

New Mexico Tribal/State Transportation Summit

Summary of Proceedings
October 14-15, 1999

Editor: Judith M. Espinosa
Director, ATR Institute

Compiled by: Elaine Brouillard, Research Scientist
Frederic L. Shean, Jr., Graduate Student Intern

ATR Institute/University of New Mexico
1001 University Boulevard SE, Suite 103
UNM Science and Technology Park
University of New Mexico
Albuquerque, NM 87106
Telephone: 505 246-6410 Fax: 505 246-6001
Internet: www.unm.edu/~atr

New Mexico Tribal/State Transportation Summit October 14-15, 1999, Santa Fe, New Mexico

Introduction

The New Mexico Tribal/State Transportation Summit held October 14-15, 1999, was a significant step towards improving the relationship between the State of New Mexico and the Indian pueblos and tribes. This event was the first of its kind in New Mexico, bringing together sovereign Native American nations with local, state and federal agencies to specifically discuss both their individual and mutual transportation concerns and needs with the intention of signing cooperative resolutions. The Summit was the pinnacle of months of collaboration between the Pueblos and Tribes of New Mexico and the New Mexico State Highway Transportation Department (NMSHTD) working to lay the foundation for government-to-government protocol for tribal and state transportation issues.

The Summit's immediate and continuing successes include the signing of one Memoranda of Agreement (MOA) presented at the Summit and creating an Action Committee who is setting up the initial stages for implementation of the aspired government-to-government protocols between tribal governments and state transportation agencies. The process for the formalized relationship between New Mexico and the tribes is expected to continue and build upon the accomplishments of the Summit and progress of the Action Committee.

Background

The government-to-government relationship initiative began in the Spring of 1998 with a proposal by Bernie Teba, Executive Director of the Eight Northern Indian Pueblos Council, Inc. (ENIPC), to the State of New Mexico to convene and discuss transportation related issues and concerns. State of New Mexico Governor Gary Johnson agreed to the proposal and in August 1999 the representatives from the Tribes and Pueblos in New Mexico and local, state, and federal transportation agencies met to create an agenda, a process, and topics of discussion for the New Mexico Tribal/State Transportation Summit. In order to collect the mutual transportation barriers experienced by all parties and to develop a working trust among parties, a two-day Pre-Summit was convened.

The Pre-Summit established a forum for the working transportation professionals and leaders from all parties to come together with five general topics or issues for discussion and further development at an October 1999 Summit.

- Sovereignty and jurisdiction
- Communication/consultation/participation
- Environment/cultural value/quality of life
- Funding
- Safety

Summit Preparation

An Executive Planning Committee, assembled before the Pre-Summit, was created to sustain both the directions for the Tribal/State Pre-Summit and Summit and the continued efforts to improve relations between the involved entities. The Committee was composed of representatives from the Navajo Nation, Mescalero and Jicarilla Apache Tribes, the All Indian Pueblo Council (AIPC), Eight Northern Indian Pueblos Council, Inc. (EINPC), the Federal Highway Administration (FHWA), the Bureau of Indian Affairs (BIA), the New Mexico State Land Office, the New Mexico Office of Indian Affairs, the U.S. Department of Energy (DOE), the ATR Institute and the NMSHTD. Committee meetings subsequent to the Pre-Summit were used to develop the goals for the October 1999 Summit based on comments made and issues raised during the Pre-Summit.

The Executive Planning committee agreed that the Planning Division of the NMSHTD should develop draft Memoranda of Agreement (MOA) to be discussed at the Summit:

Draft Memoranda of Agreement:

- ❖ Principles of Cooperation in Transportation Matters
- ❖ Consultation Agreement
- ❖ Continuing Study and Action
- ❖ Cooperative Planning Agreement
- ❖ Transportation Safety and Emergency Preparedness: Principles and Policy
- ❖ Land for Land Agreement

The ATR Institute researched the questions and issues raised by the tribal and state parties and provided this research for the Summit participants. The ATR Institute also performed the logistical functions for the Summit, including Summit arrangements, production of summary documents, arranging the facilitation and video recording, registration, and information mail-out functions.

Summit Goals

The Summit agenda structure achieved the following four goals created by the Executive Planning Committee:

1. Improve government-to-government cooperation and build working relationships between the tribes of New Mexico and the State Highway and Transportation Department.
 - The Summit's Executive Planning Committee has been expanded at the request of tribal leaders at the Summit. It now includes representatives from the Navajo Nation, Mescalero and Jicarilla Apache Tribes, All Indian Pueblo Council, Eight Northern Indian Pueblos Council, the Federal Highway Administration, the Bureau of Indian Affairs, the New Mexico State Land Office, the Office of Indian Affairs, Department of Energy, and the New Mexico State Highway and Transportation Department.

