

ROAD MAINTENANCE IN INDIAN COUNTRY

OVERVIEW

Road maintenance is an important service for any locality, both for ease of travel and for safety. Federal, state, and county roads traverse tribal lands, and many opportunities for funding and cooperative agreements exist to maintain them.

Due to the individualized nature of road maintenance, consulting each tribe regarding the specific methods used to maintain roads within its reservation boundaries would need to occur to gain a full, in-depth picture. This document is intended as a general overview of the programs, options, and methods available for road maintenance.

FEDERAL FUNDING

Congress established the Tribal Transportation Program (TTP), originally known as the Indian Reservation Roads (IRR) program, in 1982 with the Surface Transportation Assistance Act. The Federal Highway Administration's Office of Federal Lands Highway and the Bureau of Indian Affairs (BIA) jointly administer the program through a memorandum of understanding. Currently, 573 federally recognized Indian Tribes and Alaska Native Villages receive funds for road planning, designing, construction, and maintenance.

In fiscal year 2016, Congress funded TTP at \$465 million with an annual increase of \$10 million per fiscal year through 2020, as provided under the *Fixing America's Surface Transportation Act* (FAST Act). The tribal shares are determined using a statutory funding formula found at [23 USC 202\(b\)](#).¹

To receive TTP funds, a tribe must comply with:

1. [Title 23 of the United States Code and 25 CFR Part 170](#);
2. [Public Law 114-94](#), *Fixing America's Surface Transportation* (FAST) Act; and
3. the terms of a tribe's most current executed TTP Program Agreement with the Federal Highway Administration (FHWA).

¹ Foreword to the [Tribal Transportation Program Delivery Guide](#), 2019, page 1.

The FHWA and the BIA work cooperatively to administer the program in conjunction with the TTP Coordinating Committee, a committee of 24 tribal representatives who provide input and recommendations to the BIA and FHWA and act as the liaison between federal agencies and tribes.

FY2019 TTP AMOUNTS ALLOCATED TO TRIBES IN MONTANA²

	Population	Total Miles	Total Share
Fort Peck Tribes	7,341	375	\$4,377,571.82
Blackfeet	9,136	653.2	\$3,148,956.15
Chippewa Cree	3,437	541.1	\$1,948,693.17
Confederated Salish & Kootenai	10,401	334.2	\$1,703,192.82
Crow	7,381	1,738.9	\$5,776,547.79
Fort Belknap Indian Community	2,833	967.9	\$2,600,583.29
Northern Cheyenne	4,842	558.4	\$2,328,773.73

SPENDING LIMITS ON TTP FUNDS

Tribes must adhere to specific spending limits based on particular TTP activities. The spending limits are:

- **Planning** - Up to 100% of Tribe's TTP funds if identified as a priority on the FHWA-approved Tribal Transportation Improvement Program³
- **Preliminary Engineering** - Up to 100% of Tribe's total fiscal year TTP allocation⁴
- **Construction** - Up to 100% of Tribe's total fiscal year TTP allocation
- **Construction Engineering** - Up to 100% of Tribes total fiscal year TTP allocation
- **Transit** - Up to 100% of Tribe's total fiscal year TTP allocation
- **Maintenance (including purchase of maintenance equipment)** - Up to 25% or \$500,000, whichever is greater, of Tribe's total fiscal year TTP allocation⁵

² A condensed version of the total allocation table is provided. The full table is found here:

<https://flh.fhwa.dot.gov/programs/ttp/finance/documents/Tribal-Shares-FY19.pdf>

³ 25 CFR 170.403

⁴ 25 CFR Appendix A to Subpart B of Part 170

⁵ 23 U.S.C.202(a)(8) and 25 CFR 170.800

WHAT CONSTITUTES MAINTENANCE?

A tribe may use TTP funds to maintain transportation facilities identified in the National Tribal Transportation Facility Inventory. According to the TTP Program Delivery Guide, maintenance is "any action required to preserve and maintain a current transportation facility within its right-of-way, so that the facility may be used safely and effectively for its designated purpose".

The main categories of maintenance include:

1. **Preventative maintenance** - regularly scheduled inspections and minor repairs;
2. **Scheduled maintenance** - planned, results from preventative maintenance inspections;
3. **Unscheduled maintenance** - immediate action needed to correct unexpected occurrences that impact safety and efficiency of operations; and
4. **Normal maintenance** - planned, reoccurring day-to-day care of the facility.

