

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL --- THIRD YEAR, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE, AND NAVAJO NATION COUNCIL; RESCINDING CAP-18-14; AUTHORIZING THE NAVAJO NATION CHAPTERS TO SUBMIT PROPOSALS FOR THE CAPITAL IMPROVEMENT PLAN TO THE CAPITAL IMPROVEMENT OFFICE, OR ITS SUCCESSOR; DIRECTING THE CAPITAL IMPROVEMENT OFFICE, OR ITS SUCCESSOR, TO DEVELOP THE CAPITAL IMPROVEMENT PRIORITY LIST IN FULL COMPLIANCE WITH THE NAVAJO NATION CAPITAL IMPROVEMENT PROCESS AS CODIFIED AT 12 N.N.C. § 860 *ET SEQ.*; DIRECTING THE CAPITAL IMPROVEMENT OFFICE, OR ITS SUCCESSOR, TO PROVIDE A REPORT TO THE NAABIK'ÍYÁTI' COMMITTEE REGARDING THE CAPITAL IMPROVEMENT PRIORITY LIST NO LATER THAN JANUARY 12, 2017

BE IT ENACTED:

Section One. Authority

- A. The Resources and Development Committee is the oversight committee for economic and community development and is oversight committee for the Division of Community Development and the Division of Economic Development. 2 N.N.C. §§ 500(C)(2) and 501(C).
- B. The Budget and Finance Committee is empowered to "review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds." 2 N.N.C. § 301(B)(2).
- C. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee before it is heard by the Navajo Nation Council. 2 N.N.C. § 164 (A)(9).

Section Two. Findings

- A. The Navajo Nation Council approved the Navajo Nation Capital Improvement Plan through resolution CAP-18-14 on April 25, 2014 and the Navajo Nation President signed the resolution on April 30, 2014. The Navajo Nation Council has not passed a resolution to fund the Capital Improvement Plan approved by CAP-18-14.

- B. The Division of Community Development, Capital Improvement Office has the responsibility to evaluate all capital improvement projects in accordance with objective criteria, the Capital Improvement Projects Guidelines, Policies and Procedures, and to develop the priority ranking system taking into consideration project cost, feasibility, project value and benefit to the community. 12 N.N.C. §§ 860 et seq. The Capital Improvement Office had this responsibility when the Capital Improvement Plan was compiled for the Navajo Nation Council Resolution CAP-18-14.
- C. The Capital Improvement Office has been under audit by the Navajo Nation Auditor General's Office since 2001 when the Budget and Finance Committee approved the Capital Improvement Office's Corrective Action Plan pursuant to Budget and Finance Committee resolution BFS-97-01. Two areas identified in the audit were the need to strengthen project selections and appropriation procedures, and the need to ensure that matching funds were available for projects. Two years after the approval of the Corrective Action Plan, the Auditor General conducted its first review of implementation of the Corrective Action Plan. Because the Corrective Action Plan was not fully implemented, the Budget and Finance Committee, through Resolution BFS-141-03 passed on September 9, 2003, approved sanctions for the Capital Improvement Office. In 2005 and again in 2008, the Capital Improvement Office requested follow-up reviews of its Corrective Action Plan. These second and third reviews found the Capital Improvement Office did not make sufficient improvements and the sanctions were not lifted. Audit Report No. 14-14 of June 2014.
- D. A Fourth Follow-Up Review of the Capital Improvement Office Corrective Action Plan Implementation was conducted by the Office of the Auditor General. Audit Report No. 14-14 of June 2014 (Audit Report)(Exhibit A). This review focused on the method the Capital Improvement Office used in selecting the projects to be included on the Capital Improvement Plan contained in Navajo Nation Council Resolution CAP-18-14. The review found the Capital Improvement Office did not follow the established Capital Improvement Project process in developing the plan. The Audit Report found flaws in the selection process including failure to provide chapters and programs with the project selection policies and procedures and notices of proposal deadlines. The Audit Report concluded that "there still remains the risk the CIP includes ill-planned projects due to lack of pertinent documentation and unclear ranking of proposals." The Audit Report also

found that the Capital Improvement Office "continues to put the Navajo Nation at risk of approving capital projects with matching funds that may not materialize and end up with funding shortfalls." Audit Report No. 14-14 of June 2014.

