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SUCCESSFUL TRANSPORTATION PROJECTS: YOUR ROLE IN THE TRIBAL – STATE PARTNERSHIP

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TRENDING FORWARD: THE NEED FOR TRANSPORTATION



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BY ALL MEANS NECESSARY...



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Q. WHY DO WE NEED TRANSPORTATION SOLUTIONS?

A. MOBILITY & ACCESS

Basic universal human needs – moving from Point A to Point B to acquire life's necessities

- Food
- Shelter
- Water
- Medicinal
- Economic development
- Social
- Familial
- Cultural
- Educational
- Health
- Religious



GOVERNMENT - TO - GOVERNMENT RELATIONS

Communities in Indian country often bear not only a disparate negative impact vis-à-vis siting and enforcement decisions, but a significant and unique burden deriving from their sovereign status, need for economic development, and/or cultural and religious ties to the land and sacred or holy sites that are often not under their own ownership or control.



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INDIAN COUNTRY

- Indian Country is generally defined as:
 - All lands within the limits of any Indian reservation, including rights-of-way running through the reservation
 - All dependent Indian communities within the U.S.
 - All Indian allotments

INDIAN TRIBE

- The U.S. Supreme Court has classified Indian tribes as:
 - “domestic dependent nations”
 - “distinct, independent political communities”
 - 565 federally recognized Indian tribes in the U.S.
 - 11 federally recognized tribes in Wisconsin.

INDIAN TRIBES

- Indian tribes in Wisconsin include the:
 - Bands of Lake Superior Chippewa
 - Bad River, Las Courte Oreilles, Lac du Flambeau, Red Cliff
 - Sokaogon Chippewa Community
 - St. Croix Chippewa Community
 - Forest County Potawatomi Community
 - Stockbridge-Munsee Band of Mohican Indians
 - Menominee Indian Tribe of Wisconsin
 - Oneida Nation of Wisconsin
 - Ho-Chunk Nation

TRIBAL SOVEREIGNTY

- Inherent powers of self-government, by reason of their original tribal sovereignty, not by virtue of any delegation of powers
 - Membership
 - Form of tribal government
 - Govern members and territories
 - Administer justice
 - Power to exclude
- “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” U.S. v. Wheeler, 435 U.S. 313, 323 (1978)

TRIBAL SOVEREIGNTY (CONT.)

- **A tribe retains its sovereignty until Congress acts to divest that sovereignty.**
 - Limitations may arise through treaties and statutes – clear and unambiguous
 - Limitations on conveyances of tribal property
 - General Allotment Act
 - Major Crimes Act
 - Indian Civil Rights Act
 - PL 280 (includes Wisconsin)

FEDERAL TRUST RESPONSIBILITY

- **Federal government's unique relationship with Indian tribes**
 - Evolved from treaties, statutes, and courts
 - Reaffirmed through legislation, invoked through administrative action, court decisions
- **Scope**
- **Enforcement**
 - Breach of trust claims
 - Administrative Procedures Act

STATE AUTHORITY

- **General Rule: No State Authority in Indian Country**
 - Congressional plenary authority
 - Federal preemption
 - Infringement
 - Right of Indians to make their own laws and be ruled by them – *Williams v. Lee*, 358 U.S. 217 (1959)
 - State's interest
 - Minimal burden – *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463 (1976)

STATE AUTHORITY (CONT.)

- Congressional grant of authority
 - Public Law 280 (1953)
 - Most crimes and some civil matters
 - Wisconsin (except Menominee)
 - Gaming Regulation
 - Liquor laws

CASE ILLUSTRATION: KINGSLEY BEND MOUNDS



Ho-Chunk Nation provided site maintenance services to the (previous) Wisconsin DOT wayside that they acquired in the 1940's containing the majority of the remaining mound group - numerous effigy, conical and linear mounds ancestral to the Nation

In 2007, the State and the Nation secured a mutually-beneficial agreement to effectuate the land transfer of the wayside site to the Nation under state and tribal authority

