PARTNERSHIP AGREEMENT

Between

Wisconsin's Eleven Federally Recognized Tribes

Bad River Band of Lake Superior Chippewa Indians, Forest County Potawatomi Community, Ho-Chunk Nation, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac Du Flambeau Band of Lake Superior Chippewa Indians, Menominee Indian Tribe of Wisconsin, Oneida Tribe of Indians of Wisconsin, Red Cliff Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community, St. Croix Band of Chippewa Indians, Stockbridge-Munsee Band of Mohican Indians;

And

Wisconsin Division-Federal Highway Administration;

And

Wisconsin Department of Transportation

Tuesday, October 26, 2010

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Introduction and Purpose

The United States government has a unique legal relationship with federally-recognized Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. The federal government recognizes the right of self-determination for Indian tribal governments and the obligation to work with Indian tribal governments in a government-to-government relationship. As an executive agency, the U.S. Department of Transportation has a responsibility and is committed to working with Indian tribal governments in this unique relationship, respecting tribal sovereignty and self determination.

This Partnership Agreement is a document first created in 2005 as a result of Executive Order 39, ***"Relating to an Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin."*** Its purpose is to continue to create and define the processes by which the Wisconsin Department of Transportation (WisDOT) and the Wisconsin Division-Federal Highway Administration (FHWA) will work in collaboration with the eleven federally recognized tribes (tribes) of Wisconsin. This agreement is designed to acknowledge and support the government-to-government relationship and support American Indian sovereignty among State and Federal Agencies and the eleven Tribes. This mutually beneficial relationship continues to grow.

Transportation systems play a pivotal role in the economic health and vitality of all Wisconsin communities. Due to many factors, Wisconsin's tribal governments have historically struggled to meet the transportation related needs of their communities. This has often resulted in negative impacts upon their local economy, human and natural environments, and quality of life. In a historic move to better meet the needs of tribal communities, this document seeks to embark and continue on the journey involved in building and sustaining a true government-to-government relationship between the tribes of Wisconsin, FHWA, and the WisDOT. The goal of such a relationship is aimed at moving to move beyond the agency mindset of simply consulting with tribes as a legal requirement, to working with Tribes as equal partners focused on people, economics, and natural and human environments to improve the quality of life for all people.

Agreement

1. Overall Objectives

Partnerships defined by formal agreements are rare, and all parties acknowledge the significance of this effort. All parties place value in working as equal partners and will be guided by moral, ethical and professional principles, not limited to rights and interests specified by law.

This agreement codifies the desire of the WisDOT, FHWA, and the individual Wisconsin tribal governments to implement the concept of the government-to-government relationship. Under this agreement, all parties will agree to work together under the framework of the Guiding Principles section by providing the transportation related programs and services to better serve their communities. This agreement does not determine specific tribal funding issues or state or federal funding formulas and does not focus on individual tribal specific issues. It does provide all parties with protocols to enhance collaboration, a timeline for measurable results and specific contact staff for timely communication. Addendum 1 is a map of statewide and regional tribal liaison contacts who are the essential key points of communication with WisDOT to facilitate the successful implementation of partnership projects and action items.

A WisDOT Tribal Task Force was established after the original 2005 Partnership Agreement was signed. This group consists of representatives designated by the tribal leaders and WisDOT. The WisDOT Tribal Task Force is a forum for partners to address long-standing transportation issues faced by tribal communities. All parties recognize that administration and financial support is essential to the success of the WisDOT Tribal Task Force.

2. Guiding Principles

All parties hereby agree to the following:

- Reflect and support the government-to-government relationship among the tribes of Wisconsin, federal government, and the State of Wisconsin.
- Recognize the importance of collaborative partnerships and respect the knowledge, experience, perspectives, and needs of the other partners.
- Move forward the shared goals of their stakeholders and constituents through improved working relationships and partnership building.
- Work together to develop an effective and efficient consultation framework, ensuring the long-term prosperity of this agreement.
- Agree to dedicate the appropriate level of resources to achieve success.
- Recognize and support the need to engage the shared strength, skills, and expertise in a collaborative effort to achieve success in transportation related activities.
- Pledge to work together in a proactive and cooperative manner.