- E. The Navajo Nation Council passed Resolution CAP-18-14 two years ago and the funding for the Capital Improvement Plan has not been appropriated. Some projects on the list have been completed using funding sources such as supplemental appropriation, capital outlay, or other forms of funding.
- F. The Capital Improvement Plan passed with Navajo Nation Council Resolution CAP-18-14 has not been implemented for the reasons listed above which include: failure of the Capital Improvement Office to properly conform to the Capital Improvement Planning process as stated in 12 N.N.C. §§ 860 et seq.; failure to follow the Capital Improvement Projects Guidelines, Policies and Procedures; and failure to identify matching funds for all the projects; therefore, the listed projects are not ready to be funded through Navajo Nation Council appropriation. Some of the projects included in CAP-18-14 have been completed with supplemental appropriation, capital outlay, or other forms of funding, therefore, the CAP-18-14 listing is no longer up to date.
- G. It is in the best interest of the Navajo Nation that the Navajo Nation Resolution CAP-18-14 be rescinded and that a new capital improvement project process begin with the opportunity for the Navajo Nation Chapters to include their projects on the list of capital improvement proposals to be considered for inclusion in the Title 12 Capital Improvement Plan. Beginning a new capital improvement process with directives to the Capital Improvement Office, or its successor office, to fully follow the Capital Improvement Planning process as provided in 12 N.N.C. §§ 860 et seq. and to report to the Naabik'iyáti' Committee on the Capital Improvement Office's progress in formulating the Capital Improvement Plan will bring the Capital Improvement Plan up to date and call the Capital Improvement Office to do the work for which it was created.

Section Three. Rescinding CAP-18-14

The Navajo Nation hereby rescinds CAP-18-14 which recommended and approved the Navajo Nation Five Year Plan.

Section Four. Directive to the Capital Improvement Office, or its successor, to begin the Title 12 Capital Improvement Process anew with inclusion of the Navajo Nation Chapters in the solicitation of capital improvement proposals

The Navajo Nation hereby directs the Capital Improvement Office, or its successor, to begin the Title 12 Capital Improvement Process anew. The Navajo Nation hereby directs the Capital Improvement Office, or its successor, to include the Navajo Nation Chapters in the capital improvement process as stated by 12 N.N.C. § 860 (D)(1), with preference for region-wide projects.

Section Five. Directive to the Capital Improvement Office, or its successor, to provide a report to the Naabik'íyáti' Committee regarding the Capital Improvement Priority List no later than January 12, 2017

The Navajo Nation hereby directs the Capital Improvement Office, or its successor, to provide a report to the Naabik'íyáti' Committee regarding the Capital Improvement Priority List no later than January 12, 2017.

Section Six. Effective Date

This Chapter is effective upon its approval pursuant to 2 N.N.C. § 221.

Section Seven. Savings Clause

Should any provision of this enactment be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of the enactment, which are not determined invalid, shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 21 in favor and 0 opposed, this 20th day of April, 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

4-19-17

Date

Motion: Honorable Herman M. Daniels
Second: Honorable Dwight Witherspoon

RCS# 748

NAVAJO NATION

NNC Spring Session

4/20/2017
11:51:11 AM

Amd# to Amd#

Legislation No. 0347-16

PASSED

MOT Daniels

Rescinding CAP-18-114; Authori-
zing the NN Chapters to submit
proposals for CIP

SEC Witherspoon

Yea : 21

Nay : 0

Not Voting : 2

Yea : 21

Begay, K
Begay, NM
Begay, S
BeGaye, N
Bennett
Brown

Chee
Crotty
Damon
Daniels
Filfred

Hale
Perry
Pete
Phelps
Slim

Smith
Tso
Tsosie
Witherspoon
Yazzie

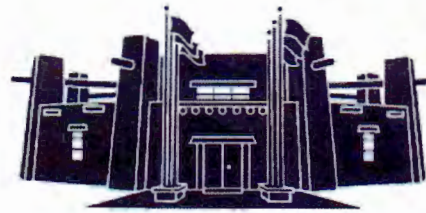
Nay : 0

Not Voting : 2

Jack

Bates

Shepherd



OFFICE OF THE AUDITOR GENERAL

The Navajo Nation

A 4th Follow-Up Review of the Capital Improvement Office Corrective Action Plan Implementation

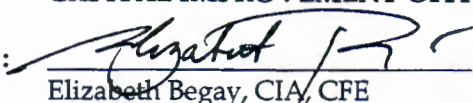
**Report No. 14-14
June 2014**

Performed by:
Alfreda Lee, Senior Auditor
Stacy Manuelito, Associate
Auditor



M-E-M-O-R-A-N-D-U-M

TO : Casey Begay, Department Manager
CAPITAL IMPROVEMENT OFFICE

FROM : 
Elizabeth Begay, CIA, CFE
Auditor General
OFFICE OF THE AUDITOR GENERAL

DATE : June 30, 2014

SUBJECT : 4th Follow-up Review of the Capital Improvement Office Corrective Action
Plan Implementation

The Office of the Auditor General herewith transmits Audit Report No. 14-14, a 4th Follow-up review of the Capital Improvement Office Corrective Action Plan (CAP) Implementation. Our office conducted this review to determine whether the Capital Improvement Office implemented its CAP to address prior audit findings.

