



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Avenue, SE

Washington, DC 20590

In Reply Refer to: HCR-20
DOT# 2019-0167

September 2, 2020



Subject: Resolution of Complaint #2019-0167

Dear ,

The Federal Highway Administration (FHWA) has resolved your complaint against the Nevada Department of Transportation (NDOT) and Elko County. Your complaint, which was received by this office on March 4, 2019, alleged that NDOT and Elko County violated Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and FHWA (23 C.F.R. Part 200). The FHWA Office of Civil Rights accepted your complaint for investigation on July 9, 2019 and conducted a site visit on January 14, 2020.

FHWA reached a voluntary resolution agreement with NDOT on August 27, 2020 (enclosed). The agreement pertains to the repair and maintenance of Lee Road. This letter closes FHWA's investigation of your complaint.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA.

Sincerely,

Nichole McWhorter

Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Susan Klekar, Division Administrator, FHWA NV Division Office
Greg Novak, Assistant Division Administrator, FHWA NV Division Office
Rhonda Motley, Civil Rights Program Manager, FHWA NV Division Office

Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights

Voluntary Resolution Agreement

I. Purpose

The Federal Highway Administration (FHWA) and the Nevada Department of Transportation (NDOT) hereby enter into this Voluntary Resolution Agreement (Agreement) regarding the maintenance of Elko County Road 713, known as Lee Road, to resolve allegations against NDOT of noncompliance with Title VI of the Civil Rights Act of 1964 (Title VI). In entering into this Agreement, FHWA is not making a noncompliance finding against NDOT, and NDOT is not admitting a violation of Title VI.

II. Background

- A. On March 4, 2019, FHWA received a Title VI complaint against NDOT and Elko County. The complaint alleges that the state and county discriminates against the Native Americans living on the South Fork Band Reservation by not adequately maintaining roads near the reservation, including Lee Road. On January 14, 2020, the FHWA Office of Civil Rights conducted a site visit and interviewed NDOT staff, Elko County staff, and members of the South Fork Bank Council.
- B. The South Fork Reservation is about 25 miles southeast of the City of Elko. State Route 228 connects the South Fork Reservation area to Elko via State Route 227. Two county roads – Lee Road and Woods Lane – connect the reservation to State Route 228. Lee Road connects State Route 228 to the main entrance of the reservation, while Woods Lane connects to State Route 228 on the southern end of the reservation.
- C. In the early 1990s, a dispute between Elko County and the South Fork Band Council led the band council to restrict public access to roads going through the South Fork Reservation. In response, the Elko County Board of Commissioners voted on November 5, 1992 to relinquish any property rights they might have to roads within the boundaries of the South Fork Band Reservation and to discontinue road service within the boundaries of the reservation.
- D. Lee Road starts at State Route 228 and runs about one mile to the entrance of the South Fork Band Reservation. This portion of Lee Road has not been maintained by Elko County for at least 21 years.
- E. On July 10, 2020, NDOT entered into an agreement with Elko County for the repair and maintenance of Lee Road. This agreement titled “Agreement for Road Repair and Maintenance” is incorporated into this Agreement as Appendix A.

III. Applicability

Title VI provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C.

2000d. Title 49 of the Code of Federal Regulations (CFR), Part 21, implements Title VI for the U.S. Department of Transportation (DOT) and provides that DOT Recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. 49 CFR § 21.5(b)(2). NDOT is a Recipient of Federal financial assistance from the FHWA.

IV. NDOT Actions

As a primary recipient of Federal-Aid Highway funding from FHWA, NDOT is responsible for implementing FHWA Title VI Program requirements. See 23 CFR § 200.3. NDOT is solely responsible for effectuating the actions described in this Agreement by taking the following actions:

- A. Ensure Lee Road is repaired by September 1, 2020 pursuant to the terms of NDOT's agreement with Elko County (Appendix A). NDOT shall notify the FHWA-Nevada Division of repair completion by submitting a written summary of the completed repair work along with photographs of the repairs no later than October 1, 2020.
- B. Ensure Lee Road is regularly maintained pursuant to the terms of NDOT's agreement with Elko County (Appendix A).
- C. NDOT shall send written progress reports to the FHWA-Nevada Division annually for three years beginning October 1, 2021. The reports will include a summary of all activities related to the maintenance of Lee Road between State Route 228 and the boundary of the South Fork Reservation. Further, NDOT will cooperate with FHWA regarding all additional requests for documentation, pursuant to 49 C.F.R. § 21.9, et seq.
- D. If the agreement between NDOT and Elko County (Appendix A) is ever terminated, NDOT shall notify the FHWA-Nevada Division promptly in writing. This written notification shall contain proposed alternative remedies for ensuring Title VI compliance. Any proposed alternative remedies are subject to final approval by FHWA.

