

# TRIBES / STATE DOT PARTNERSHIPS

CTER – Legal Update  
Las Vegas, NV  
December 6, 2018

# BACKGROUND

## TERO

- Prevent employment related discrimination and give preference in employment, contracting, sub-contracting to American Indians
- Maximize the utilization of Indian workers in all employment opportunities on and near reservations.

## United States DOT Federal Highway Administration

- Issued guidance for State DOT's to include Indian Preference in employment on federal-aid transportation projects

## State of Oregon

- First state to enter into MOU's with 3 tribes (Umatilla, Grand Ronde, Warm Springs)

## Call to action

- Resolutions from ATNI and NCAI

# FEDERAL LAW

## The Surface Transportation Reauthorization and Uniform Relocation Act (STURRA) of 1987

- Added subsection (d) to Title 23 U.S.C. §140.
- Meant to address antidiscrimination as directed by Title VII of the Civil Rights Act in regards to Indian preference in employment and contracting for certain Federal-aid highway projects.
- Amendment only allowed for preference on Federal-aid IRR projects.

## Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991

- Amended the 1987 Act.
- Allowed for Indian preference on all Federal-aid and direct Federal highway projects on or near reservations.
- More Indian labor will be used when building on or near reservations.

# FEDERAL LAW

Other Federal Transportation Bills that reauthorized Section 140(d) of the United States Code, Title 23 provides, “States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation.”

- The Surface Transportation Reauthorization Assistance Act of 1987 (STURRA)
- The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)
- The Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21)
- The Fixing America’s Surface Transportation Act of 2015 (FAST)

# U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION

FHWA Notice N 4720.7 issued March 15, 1993 by Executive Director E. Dean Carlson

- Notice was to consolidate all previous guidance in regards to allowance of Indian preference.
- Applicability
  - Projects that are on or near. Near is determined to be that which is within a reasonable commuting distance from the reservation.
- Eligible Employees
  - All Indians, without regard to tribal affiliation or enrollment, are eligible for employment preference.
- Indian Preference Goal
  - States and Tribes will work together on determining Indian employment goals.
- TERO Tax
  - TERO's can assess a tax/fee on reservation, but not off.

# CTUIR/ODOT MOU

## Confederated Tribes of the Umatilla Indian Reservation/Oregon Department of Transportation Memorandum of Understanding

- 1994 – 1<sup>st</sup> CTUIR/ODOT MOU was entered into.
- Established procedures to be followed by both parties to ensure that -
  - Contractors are complying with the TERO Code and Compliance Agreement
  - Contractors are in compliance with the provisions of the Federal-Aid Highway Program
- Acknowledges the formal "Government-to-Government" relationship between the CTUIR and the State of Oregon
- Affirms the inherent sovereign authority of the CTUIR to promulgate and enforce the TERO Code within the jurisdiction as outlined in the MOU.

# CTUIR/ODOT MOU

## Mandatory TERO Workshop

- TERO will conduct mandatory pre-bid workshops to certify contractors.
- Contractors must have a certificate in order to be eligible to bid on ODOT Contracts.
- TERO Certification will allow contractors to be eligible to be successfully awarded an ODOT or OTIA III project within the CTUIR TERO jurisdiction.
- Certifications are valid for a three year period.

# CTUIR/ODOT MOU

## Compliance Agreements

- Affirms TERO's ability to enter into agreements with contractors performing work within TERO's jurisdiction.

## Taxes

- Recognizes the CTUIR's inherent sovereign authority to assess and collect taxes.
- Separate Tax rates for on and off reservation projects

## State Transportation Improvement Program

- Annual meeting between TERO and ODOT to review upcoming projects
- This includes all bridge & highway projects within the MOU boundary.



# MOU ENFORCEMENT

## MOU and TERO provisions

- Enforced by TERO, ODOT and prime contractors.