Examples of allowable maintenance include but are not limited to:

- Cleaning and repairing ditches and culverts
- Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments
- Adding additional culverts to prevent roadway and adjoining property damage
- Repairing, replacing, or installing traffic control devices, guardrails, and other features necessary to control traffic and protect the road and the traveling public
- Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
- Repairing or developing stable road embankments
- Paying utility costs for roadway lighting and traffic signals
- Developing, implementing, and maintaining a BIA Transportation Facility Maintenance Management System
- Performing erosion control
- Regraveling roads
- Making bridge repairs
- Purchasing maintenance materials
- Maintaining airport runways, heliport pads, and their public access roads
- Making temporary highway alignment or relocation changes for emergency reasons
- Removing roadway hazards
- Performing environmental/archeological mitigation associated with facility maintenance
- Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
- Performing pavement maintenance such as pothole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch)
- Administering the BIA transportation facility maintenance program
- Leasing, renting, or purchasing of maintenance equipment
- Controlling vegetation through mowing, noxious weed control, trimming, etc.
- Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary of Transportation
- Controlling roadway dust
- Training maintenance personnel
- Paying the cost of closing of transportation facilities due to safety or other concerns
- Maintaining other TTP intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding

All maintenance must be completed in accordance with applicable standards that meet or exceed the Manual on Uniform Traffic Control Devices and either the appropriate National Association of County Engineers maintenance standards, the AASHTO Maintenance Manual for Roadways and Bridges, or another tribal, federal, state, or local government maintenance standard negotiated in an Indian Self-Determination and Education Assistance Act road maintenance self-determination contract or self-governance agreement.

Tribes may use maintenance equipment purchased with TTP funds for non-TTP related activities as long as the user is charged appropriate rates to recover the costs to maintain, replace, and operate the maintenance equipment.

STATE MAINTENANCE

The State of Montana maintains a broad network of state and federal highways and is responsible for maintaining many roadways within reservation boundaries. The Montana Department of Transportation (MDT) provides maintenance equipment, staff, and resources to maintain 2,459.2 miles of roadway within the seven reservations in Montana.

MILES OF STATE-MAINTAINED ROADWAYS WITHIN RESERVATION BOUNDARIES⁶

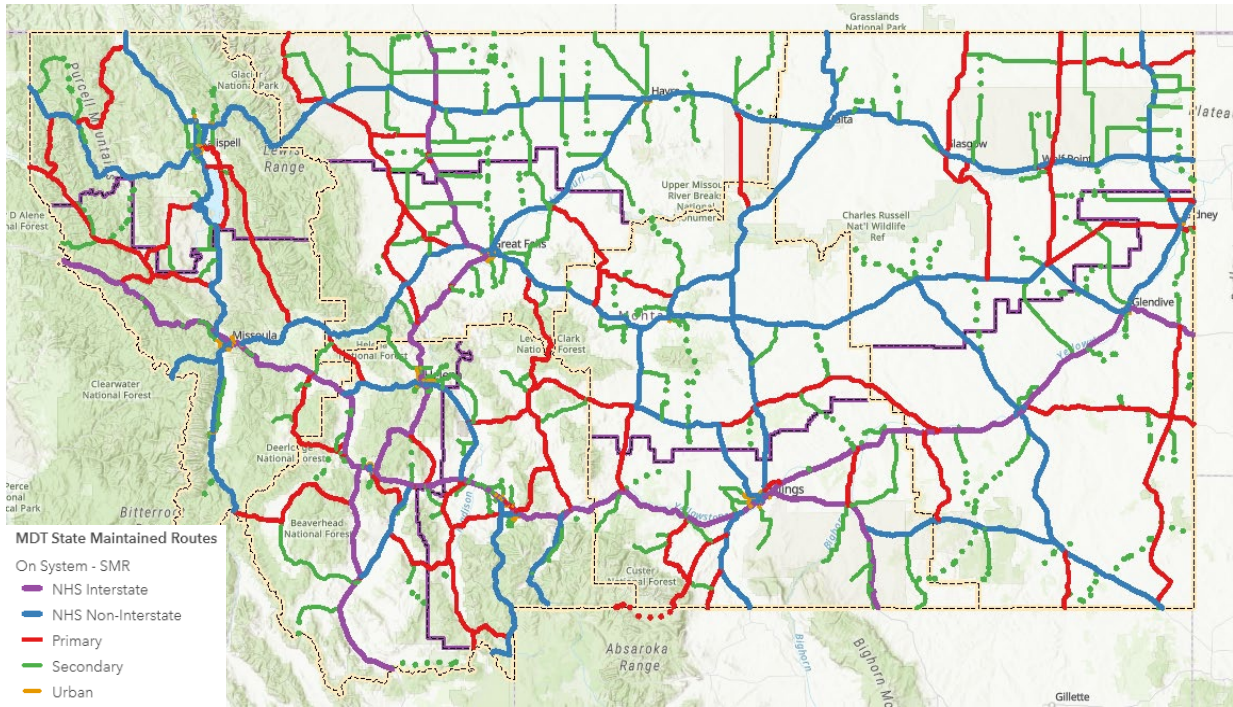
	Centerline Miles	Lane Miles
Blackfeet	231.967	479.166
Crow	315.205	636.251
Flathead	231.802	511.942
Fort Belknap	64.78	129.56
Fort Peck	282.512	567.328
Northern Cheyenne	55.799	121.701
Rocky Boy's	6.647	13.294

⁶ [HB426 fiscal note](#), 2019 session.