3. Issue/Dispute Resolution Process

From time to time, disagreements and disputes will occur. The key to forging lasting relationships is the manner in which differences are resolved. Addendum 2 is a formal process for dispute resolution. The goal of the resolution process is to have partners continue working together seeking mutual solutions. This resolution process is specific to the communication between WisDOT and the tribes of Wisconsin. As a good faith effort on the part of WisDOT, this dispute resolution process will be honored for any tribe even if that tribe did not choose to sign this formal agreement. The process is meant to lend assistance in the resolution of any issue. Tribes can contact WisDOT directly with any issue if they feel issue resolution is more effective outside this process.

Initial Discussion

When a specific issue arises, a tribe should first contact their regional liaison. Individual tribes should designate a main point of contact for agency staff to reach (Tribal Chair and Task Force representative or Tribal Historic Preservation Officer). When an issue is identified that impacts multiple tribes, the issue may be addressed through the Statewide Tribal Liaison or Tribal Task Force.

Issue Resolution

A. Tribes

In the event of an issue between parties, tribes should first contact in writing their WisDOT regional tribal liaison and WisDOT statewide tribal liaison who will monitor the entire process through resolution.

B. Transportation Agencies

WisDOT should contact, in writing, the designated tribal representative and the tribal liaison who will monitor and facilitate the communication process through resolution.

4. Emphasis Areas and Measurable Achievements

The purpose of this section is to identify areas of partnership emphasis with the goal of defining means to measure partnership achievements. The following specific emphasis areas are established by both the tribes and transportation agencies working together through the annual Tribal Task Force strategic planning process. These shared emphasis areas and implementing activities promote the partnership's core values of quality, opportunity, engagement, and sustainability, and are intended to lead to means of measuring successful engagement and achievements. The core emphasis areas identified by tribes and acknowledged by the transportation agencies are:

A.) Partnership
B.) Transportation Safety

C.) Economic Development
D.) Building Capacity of Tribally Run Businesses
E.) Native American Labor Development
F.) Training
G.) Cultural Resources

A.) Partnership

The Tribal Task Force will develop and distribute to each partner an annual work plan that lays out the goals under the Partnership Agreement. The annual work plan will include objective means to measure achievement of these goals.

B.) Transportation Safety

As a part of its ongoing function, the WisDOT Tribal Task Force will work to identify and expand joint transportation related safety initiatives and opportunities that bring benefits to tribal communities.

C.) Economic Development

As a part of its ongoing function, the WisDOT Tribal Task Force will work with all appropriate groups, agencies, and committees to create infrastructure development, entrepreneurial assistance, and youth development programs meaningful to each partner.

D.) Building Capacity of Tribal Run Businesses

The Tribal Task Force and tribal leaders will work with the transportation agencies to ensure that tribes and tribal members receive all the employment, training, business, and economic opportunities for Indian-owned businesses afforded by law. This will include support of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 *et seq.*) and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) and the related obligations imposed by Executive Order 11246. Efforts will focus on training sessions for labor and tribal businesses on how to become successful in reducing unemployment rates, enhancing tribal economy, and performing and administering contracts and related contractor regulations.

E.) Native American Labor Development

Work will focus on tribal and Transportation agency staff, ensuring that all is done to cooperatively ensure that work in Indian Country complies with tribal codes to the extent applicable; promotes Tribal employment through training-based initiatives and joint partnerships; and sustains, promotes, and expands Native American hiring. [Note: WisDOT does not have statutory authority to impose and enforce TERO and other hiring preferences on WisDOT contracts.]

F.) Training

As a part of its ongoing function, the WisDOT Tribal Task Force will work with the tribes, WisDOT, and FHWA, to establish shared transportation related training needs and corresponding training schedules that help each partner achieve higher levels of success for their respective stakeholders.

