



24th NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, Kee Allen Begay, Jr, Primary
Sponsor of proposed legislation hereby withdraw my
sponsorship of the proposed legislation. The legislation
tracking number is 0040-20.

If there are any co-sponsors, they may re-sponsor the same
bill by beginning a new legislation.

SPONSOR SIGNATURE:

DATE:

Ky
3/18/20

LEGISLATIVE SUMMARY SHEET

Tracking No. 0040-20

DATE: February 20, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; DELEGATING AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO ISSUE EASEMENTS TO THE NAVAJO TRIBAL UTILITY AUTHORITY; SUPERSEDING CERTAIN PROVISIONS OF RDCS-96-17 AND RDCS-97-17

PURPOSE: This resolution, if approved, will delegate RDC's authority to approve NTUA utility easements to the Director of Navajo Land Department.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 9/24
Website Posting Time/Date: 5:16pm 02-24-20
Posting End Date: 02-29-20
Eligible for Action: 03-01-20

PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

K 7
(Prime Sponsor)

Kee Allen Begay JR

TRACKING NO. 0040-20

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE;
DELEGATING AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND
DEPARTMENT TO ISSUE EASEMENTS TO THE NAVAJO TRIBAL UTILITY
AUTHORITY; SUPERSEDING CERTAIN PROVISIONS OF RDCS-96-17 AND
RDCS-97-17

BE IT ENACTED:

Section One. Authority

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council empowered to exercise oversight authority on matters involving communication and utilities, economic and community development, rights-of-ways, public utilities, telecommunication and housing. 2 N.N.C. §500 (C)
- B. The Resources and Development Committee is also empowered to exercise oversight authority over land and has the enumerated power to grant final approval for non-mineral leases and rights-of-way within the Navajo Nation. 2 N.N.C. §§ 500 (C) and 501 (B) (2) (a).
- C. The Resources and Development Committee is further empowered to delegate its final approval authority for non-mineral leases and rights-of-way to appropriate Divisions for efficiency and streamlining of government processes provided the Committee first

1 approves rules and regulations governing such delegations and rescission of such
2 delegations. *See* 2. N.N.C. § 501 (B) (3).
3

4 **Section Two. Findings**

- 5 A. The Navajo Nation has inherent authority to govern itself and its lands. The United
6 States recognizes the Navajo Nation's sovereignty and self-governance through the
7 Treaty of 1868, various statutes, contracts, and judicial decisions; this authority of self-
8 governance includes the power to regulate the use, sale, exchange and development of
9 Navajo Nation lands.
- 10 B. In 2016, the United States Department of Interior updated its regulations concerning
11 the issuance of rights-of-ways over Indian land to include the following language: "you
12 do not need a right of way if you [a]re an independent legal entity wholly owned and
13 operated by the tribe that owns 100 percent of the trust or restricted interest in land."
14 25 C.F.R. § 169.4 (b) (3).
- 15 C. According to the 2010 Census, Navajo Nation has over 300,000 enrolled tribal
16 members with 47% living on the Navajo Nation which extends over 27,425 square
17 miles and expands into the states of Arizona, New Mexico and Utah.
- 18 D. The Navajo Nation lacks utility infrastructure; for example, even though Navajo Tribal
19 Utility Authority (NTUA) connects an average of 474 homes per year to the electrical
20 grid and has connected over 5,500 Navajo families since 2008, over 15,000 Navajo
21 families still lack access to electricity.
- 22 D. The current Bureau of Indian Affairs review and approval process of rights-of-ways is
23 time consuming, burdensome, and ever changing; this bureaucracy has resulted in loss
24 of project funding and delays of providing Navajo residents with much needed utility
25 services.
- 26 E. The Resource & Development Committee's delegation of authority to the Director of
27 the Navajo Land Department to issue easements, also known as right of ways, to NTUA
28 will be an exercise of self-governance and tribal sovereignty, and result in time and
29 cost savings.
30

1 F. As set forth in its enabling legislation at 21 N.N.C. §§ 1 *et seq.*, NTUA is an
2 independent legal entity wholly owned by the Navajo Nation.

