations to determine translation needs. The tribal governments should be contacted to see if they would like to share their own data to ensure accurate records.

1995, Tulalip Tribe Consultation:

The community leaders saw the need for an extensive dialogue with the Washington State Department of Transportation and the USDOT on the reinvention of the NEPA process. NEPA reinvention will need to incorporate the tribal governments into the process not as stakeholders, but as part of the government. Tribal governments must play a major player in the decisionmaking process concerning transportation projects. Part of this process involves balancing decisionmaking among tribal and state governments.

Agencies within the state government need to become familiar with treaties dealing with tribal lands. They also need to understand the inner working of the tribal governments. The USDOT must understand the laws between the state and the tribes and redesign their policies (i.e., NEPA) to conform to these laws and protect the resources of the tribes.

The holistic approach to environment includes the following elements:

integrates the built environment with the natural environment and
cultural environment;

incorporates the social, economic, and environmental benefits for people in the respective communities;

ensures a balance of decisionmaking powers between the government-to-government relations;

provides the avenue for the tribal governments to be able to sit down with the local, state, and federal governments to discuss federal, state, and local laws as they relate to infrastructure and planned growth;

and brings the tribal governments in as major players in government-to-government relations.

**Tulalip Tribes Workshop Recommendations**

Create innovative ways to strengthen collaboration with USDOT, WADOT, tribes, counties, and municipalities.

Leverage transportation funds to build trust and contribute to economic development in the region.

Involve the tribes early in the transportation projects decision making process.

Recruit a broad section of stakeholders in transportation decision making.

Develop a countywide transportation system that coexists with other regional growth.

Provide funding for water/sewer projects that provide benefits for the tribes.
Develop parks and open spaces for both passive and active uses. Support the existing infrastructure in proportion to recent and planned growth.

Address surface water problems and link with recreational opportunities.

Distribute substantial funding to tribes to support infrastructure investments.

Promote a holistic methodology for assessing ecological impacts and addressing transportation needs.

Encourage long-term community outreach among all stakeholders.

Recognize the trust responsibility and the nation-to-nation relationship.

Provide adequate tribal representation on state and federal-wide activities.

Provide resources for the coordination of tribal transportation programs with WADOT and federal agencies.

**States’ Approaches**

In recent years, the states have broken new ground in developing EJ authorities in the attempt to address environmental justice concerns. The states’ approaches vary along multiple dimensions:

Duration: ad hoc, subject to change in administration, or permanent;

Government branch: judicial, legislative, or executive (*in toto*, or
solely the environmental protection agency);

Factual predicates: pollutants (anti-concentration laws), media or demographics (procedural/substantive goals for communities meeting geographical or demographic criteria);

Institutional reach: dedicated EJ personnel, offices, community advisory boards or functions;

Breadth: permitting/siting process, or general applicability affecting all environmental decisions, or most broadly, all decisions within the state government;

State/local relations: exclusively matters of statewide concern, or matters of local land use planning;

Remedies: causes of action, administrative petitions, heightened public participation; and

Mini-NEPAs: consideration of environmental permitted, required or proscribed.

(Steven Bonorris, Editor; Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases; Third Edition; Public Law Research Institute; UC Hastings College of the Law; 2007)

**Differences in the public outreach, involvement, and participation process: The Government to Government Relationship**

Tribes are different than other minority groups affected by the environmental impacts of transportation projects. They are sovereign governments. Interactions among tribes, the FHWA,
and State DOTs should be structured as a government-to-government relationship. Consultation with tribes is therefore different from traditional public involvement outreach. Reaching out to tribes is crucial if Federal and State agencies want to be sure that environmental justice concerns are understood and addressed. Transportation officials need to adapt their outreach efforts to this special relationship.

**Tribal Involvement vs. Public Involvement -- There Are Differences**

Effective environmental justice practice requires an agency to reach out to minority or low-income populations to learn about their concerns, needs, and circumstances. This is usually done through targeted public involvement.

Tribal consultation is *not* the same as public involvement. Tribal governments must be formally notified of agency actions and proposals and should be given the same courtesies and opportunities for participation and review that are given to other governmental entities. Simply sending a letter or making a phone call to invite a tribe's participation is usually not sufficient -- agencies should be sure that the contact is acknowledged and its purpose understood. Once formal contact has been made authorities from each side may designate others to carry on technical discussions or other day-to-day consultations. Documenting this ongoing contact, *(e.g.,* through an exchange of letters) is one good way to ensure that tribes are being respected and included in the transportation decision-making process.

