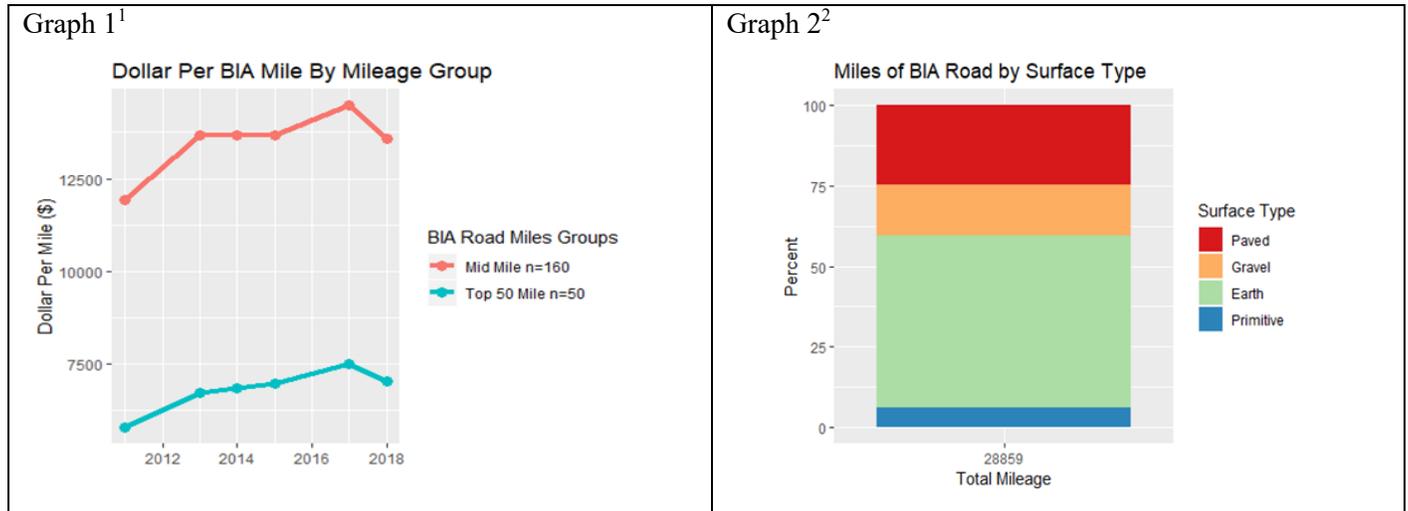


## TRIBAL ROAD FUNDING UNDERMINED WITH CURRENT TPP FORMULA

Congress should reinstate the Tribal Transportation Program Formula, TEA-21 authorized, utilizing the relative need distribution formula published in the 2004 Federal Register

### Restore the Equitable Process

In 2003, the U.S. Department of the Interior established the Tribal Transportation Program (TTP) rulemaking process that developed a fair needs-based tribal road funding formula that reflected the consensus of a geographically representative committee of tribal leaders. Recent federal highway bills have abandoned this needs-based funding approach and adopted instead a population-based funding formula. The result negatively impacts 64% of the 574 federally recognized tribes and makes 2/3 of tribal road funding available for non-tribal roads. Perversely, tribal roads and communities now receive the least benefit from funding increases that Congress allocates to the TTP.



### Addressing Systemic Neglect Can Reduce Safety Risks

Systemic neglect of tribal roads on large land-based reservations that do not benefit from a population-based formula costs lives. Though traffic safety crash and injury data for American Indians and Alaska Natives (AI/AN) is often difficult to obtain and incomplete, vehicular accidents are the [number one cause of death in Indian Country](#). According to the Centers for Disease Control, motor vehicle-related death rates for AI/AN are more than twice that of non-Hispanic Whites or Blacks. For crashes not attributable to driver error, vehicular accidents in Indian Country are often the result of poor road conditions on Indian reservations, particularly in inclement weather -- compounded by the difficulty first responders have in reaching crash victims.

### Recognize Social Impacts

The population-based formula funding for TTP compounds chronic disparities across Indian Country by depriving tribes access to federal programs. The federal trust responsibility includes healthcare, education, and infrastructure. Community members needing to use these roads are at a disadvantage. For example, it can take 2-3 hours to reach a healthcare facility offering maternity/diabetes/cardiac care and other critical medical services. Unsafe and impassable roads deprive students on reservations<sup>3</sup> access to education. A 2017 GAO [Report to Congress](#) found that the condition of school bus routes on large land based reservations are a [barrier to school attendance](#) and contributes to the high absenteeism of AI students. Economic development is also slowed or obstructed as roads must first be built to open up a new area for development whether that be housing, agriculture, tourism, or even build-out projects for electricity or telecommunications.<sup>4</sup> Our roads are the life line of our communities.

