

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0124-20

**DATE:** May 18, 2020

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING TRIBAL AUTHORIZATION AUTHORIZING ACCESS WITHOUT BUREAU OF INDIAN AFFAIRS APPROVAL FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED AND OPERATED BY THE NAVAJO NATION; APPROVING THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL ACCESS FOR RIGHTS-OF-WAY ON THE NAVAJO NATION FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED BY THE NAVAJO NATION; APPROVING THE DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS AND THE TERMS AND CONDITIONS FOR THE DELEGATION OF AUTHORITY; AND, RESCINDING RCD-104-10, RDCS-97-17 AND OTHER PRIOR INCONSISTENT RESOURCES AND DEVELOPMENT RESOLUTIONS

**PURPOSE:** Approving the “tribal authorization authorizing access without BIA approval” for independent legal entities wholly owned and operated by the Navajo Nation pursuant to the requirement stated in 25 CFR § 169.4 (b)(3)(iii); approving the delegation of authority to the Department Manager of the Navajo Land Department, Division of Natural Resources, to grant tribal access for rights-of-way on the Navajo Nation for legal entities wholly owned by the Navajo Nation on Navajo Nation trust and fee lands; approving the Departmental Administrative Rules and Regulations for the Delegation of Authority to the Department Manager of the Navajo Land Department; approving the Terms and Conditions; rescinding Resolutions RCD-104-10, and RDCS-97-17; directing the Navajo Land Department Manager, Navajo Nation Division of Natural Resources to provide this authorizing tribal authorization resolution and a legal description to the Bureau of Indian Affairs as is provided in 25 CFR § 169.4 (b)(3)(iii).

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

PROPOSED STANDING COMMITTEE RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0124-20

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE;  
APPROVING TRIBAL AUTHORIZATION AUTHORIZING ACCESS WITHOUT  
BUREAU OF INDIAN AFFAIRS APPROVAL FOR INDEPENDENT LEGAL  
ENTITIES WHOLLY OWNED AND OPERATED BY THE NAVAJO NATION;  
APPROVING THE DELEGATION OF AUTHORITY TO THE DEPARTMENT  
MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL  
ACCESS FOR RIGHTS-OF-WAY ON THE NAVAJO NATION FOR  
INDEPENDENT LEGAL ENTITIES WHOLLY OWNED BY THE NAVAJO  
NATION; APPROVING THE DEPARTMENTAL ADMINISTRATIVE RULES  
AND REGULATIONS AND THE TERMS AND CONDITIONS FOR THE  
DELEGATION OF AUTHORITY; AND, RESCINDING RCD-104-10, RDCS-97-17  
AND OTHER PRIOR INCONSISTENT RESOURCES AND DEVELOPMENT  
RESOLUTIONS

BE IT ENACTED.

**Section One. Authority**

A. Pursuant to 2 N.N.C. § 500, the Resources and Development Committee was  
established as a standing committee of the Navajo Nation Council.

1 B. Pursuant to 2 N.N.C. § 501 (B) (2) (a), the Resources and Development Committee  
2 grants final approval for all rights-of-way.

3 C. Pursuant to 2 N.N.C. § 501 (B) (3), the Resources and Development Committee is  
4 authorized to delegate its powers to appropriate divisions of the Navajo Nation for  
5 efficiency and streamlining of government processes provided the Committee first  
6 grants final approval of rules and regulations governing such delegations and  
7 rescission of such delegations.

8  
9 **Section Two. Findings**

10 A. The Code of Federal Regulations, Title 25, Part 169. Rights-of-way over Indian Land  
11 Subpart A. Purpose, Definitions, General Provisions, 25 CFR § 169.4 (b)(3)(iii) states  
12 “You do not need a right-of-way if you are... (iii) An independent legal entity wholly  
13 owned and operated by the tribe that owns 100 percent of the trust or restricted  
14 interests in the land.” 25 CFR § 169.4 (b)(3)(iii) further states: “but the following  
15 conditions apply . . . The tribal governing body must pass a tribal authorization  
16 authorizing access without BIA approval and including a legal description, and you  
17 must submit both documents to BIA for our records.”

18 B. Independent legal entities wholly owned by the Navajo Nation include but are not  
19 limited to: Navajo Tribal Utility Authority (NTUA), Navajo Engineering  
20 Construction Authority (NECA), Navajo Nation Oil and Gas Company (NNOGC),  
21 Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry  
22 (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise  
23 (NNHE), Dine Power Authority (DPA), and Navajo Nation government divisions and  
24 departments such as the Navajo Division of Transportation and Department of Water  
25 Resources.

26 C. The Resources and Development Committee desires uniform rules and regulations for  
27 issuing rights-of-way for all independent legal entities wholly owned by the Navajo  
28 Nation.

29 D. Currently, there are Resources and Development Committee (RDC) and Resources  
30 Committee (predecessor to the RDC) resolutions pertaining to rights-of-way and the

1 Navajo Tribal Utility Authority (NTUA), an independent legal entity wholly owned  
2 by the Navajo Nation. These resolutions include RCD-104-10 (Delegation to  
3 Director of Navajo Land Department to approve rights-of-way for NTUA for  
4 electric, water, sewer, natural gas, and other such NTUA activities; approving rules  
5 and regulations for the delegation; and approving the terms and conditions for these  
6 rights-of-way). Resources and Development Committee Resolution RDCS-97-17  
7 amended RCD-104-10's Exhibit B which was the NTUA terms and conditions for  
8 the rights-of-way to allow waivers of compensation for commercial rights-of-way.  
9 RCD-104-10 is attached as **Exhibit C**. RDCS-97-17 is attached as **Exhibit D**.

