



— STATE OF SOUTH DAKOTA —
OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

May 8, 2020

Oglala Sioux Tribe
President Julian Bear Runner
PO Box 2070
Pine Ridge, SD 57770

Dear President Bear Runner,

It has come to my attention the Oglala Sioux Tribe established travel checkpoints on US and State Highways. The Tribe did so despite the April 8, 2020 memorandum received from the United States Department of the Interior. The Department of the Interior, in its April 8, 2020 memorandum, set forth the legal parameters and procedure the Tribe must follow. To date, the Oglala Sioux Tribe has not followed the legally established procedure.

The State of South Dakota objects to tribal checkpoints on US and State Highways regardless of whether those checkpoints take into consideration the safety measures recommended by the SD DOT. Safety recommendations do not constitute consultation and certainly do not equal agreement. The April 8, 2020 memorandum is enclosed for your review.

I request the Tribe immediately cease interfering or regulating traffic on US and State Highways and remove all travel checkpoints. If the checkpoints are not removed within the next 48 hours, the State will take necessary legal action.

Sincerely,

A handwritten signature in blue ink, which appears to read "Kristi Noem", is written over a horizontal line.

Kristi Noem
Governor

Enclosure

CC: Director, Daryl LaCounte, Bureau of Indian Affairs



United States Department of the Interior

Bureau of Indian Affairs
Washington, DC 20240

April 8, 2020

REFER TO:
Office of Indian Services

Memorandum

To: Regional Directors
Deputy Bureau Director, Justice Services
Deputy Bureau Director, Field Operations

From: Director, Bureau of Indian Affairs

Subject: Temporary Guidance – Road Closures or Restrictions on Tribal Lands

Background: Like states and local governments, many tribal governments have issued orders banning or curtailing travel into or within tribal lands amid the COVID-19 pandemic. As with other governments, carrying out these tribal orders often involves temporarily closing or restricting public roads by setting up temporary roadblocks or check points as a means of monitoring traffic. Nearly all Regions have reported receiving inquiries about, or have become aware of, public road closures or restrictions by tribal governments as part of their efforts to combat the COVID-19 pandemic. To ensure consistency across all Regions, we are issuing this temporary guidance.

Federal law defines a “public authority” as a “Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free [roads].” 23 U.S.C. § 101 (a)(21).

As used below, an “owner” means the public authority, e.g., Tribes, the Bureau of Indian Affairs, states or local governments, that is responsible for operating or maintaining a specific road.

This guidance is limited to temporary restrictions or closures of public roads for public health and safety purposes during the COVID-19 pandemic and does not, nor is it intended to, address civil or criminal jurisdiction over persons.

Question: Can Tribes temporarily close or restrict access to tribal lands over tribally-owned roads during the COVID-19 pandemic?

Response: Yes. Although the Tribal Transportation Program (“TTP”) regulations provide that “all transportation facilities listed in the National Tribal Transportation Facility Inventory must be open and available for public use,” Tribes “may restrict road use or close” tribally-owned roads temporarily without first consulting with the Secretary of the Interior or private landowners under conditions involving “immediate safety or life-threatening situations.” 25 C.F.R. §§ 170.114 (a)(1) and (b). The COVID-19 pandemic meets the definition of an “immediate safety or life-threatening situation.”

Question: Can tribes temporarily close or restrict access to tribal lands over roads owned by others, such as the Bureau of Indian Affairs, other federal agencies, or state and local governments during the COVID-19 pandemic?

Response: Yes, but *only* on behalf of the affected road owner *after* the Tribe has consulted *and* reached an agreement addressing the parameters of the temporary road closure or restrictions. 25 C.F.R. § 170.114 (a)(1) and (b). At a minimum, this should include identifying points of contact for each road owner, who is allowed in, as well as ensuring that emergency and other essential services can access affected areas.

Tribes and other road owners should regularly consult and coordinate to the greatest extent possible about temporary road closures and restrictions affecting both tribal members and the general public alike. As described above, this should include identifying who is allowed in, as well as ensuring that emergency and other essential services can access affected areas.

Before temporarily closing or restricting any roads, Tribes should use plans and procedures disclosed in advance to the public through various means such as media, social networking, public service announcements, and adequate signage in advance of affected locations, including electronic signs. Road closure or restriction locations should also be monitored by public safety, emergency management, and transportation personnel.

Finally, we have determined that Tribal road safety personnel and other costs associated with staffing, setting-up and maintaining temporary roadblocks and checkpoints are allowable expenditures of TTP funds. A Tribe choosing to use its TTP funds for these purposes should promptly notify their respective contracting agency (BIA or FHWA), and they will work with the Tribe to ensure the expenditures are correctly categorized and approved as part of their Fiscal Year 2020 Transportation Improvement Program (TIP).

Should you have any questions, please contact LeRoy Gishi, Supervisory Highway Engineer, Office of Indian Services, at (202) 513-7711.