MDT utilizes an ArcGIS map illustrating the roads the state maintains and those that are outside its jurisdiction. Below is a screenshot that provides a high-level overview of state-maintained routes. To explore further, visit the online version:

<http://www.arcgis.com/home/webmap/viewer.html?webmap=8a4fe70b08534341afb10a49fb5b7771>.

MDT State-Maintained Routes - Online Map Database



HOW IS STATE ROAD MAINTENANCE FUNDED?

Most state road maintenance funding comes from fuel tax revenue. Revenues generated from fuel taxes are deposited into a Highway State Special Revenue Account and are constitutionally restricted for:

1. payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges;
2. payment of county, city, and town obligations of streets, roads, and bridges; and
3. enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

In 2017 the legislature passed [HB473](#), the Bridge and Road Safety and Accountability Act which increased Montana's fuel tax rate in phases through 2023. The increased fuel taxes are deposited into the Bridge and

Road Safety and Accountability Restricted Account with 35% of the increased tax distributed to MDT and the remainder allocated to local governments⁷.

	State Fuel Tax Rate	State Special Fuel (Diesel) Tax Rate
July 1, 1994	0.27	0.2775
July 1, 2017	0.315	0.2925
July 1, 2019	0.32	0.2945
July 1, 2021	0.325	0.2955
July 1, 2023	0.33	0.2975

HOW ARE FUEL TAXES COLLECTED ON RESERVATIONS?

The state does not have authority to levy taxes within reservation boundaries, but the tribal government for each reservation in Montana has a revenue sharing agreement that allows the state to collect fuel tax on tribal lands and then distribute proceeds back to the tribal government. The disbursements are based on the statewide per capita gasoline license tax receipts multiplied by the number of enrolled tribal members residing on the reservation, minus a one percent administration fee retained by the state⁸.

FY 2019 GAS TAX PAYMENTS TO TRIBES⁹

	Tribal share of gas tax
Fort Peck Tribes	\$948,658.15
Blackfeet	\$1,283,808.04
Chippewa Cree	\$541,385.72
Confederated Salish & Kootenai	\$716,426.21
Crow	\$1,375,356.03
Fort Belknap Indian Community	\$611,353.35
Northern Cheyenne	\$658,434.88
Total	\$6,135,422.38

⁷ Road & Bridge Funding in Montana, [Montana Department of Transportation website](#), accessed February 3, 2020.

⁸ [Policy Basics: Taxes in Indian Country Part 2: Tribal Governments](#), Montana Budget & Policy Center, November 2017.

⁹ The full table of 2019 tribal gas tax reimbursements is found here: <https://leg.mt.gov/content/Committees/Interim/2019-2020/Revenue/Meetings/November-2019/HJ-35/mdt-fuel-tax-tribal-revenue.pdf>

LOCAL/COUNTY ROAD MAINTENANCE

Other roads that exist within reservation boundaries include county roads that are usually maintained by the county. Large portions of several counties, such as Roosevelt, Bighorn, Glacier, and Lake counties, lie within reservation boundaries, and any road designated a county road is the responsibility of the county. To ensure adequate maintenance, most of these counties have their own facilities within reservation boundaries, such as equipment garages and sand and gravel resources. Tribes also maintain road departments with their own equipment inventories and often develop and utilize their own gravel pits.

Many tribes and counties currently operate on an informal basis regarding road maintenance, and when contacted by Legislative Services, tribal representatives and county commissioners in counties with reservation lands often responded that a road's right-of-way determines who maintains a road due to liability concerns if an entity without formal jurisdiction performed maintenance. Many also responded that if additional maintenance is required, it is done through "handshake" agreements rather than formal contracts.

Examples of cooperative maintenance between counties and tribal governments include counties providing equipment when tribal equipment has broken down and tribes agreeing to fund certain portions of joint county/tribal construction projects. Day-to-day maintenance such as snow plowing often occurs more organically and is rooted in past precedence of who historically maintained certain sections of road or who has the right-of-way.

Generally, counties and tribal governments prioritize road maintenance and the use of road maintenance equipment to ensure adequate maintenance is performed, first focusing on main arterial roadways and roads with school bus stops and then determining a maintenance schedule depending on need.

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