APPENDIX D
TRIBAL CONSULTATION

The U.S. Constitution and treaties recognize Native American communities as separate and independent political communities within the territorial boundaries of the United States. Federal legislation requires that federally recognized tribal governments be consulted in the development of Regional Transportation Plans (RTP) and programs (Title 23, U.S.C. 450.312). In particular, the new federal transportation bill, the Safe, Accountable, Flexible, and Efficient Transportation Act: A Legacy for Users (SAFETEA-LU), passed in 2005, reinforces federal emphasis on meaningful tribal government participation. How this consultation should occur is left to the metropolitan planning organizations (MPOs) and the tribal governments.

In the San Diego region, there are 17 federally recognized tribal nations with jurisdiction over 18 reservations – the most in any county in the United States (Figure D.1 – Tribal Lands Map). SANDAG is working to increase communication, coordination, and collaboration with tribal governments in the regional transportation planning process. The objectives for the 2030 Regional Transportation Plan (RTP) with regard to tribal nations and regional transportation planning were to:

- Develop a framework for government-to-government engagement at a regional level;
- Engage federally recognized tribal governments in the region in the transportation planning process in a timely, meaningful, and effective manner; and
- Understand current and future needs related to transportation, including: roadways, transit, funding, and information-sharing/technical assistance.

EMERGING REGIONAL GOVERNMENT-TO-GOVERNMENT FRAMEWORK

As reservations continue to develop and interregional planning issues become more related to surrounding jurisdictions rather than federal and state agencies, the need for establishing a government-to-government framework at a regional level has become more and more apparent. Tribes operate under independent constitutions, have their own systems of governance, and establish and administer their own laws. This sovereign status of tribal governments dictates that the United States and all agencies operating within it are expected to engage in government-to-government relationships when engaging Native American tribes. Government-to-government interaction with Native American tribes should follow the principles of coordination, cooperation, and consultation.

Caltrans was the first state agency in California to enact an agencywide policy on tribal consultation. In subsequent years, counties and regional agencies, such as SANDAG, have been exploring mechanisms for increased tribal involvement in regional transportation planning processes. In San Diego, a regional framework for government-to-government relations between various public agencies and the tribal nations in the region is emerging. Today, all three principal transportation planning agencies in the region have full-time tribal liaisons. Caltrans, District 11 established a Native American Liaison program in 2002 to work with the 19 tribes in its jurisdiction. Among its objectives are to establish close coordination and early project involvement with tribal governments to streamline funding, environmental, and project delivery processes in areas on or near reservations and encourage cooperation between other agencies and local tribal governments. The County of San Diego established the position of Tribal Liaison in 2001. Liaison responsibilities include identifying and resolving issues related to impacts of tribal economic development projects on infrastructure and other county services in unincorporated areas. For SANDAG, it is through the Borders Committee that SANDAG has been pursuing government-to-government relations with tribal
governments in the region. Its first tribal summit was held in 2002 and has incorporated a tribal liaison position within its land use and transportation planning department, providing staff support to the Borders Committee.

Intertribal organizations are playing an increasingly key role as facilitators for this emerging regional government-to-government framework. SANDAG is building working relationships with two key intertribal associations to strengthen communication and coordination with area tribes. The Reservation Transportation Authority (RTA), founded in 1998, is a consortium of Southern California Indian tribal governments designated as a Public Law 93-638 contracting entity that provides transportation education, planning, and program administration for tribal government members. SANDAG signed a memorandum of understanding (MOU) with the RTA in August 2005 to strengthen liaison activities and tribal involvement in transportation planning. The activities outlined in the MOU were funded by an environmental justice grant from Caltrans to RTA. The Southern California Tribal Chairmen’s Association (SCTCA) is a multi-service, non-profit corporation established in 1972 by a consortium of 19 federally recognized Indian tribes in Southern California. As an intertribal council, the SCTCA serves as a forum for a wide variety of issues for its member tribes. In June 2005, the SCTCA joined SANDAG as an advisory member of the Borders Committee. In January 2007 the SCTCA and SANDAG signed an MOU for SCTCA to join SANDAG as an advisory member to SANDAG’s Board of Directors, as well as the four policy advisory committees – Transportation, Regional Planning, Public Safety, and Borders.

2006 SAN DIEGO REGIONAL TRIBAL SUMMIT: A MECHANISM FOR CONSULTATION

SANDAG convened its first Tribal Summit as a mechanism for consulting with tribal governments in 2002 to attain tribal input for the MOBILITY 2030. In 2004, the RTA was awarded a grant from Caltrans to improve government-to-government relations between the tribes in Southern California and their respective regional transportation planning agencies. As part of the MOU signed with SANDAG in August 2005, the RTA agreed to collaborate on the organization of a second Tribal Summit between elected tribal leaders from the 17 tribes in the San Diego region and the SANDAG Board of Directors.