Review Results

Finding	Status of CAP
The Capital Improvement Office needs to strengthen project selections and appropriation procedures.	Not Implemented
The Capital Improvement Office needs to ensure that matching funds are available for projects as scheduled.	Not Implemented
Large carryover balance demonstrates ineffective use of capital improvement funds.	Not Implemented

If you have any questions about this report, please contact our office at (928) 871-6303.

xc: Leonard Chee, Division Director
DIVISION OF COMMUNITY DEVELOPMENT
Katherine Benally, Chairperson
RESOURCES AND DEVELOPMENT COMMITTEE
Chrono

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INTRODUCTION AND BACKGROUND

The Navajo Nation Council approved a Condition of Appropriation for the Capital Improvement Office (CIO) on September 10, 2013 per resolution number CS-47-13 to request a corrective action plan (CAP) follow-up review. CIO affirmed the corrective actions were implemented, therefore the Office of the Auditor General (OAG) conducted a 4th follow-up review of the CAP implementation status.

The corrective action plan was approved by the Budget and Finance Committee on September 04, 2001 per resolution number BFS-97-01. In accordance with 12 N.N.C. Section 7(G), OAG conducted a twelve month follow-up review and presented the results of this review on June 23, 2003. The follow-up review concluded that CIO did not fully implement its CAP. Consequently, the audit findings remain unresolved. In the absence of significant improvement, OAG made a recommendation to sanction CIO in accordance with 12 N.N.C. Sections 9(B) and 9(C). Accordingly, the Budget and Finance Committee approved the Auditor General's recommendation to sanction CIO on September 09, 2003 per resolution number BFS-141-03.

In 2005, CIO requested a supplemental follow up review and OAG issued a report on January 19, 2005. Further, in 2008, CIO requested another supplemental follow up review and OAG issued a report on August 20, 2008. Both supplemental reviews found CIO did not make sufficient improvements in fully implementing its corrective action plan. Consequently, the sanction imposed against the program and its manager was not lifted.

The sanction against the CIO involved the following:

1. 10% withholding of General Funds appropriated to the program
2. 20% withholding of the CIO manager's annual salary

The Office of the Controller will withhold these funds until CIO demonstrates to OAG that it has fully implemented its CAP pursuant to Title 12 N.N.C. §9.

Objective, Scope and Methodology

The objective of this 4th follow-up review was to determine whether CIO implemented its CAP. The scope of this review are the activities within the Capital Improvement Plan (CIP) process that resulted in the approval of a CIP in April 2014. In meeting our objective, we interviewed program staff, examined available documentation and tested a sample of proposals for required documentation and compliance with established policies and procedures. The sample was selected using non-statistical, judgmental sampling methods.

The Auditor General and staff express appreciation to the Capital Improvement Office for their cooperation and assistance throughout this review.

Review Results

CIO did not implement its CAP. The 4th follow-up review revealed the following:

AUDIT FINDING:

The Capital Improvement Office needs to strengthen project selections and appropriation procedures.

CORRECTIVE ACTIONS:

- Provide CIO policies and procedures to Chapters/Programs for documenting need assessment. Track and confirm receipt of policies and notices to recipients.
- Send advance notice of annual CIO proposal submission deadline of March 1st of each year.
- Use the check list to ensure that proposals have complete documentation. Return incomplete proposals to applicants and deadline to resubmit.
- Send notice to multi-disciplinary committee and convene committee by first Monday in April of each year.
- Conduct orientation with multi-disciplinary committee utilizing Resources and Development Committee (RDC) approved policies and procedures.
- Conduct capital improvement plan proposal review/ranking using the established evaluation criteria approved by RDC by April of each year.
- Summarize results of capital improvement plan proposal evaluation by April of each year.
- Develop the Navajo Nation capital improvement plan and capital budget with a list of scores from highest to lowest ranking.
- Present the Navajo Nation capital improvement plan and capital budget to RDC.