G.) Cultural Resources

As a part of its ongoing function, the WisDOT/Tribal Historic Preservation Officer project, tribal representatives, WisDOT, and FHWA will serve as a forum to network, develop policy, and deliver training to meet shared cultural resource goals and objectives.

To facilitate a common background starting point for the Partnership Agreement, Addendum 3 provides a historic overview. For convenience and to assist partnership communication, Addendum 4 provides a list of commonly used key reference terms.

Wisconsin Department of Transportation
Tribal Partnership Agreement
Tuesday, October 26, 2010
Signatories

The following signatories hereby agree to the 1) Overall Objectives, 2) Guiding Principles, and 3) Resolution Process, and 4) Emphasis Areas and Measurable Achievements

Bad River Band of Lake Superior Chippewa
Tribal Chairman – Michael Wiggins, Jr.

_____

Red Cliff Band of Lake Superior Chippewa
Tribal Chairwoman – Rose Soulier
Rose Soulier

_____

Lac du Flambeau Band of Lake Superior Chippewa
Tribal President - Tom Maulson
Tom Maulson

_____

Ho-Chunk Nation
Tribal President – Wilfrid Cleveland
Wilfrid Cleveland

_____

Oneida Tribe of Indians of Wisconsin
Tribal Chairman – Richard Hill
Richard G. Hill

_____

Lac Courte Oreilles Band of Lake Superior Chippewa
Tribal Chairman – Louis Taylor
Russell Barber