V. Modification of Agreement

This Agreement may be modified by mutual agreement of both FHWA and NDOT after negotiating in good faith and writing.

VI. Third-Party Agreement

FHWA acknowledges that NDOT has entered into a separate agreement with Elko County (Appendix A) for purposes of implementing this Agreement, and that Elko County under the separate agreement will carry out actions for the repair and maintenance of Lee Road. No provision in such agreement will (1) affect NDOT's obligations to FHWA, generally, or (2)

supersede any provision described herein to the extent NDOT's third-party agreement conflicts with any provision contained herein or Federal law or regulation.

VII. Intimidation or Retaliatory Acts Prohibited

Neither NDOT nor any entity or business party to an agreement to carry out the actions herein shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of Title VI or 49 C.F.R. Part 21, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to 49 C.F.R. Part 21.

VIII. Compliance

FHWA may review NDOT's compliance with this Agreement at any time. If FHWA believes NDOT has failed to comply in a timely manner with any requirement of this Agreement, FHWA will so notify NDOT in writing and will attempt to resolve the issue or issues in good faith.

IX. Abeyance

The FHWA will hold in abeyance the Letter of Finding regarding the complaint filed in the matter (described above) during the performance of this Agreement. At any time, should NDOT not perform, or ensure performance, under this Agreement, FHWA will notify NDOT as stated in section VIII above. Should NDOT fail to remedy the noncompliance issue within 30 days of notification, FHWA will issue the Letter of Finding and take such other actions as necessary to ensure NDOT's compliance with Title VI.

FEDERAL HIGHWAY ADMINISTRATION

Susan Klekar

Susan Klekar
Nevada Division Administrator

July 29, 2020

Date

NEVADA DEPARTMENT OF TRANSPORTATION

DocuSigned by:

Kristina Swallow

Kristina Swallow
Director

08/27/2020

Date



Appendix A:
AGREEMENT FOR ROAD REPAIR AND MAINTENANCE

AGREEMENT FOR ROAD REPAIR AND MAINTENANCE

This Agreement for road repair and maintenance (Agreement) is entered between the Nevada Department of Transportation (NDOT) and Elko County, a political subdivision of the State of Nevada, (County).

I. Recitals

1. NDOT receives federal financing assistance through the United State Department of Transportation for road projects within the state of Nevada.
2. NDOT provide a portion of those funds to County for local road projects. NDOT is responsible to assure that all entities receiving federal financing assistance funds are in compliance with all federal statutes and regulations.
3. As such, the parties agree to the following terms and conditions for the maintenance and repair of lower Lee Road:

II. Terms of Agreement

4. **Description of Road.**
Lower Lee Road starting at S.R. 228 to the border of Lee Reservation (road).
5. **Repair.**
County agrees to complete all repairs on the road on or before September 1, 2020. All repairs will be photographed and sent to NDOT and FHWA within 10 days of completing all repairs to the road.
6. **Maintenance.**
County agrees to maintain the road in the same manner as similarly situated roads within the county, including the following:
 - a. County will log all maintenance to the site, and retain all maintenance records for NDOT and FHWA review upon request.
 - b. Maintenance for the road includes, but is not limited to, snow removal, pavement preservation, debris removal and repairs equal to similarly situated roads within Elko County.
7. **No Admissions.**
This Agreement is not an admission, concession, or evidence that County is not in compliance with any applicable statute, regulation, or other requirement, or otherwise liable for violating any applicable federal statute or regulation.
8. **Binding on Successors.**
This Agreement is binding on County and its successors, heirs, transferees, and assigns.
9. **Costs.**
Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. No Additional Releases.

This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against or by any other person or entity.

11. Effect of Agreement.

This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.

12. Execution of Agreement and Effective Date.


The Agreement shall become effective upon the date of signing of this Agreement.

13. Disclosure.

NDOT places no restriction on the publication of the Agreement. In addition, NDOT may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act.

14. Authorizations.

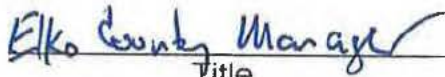
The individual(s) signing this Agreement on behalf of County represent and warrant that they are authorized by County to execute this Agreement. The individual(s) signing this Agreement on behalf of NDOT represent and warrant that they are signing this agreement in their official capacities and that they are authorized to execute this Agreement.



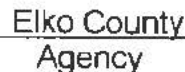
Signature



Date



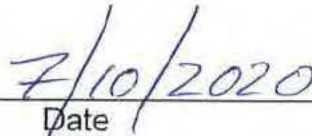
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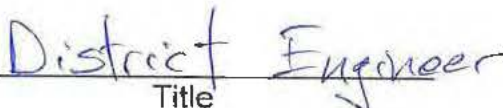
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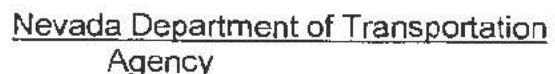
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