3 G. The Resource & Development Committee finds that it is in the best interest of the
4 Navajo Nation for the Navajo Land Department to issue easements to the Nation's own
5 Utility on lands owned 100% by the Nation and in so doing, streamline the process for
6 issuing easements to the Navajo Tribal Utility Authority.

7
8 **Section Three. Approval and Superseding Resolution**

9 A. The Resources and Development Committee of the Navajo Nation Council hereby
10 approves the delegation of authority to the Director of the Navajo Land Department,
11 Division of Natural Resources, to approve easements on lands owned 100% by the
12 Navajo Nation.

13 B. The Resource Development Committee hereby approves the Regulations attached
14 hereto as **Exhibit A**.

15 C. The Resources and Development Committee hereby clarifies that this Resolution
16 supersedes and replaces any and all sections of Resolutions RDCS-96-17 and RDCS-
17 97-17 that concern the Navajo Tribal Utility Authority.



Regulations Supporting the Delegation of Authority
to the Director of the Navajo Land Department to Issue Easements
to the Navajo Tribal Utility Authority

I. AUTHORITIES

These Regulations are authorized by the Resources and Development Committee (RDC) of the Navajo Nation Council which has final authority to grant right-of-way across the Navajo Nation, 2 N.N.C. §500 (C), and approved through Resolution No. RDC__-__-20.

II. PURPOSE

The purpose of these Regulations are to:

- A. Delegate RDC's authority to grant final approval of Navajo Tribal Utility Authority's (NTUA) easements over or across Navajo Nation land to the Director of the Navajo Land Department (Director) or their designee;
- B. Define the scope of RDC's Delegation of Authority to the Director; and
- C. Establish the procedure for the Director's issuance of easements to NTUA.

III. DEFINITIONS

Blanket Easement means an Easement granted for an area of land that will be developed and where NTUA will determine the most efficient placement of utilities within that area in coordination with the land developer.

Easement means an interest in land, consisting of the legal right to go over or across or through Navajo Nation Land for an identified purpose or multiple purposes, for example for building and operating a utility line or road or a utility corridor. Title to the land remains vested in the Navajo Nation.

Navajo Nation Land means any tract in which the surface estate, or an undivided interest in the surface estate, is owned by the Navajo Nation in trust, in restricted status, or in fee. The term also includes the surface estate of lands held in trust for the Navajo Nation but reserved for BIA administrative purposes.

Utility, also referred to as *Utility Services*, means but is not limited to electricity, water, sewer, also referred to as wastewater, gas, fiber, communications, roads, and power generation. The definition is not limited to the listed areas as utilities are developed over time. If NTUA plans to provide a utility that is not listed here, it will provide written notice of that utility to the Office of the President & Vice-President, Resources and Development Committee, Division of

Natural Resources Director, Director of the Navajo Land Department, Director of the General Land Development Department and the Attorney General.

IV. DUTIES AND RESPONSIBILITIES

This section outlines the duties and responsibilities that are necessary for the Director to successfully administer the delegation to issue Easements to NTUA.

- A. The Director or their designee will be responsible for providing final approval of Easements to NTUA.
- B. The Director or their designee, in collaboration with NTUA and the Navajo Nation Department of Justice, will develop the appropriate form(s) to issue Easements to NTUA. These form(s) shall be developed no later fifteen (15) business days after RDC's approval of these Regulations. A copy of the final form(s) will be submitted to RDC.
- C. The Director or their designee will ensure that NTUA's applications for Easements are accompanied by proper maps, archaeological and cultural resources clearances, and biological resources clearances as required by applicable law.
- D. Upon the consent of NTUA, the Director or their designee may amend the Procedures outlined in these Regulations under Section V. If the Director or their designee intends to amend the Procedures as set forth under Section V., the Director or their designee shall provide actual written notice to NTUA and RDC before any amendments are made.
- E. The Director or their designee are encouraged to develop additional tools, as they deem necessary, to assist in the efficient implementation of this Delegation of Authority.