_____

Stockbridge-Munsee Band of Mohican Indians
Tribal President – Kimberly Vele

Sokaogon Chippewa Community
Tribal Chairman – Garland McGeshick

Forest County Potawatomi Community
Tribal Chairman – Harold "Gus" Frank

St. Croix Chippewa Community
Tribal Chairman – Lewis Taylor

Menominee Indian Tribe of Wisconsin
Tribal Chairwoman – Laurie Boivin

Wisconsin Division-Federal Highway Administration

Division Administrator
George Poirier

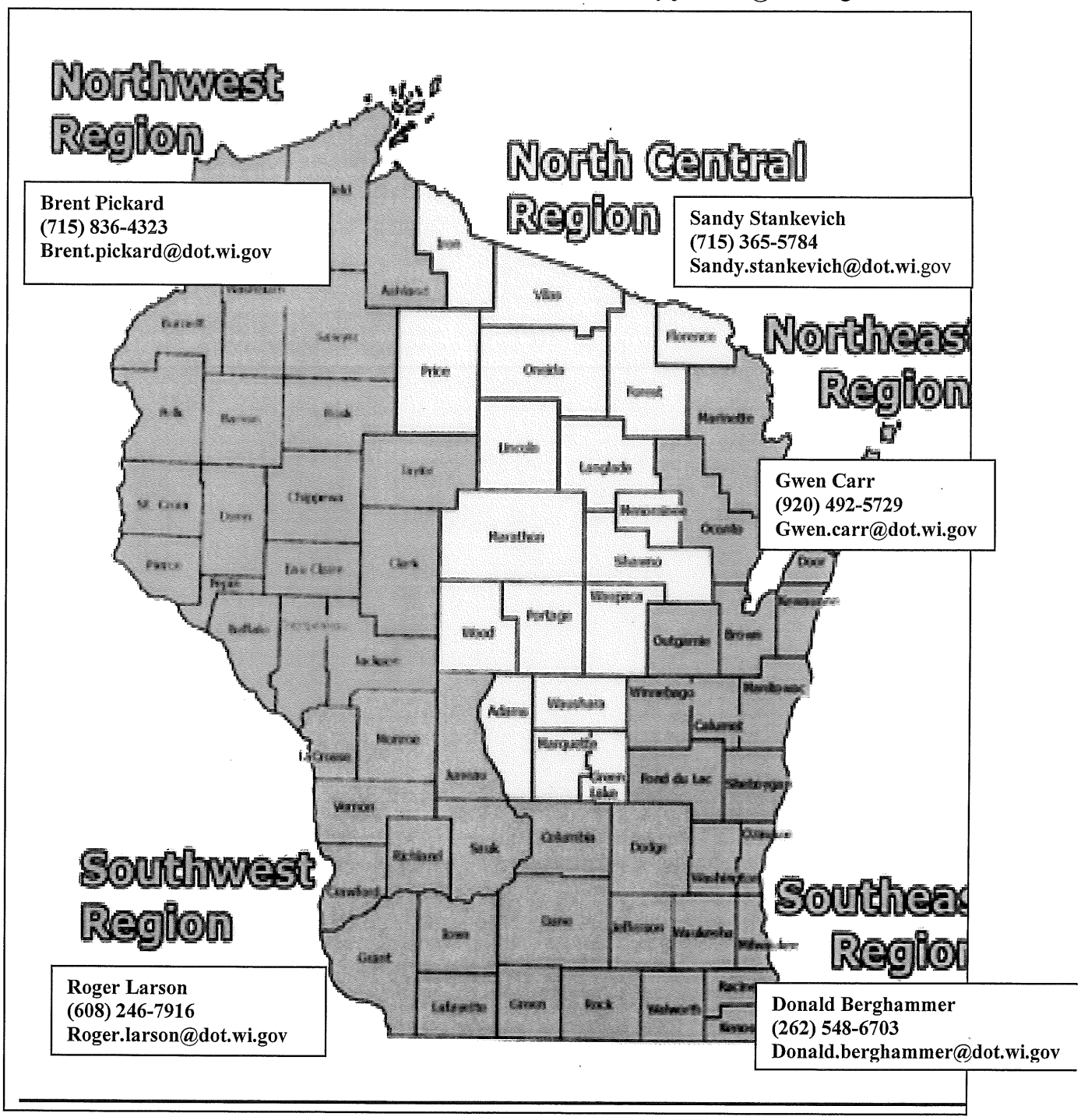
Wisconsin Department of Transportation

Secretary
Frank Busalacchi

Addendum 1

Map of Statewide and Regional Liaison Contacts

Statewide Contact: Kelly Jackson (608) 266-3761 Kelly.jackson@dot.wi.gov



Addendum 2

Formal Process for Dispute Resolution

At any time during the dispute resolution process, the parties have the option to request the Wisconsin Division of Federal Highway Administration, BIA or any other agencies or groups at any level to participate in the dispute resolution process.

Step 1

The dispute resolution process is initiated when a representative of the Indian Nation(s) or WisDOT outline the issue in writing to the designated representative of the other party, with a copy to the liaison who will monitor the entire process thru completion. (A directory of the designated representatives, and their contact information, is included in Addendum 1, which will be updated every January.) The outline should contain:

1. Statement describing the issue
2. The desired solution
3. If possible, a timeline establishing dates and performance indicators that demonstrate resolution is being achieved

Step 2

Both parties agree to acknowledge receipt in writing within 10 business days. Within 30 business days, recipient will respond in writing outlining what activity is currently under way to achieve resolution.

Step 3

In the event this does not resolve the dispute, transportation agencies will have their WisDOT representative, on behalf of the Secretary, contact, in writing, the Tribal Chair/President or his/her designee directly to resolve disagreements, and will send copies of any communication to the liaison.

Step 4

The dispute will be raised to the appropriate level in the transportation agencies and Indian Nation for resolution. Within WisDOT, the liaison will facilitate contact with the appropriate internal staff or management. The appropriate transportation agencies will acknowledge receipt and will contact the appropriate designated tribal representative. Communication between those parties will occur as soon as possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue continues unresolved, the involved parties will meet to determine a process and timeline, if possible, for resolution of the issue. The parties acknowledge that some issues may not be able to be resolved to the satisfaction of all parties.