U.S. DOT Order 5301.1 also suggests that tribal representation *should* be sought in traditional public outreach efforts, such as meetings, negotiations, rulemaking efforts, advisory committees, and focus groups. Individual members of native tribes, as well as tribal officials, can participate in these forums. In addition to these opportunities (which can be part of any good public participation
effort), DOT and its state transportation partners must recognize the rights of tribal governments to represent their interests as governments. This is an important distinction between tribal involvement and outreach to other populations affected by Title VI.

Without this public engagement, particularly as it concerns Environmental Justice, there is the greater likelihood of tension, confrontation, or litigation between affected communities and the agencies responsible for planning that will cloud the dialogue on transportation and ultimately add to the cost of transportation improvements. When there is federal assistance to develop standards, approaches, and resources, there can be a recognition and incorporation of innovative approaches being used by some states to further enrich and sensitize the processes for transportation planning.

States have initiated a number of strategies to better coordinate transportation planning and construction with the tribes. A report prepared for the Wisconsin DOT (CTC and Associates 2004) identified four common methods within state DOTs for such coordination:

Tribal liaisons, either as designated individuals or offices (Arizona, California, Minnesota, Montana, and Washington State were noted).

Tribal summits, held as communication or coordination meetings (Idaho, Iowa, Minnesota, New Mexico, Pennsylvania, Washington State, and Wisconsin were noted).

Transportation resource guides, either printed or online, to help Indians and agencies understand a tribes’ role in transportation issues (California, Minnesota, and Washington State were noted).
Advisory committees, which meet regularly to address tribal transportation issues (Arizona and California were noted).

**Paying for Tribal Efforts: [Funding]**

According to the *Indian Reservation Roads Program, Transportation Planning Procedures and Guidelines*, tribes can fund transportation planning and planning coordination efforts through four programs:

- **Indian Reservation Roads Program Funds** are allocated by Bureau of Indian Affairs (BIA) area offices for transportation improvements within or leading to Indian lands. They may be used for planning.

Public Law 93-638 federal contracts to carry out the BIA Tribal Roads Construction and Roads Maintenance Program and other contracts and grants for other transportation-related activities and projects from local, state, and federal agencies.

- **FHWA State Planning and Research and Metropolitan Planning Funds**. Tribal governments should consult with the State and Metropolitan Planning Organization (MPO) about the possibility of using these funds for tribal transportation planning.
- **Federal Transit Administration (FTA) State Planning and Research and Metropolitan Planning Funds**. Tribal governments should consult with the State and MPO about the possibility of using these funds for tribal transportation planning.
- **Public Lands Highway -- Discretionary Funds** are available from the FHWA-Federal Lands Highway Office through the State Transportation Agencies (STA) for transportation planning that promotes and/or benefits tourism and recreational travel. Candidate projects on Indian reservations can be submitted to the STAs by the BIA or tribe.
State Transportation Improvement Program (STIP) and Transportation Enhancements (TE) program. Federal law requires that states consult with tribes in developing their state transportation improvement plans (STIPs) and with regard to issues arising out of Section 106 of the National Historic Preservation Act of 1966 (P.L. 102-575, 16 U.S.C. 470 et seq.).

The 2000 *Proposed Rule for Statewide Transportation Planning and Metropolitan Transportation Planning* (USDOT, 2000) requires a statewide planning process that will support and enhance seven categorical factors of transportation. According to the rule, the planning process should provide for consideration of projects and strategies that will:

(1) Support the *economic vitality* of the US, states and metropolitan areas;

(2) Increase the *safety and security* of the transportation system for motorized and non-motorized users;

(3) Increase the *accessibility and mobility* options available to people and for freight;

(4) *Protect and enhance the environment*, promote energy conservation and improve the quality of life;

(5) *Enhance the integration and connectivity of the transportation system*, across and between modes throughout the state, and for people and freight;

(6) *Promote efficient system management and operation*; and,
(7) Emphasize the preservation of the existing transportation system.

A tribal project can, however, be eligible for the funds with another agency, such as a city, county or state agency, acting as the project sponsor and administering the project on behalf of the tribe.

The Transportation Enhancement (TE) Program is a Federal funding source that provides for projects that creatively and sensitively integrate surface transportation facilities into their surrounding communities. Projects must be over and above required mitigation and normal transportation projects. Projects must fall within one of twelve categories including, bicycle and pedestrian facilities, landscaping and beautification, and historic rehabilitation.

The TE program is authorized by the federal government in 6-year cycles corresponding with the federal transportation bill.