Building on strengthened relationships with the RTA and the SCTCA, the Borders Committee formed an ad hoc interagency task force representing the RTA, SCTCA, County of San Diego, Caltrans, and SANDAG to plan the Tribal Summit. Regular planning meetings were hosted by the RTA to develop a mutually determined agenda and protocol. Chairman Robert H. Smith of the Pala Band of Mission Indians, Chair of the SCTCA, offered to host the event on the Pala Indian Reservation.

Tribal leaders stated an interest in the Summit being an opportunity for local government officials to learn more about tribal nations, as well as an opportunity for tribal leaders to understand better the policy areas that SANDAG deals with as a regional planning forum. It was suggested that a framework be developed for the Tribal Summit to channel the dialogue constructively and take full advantage of the presence of regional policymakers to arrive at specific recommendations/action items. In light of the development of the 2030 RTP, the 2006 San Diego Regional Tribal Summit was focused on a bilateral analysis of tribal transportation issues.

The mechanism of the Tribal Summit appears to be a useful tool as a forum for discussing policy-level planning issues of mutual concern between the SANDAG Board of Directors and the tribal governments of the region.
TECHNICAL TRIBAL TRANSPORTATION WORKSHOP

In preparation for the 2006 San Diego Regional Tribal Summit, SANDAG, Caltrans, County of San Diego, SCTCA, and RTA staff worked together to hold a technical transportation workshop to discuss the results of the Tribal Transportation Needs Survey\(^1\) and provide an opportunity for tribal transportation managers to discuss issues and strategies to improve tribal transportation programs in the region with the transportation planning staff from SANDAG, Caltrans, the County, Metropolitan Transit System (MTS), North County Transit District (NCTD), and the Bureau of Indian Affairs (BIA). The group analyzed the current situation of transportation programs in the region discussing first the obstacles to overcome in order to improve tribal transportation programs and then those strengths in the region that could be leveraged for improvement.

Among the obstacles tribal representatives mentioned: (1) the lack of communication and follow-up from agencies; (2) complex government processes and a lack of understanding of tribal processes; (3) lack of understanding of the transportation funding process and how to access it; (4) disconnects between transportation planning priorities of agencies and tribal governments; and (5) rigid organizational cultures and legal constraints that limit collaboration.

Among the strengths that are currently available that can be leveraged to improve tribal transportation-related programs, the group identified the following: (1) tribal governments acknowledged that agencies are recognizing the problems and are willing to work on them; (2) that agencies have been working more effectively in recent years and there is an increased one-on-one respect; (3) the existence of tribal liaisons in the agencies has facilitated communication and coordination; (4) policy mandates from the federal and state level are helping to create the political will to cooperate; (5) intertribal councils such as the RTA and the SCTCA are focusing more on policy-level tribal needs and partnerships; (6) increasing evidence of a desire on both parts to understand each other and work on collaborative solutions.

The group then developed a set of strategies to improve tribal transportation programs in the region. These strategies were taken to the Tribal Summit for the SANDAG Board of Directors and elected tribal leaders from each of the 17 nations in the San Diego region to discuss, analyze, and develop their priorities for action at a policy level.

In the area of roadway infrastructure, priority strategies included: (1) coordinate the incorporation of existing Tribal Transportation Plans (TTP) into future regional transportation plans; (2) identify corridors critical to tribal reservations and coordinate the implementation of relevant studies, including funding; (3) collaborate/support on developing an accurate, up-to-date Indian Reservation Roads Inventory for the San Diego region; and (4) identify critical regional arterials serving tribal nations which should be included in future regional transportation plan updates.

Transportation funding was another area of concern. Priority strategies included: (1) examine mechanisms for leveraging existing funds between local governments and tribal nations to improve transportation projects of mutual concern; and (2) develop collaborative strategy for pursuing additional transportation funds for the region.

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\(^1\) Caltrans/SANDAG, 2005 Tribal Transportation Needs Survey. February 2006. This survey formed part of the Caltrans, District 11 Tribal Transportation Needs Assessment and served as the basis for more systematic dialogue with the tribal nations in the region and the planning agencies. The results of the survey served as a basis for the technical workshop.
There is a need to coordinate on possible transit alternatives for the both the reservations and the employees of the gaming facilities. Among the strategic priorities identified was to collaborate with interested tribal governments on a Tribal Transit Feasibility Study to examine potential alternatives for transit in selected tribal transit corridors and ways to fund such projects through private/public partnerships.

