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MEMORANDUM

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To: Tribal Transportation Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***Tribal Transportation Developments***

In this memorandum we report on the following developments in tribal transportation:

- *Tribal Representatives Begin Discussion of Consensus Positions for MAP-21 Reauthorization at the Tribal Transportation Unity Summit in Denver, Colorado*
- *Senate Committee on Indian Affairs Schedules Hearing on Tribal Economic Development and Transportation Infrastructure*
- *President Obama and House Ways and Means Chairman Announce Plans to Fund Transportation Investment Through Tax Reform*
- *US DOT Announces New Round of TIGER Grants*
- *Upcoming Tribal Transportation Policy Meetings*

Tribal Representatives Begin Discussion of Consensus Positions for MAP-21 Reauthorization at the Tribal Transportation Unity Summit in Denver, Colorado

Tribal leaders and tribal transportation technical staff representing more than 50 tribes gathered in Denver on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop consensus legislative proposals for a new surface transportation bill. Through two days of policy discussion and a third day of legislative proposal drafting, the “Tribal Transportation Reauthorization Unity Summit” adopted a platform of 12 consensus positions that will be shared with tribal nations, with the National Congress of American Indians (NCAI), the Intertribal Transportation Association (ITA) and Members of Congress. Each of the consensus provisions has been

summarized in the attached “Tribal Transportation Unity Act” summary. Additionally, participating tribal representatives signed onto the attached statement of unity intended to promote a coordinated approach to tribal advocating for a new highway bill.

The Denver Summit and the formation of the ad-hoc “Tribal Transportation Unity Caucus (TTUC)” represent efforts to overcome the divisions among tribes over the transportation funding allocation formula. When funding formula concerns were raised by participants at the Denver Unity Summit, the event organizers urged reserving debate about the funding formula until after consensus positions could be worked out. They insisted that the Summit was convened to facilitate uniting tribes under consensus positions that can be put forward forcefully to Congress so that they might be included in the baseline transportation bills of the House Transportation and Infrastructure (T&I) and Senate Environment and Public Works (EPW) Committees.

The Denver Summit evaluated tribal advocacy positions based upon newer concerns emerging from the implementation of MAP-21 as well as proposals developed for the SAFETEA-LU reauthorization, including provisions adopted by the T&I Committee in H.R. 7 (that were never acted upon by the full House) and the discussion draft bill circulated by former Chairman Dorgan of the Senate Committee on Indian Affairs in 2009 known as the Tribal Reauthorization of Indian Programs (TRIP) Act. Summit representatives agreed to work collectively to advance a dozen items, including the following:

- Significantly increase the overall funding levels for tribal transportation infrastructure investment, road maintenance funding, and transit program funding;
- Restore funding from the Highway Trust Fund for tribal High Priority Projects;
- Increase funds available for tribal construction-ready projects by redistributing at least 10% of unused obligation authority provided to states;
- Establish tribal set-asides in high safety programs and the Transportation Alternatives program (previously known as Safe Routes to Schools);
- Create a Tribal Self-Governance Program within the US DOT;
- Ensure tribal eligibility for all DOT programs and discretionary and competitive grants;
- Require BIA to improve Right-of-Way documentation management and provide funding to implement corrections, improvement and to pay trespass damages;
- Improve efficiency in delivering Emergency Relief Funds to tribes; and
- Ensure federal funding for tribal bridge inspections.

A brief explanation of each of the consensus items is set forth in the attached Tribal Transportation Unity Act summary. Please let us know if you would like further detail and how important you view each of these items. As the legislative process moves forward, we can expect that the congressional committees will call upon tribes to narrow this list to a top ten or even top five listing of priorities.

With respect to the discussion of the funding allocation formula, several tribal representatives at the Unity Summit recommended that tribes come together to advocate for a new process to determine the formula to allocate transportation funding among the tribes. Summit organizers stated that formula allocation issues were not on the agenda and not open for discussion. Tribal leaders, including Central Council of Tlingit & Haida President Ed Thomas, Sr., called for open and honest discussion of formula concerns as the only way to achieve unity. The request revealed underlying tensions, as a participant alleged that tribes in Alaska, Oklahoma and the Midwest had manipulated the inventory data and abused the system that generated funding under the previous funding formula. The comments resulted in heated exchanges that threatened to undermine the Summit. Debate subsided following an impassioned plea by NCAI representative Gwen Salt for participants to work toward unity and act with mutual respect. Summit participants generally agreed to address funding formula perspectives at another time.

During the final day of the Summit tribal representatives and advocates met to draft the Tribal Transportation Unity Act summary and assign legislative language drafting tasks. The TTUC will present that summary and proposed legislation during the NCAI pre-meeting session on March 11th in Washington, D.C. Additionally, with the Senate Committee on Indian Affairs oversight hearing set for March 13th (see details below), tribal representatives intend to urge congressional support for the tribal positions outlined during the Summit.