How the FHWA Can Help a State Pay for Tribal Consultation Under NHPA Section 106

In March 2000, a legal opinion by FHWA's Chief Counsel stated that, under certain specific circumstances, the FHWA can use Federal-aid funds to participate in such payments. The opinion concluded:

When a State so requests, FHWA may participate in eligible project-specific consultation costs and/or expenses incurred by a THPO [Tribal Historic Preservation Officer] or designated tribal representative. However, (1) FHWA participation is expressly limited to reimbursing those reasonable costs over and above general operating or overhead costs, (2) participation must be
approved in advance, (3) FHWA's approval must be supported by an MOU or written contract and (4) prior to approval, the Division should make a determination that the requirements of 23 CFR 771.105(d) are satisfied.

Source: Excerpted from FHWA Office of Legal Counsel, HCC-1, Legal Opinion Re: Federal-Aid Participation in Payments for Tribal Services Under the National Historic Preservation Act.

Under a SANDAG-administered Caltrans Environmental Justice grant, the RTA undertook a tribal transportation demand management (TDM) project to (1) be trained in TDM management practices; (2) develop a business plan for a tribal transportation management association (TTMA); (3) develop a marketing strategy; (4) develop marketing materials, including a web site; (5) assess and survey the transportation and commuting needs of tribal enterprise staff in six locations; and (6) develop a collaborative TDM strategy with SANDAG with the potential establishment of a tribal TMA. This report details the survey and sampling procedures and provides highlights of the survey results.

**Types of Projects**

Generally, there are two kinds of projects in which Native American tribal participation, with an emphasis on environmental justice, is most likely to occur. Transportation projects conducted on or partially on Indian-owned land are the most obvious. These should always be conducted with the direct participation of the relevant tribes. But tribal participation is also required when transportation projects have the potential to affect historic resources on lands used by Native Americans in the past. Because all of this country was once owned and used by native tribes, transportation planners must be ready to consult with the appropriate tribal governments even when tribal historical resources are found far from any present-day tribal settlements.
**Challenges:**

Some Federal, State, and local transportation practitioners do not understand the requirements of a government-to-government relationship. There is sometimes an open and deep skepticism about the motives behind tribal involvement efforts to preserve unique tribal rights and resources. Their preservation goals were viewed more dimly as gambits for more control over resources.

While some MPOs have successfully integrated tribal participation into their planning process, others have assumed that tribal involvement is primarily a Federal concern. MPOs need the active participation of both individuals and tribal governments to identify and address the transportation needs of Native Americans.

Proactive tribal participation in statewide transportation planning is being successfully promoted in some States, but has not been a priority in others. Efforts to involve tribes in the early stages of transportation planning have been hampered by a lack of interest (sometimes on the part of agencies, sometimes on the part of tribes), a lack of knowledge, resources, or trust.

Most tribes do not have the resources or the administrative infrastructure needed to be effective partners in the transportation planning process.

Even if a State has no reservations within its borders, or a reservation is far from a project location, there may still be historic resources, such as traditional cultural properties, associated with a tribe. It is the Federal agency's responsibility to identify and contact such tribes.

**Stakeholders:**

Federal agencies
State agencies
MPO’s
Puget Sound Regional Commission

PSRC will identify target environmental justice populations, based on demographic analysis and contacts from past PSRC environmental justice outreach efforts.

PSRC will conduct roundtable discussions with environmental justice community leaders. The objective is to present the alternatives to key community leaders to stimulate an in-depth discussion of the proposed projects, programs, and funding strategies. Specifically, the discussions will examine the benefits of alternative transportation investments and how low-income and minority populations may be impacted by tolling, variable pricing, and user fees.

There are eight federally recognized tribes in the central Puget Sound region and one tribe pursuing recognition. Tribal reservations, other tribal lands, and tribal economic enterprises are an integral part of the region's economic and environmental landscape.

Roads on tribal lands often connect to county road networks.

Many tribal enterprises are located along interstate and state highways and contribute to roadway congestion and benefit from the regional system. At least two tribal governments operate paratransit systems that are available to the general public.

Tribal leaders hold seats on PSRC boards and are invited to participate in the discussions on growth management, economics, and transportation.
PSRC staff participate in the Tribal Transportation Planning Organization (a statewide group of tribal leaders and planners) and through its leadership has an ongoing relationship with tribal leaders.

Need access to the applicable materials.

Helpful to develop tribal resources to work on these issues.

Overlap/synergy with environmental issues and laws:

NEPA/Mini-NEPAs: The National Environmental Policy Act requires that federal decision makers consider the environmental effects of federal actions with significant impact upon the environment. The affected community is given a chance to comment on the process, and to suggest mitigation of such impacts. The Council on Environmental Quality has issued guidelines to ensure that marginalized, affected groups have maximum meaningful participation and that project evaluators consider effects on sensitive communities. More than a dozen states have passed analogous laws or “Mini-NEPAs” such as the California Environmental Quality Act.