## Equal Employment Opportunities Commission (EEOC)

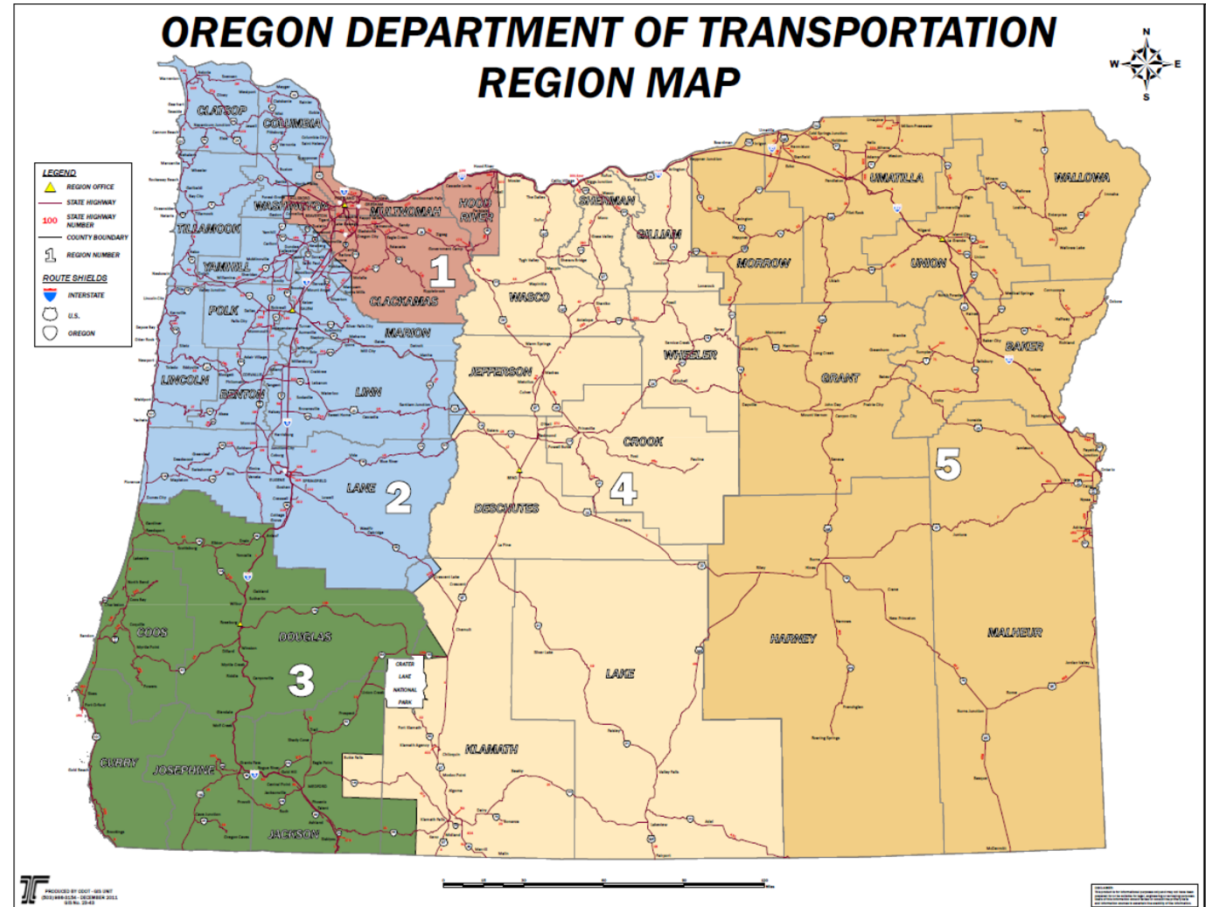
- TERO is contracted by the EEOC to investigate, mediate and settle complaints.

## Discrimination

- TERO and ODOT support ZERO Tolerance for all forms of discrimination and harassment.