- Five Memoranda of Agreement drafts will go forth from the original six drafts to become the framework on which to establish better working government-to-government relationships. Once signed, these agreements will foster additional specific policies desired by a tribe with a specific department within the highway department or other state agencies, other partners to the agreements such as the BIA, FHWA, and DOE.
2. Agree to communication protocols and processes and work toward a better understanding of sovereignty, values, history and authorities.
 - Most participants expressed a strong desire for better government-to-government relationships and expressed a desire to participate in that process. All agreements recognize each party's sovereignty.
 - Two of the Memoranda of Agreement address the process and protocols of cross-cultural communication.
 3. Review other successful government-to-government relationships.
 - This was left to the new executive committee.
 4. Establish agreements that clarify and define issues and their resolution.
 - Joint Agreement on Principles of Cooperation in Transportation Matters
 - Joint Consultation Agreement
 - Joint Agreement on Continuing Study and Action
 - AIPC agreed to sign this on 10/28/99. The NMSHTD Secretary Rahn signed this agreement on 12-10-99. This agreement will be signed by the AIPC on 12-16-99
 - Five of the agreements have been reviewed and approved by the Office of the Attorney General (12-3-1999). The Land for Land agreement was tabled due to serious language problems. The executive committee will pursue this important issue.
 - Two agreements were not reviewed due to lack of time. These agreements are in the comment process with all signatory parties. The two agreements not discussed are: the Cooperative Planning Agreement and the Statement of Transportation Safety and Emergency Preparedness Principles and Policy. The DOE has agreed to sign this statement.

Signatory Participants

Nineteen tribal leaders or their designees, three state officials, and three federal officials attended the Summit. Many observers from tribal governments and state and federal agencies were also in attendance. The signatory participants or designees included:

Tribal Representatives

Terry Governor, Pueblo of San Ildefonso
Sampson Begay, Navajo Nation Council, The Navajo Nation
Clarence Coriz, Lieutenant Governor, Pueblo of Tesuque
Walter Dasheno, Governor, Pueblo of Santa Clara
Harry Early, Governor, Pueblo of Laguna
David Gomez, Assistant Tribal Programs Administrator, Pueblo of Taos
Alvino Lucero, Governor, Pueblo of Isleta
Joseph Martinez, 2nd Lieutenant Governor, Pueblo of San Juan
Anthony Moquino, Governor, Pueblo of San Juan
David A. Perez, Governor, Pueblo of Nambe
Michael Romero, Director, Environmental Office, Pueblo of San Felipe
Rex G. Salvador, 2nd Lieutenant Governor, Pueblo of Acoma
Ruben Sando, 2nd Lieutenant Governor, Pueblo of Jemez
Amadeo Shije, Governor, Pueblo of Zia
Edwin Tafoya, 2nd Lieutenant Governor, Pueblo of Santa Clara
Bernie Teba, Executive Director, Eight Northern Indian Pueblos Councils, Inc.
Carl Tsosie, Tribal Sheriff, Pueblo of Picuris
David Wyaco, Sr., Councilman, Pueblo of Zuni
Mark Wright, Tribal Roads Engineer, Jicarilla Apache Tribe

State of New Mexico Representatives

Walter D. Bradley, Lieutenant Governor
Lou Gallegos, Chief of Staff
Pete Rahn, Secretary of Transportation

Federal Representatives

Reuben Thomas, Division Administrator, Federal Highway Administration
Rob Baracker, Regional Director, Bureau of Indian Affairs – Albuquerque Area Office
Judith Holm, National Transportation Manager, Department of Energy

Summit Proceedings: Government-to-Government Discussion

The signatory participants discussed how to establish and formalize government-to-government transportation relationships between Tribal Governments, the State, the federal government and other agencies and partners. Much of the discussion included elaboration of the five principal issues that were important to the pueblo, tribe or agency the participant was representing. The draft MOA were also discussed in detail and modified by tribal and state representatives.

Sovereignty and Jurisdiction

Road rights-of-way through Indian lands are a significant sovereignty and jurisdictional issue to the Tribes. The NMSHTD has specific needs for road right-of-way easements for the life of a road. These conflicting needs will be addressed through the government-to-government process. Each Tribe exercises their sovereignty in their own manner and therefore sovereignty issues are complex. In addition, transportation issues are pieces of larger sovereignty and jurisdictional questions. Mutual respect and acknowledgement of separate responsibilities and sovereignty *and* the acknowledgement of mutual transportation responsibilities and goals are fundamental to government-to-government cooperative relations and agreements.

