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TESTIMONY OF EDWARD K. THOMAS, PRESIDENT
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OVERSIGHT HEARING
ON TRIBAL TRANSPORTATION REAUTHORIZATION

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
March 13, 2014

INTRODUCTION

Good Morning! My name is Edward K. Thomas, and I am the duly-elected President of the Central Council of Tlingit & Haida Indian Tribes of Alaska ("CCTHITA" or "Central Council"), a federally recognized Indian Tribe representing over 29,000 tribal citizens primarily in 18 communities in Southeast Alaska.

PERSONAL BACKGROUND

Since the early 1980s, I have had the privilege of being in tribal leadership. I plan to retire next month after having served as Central Council's President for 27 years. Over the past four decades, I have had the opportunity to provide Capitol Hill testimony on many dozens of occasions and have met with six U.S. presidents and dozens of federal officials. Thank you for honoring me with your request to testify today to the Senate Committee on Indian Affairs in this hearing entitled "*Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country.*"

EQUITABLE ACCESS TO TRANSPORTATION IS A MATTER OF LIFE AND DEATH

I believe the reauthorization of the transportation legislation holds great potential to provide critically-needed assistance to address the vast unmet needs of Indian tribal governments in our roads systems.

That great potential for good lies in your hands. However, that potential is also a heavy responsibility on your shoulders.

Indian Country lags far behind the rest of America in terms of access to vital services and markets. This is particularly true in rural parts of Indian Country, especially in rural Alaska.

In rural Indian Country, we dial 9-1-1 and then wait for hours, sometimes days, for law enforcement or emergency medical help to arrive. Unlike in the rest of America, "access" in Indian Country is often a matter of life or death.

America focuses on healthy food lifestyles, but in rural Indian Country we are hours away from healthy food markets.

The lack of transportation facilities in rural Indian Country blocks our access to economic recovery, and to jobs, and to markets. It should come as no surprise, then, that high unemployment and systemic economic depression defines much of Indian Country today. We simply don't have the infrastructure access that is expected and enjoyed by all other Americans.

This is a great inequity. Surely in the transportation reauthorization, and the accompanying allocation of national Highway Trust Fund revenues, this Committee and its colleagues in the Senate and House should make a special effort to rectify this situation.

MAP-21 WORSENEED OUR PROBLEMS

MAP-21 made our situation worse because it tossed aside an allocation formula based on "relative needs" that had been carefully crafted by tribal stakeholders ourselves in a negotiated rulemaking proceeding. The MAP-21 approach resulted in dramatic cuts in funding to some tribes (many of them smaller and isolated) and dramatic increases in funding for other tribes. The changes had little if any logical connection to "relative need" or degree of access to critical services.

Instead of relative needs, the MAP-21 formula reflected the "relative power" of political muscles here on Capitol Hill. This is what happens when Washington D.C. power brokers make the decisions affecting Indian Country rather than tribal governments ourselves in a negotiated rulemaking procedure consistent with Indian self-determination and tribal self-governance.

Now let me be clear -- Central Council did relatively ok under the MAP-21 formula, largely because the MAP-21 formula favored tribes with relatively large census numbers. But Central Council continues to object to both the

MAP-21 formula process and outcome, because the MAP-21 formula short-changed many smaller and more remote tribes, especially those in Alaska. This is neither fair nor just. Allocation formula decisions like these should be made by all the tribal stakeholders together, not by the politicians holding power in Washington, D.C.

FREEZE THE FY 2012 FORMULA AND MANDATE TRIBAL NEGOTIATED RULEMAKING

Further harm will result if what I call the MAP-21 "relative power formula" is left on autopilot for Fiscal Year 2015 and beyond. Instead, as set out below, Central Council asks this Committee to seek to statutorily --

- (a) freeze in place the FY 2012 relative funding allocation formula for FY 2015 and FY 2016, and
- (b) require a new tribal negotiated rulemaking committee to come up with a more refined relative needs formula for FY 2017 and future years.

INCLUDE THE TRIBAL TRANSPORTATION UNITY COALITION SUGGESTIONS

Central Council supports the position papers developed by the Tribal Transportation Unity Coalition (TTUC) which I have attached and submitted at the end of my written testimony. The new transportation reauthorization bill should include these TTUC recommendations, which many tribes believe would bring modest but much needed improvements to our tribal community road systems. We have to begin with small steps like these recommendations if Indian Country is ever, in our lifetimes, going to reach the standards for a livable community enjoyed by non-tribal communities across America.

WE MUST MAKE INDIAN COUNTRY ACCESSIBLE AND LIVEABLE

Tribal communities have always received far less federal transportation funding than have federal, state and local governments. Where roads and other intermodal systems exist in Indian Country, they are much less safe than those in non-tribal communities. And the biggest problem is that, for many rural Indian communities, transportation infrastructure simply does not exist. As a result, travel is an extremely risky and dangerous activity for many of our tribal citizens.

Our inadequate roads block our economic development and commerce, restrict essential services, and pose a serious obstacle to our citizens who simply want to get to and from work and home.

On health care, for much of Indian Country the question is whether it is "accessible", not whether it is "affordable".