Road Construction Costs per One Mile <sup>5</sup>		
Montana DOT: <b>\$3.3 million</b>	Navajo Nation: <b>\$3.3 million</b>	Three Affiliated Tribes: <b>\$2 million</b>

<sup>1</sup> “Mid-Mile” refers to Tribes that have 5 to 143 miles of roads. “Top 50 Mile” refers to Tribes that have over 143 miles of roads.

<sup>2</sup> Paved roads are concrete and bituminous roads. Primitive roads are ones where people have driven enough times to form a road, but the ground has never been graded. See U.S. Gen. Accountability Office, GAO-17-423, Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies, 16 (2017).

<sup>3</sup> Tribes with large land-based reservations are those with 100,000 acres or more.

<sup>4</sup> U.S. Comm’n on Civil Rights, Briefing Report, [Broken Promises: Continuing Federal Funding Shortfall for Native Americans](#), 138 (2018).

<sup>5</sup> (Does COLT wish to provide a citation for this data?)

**COLT respectfully requests Congress enact the following recommendations:**

**1. AMEND THE TTP FORMULA AND TEMPORARILY REINSTATE THE TTP FORMULA IMPLEMENTED PRIOR TO MAP 21.**

Increased appropriations to the TPP is imperative. However, these increases will never reach the areas of Indian Country that need the funds most if the formula does not change. The only practical solution is to replace the unfair and discriminatory formula contained in MAP-21 and the FAST Act with a funding formula that is based on actual documented road construction needs data. Until a new formula is developed by Tribes, Congress should utilize the relative need distribution formula published in the 2004 Federal Register shaped by Tribes through the negotiated rulemaking process.

**Proposed Language:**

Subparagraph (2) of Subsection (b) of Section 207 of title 23, United States Code, is amended to read as follows:

*“(2) REGULATIONS.--*

*(A) Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain any regulations governing the tribal transportation program.*

*(B) Notwithstanding any other provision of section 202 of title 23, the Secretary of the Interior and the Secretary of Transportation shall restore and implement, on an interim basis for fiscal year 2021 and following years, the tribal share and relative needs funding formula approved by the Federal-Tribal Negotiated Rulemaking Committee established by Section 1115(b)(4) of the Transportation Equity Act for the 21st Century, Public Law 105-178, as amended by title IX of Public Law 105-206, and published in Vol. 69, No. 137 of the July 19, 2004 Federal Register at page 43090.*

*(C) Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior and the Secretary of Transportation shall establish a new negotiated rulemaking committee, within 90 days of enactment of this Act, to review the interim rule restored and implemented in paragraph (B) and, within two years of enactment of this Act, replace such interim rule with a new tribal share and relative needs funding formula consistent with the factors and requirements set forth in Section 1115(b)(4) of the Transportation Equity Act for the 21st Century, Public Law 105-178, as amended by title IX of Public Law 105-206.”*

**2. ENACT S. 3359, THE TRIBAL TRANSPORTATION EQUITY AND TRANSPARENCY IMPROVEMENT ACT OF 2020.**

S.3359 would require the Comptroller General to initiate an audit of the TTP program to better understand how congressional and agency decisions have affected tribal shares of program funds over the years, whether the current funding methodology provides an accurate and reliable estimate of tribal population, and potential alternatives to the current funding methodology. COLT believes this audit will greatly assist Congress in creating a new TTP funding formula that fairly and equitably addresses tribal transportation needs of Indian Country. Additionally, the bill requires the Secretary of Interior to collect and use updated information for transportation facilities when making TTP funding allocations rather than relying on its current inventory which was frozen in 2012.

**3. INCLUDE SECTION 1509 OF H.R. 2, THE MOVING FORWARD ACT, IN ANY SENATE PASSED TRANSPORTATION PACKAGE.**

COLT strongly supports Section 1509, which requires the DOT Secretary to publish an annual report detailing the number of Tribes that were direct recipients of transportation funding, the amount of funding made available to these Tribes, the number and location of Tribes that were indirect recipients of any formula-based federal transportation program, and the amount of transportation funding made available to Tribes through states. Congress can utilize this information when creating a new TTP funding formula that fairly and equitably addresses tribal transportation needs.

**4. ENACT A RULE TO ENSURE TTP FUNDS REACH INDIAN COUNTRY.**

**Proposed Language:**

*Not less than 70 percent of the funds distributed under the Tribal Transportation Program funding formula shall be allocated amongst Tribes based on their relative share of BIA and Tribal roads that are identified in the National Tribal Transportation Facilities Inventory as a result of paragraph(2)(B)(i), (2)(B)(ii), or (2)(B)(iii) of 23 U.S.C. 202(B)(1).*