REVIEW RESULTS:

CIO did not implement the corrective actions. CIO presented a \$296 million Capital Improvement Plan (CIP) to the Navajo Nation Council (NNC) to fund 132 projects which was approved April 22, 2014 via resolution number CAP-18-14. The CIP was approved by the Navajo Nation President on April 30, 2014.

CIO did not implement the corrective actions to ensure projects were selected in accordance with the project selection process. Our review found the following:

- CIO did not provide policies and procedures to Chapters/Programs as well as advance notices for proposal deadline.
- CIO did not consistently use a check list to ensure proposals have complete documentation. Rather, CIO accepted all proposals with a minimum requirement of cover sheet, proposal, and resolution. However, 20 projects included on the CIP for approximately \$85 million did not have proposals and were not reviewed by the multi-disciplinary ad-hoc committee. These projects represent 29% of the \$296 million CIP. The Department Manager stated these projects were included directly by the NNC during the Spring Session approving the CIP.
- Over a five day period, seven multi-disciplinary ad-hoc committee members met, reviewed and ranked at least 112 proposals. We found that one out of seven members did not attend the first day when the orientation is so crucial in how to review and rank the proposals. An interview with one member revealed that the first day's orientation was confusing. On the second day, when the Department Manager did another orientation, the review and ranking of

proposals became clearer. Over the course of five days, only one member was in attendance every day. The other six members were absent at least a third of the time.

- At the end of the ranking period, a summary report was not prepared by the multi-disciplinary ad-hoc committee for the proposals they rated, therefore it is unknown how many proposals the committee actually ranked.
- Although a CIP was approved by the NNC and President, there was no capital budget that was included with the plan. Per CIO, a capital budget will be presented in the 2015 appropriation process based on the CIP. This capital budget will include options on how to fund the CIP.

A CIP was approved for the Navajo Nation, however CIO did not comply with the established CIP process in developing the plan. Despite the NNC's direct action to approve 20 projects contrary to the CIP process, CIO was still responsible for carrying out the CIP process to ensure informed decisions are made about capital projects and resource allocation. Therefore, there still remains the risk the CIP includes ill-planned projects due to lack of pertinent documentation and unclear ranking of proposals. Consequently, such projects will likely encounter funding shortfalls and project delays.

AUDIT FINDING:

CIO Needs to ensure that Matching Funds are Available for Projects as Scheduled.

CORRECTIVE ACTIONS:

- Identify matching funds pledged or cited by applicants in their proposals and include them in the preliminary check off list.
- Request for documented evidence of matching funds pledged or cited by applicants.
- Confirm the matching funds pledged or committed by funding agency.

REVIEW RESULTS:

CIO did not implement the corrective actions. CIO did not verify match funds are available as represented by project sponsors. Our review of 11 proposals that cited matching funds found five proposals did not have evidence of matching. Nevertheless, the proposals were awarded higher points for matching fund but may not be reliable due to lack of documentation. Overall, CIO did not ensure that matching funds had adequate verification documents prior to being ranked. The CIO continues to put the Navajo Nation at risk of approving capital projects with matching funds that may not materialize and end up with funding shortfalls.

AUDIT FINDING:

Large Carryover Balance Demonstrates Ineffective Use of Capital Improvement Funds.

CORRECTIVE ACTIONS:

- Develop a monthly expenditure report identifying percentage of expenditures against budget.
- Based on the expenditure and performance reports, plan and prioritize existing projects for completion as follows:
 1. Construction completed projects not closed out.
 2. Projects not fully funded.
 3. Projects not ready for construction.
 4. Set up files for each project

5. Develop a standardized and automated project tracking system.
6. Provide notice to project sponsors, vendors, contractors and other appropriate parties of construction completed projects that accounts have been outstanding for more than two years.
7. Reorganize CIO's operating procedures for efficient management of capital projects.

REVIEW RESULTS:

CIO did not implement the corrective actions. The unexpended balance as of May 31, 2014 is \$13.1 million. The CIO provided two lists of projects funded from the following: the Navajo Nation General Fund and the State of New Mexico. The financial status for projects on these lists reconcile to the Navajo Nation Financial Management Information System.

However, CIO project reports do not adequately disclose the project completion status. Project owners, such as Design and Engineering, have completion status reports available. However, CIO does not provide this information on its project reports. CIO currently monitors 184 projects but without completion status on its reports, CIO cannot readily disclose the status of projects and effectively track the capital projects.