Finally, a set of strategies were identified to create mutually acceptable mechanisms for information-sharing, data collection, and technology transfer, including: (1) create and maintain a useful, accessible interagency directory to orient tribal governments on which agencies to approach for specific transportation issues; (2) provide ongoing training to tribal governments on funding processes and transportation and regional planning; and (3) provide technical support for planning and data analysis services to tribal governments parallel to member agencies.

**TRIBAL TRANSPORTATION STRATEGIES**

The Summit, held March 10, 2006, drew over 120 participants, including elected officials from 12 tribal governments in the region, the SANDAG Board of Directors, members of SANDAG’s policy advisory committees (PACs), various public agencies that work with tribal governments, and interested organizations and stakeholders. The proceedings from the Summit were distributed to the participants of the Summit, as well as to all SANDAG Board members and tribal governments in April 2006.

The core activity at the Tribal Summit was a facilitated, interactive discussion, analysis, and electronic polling exercise regarding the tribal transportation strategies developed at the technical workshop. The tribal leaders and SANDAG Board of Directors discussed them and then participated in an interactive polling exercise to determine where there were areas of mutual concern to identify possible areas of collaboration. Table D.1 describes the list of policy-level next steps that were based on the recommendations coming out of the Summit and approved by both the Boards of SANDAG and the SCTCA.

<table>
<thead>
<tr>
<th>Policy Action Item</th>
<th>Tribal Partner</th>
<th>SANDAG Executive Committee</th>
<th>Borders Committee</th>
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<td>Work with tribal nations to address the following issues:</td>
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<td>▶ Tribal representation on the SANDAG Board and/or PACs</td>
<td>SCTCA</td>
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<td>▶ Collaborative legislative agenda</td>
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<td>Continue to strengthen communication and coordination with tribal</td>
<td>SCTCA</td>
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<td>governments through the Borders Committee</td>
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<td>Form Interagency Technical Working Group on Tribal Transportation (Tribes,</td>
<td>RTA</td>
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<td>RTA, Caltrans, County, MTS, NCTD, BIA) to serve as a forum to</td>
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<td>coordinate programs, address issues of concern, and ensure that the needs and</td>
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<td>issues of tribal governments are being incorporated into the</td>
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<td>transportation planning process at the regional level.</td>
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BIA  = Bureau of Indian Affairs  
RTA  = Reservation Transportation Authority  
SCTCA = Southern California Tribal Chairmen’s Association
CURRENT STATUS AND NEXT STEPS

Significant milestones have been attained regarding the actions agreed upon by the tribal leadership and the SANDAG Board at the Summit. First, at a technical level, it was agreed that a tribal working group should be formed to discuss tribal transportation issues on a regular basis. The Interagency Technical Working Group on Tribal Transportation Issues (Working Group) was formed in September 2006 and held its first quarterly meeting in October. This Working Group serves as a forum for tribal governments in the region to discuss and coordinate transportation issues of mutual concern with the various public planning agencies in the region, including SANDAG, Caltrans, the County of San Diego, and the transit operators. The Working Group responsibilities include reviewing current activities and plans being implemented by SANDAG and the tribal governments in an effort to coordinate programs, addressing issues of concern, and ensuring that the needs and issues of tribal governments are being incorporated into the transportation planning process at the regional level.

The Working Group provides feedback and comments on current and planned activities and provides technical advice on the implementation of these activities. Currently, they serve as the project advisory group on a number of grant-based projects, including: Tribal Transit Feasibility Study and the Tribal Transportation Demand Management Outreach Study. The Working Group also assists with the associated outreach to the tribal community on transportation issues of regional significance, such as the availability of new funding programs for tribes through SAFETEA-LU. The Working Group forms part of the SANDAG structure and reports to the Borders Committee.

Second, at a policy level, the leadership of SANDAG and the SCTCA had discussions over several months regarding the development of a formula for tribal representation which would respect tribal sovereignty and involve tribal governments in policy decisions at SANDAG. A jointly developed proposal was presented to both the SANDAG and SCTCA Executive Committees for consideration in November 2006. It was forwarded for recommendation to both Boards of Directors in December and approved by both Boards. These actions resulted in the SCTCA joining the SANDAG Board of Directors and PACs. This historic action was incorporated into an MOU between SANDAG and SCTCA signed into effect at the SANDAG Board of Directors meeting on January 26, 2007.

Through these two new mechanisms of communication and coordination, SANDAG and the tribal nations in San Diego have established a government-to-government framework through which to pursue regional policy-level actions, as well as collaborate on specific planning projects of mutual concern. At the same time, SANDAG will continue to engage tribal governments in individual consultation, addressing each nation’s specific issues and ensuring that each is consulted on major plans and projects that impact them.