Sovereignty–Definition and Recognition

- The state formally recognizes Tribal sovereignty. The July 8, 1996, Government-To-Government Policy Agreement recognized that the Tribal leaders and New Mexico Governor Gary Johnson both acknowledged and respected each other’s sovereignty.
- The Summit should affirm the Tribes’ and the State’s mutual sovereignty.
- Questions of NMSHTD right-of-way and new road construction through tribal lands were discussed from the framework of sovereignty. The finding of archaeological artifacts and funerary objects during road construction was discussed for clarification. The current state policy is that these items are the property of the Tribe if on Tribal land and the property of the State of New Mexico if on right-of-way land. The State Historic Preservation Officer would be alerted if these objects were found.

Civil Jurisdiction

- Civil jurisdiction issues between tribes and the state need to be researched and discussed, then mutually agreeable procedures can be established.
- Law enforcement personnel, both tribal and state, have encountered many jurisdictional problems in their day-to-day activities. Resolving these barriers will benefit the safety of all the state’s citizens and those of the traveling public.

Land Base Issues

- Understanding jurisdiction, while complicated, presents an educational opportunity for all parties.
- The State Land Office continues to work with tribal entities to protect cultural lands and lands of religious significance.
- The Summit participants acknowledged that a cultural difference could exist in assigning land its value. The concept of value needs to be addressed since there may be a marked difference in value attributed by a tribal council versus European standards or commonly used real estate market value.

Right-of-Way, Now and in the Future

- Tribes and the State are viewing the right-of-way process from different perspectives. This difference may lead to a re-examination of the current right-of-way process.
- There is a State Constitutional difference between the New Mexico State Land Office easements requirements and the NMSHTD right-of-way easement requirements. The NMSHTD policy is to have right-of-way and easement documents secured for as long as the road is needed. In some cases, this may mean in perpetuity. The State Land Office has a policy of requesting a 25-year easement right-of-way. This difference between State agencies has, at times, been confusing protocol.
- Granting rights-of-way to the NMSHTD is at the discretion of each sovereign tribe.

Communication/Consultation/Participation

Communication between the Tribes and NMSHTD is limited, at best. Establishing and maintaining a government-to-government relationship that allows for the resolution of mutual transportation issues is vitally important and recognized by Tribal and State leaders. Establishing mutually successful means of communication and consultation is a key tenet of the Summit process.

- All parties expressed an interest in resolving short and long-term transportation needs as partners.
- The Summit process would establish a general agreement of cooperation and establishing a mechanism for cooperative planning efforts between the Tribal governments and the NMSHTD.

Government-to-Government Relationship

- Tribal representatives want a better working relationship with the State.
- All parties want to open the lines of communication that were not present in the past.

Consultation Definition and Establishment of Protocols

- Clarification of the word “consultation” was requested, in order to meet the needs of the Tribe to the fullest extent.
- It is important that all elements of the consultation process are identified within the agreements and all participants at the Summit were asked to consider the issues of consultation and participation within the six draft Memoranda of Agreement.

TEA-21 Legislation

The TEA-21 work distribution formula in the Indian Reservation Roads (IRR) program needs legislative changes to lift current limitations.

Environment/Quality of Life/Cultural

Tribal leaders expressed the importance of environmental protection for their tribal lands from road hazards, spills, accidents, and erosion. Environmental issues as well as quality of life and cultural value concerns were important to any discussions about transportation.

Demographics

- The implications of population shifts and how these shifts affect education, housing, and transportation need to be considered.

Cultural and Traditional Ways, Protection of Religious Activities and Sites

- A protocol must be developed to deal with petroglyphs, culturally significant etchings, in road building and maintenance operations.

Erosion

- Drainage issues, such as responsibility for erosion mitigation caused by the road and right-of-way areas, are a concern to the tribes.

Environmental Issues

- There can be a high use of rural routes by tourists, hunters and skiers on roads that travel through tribal lands. Both the road and the people can interfere with wildlife and this issue needs to be addressed.
- Questions concerning needed wildlife corridors for animal migration, e.g., the right-of-way fences that are constructed as part of road building will interfere with wildlife migration. Wildlife corridors need to be addressed.

Bus and Van Service

- According to US Senator Bingaman, bus and van service must be a priority in our state. Transit service can help people get to their jobs and is critical to young people and to senior citizens.
- There is support for the Northern New Mexico Park and Ride Transit Service, which could provide commuter service between Santa Fe, Pojoaque, Española and Los Alamos, including service to a number of the Pueblos, as another mutual mobility method for tribal residents.

Tribal Members Need Access to Medical Facilities and Jobs

- There should be words in the Memoranda of Agreement that ensure that work contracts are available for Tribal members.
- Tribal members throughout the state need safe transportation to medical facilities, employment centers, and all aspects of daily transportation needs.

Funding

Like all activities, funding is problematic. Tribes are inadequately funded to address reservation and pueblo transportation needs. They also lack technical expertise in many cases and do not have the planning funding to hire the appropriate personnel. Tribes lack funds for equipment and infrastructure, and if they have the equipment, operating and maintenance costs are typically not available. The State Highway and Transportation Department, like most other state DOTs, does not have enough funds to meet its own responsibilities, and is constrained by federal, and in some cases state, regulations as to where transportation dollars may be spent. The State Highway and Transportation Department will provide the Tribal governments of New Mexico a summary of federal and state funding categories and regulations. Tribes have concluded that more money from federal and state governments is critical and that new sources for money need to be pursued.

Safety

Transportation is an inextricable part of modern life. It provides for the delivery of services and goods. It provides educational and recreational opportunities. It provides for access to

emergency services such as medical treatment and law enforcement. Because transportation is an integral part of our lives, unsafe transportation practices pose an immediate danger to everyone.

Traffic Safety

- Truck drivers' speed through reservation lands on interstate highways without impunity.
- Working streetlights, traffic lights and appropriate signage are needed.
- On-ramp and off-ramps to and from the highways onto the tribal lands may need deceleration lanes or other upgrades for safety.

Safe Transportation for School Children

- Many tribal children are transported in school buses off their tribal lands for school attendance. This school bus commute is a concern for their parents and tribal leadership. Providing the safest school bus transportation possible is an important issue to tribal members.

Maintenance Safety Issues

- Maintenance of the roads, the day to day to long-term maintenance has been problematic for many tribes.
- Maintenance responsibilities between tribes and the NMSHTD need to be sorted out by researching prior agreements.
- Summit participants suggested establishing new protocols based on working agreements with the tribal leadership and the NMSHTD District Engineers.

Hazardous Materials Safety

- Several Tribal leaders voiced concerns about hazardous waste transport and emergency management on state highways and interstates that border their tribal lands.
- Training for local personnel who respond to hazmat incidents was an issue of concern.

Summit Conclusions

The tribal leaders spoke of many issues in their opening statements. Summit signatories concluded that working committees, consisting of the Executive Planning Committee and other stakeholder volunteers, would be created to evaluate if legislative barriers exist and decide the directions.

Key issues for the working committee to explore:

- Sovereignty issues are paramount. If one party says no to an agreement, will that no be accepted? Who decides the final outcome, the tribe or the State of New Mexico? How will compromises be established?
- Tribal leaders strongly stated they wanted no reduction in their land base. This includes losing land base due to right-of-way requests from the highway department. Tribal lands fall into a number of land classifications such as trust, fee patent, Pueblo Lands Act, and land grant. The legal definitions of these various types of tribal land may have a bearing on right-of-way requests from the Highway Department. A working committee needs to explore the legal definitions of these land types in our state and evaluate if this affects right-of-way and construction easements with road building.
- Tribal governments may view the phrase “land value” differently than market value or non-Indian defined land values. Tribal governments may view some land with high value if the land has cultural and/or religious significance. This difference in land value will need to be acknowledged and sensitively resolved.
- Land swaps for right-of-way need to be discussed extensively by a working committee and a framework established for implementation.
- What is the best framework to address past grievances? How is this formalized?

Progress

The effort to formalize a government-to-government relationship between tribal governments and state and federal agencies has continued since the New Mexico Tribal/State Transportation Summit. The Executive Planning Committee has been transformed into an Action Committee, presently serving as an interface between the tribal governments and the NMSHTD. The Action Committee is currently planning the process to best address the mutual transportation needs of the tribes and state.

All signatory parties have signed one MOA since the Tribal/State Transportation Summit. The *Joint Agreement for Continuing Study and Action* was signed on December 19, 1999. The *Principles of Cooperation in Transportation Matters*, *Joint Consultation*, and *Cooperative Planning* agreements were combined into one memorandum, the *Joint Agreement on Principles of Consultation and Cooperation in Transportation Matters*. This joint agreement has been distributed to all pueblos and tribes and the Action Committee is currently holding for comments. The *Joint Agreement for Transportation Safety and Emergency Preparedness: Principles and Policy* is currently under review. The *Land for Land Agreement* has been tabled for further study. It is proposed that a workshop involve a session on discussing and editing this MOA. [The Land for Land MOA was tabled to the Executive Planning Committee for further review and research.]

Formalizing government-to-government protocol between the tribal governments and the state's transportation agencies will be an on-going process, involving more research and joint

agreements for the mutual benefit of both parties. Logistical support and facilitation for the planned workshops and signing summits will be needed to continue the success achieved by this monumental effort in transportation policy.