- Communication- tribes did not feel there is adequate consultation or inclusion in transportation related activities.
- Economic Development/Capacity Building- the majority of tribes were not aware of the full scope of programs and services.
- Sustainability - many of the tribal staff doubted that such an agreement would be sustained over the long term.

Based upon these findings, CMN assembled an agreement grounded in the basic core values of quality, opportunity, engagement, and sustainability.

Key Participants

1. The 11 federally recognized tribes of Wisconsin:
   - Bad River Band of Lake Superior Chippewa Indians
   - Forest County Potawatomi Community
   - Ho-Chunk Nation
   - Lac Courte Oreilles Band of Lake Superior Chippewa Indians
   - Lac Du Flambeau Band of Lake Superior Chippewa Indians
   - Menominee Indian Tribe of Wisconsin
   - Oneida Tribe of Indians of Wisconsin
   - Red Cliff Band of Lake Superior Chippewa Indians
   - Sokaogon Chippewa Community
   - St. Croix Band of Lake Superior Chippewa Indians
   - Stockbridge-Munsee Band of Mohican Indians

2. Wisconsin Department of Transportation (WisDOT)

3. Wisconsin Division-Federal Highway Administration (FHWA)

Bridge Replacement: Building a new bridge at the location of the existing structure or at a new location usually contiguous to the existing structure. A minor acquisition of additional right-of-way may be required.

Additional Criteria

- Includes replacement bridges with wider lanes and shoulders or additional lanes
- Includes eliminating grade separations and replacing with at-grade crossings
- Includes box culverts or a series of pipes wide enough to be classified as a bridge
- A bridge of any length or type may be replaced by any other

Consultation: The process of seeking, discussing, and considering the views of others and, where feasible, seeking agreement with them.

Consultation and Coordination with Indian Tribal Governments: This is the title of Executive Order 13084, signed by the President on May 14, 1998, that requires federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities whenever they formulate policies that affect Indian tribal governments in a unique and significant way.

Cooperative Agreement - An agreement between the BIA and another agency(ies) used to reimburse that agency for goods or services provided to the BIA.

Deterioration: of a highway is measured by:

1. Pavement Serviceability Index (PSI): describes how smooth the pavement rides.
2. Pavement Distress Index (PDI): describes how cracked the pavement is.
3. Pavement rutting: describes the potential for hydroplaning.

Safety is a top concern: Safety problems can often be addressed by adding or upgrading traffic signals, installing beam guards, adding turn lanes or upgrading railroad crossing warning devices. The road may also be widened and curves may be flattened to increase sight distances for motorists.

Disadvantaged Business Enterprise (DBE): A business owned and operated by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals include African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans or Asian Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act.

Environmental Impact Report/Environmental Impact Statement (EIR/EIS): An analysis of the environmental impacts of proposed land development and transportation projects; it's an Environmental Impact Report (EIR) when conducted in response to California Environmental Quality Act, and an Environmental Impact Statement (EIS) when conducted for federally funded or approved projects pursuit to the National Environmental Policy Act (NEPA). A draft EIR or draft EIS (DEIR or DEIS) is circulated to the public and agencies with approval authority for comment. A Final Environmental Impact Report or Statement (FEIR or FEIS) contains responses to public comments and ways to mitigate adverse impacts.

Indian Reservation Roads (IRR): Public roads located within or that provide access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the federal government, or Indian and Alaska Native villages, group, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. Roads on the BIA Road System are also IRR roads.

Indian Sacred Sites: This is the title of Executive Order number 13007 signed on May 24, 1996 by the President that directs federal agencies that manage federal lands to accommodate access to and ceremonial use of Indian sacred sites and avoid adversely affecting the physical integrity of such sacred ties.

IRR Inventory: An inventory of roads that meet the following criteria: a) public roads strictly within reservation boundaries; b) public roads that provide access to lands, groups, villages, and communities in which the majority of residences are Indian; c) public roads that serve Indian lands not within reservation boundaries; and d) public roads that serve recognized Indian groups, villages, and isolated communities not located within a reservation.