CONCLUSION

Although the Navajo Nation approved a Capital Improvement Plan of approximately \$300 million for 132 projects, the plan is potentially comprised of ill-planned projects and poorly ranked projects because CIO and Navajo Nation Council did not consistently follow the CIP process defined within the Navajo Nation Appropriations Act. This plan poses the following risks:

- Funding shortfalls
- Project delays
- Unused capital improvement funds
- Priorities of the Navajo Nation may go unmet

Overall, the corrective action plan approved by the Budget and Finance Committee in September 2001 has not been implemented. Consequently the sanctions currently being imposed against the program and its manager cannot be lifted. In accordance with 12 N.N.C. § 9(B) and (C), program funds and manager salary will continue to be withheld until such time that the CIO has demonstrated that the corrective action plan has been implemented.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL -- Fourth Year, 2014

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND
NAABIK'ÍYÁTI'; RECOMMENDING AND APPROVING THE NAVAJO NATION
FIVE YEAR PLAN

BE IT ENACTED:

Section 1. Findings

The Navajo Nation finds with respect to this legislation
the following:

- A. The Navajo Nation Capital improvement process is codified
at 12 N.N.C. §860 *et seq.*
- B. Pursuant to 12 N.N.C. §860 (A)(2) the Capital Improvement
Office shall evaluate all requests in accordance with
objective criteria approved by the Transportation and
Community Development Committee, TCDCJY-77-99 (Capital
Improvement Projects Guidelines, Policies and Procedures),
attached hereto as Exhibit E; and
- C. Pursuant to 12 N.N.C. §860 (B)(1) the development of a
Capital Improvement Plan shall consist of a multi-year plan
for capital expenditures, including a detailed one-year
capital improvement budget. The priority list is to
include, among other information, an anticipated cost of
the project, source of capital funds to complete the
project, completion date of the project, and the projects'
ranking in whatever priority setting system is used; and
- D. Pursuant to 12 N.N.C. §860 (C), the Capital Improvement
Office is to develop the priority ranking system which must
be presented to the Resources and Development Committee
taking into considerations factors such as project cost,
feasibility, project value and benefit to the community as
a whole; and

- E. Pursuant to 12 N.N.C. §860 (C)(1), the Capital Improvement Plan is subject to the approval of the Navajo Nation Council upon recommendation of the Resources and Development Committee; and
- F. Pursuant to 12 N.N.C. §860 (C)(2), the appropriation portion is subject to the approval of the Navajo Nation Council upon recommendation of the Budget and Finance Committee; and
- G. Pursuant to 12 N.N.C. §860 (D)(1-3), the Capital Improvement Plan and Capital Budget is to be developed in accordance with a specific month-to-month chronological sequence of activities beginning with gathering information about chapter needs, preparing a list of existing tribally owned facilities in need of repair or replacement, reporting on the status of previously approved capital projects; and
- H. Pursuant to 12 N.N.C. §860 (D)(4), the Capital Improvement Office, the Office of Management and Budget and the Controller are to perform a financial analysis to determine the level of expenditures and the source of the funding the Nation can safely afford, (See, Exhibits B, C and D); and
- I. Pursuant to 12 N.N.C. §860 (D)(5), the Capital Improvement Office shall compile and objectively evaluate all capital improvement funding requests; and
- J. Pursuant to 12 N.N.C. §860 (D)(6), upon review and approval by the Resources and Development Committee, the Capital Improvement Plan is to be submitted to the Office of Management and Budget to be incorporated in the recommended capital budget which shall be made a part of the comprehensive budget for purposes of recommending the Capital Improvement Plan to the Navajo Nation Council; and
- K. Pursuant to 12 N.N.C. §860 (D)(7), prior to the beginning of the fiscal year, the Office of Management and Budget shall submit the appropriation portion to the Budget and Finance Committee for recommendation to the Navajo Nation Council with any changes to be concurred by the Resources and Development Committee.

L. The Division of Community Development Navajo Nation Infrastructure and Capital Improvement Plan, including Executive Summary, Summary of Plans for 2013 through 2018, and a listing of Infrastructure and Capital Improvement Projects for the Five Agencies of the Navajo Nation, is attached hereto as Exhibit A.

Section Two. Recommending and Approving

The Navajo Nation hereby recommends and approves the Navajo Nation Chapters' Infrastructure Improvement Priority Projects for Fiscal Years 2013 through 2018 attached hereto as Exhibit A.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 1 opposed, this 22nd day of April 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

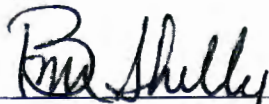
April 25, 2014

Date

Motion: Honorable David Tom
Second: Honorable Danny Simpson

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of APR 30 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation