§ 170.110 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials should consult and work with tribes early in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

(1) Impeding access to tribal communities or activities;

(2) Creating excessive access to culturally or religiously sensitive areas;

(3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;

(4) Harming indigenous plants and animals; and

(5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

§ 170.111 What can a tribe do if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

(a) Take reasonable steps to resolve the problem directly with the State or local government involved;

(b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

§ 170.115 What activities may be funded with IRR Program funds?

(a) IRR Program funds may be used:

(1) For all of the items listed in appendix A to this subpart;

(2) For other purposes identified in this part; or

(3) For other purposes recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and §170.156 and approved by FHWA or BIA pursuant to §170.117.

(b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

§ 170.116 What activities are not eligible for IRR Program funding?

IRR Program funds cannot be used for any of the following:

(a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;

(b) Structures and erosion protection unrelated to transportation and roadways;

(c) General reservation planning not involving transportation;

(d) Landscaping and irrigation systems not involving transportation programs and projects;

(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;

(f) Purchase of equipment unless authorized by Federal law or in this part; or

(g) Condemnation of land for recreational trails.

§ 170.117 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eligible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4058-MIB, Washington, DC 20240.
§ 170.124

(2) In cases involving eligibility questions that refer to the IRR Program or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 400 7th St., SW., HFL–1, Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the IRR Program Coordinating Committee before denying a request. BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA Regional offices.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that specific project.

USE OF IRR AND CULTURAL ACCESS ROADS

§ 170.120 What restrictions apply to the use of an Indian Reservation Road?

Indian Reservation Roads (IRRs) must be open and available for public use. However, the public authority having jurisdiction over these roads may:

(a) Restrict road use or close roads temporarily when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as contained in §§ 170.122 and 170.813;

(b) Conduct engineering and traffic analysis to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(c) Erect, maintain, and enforce compliance with signs and pavement markings.

§ 170.121 What is a cultural access road?

(a) A cultural access road is a public road that provides access to sites for cultural purposes as defined by individual tribal traditions, which may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A tribal government may unilaterally designate a tribal road as a cultural access road. A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a tribal government to designate a non-tribal road as a cultural access road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural access roads may be included in the IRR Inventory if they meet the definition of an IRR.

§ 170.122 Can a tribe close a cultural access road?

(a) A tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

(1) During periods when the tribe or tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the tribal members or the general public.

(b) Cultural access roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.121(c).

SEASONAL TRANSPORTATION ROUTES

§ 170.123 What are seasonal transportation routes?

Seasonal transportation routes are non-recreational transportation routes in the IRR Inventory that provide access to Indian communities or villages and may not be open for year-round use. They include snowmobile trails, ice roads, and overland winter roads.

§ 170.124 Does the IRR Program cover seasonal transportation routes?

Yes. IRR Program funds can be used to build seasonal transportation routes and a tribe may request that BIA include seasonal transportation routes in the IRR Inventory.