Nation continues to restore the site



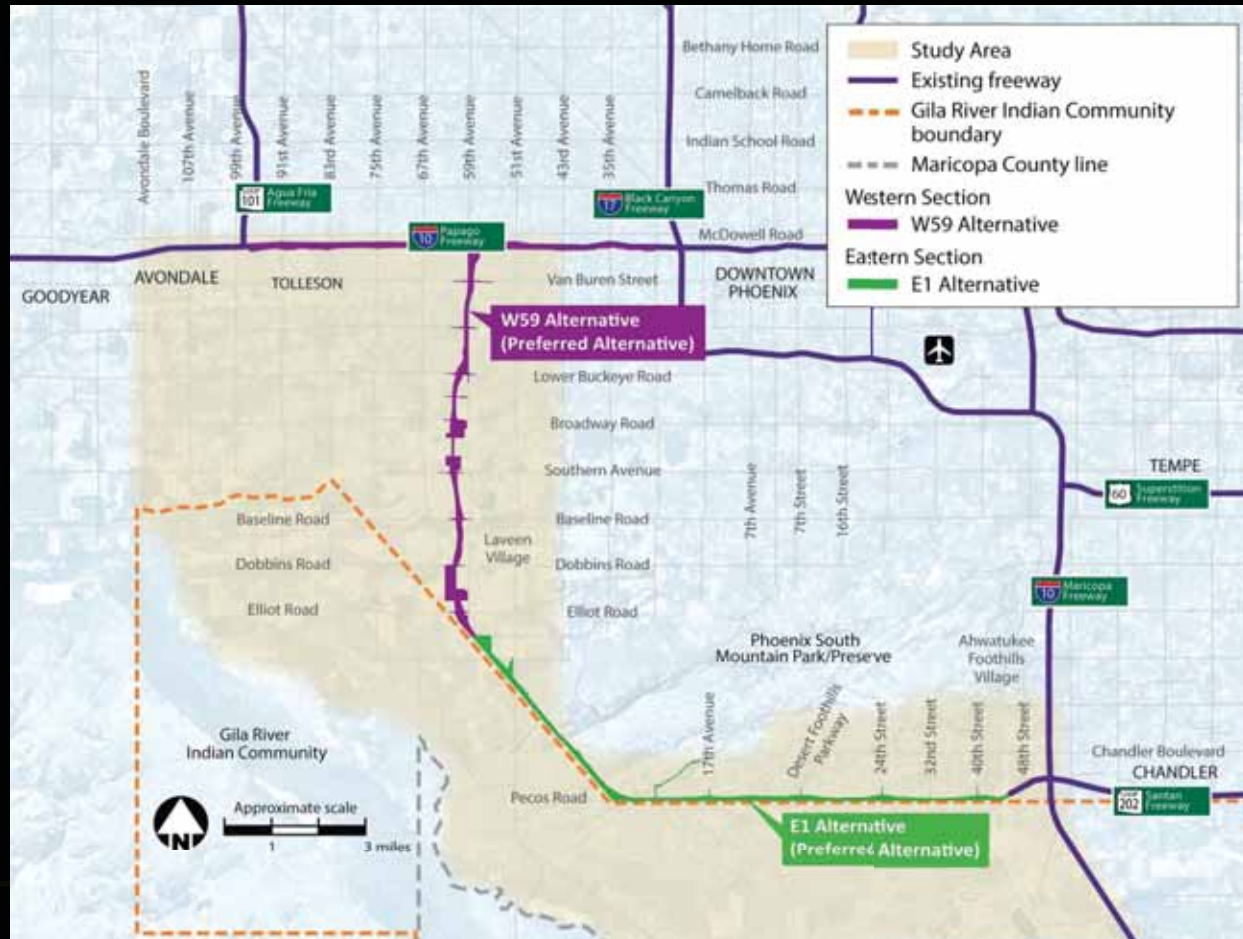
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CASE ILLUSTRATION: LOOP 202 EXTENSION - ARIZONA

- <http://wwwa.azdot.gov/projects/loop-202-south-mountain-freeway-2014.mov>

LOOP 202 EXTENSION



LOOP 202 EXTENSION

- Project Status
 - in the development phase
 - Draft EIS was released - comment period closed on July 24, 2013
 - Final EIS was released on Sept. 26, 2014 - AZDOT allowing comments on FEIS for 60 days
 - Record of Decision is expected to be finalized in late 2014 and available for public review in early 2015

LOOP 202: TRIBAL PERSPECTIVES



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LOOP 202: THE CONTROVERSY ENSUES: TO BUILD OR NOT TO BUILD?

- Tribal/Government Perspectives
 - Pro-Development: What economic benefits come with access?
 - Anti-Development: Should city growth problems fall upon the tribe?
- State/Government Perspectives
 - ADOT: How do we solve significant growth problems bordering a reservation?
 - Maricopa Association of Governments (MAGS)
- Interested Persons and Entities
 - Tribal landowners: NIMBY? Can I lease my land? What if I oppose?
 - Developers
 - Environmental entities
 - Community entities

WHAT IS YOUR ROLE?

- Tribal leader/representative
- State representative/agent
- Planning
- Engineering
- Environmental
- Cultural/Historical/Archaeological/Religious
- Community
- Construction
- Landscaping
- Inter-Governmental
- Safety
- Commercial
- Legal

KEY CLOSING THOUGHTS

- Understand the dynamic and ever-changing federal-tribal and state-tribal relationship as it is necessary to be effective
- Understand your role and the immense impact you can make
- Consider intergovernmental agreements, in a variety of forms, as an opportunity to coordinate authority, share resources, reduce costs
- Network (tribal/non-tribal, local/regional/national)
- Case Updates & Illustrations – keep a watchful eye on developments
- Think outside of the box

QUESTIONS?

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