Senate Committee on Indian Affairs Schedules Hearing on Tribal Economic Development and Transportation Infrastructure

On March 13th, the Senate Committee on Indian Affairs (SCIA) will hold an oversight hearing entitled, “Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country.” The 10:00 a.m. hearing will provide an important opportunity for tribal leaders to put forward transportation infrastructure needs and opportunities for the MAP-21 reauthorization process. As noted above, many of the consensus positions tribes adopted during the Unity Summit were based upon provisions circulated by the SCIA in 2009 as the TRIP Act. Tribal witnesses will likely call upon Chairman Tester (D-MT) and Vice Chairman Barasso (R-WY) to work closely with

tribes to ensure that tribal priorities are incorporated into the Senate EPW Committee's base transportation bill.

President Obama and House Ways and Means Chairman Urge Funding for Transportation Investment Through Tax Reform Proposals

Congress and the Obama Administration have begun pitching proposals as to how to address the upcoming funding shortfalls in transportation infrastructure investment. The current highway construction law, Moving Ahead for Progress in the 21st Century (MAP-21), will expire On September 30, 2014. By August, the Congressional Budget Office (CBO) expects the Highway Trust Fund to run out of money intended to pay for the obligations authorized in MAP-21. Congress enacted MAP-21 as a two-year bill with flat-line funding because Members could not reach agreement as to ways to shore up the Highway Trust Fund, which depends on revenues generated by the federal gas tax. The funding available, however, will not even match the MAP-21 requirements.

Last month we reported on the Senate Environment and Public Works (EPW) Committee hearing in which business, labor, the construction industry and the manufacturing sector all testified as to the urgent need for an immediate and medium term solution to avoid a funding crisis and to restore the focus on federal infrastructure needs and investment. All witnesses to the EPW Committee hearing indicated that raising the federal gas tax was the only viable solution to address the nation's deteriorating infrastructure conditions and maintain a transportation network for the United States to be competitive in the global economy. With elections coming in November, however, few Members of Congress will find this year to be the right moment for the first gas tax increase since 1993. The discussion in Washington will likely be limited to identifying a mechanism for a short-term patch.

Both President Obama and House Ways & Means Committee Chairman Dave Camp (R-MI) introduced proposals last week that included elements intended to address this short-term transportation funding need. President Barack Obama suggested a four-year, \$302 billion transportation bill to replace MAP-21 and called for tax reform to make up for the gas tax shortfalls. The President's proposal would be a significant increase over the \$109 billion MAP-21 authorization, but does not appear to respond to those calling for a renewed commitment to federal infrastructure investment. The CBO estimates that just to meet current investment levels will require \$279 billion over four years.

We expect the President's proposal will serve to jump start a debate on the specifics of a short-term funding patch. The President urged that through tax reform,

Congress could use certain business taxes to create a new revenue stream that would provide \$150 billion over four years for infrastructure investment. Transportation Secretary Anthony Foxx said that \$63 billion would be applied to shore up the Highway Trust Fund and that the remaining \$87 billion would fund additional infrastructure investment across the United States.

On the same day President Obama presented his proposal, House Ways and Means Committee Chairman Dave Camp offered a 979-page comprehensive tax reform discussion draft that reportedly allocates some \$120-\$125 billion for infrastructure investment. Mr. Camp's proposal would overhaul corporate taxes in a manner that would provide \$120-\$125 billion in revenues as a one-time infusion to the Highway Trust Fund. Of course, in this election year, Congress is no more likely to enact legislation to overhaul of the corporate tax code than it would be to raise the federal gas tax. The Obama and Camp proposals are significant, however, in demonstrating each party's recognition of the need to address infrastructure investment and set forth some beginning points for more focused congressional engagement on the issue in the coming months.

US DOT Announces New Round of TIGER Grants

The United States Department of Transportation (DOT) published a Notice of Funding Availability (NOFA) for the next round of the Transportation Investment Generating Economic Recovery (TIGER FY2014) Grant Program. Under this round of TIGER, the DOT will make \$600 million available for grants. Please see www.dot.gov/TIGER for the NOFA and information about informational webinars.

President Obama's remarks last week highlighted these TIGER grants. This new round is oriented toward "transformative" projects that will expand job access and increase economic opportunities.

According to the NOFA, no pre-applications are required and up to \$35 million may be awarded for Planning Grants. Applications may be submitted to www.grants.gov as early as April 3, 2014. The deadline for final applications is April 28, 2014 at 5:00 p.m. E.S.T.

Upcoming Tribal Transportation Policy Meetings and Events

- NCAI Tribal Leaders Meeting on Transportation Reauthorization, March 11, 2014. Washington, DC
- Tribal Transportation Program Coordinating Committee, March 25-27, 2014. Albuquerque, NM

Conclusion

If you would like more information about any of the issues discussed in this memorandum, please contact Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), Michael Willis (mwillis@hobbsstrauss.com or 202-822-8282), Steve Osborne (sosborne@hobbsstrauss.com or 503-242-1745), or Tim Seward (tseward@hobbsstrauss.com or 916-442-9444).