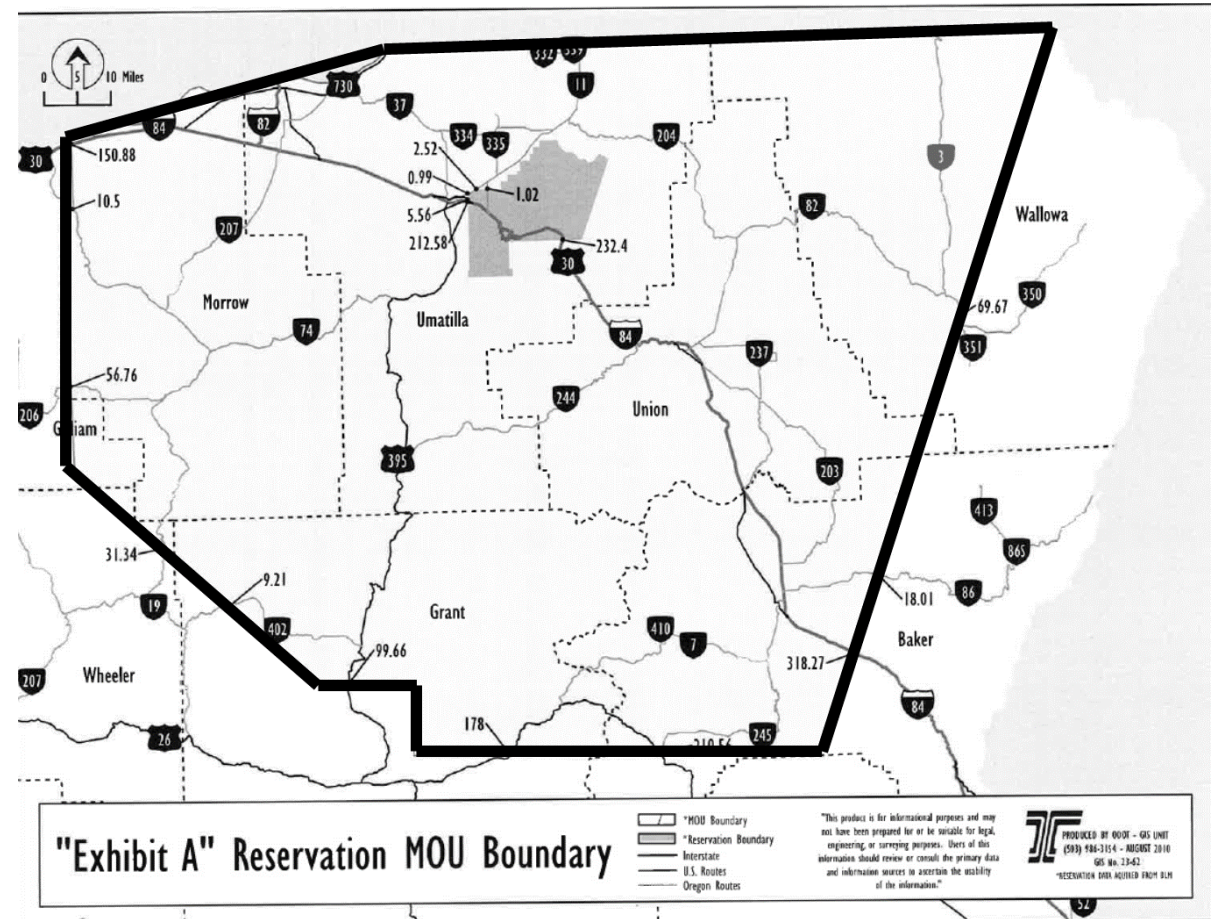
# ODOT REGION MAP

- ODOT has divided Oregon into 5 regions.
- CTUIR is located in Region 5



# CTUIR TERO MOU BOUNDARY

- Boundary extends 60 miles outward from edge of CTUIR Reservation boundary.
- 60 miles is a reasonable commutable distance



# CALL TO ACTION

Tribes and States are encouraged to develop MOU's similar to that of the State of Oregon the Tribes in Oregon.

Tribal Organization have developed policies calling for such a partnership.

- **Affiliated Tribes of Northwest Indians**
  - Resolution #17-46 "State Departments of Transportation Memorandums of Understanding with TERO Tribes"
  - "...encourages that the State Departments of Transportation to enter into agreements with Tribes in their state to include Indian Preference on federal aid transportation projects located on or near a reservation."
- **National Congress of American Indians**
  - Resolution #17-032 "State Departments of Transportation Memorandums of Understanding with Tribes"
  - "...encourages the State Departments of Transportation to enter into agreements with Tribes in their state to include Indian Preference and other TERO requirements on federal aid transportation projects located on or near tribal lands."

# NEXT STEPS

Is your TERO ready to build partnerships with outside agencies?

Review your TERO Code

Engage your Tribal Council and TERO Commission

Work with other Tribes in your State

Understand your States structure for approving MOU's.