For Native Americans, destruction of place may be equivalent to destruction of cultural identity. Native American groups face threats from radioactive waste and other kinds of waste dumping, strip mining, fisheries loss, damming of traditional waterways, and land confiscation or invasion. Like other minority groups, Native Americans needing income may have little choice but to accept toxic industries that may provide jobs or a tax base.

New York: cooperative agreement with native peoples to address EJ concerns.

California: Senate Bill 18 mandates consultation with Native
American tribes before site development.

Regional Issues

The western states share many of the same demographic characteristics. These states have large expanses of federal lands; developed urban centers surrounded by small suburban and rural communities; aging infrastructure and urban decay; large Native American populations; growing and increasingly diverse populations; and urban sprawl that is significantly affecting transportation, energy consumption, air quality, and land use. However, the states each implement and monitor Title VI and Environmental Justice requirements in different ways, which can lead to confusion and inconsistency in outreach and community involvement, funding, degree of effort, information sources identifying populations to consider, and overall standards to evaluate compliance.

The New Orleans Principles

1 • Respect the rights of all citizens of New Orleans
Displaced citizens who wish to return to New Orleans should be afforded the opportunity to return to healthy, livable, safe, and secure neighborhoods of choice.

2 • Restore natural protections of the greater New Orleans region
Sustain and restore the coastal and floodplain ecosystems and urban forests that support and protect the environment, economy, communities, and culture of southern Louisiana, and that contribute greatly to the economy and well-being of the nation.

3 • Implement an inclusive planning process
Build a community-centered planning process that uses local talent and makes sure that the voices of all New Orleanians are heard.
This process should be an agent of change and renewal for New Orleans.

4 • Value diversity in New Orleans
Build on the traditional strength of New Orleans neighborhoods, encourage mixed uses and diverse housing options, and foster communities of varied incomes, mixed age groups, and a racial diversity. Celebrate the unique culture of New Orleans, including its food, music, and art.

5 • Protect the city of New Orleans
Expand or build a flood protection infrastructure that serves multiple uses. Value, restore, and expand the urban forests, wetlands, and natural systems of the New Orleans region that protect the city from wind and storms.

6 • Embrace smart redevelopment
Maintain and strengthen the New Orleans tradition of compact, connected, mixed-use communities. Provide residents and visitors with multiple transportation options. Look to schools for jumpstarting neighborhood redevelopment and for rebuilding strong communities in the city.

7 • Honor the past; build for the future
In the rebuilding of New Orleans, honor the history of the city while creating 21st century buildings that are durable, affordable, inexpensive to operate, and healthy to live in. Through codes and other measures, ensure that all new buildings are built to high standards of energy, structural, environmental, and human health performance.

8 • Provide for passive survivability
Homes, schools, public buildings, and neighborhoods should be designed and built or rebuilt to serve as livable refuges in the event of crisis or breakdown of energy, water, and sewer systems.
9 • Foster locally owned, sustainable businesses
Support existing and new local businesses built on a platform of sustainability that will contribute to a stronger and more diverse local economy.

10 • Focus on the long term
All measures related to rebuilding and ecological restoration, even short-term efforts, must be undertaken with explicit attention to the long-term solutions.

U.S. Green Building Council; New Orleans Planning Charrette; November 9-11, 2005

Tribal Consultation plan to implement Executive Order 13175 as required in Presidential Memorandum of November 5, 2009.

DOT Order 5301.1, *Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes*, explains in detail how to involve American Indians and Alaska Natives in DOT decision making.

MTC must follow eight statutory planning mandates: economic vitality, safety, security, accessibility, environmental protection and land use, connectivity, efficiency, and preservation of the existing system.

Regional Transportation Plan (“RTP”), a 25-year long-range plan and comprehensive blueprint of mass transit, highway, airport, seaport, railroad, bicycle and pedestrian facilities. (ER0009, ¶7, SER2963-3114; SER0917-0990.) All funding, planning, and investment decisions must be consistent with the RTP. A project
must be included in the RTP to qualify for federal funds.

There also were performance-related criteria, including land use, cost-effectiveness, connectivity, system access, and project readiness.

Questions:

Do tribes have the authority to prohibit hazardous materials transportation through tribal lands?

Resources:

For the Washington State Department of Transportation website which provides information on environmental justice analysis tools, resources and training see
www.wsdot.wa.gov/Environment/EJ/EnviroJustice.htm