IRR Program Stewardship Plan: The plan that details the roles and responsibilities of the BIA, FHWA and ITGs in the administration and operation of the IRR Program.

IRR Program Road/Bridge Inventory: An inventory of BIA owned IRR and bridges.

Intelligent Transportation Systems (ITS): The stated goal to "improve the way transportation is organized, managed and maintained." Projects cover transportation policy, new technology, safety, traffic management, infrastructure, and freight and logistics.

Intergovernmental Agreement (IGA): An agreement between two or more governments for accomplishing common goals, providing a service or solving a mutual problem.

Long-Range Transportation Plan: A plan that establishes strategies for transportation improvements to meet identified community needs.

Minority Business Enterprise (MBE): A business owned and operated by one or more individuals who are defined as minorities under certain federal and state regulations and statutes. See also "disadvantaged business enterprise."

Memorandum of Agreement (MOA): A document describing in detail the specific responsibilities of, and actions to be taken by, each of the parties so that their goals may be accomplished. An MOA may also indicate the goals of the parties, to help explain their actions and responsibilities.

Memorandum of Understanding (MOU): A document that describes very broad concepts of mutual understanding, goals and plans shared by the parties.

Reconditioning: Work in addition to resurfacing or pavement replacement. Reconditioning includes improving an isolated grade, curve, intersection or sight distance problem to increase safety, or changing the subgrade to widen shoulders or to correct a structural problem. Reconditioning projects may require additional right-of-way.

Additional Criteria

- Does not include increasing the number of driving lanes
- May include replacing or expanding existing storm sewer systems
- May include continuous shoulder, pavement or subgrade widening
- Does not include adding continuous lanes
- May include reconstruction not to exceed 50 percent of the length of the project
- May include replacement of curb and gutter in urban areas with up to 50 percent of new curb & gutter on new horizontal or vertical alignment

Reconstruction: Total rebuilding of both the pavement and subgrade of an existing highway to improve maintainability, safety, geometrics and traffic service. It is accomplished basically on existing location, and major elements may include flattening hills and grades, improving curves, widening the roadbed, and eliminating or shielding roadside obstacles. It includes minor widening of urban streets to widen lanes or to add parking, bicycle accommodations or auxiliary lanes. Removing parking and pavement replacement are in this category because the traffic carrying capacity of the roadway is increased without actually constructing new through-travel lanes. Normally, this type of reconstruction will require some additional right-of-way.

Additional Criteria

- Work that either changes the location of the existing subgrade shoulder points or removes all of the existing pavement and base course for at least 50 percent of the length of the project.

Regional Planning Commission (RPC)*:* An association of local governments that is statutorily charged with the responsibility of planning for the physical, social, and economic development of the region. To accomplish this mission, the commission conducts areawide planning and provides technical assistance to local governments.

Reservation: Lands reserved by a tribe during treaty negotiations with the federal government for tribal use. Indian reservations are held in trust for the tribe by the federal government.

Resurfacing: Resurfacing means placing a new surface on an existing roadway to provide a better riding surface, and to extend or renew the pavement life. It includes pavement widening and shoulder paving (without changing the subgrade shoulder points). Generally, it involves no improvement in capacity or geometrics. Resurfacing may include some elimination or shielding of roadside obstacles, culvert replacements, signals, marking, signing and intersection improvements. Usually, no additional right-of-way is required, except possible minor acquisition for drainage and intersection improvements.

Additional Criteria

- Overlay must be placed directly on top of existing pavement
- May include spot replacement of curb and gutter in urban areas

WisDOT- Wisconsin Department of Transportation. The state cabinet-level agency with responsibility for highways, mass transit, aviation, railroad development and ports, headed by the secretary of transportation.

Women's Business Enterprise (WBE): A business owned and operated by one or more women.