V. PROCEDURE

NTUA will submit an application for Easement to the General Land Development Department (GLDD), which is responsible for processing land access documents. The application will include the following:

- A. Statement of the purpose or purposes for the Easement, such purpose(s) can only be for Utility Services; and
- B. Description of the Easement in a manner acceptable to the Director; and
- C. Consent(s) of the land users whose land use area will be crossed by the Easement as required by Navajo Nation law; and
- D. All applicable clearances for archaeological and cultural resources and biological resources for the area to be crossed, including any buffer zone as deemed necessary by Navajo Nation departments.
- E. The Director or their Designee shall grant the applied for Easement within seven (7) calendar days of the submission of the application to GLDD. If the Director or their

designee determines that they cannot grant the applied for Easement within seven (7) calendar days of submission of the application, the Director or their designee shall provide written notice to NTUA stating the reasons why the Director is not granting the Easement. If additional time is needed to review the application, the Director shall inform NTUA in writing and may take no more than seven (7) additional calendar days to review the application.

- F. If the Director or his or her designee do not comply with the timelines outlined in section (V) (E), NTUA may provide written notice to the President of the Navajo Nation, the Resources and Development Committee, and the Director of the Division of Natural Resources informing them that the Director has not fulfilled the timelines. Such notice can be provided to one, two, or all three of these recipients at the discretion of NTUA.

VI. TERMS OF EASEMENTS

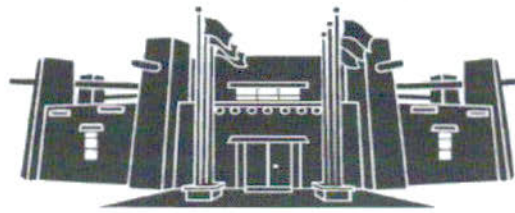
- A. Duration. The term of the Easements will be perpetual so long as NTUA is providing a Utility Service or Utility Services.
- B. Compensation for Navajo Nation Land. There shall be no consideration owed for Easements so long as NTUA is providing a Utility Service or Utility Services.
- C. Multiple Uses. The Director or their designee may approve Easements for multiple uses. These types of Easements are also referred to as Utility corridors.
- D. Blanket Easements. The Director or their designee may approve a Blanket Easement.

VII. EXECUTIVE BRANCH OVERSIGHT AND ENFORCEMENT

- A. All departments within the Navajo Nation Executive Branch will work collaboratively to ensure the successful implementation of these Regulations.
- B. The Navajo Nation Executive Branch has the authority to take all appropriate action under applicable law to promote the successful implementation of the Regulations.

VIII. REVIEW AND AMENDMENTS

The Resources and Development Committee may amend or rescind these Regulations upon recommendation by NTUA or the Director. The Director or their designee may amend the Procedures as set forth in Section V. of these Regulations upon written consent of NTUA; if NTUA does not consent, the Resources and Development Committee may review and approve amendments to the Procedures.



MEMORANDUM

TO: Honorable Kee Allen Begay, Jr.
Tachee/Blue Gap, Many Farms, Nazlini, Tselani/Cottonwood, and Low Mountain Chapters

FROM:

A handwritten signature in black ink, reading "Dana Bobroff".

Dana Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: February 20, 2020

SUBJECT: **AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; DELEGATING AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO ISSUE EASEMENTS TO THE NAVAJO TRIBAL UTILITY AUTHORITY; SUPERSEDING CERTAIN PROVISIONS OF RDCS-96-17 AND RDCS-97-17**

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0040-20_____ SPONSOR: Kee Allen Begay, Jr.

TITLE: An Action Relating to the Resources and Development Committee; Delegating authority to the director of the Navajo Land Department to issue easements to the Navajo Tribal Utility Authority; Superseding certain provisions of RDCS-96-17 and RDCS-97-17

Date posted: February 24, 2020 at 5:16pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0040-20

SPONSOR: Honorable Kee Allen Begay Jr.


TITLE: An Action Relating to the Resources and Development Committee; Delegating authority to the Director of the Navajo Land Department to issue easements to the Navajo Tribal Utility Authority; Superseding certain provisions of RDCS-96-17 and RDCS-97-17

Posted: February 24, 2020 at 5:16 PM

5 DAY Comment Period Ended: February 29, 2020

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



Legislative Tracking Secretary
Office of Legislative Services

3/02/2020 8:33am

Date/Time