The end result is that many rural tribal communities fail every livability test because of our non-existent or unsafe roads. For decades now, inequitable funding for Indian roads has meant the few road miles we have are unsafe or impassable and the many miles of additional roads we need are left un-built.

EQUITY AND FAIRNESS
MUST SHAPE THE NEW TRANSPORTATION LEGISLATION

These challenges could be met by this Committee and your colleagues if a simple yardstick of equity and fairness was used to shape the new transportation reauthorization bill. Here are the standards I would encourage to use in drafting the new bill:

1. EQUITABLE FUNDING COMPARED TO THE REST OF AMERICA. Indian Country deserves a sufficient share and an equitable allocation among tribes of the dwindling Highway Trust Fund so that Indian Country can catch up to the rest of America, and so that citizens of Indian tribal governments in their homelands can have the same basic safe access to essential services and markets enjoyed by the rest of Americans. Congress must recognize that Indian Country merits a bigger share of the Highway Trust Fund because tribal roads DO NOT now provide safe access to critical health services, supplies, job markets, and trade opportunities for remote communities throughout Indian Country, compared to the degree of safe access accorded much of the rest of America.

2. EQUITABLE FUNDING DISTRIBUTION FORMULA. The MAP-21 funding distribution allocation among tribes is inequitable. It must be replaced. The prior SAFETEA-LU relative-needs formula (RNF) adopted some years ago by all tribal stakeholders in negotiated rulemaking, as applied in FY 2012, should be reinstated for FY 2015 and FY 2016 while a new tribal negotiated rulemaking committee negotiates a new relative needs formula for FY 2017 and beyond. In other words, the new roads reauthorization language should freeze the FY 2012 funding distribution formula in place for FY 2015 and FY 2016 and require that tribes employ negotiated rulemaking to negotiate among tribal sovereigns a new relative-needs formula for FY 2017 and future years.

3. TRIBAL NEGOTIATED RULEMAKING. Tribal negotiated rulemaking is the ONLY way that tribal-federal policy should be made on major decisions involving roads formulas and programs. Sovereign tribes are the ONLY stakeholders in these decisions. Nobody else should decide. Not Congress. Not federal bureaucrats. A tribal negotiated rulemaking process be used to make all key decisions. Anything less than tribal negotiated rulemaking offends tribal sovereignty, belittles Indian self-determination and side-steps tribal self-governance.

4. RELATIVE NEEDS MUST BE CAREFULLY BALANCED. A relative-needs formula developed under negotiated rulemaking should balance key factors in an effort to be equitable relative to all tribes, such as: tribal service area of land and distance to travel, number of people, and safe access to essential services and markets. The SAFETEA-LU relative-needs formula should serve as the starting point for a new tribal negotiated rulemaking committee's formulation of a new relative-needs formula for future years.

5. STEER UNUSED OBLIGATION AUTHORITY TO UNMET INDIAN COUNTRY NEEDS. Given the huge unmet needs of Indian Country compared to the rest of America, any transportation reauthorization legislation should reallocate to a Safe Access for Tribal Communities Fund at least 10% of the obligation authority within the overall Highway Trust Fund which remains unused by states at the end of each fiscal year. Upon transfer of this obligation authority to the Safe Access for Tribal Communities Fund, these funds should be available for competitively awarded applications by tribes to address unmet needs similar to the requirements of the High Priority Projects under SAFETEA-LU.

6. FULL TRIBAL SELF-GOVERNANCE. Pub.L. 93-638 authority should be fully extended to all aspects of tribal funding and services related to the Highway Trust Fund and administered by the U.S. Department of Transportation (DoT) and the U.S. Department of the Interior (DoI). The new law should clarify that this tribal authority is a mandatory obligation of both DoT and DoI, and is not subject to discretion. It should also clarify

that all Highway Trust Funds, including those used by the DoT or DoI to administer the program, are contractible and subject to Pub.L. 93-638 authorities.

CONCLUSIONS

The overall amount of funds distributed from the federal Highway Trust Fund to Indian country transportation needs should be equitable. What is fair must be understood in terms of the huge accumulation of unmet need and the growing gap, in terms of access to essential services, between Indian Country and the rest of America. That equity in overall funding should be matched equity in the distribution of the Indian Country roads program funds among tribes.

Central Council supports the TTUC's Tribal Transportation Unity Act requests but notes that they do not address the over-arching question of what funding allocation formula will be used to distribute the funds among tribes. Central Council opposes including a funding allocation formula in any new transportation bill.

Instead, Central Council asks that the new statute require the FY 2012 funding allocation formula to be followed for FY 2015 and FY 2016 and require that a new relative-needs formula be developed by tribes in a negotiated rulemaking procedure for FY 2017 and future years. Negotiated rule making is the only approach that is consistent with tribal sovereignty and with having tribes themselves decide how funds are allocated among tribes. Tribes are the only stakeholders who should matter in this negotiation. In the spirit of tribal sovereignty, only tribal governments should shape how federal roads funds are allocated among tribes to meet the unmet priority transportation needs of Indian Country.

Thank you.

Attachments: Denver Unity Statement 2014
Tribal Transportation Unity Act summary 03-03-2014