- 10 E. The Resources and Development Committee through this resolution will rescind  
11 RCD-104-10 and RDCS-97-17 both of which pertain only to NTUA. Rescinding  
12 RCD-104-10 and RDCS-97-17 will make the rights-of-way process uniform for to  
13 all the above mentioned independent legal entities wholly owned by the Navajo  
14 Nation.

15  
16 **Section Three. Tribal Authorization pursuant to 25 CFR § 169.4 (b)(3)(iii)**

17 The Resources and Development Committee of the Navajo Nation Council,  
18 established as a standing committee of the Navajo Nation Council with the  
19 authority to grant final approval for all rights-of-way, hereby "pass[es] [this] tribal  
20 authorization authorizing access without BIA approval" for independent legal  
21 entities wholly owned and operated by the Navajo Nation pursuant to the  
22 requirement stated in 25 CFR § 169.4 (b)(3)(iii).

23  
24 **Section Four. Delegation of Authority, Approval of Rules and Regulations, and**  
25 **Approval of Terms and Conditions**

- 26 A. The Resources and Development Committee of the Navajo Nation Council  
27 hereby approves the delegation of authority to the Department Manager of the  
28 Navajo Land Department, Division of Natural Resources, to grant tribal access  
29 for rights-of-way on the Navajo Nation for legal entities wholly owned by the  
30 Navajo Nation on Navajo Nation trust and fee lands.

1 B. The Resources and Development Committee of the Navajo Nation Council  
2 hereby approves the Departmental Administrative Rules and Regulations for the  
3 Delegation of Authority to the Department Manager of the Navajo Land  
4 Department as described in **Exhibit A**.

5 C. The Resources and Development Committee of the Navajo Nation Council  
6 hereby approves the Terms and Conditions attached as **Exhibit B**.

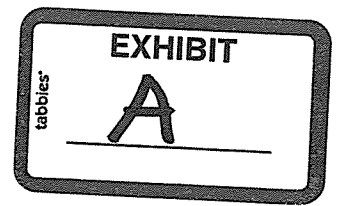
7  
8 **Section Five. Rescinding RCD-104-10, RDCS-97-17 and Prior Inconsistent**  
9 **Resolutions**

10 A. The Resources and Development Committee of the Navajo Nation Council hereby  
11 rescinds Resolutions RCD-104-10, and RDCS-97-17, attached as **Exhibit C** and  
12 **Exhibit D**.

13 B. The Resources and Development Committee of the Navajo Nation Council hereby  
14 rescinds any other prior inconsistent Resources and Development Committee  
15 resolution(s) establishing rules and regulations and terms and conditions for independent  
16 legal entities wholly owned by the Navajo Nation to insure uniformity with regard  
17 to the rights-of-way process for independent legal entities wholly owned by the  
18 Navajo Nation.

19  
20 **Section Six. Directive to Navajo Land Department Manager, Navajo Nation**  
21 **Division of Natural Resources**

22 The Resources and Development Committee of the Navajo Nation Council hereby  
23 directs the Navajo Land Department Manager, Navajo Nation Division of Natural  
24 Resources to provide this authorizing tribal authorization resolution and a legal  
25 description to the Bureau of Indian Affairs as is provided in 25 CFR § 169.4  
26 (b)(3)(iii).



## Exhibit "A"

# **DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL AUTHORIZATION ACCESS FOR FOR PROPOSED OVERHEAD AND UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS DISTRIBUTION LINES, TRANSMISSION LINES, SUBSTATION TRACTS, FIBER OPTIC CABLE AND ROADS, FOR NAVAJO RESIDENTS ON FEE AND TRUST LANDS INCLUDING THE EASTERN NAVAJO AGENCY**

## **I. AUTHORTIES**

Pursuant to 2 N.N.C. §500 (A) and (C) (1) and 2 N.N.C. §501 (C) (1), the Resources and Development Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization and protection of all resources of the Navajo Nation. The Resources and Development Committee serves as the Legislative oversight authority for the Division of Natural Resources.

Pursuant to 2 N.N.C §501 (B) (11), the Resources and Development Committee is authorized to delegate its responsibilities and authorities as appropriate for efficiency and streamlining of government processes to executive officials within the Division of Natural Resources provided that the Committee first approves rules and regulations governing such delegations.

By Resolution No. RDCO-80-16, the General Land Development Department is a Department under the Division of Natural Resources. This Department administratively processes applications for land withdrawals, non-mineral leases, permits and rights-of-way, on and across Navajo Nation lands, including any amendments, subleases, or assignments thereof. The General Land Development Department is further authorized to obtain, require, manage and record all land user consents for the issuance of mineral surface leases, permits, and rights-of-way on or across all Navajo Nation lands consistent with the requirements of Navajo Nation laws, regulations, procedures and policies including those governmental requirements codified at 16 N.N.C §§1401-1403.

25 C.F.R. § 169.4(b)(3)(iii) provides that "[y]ou do not need a right-of-way to cross Indian land if: . . . (3) You meet any of the criteria in the following table: . . . you do not need a right-of-way if you are . . . (iii) an independent legal entity wholly owned and operated by the tribe that owns 100 percent of the trust or restricted interests in the land . . . but the following conditions apply . . . The tribal governing body must pass a tribal authorization authorizing access without BIA approval and including a legal description, and you must submit both documents to BIA for our records."

## **II. PURPOSE AND SCOPE**

The purpose of this Administrative Rule is to authorize and empower the Department Manager of the Navajo Land Department of the Division of Natural resources to grant tribal authorization access for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads that are consistent with applicable Federal and Navajo Nation Laws. Telecommunication tower land leases do not qualify as rights-of-way and do not fall under these regulations.

### **III. DELEGATION**

The Resources and Development Committee hereby delegates to the Department Manager of the Navajo Land Department the following powers and authorities:

- a. To grant tribal authorization access for applications for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands. Legal entities wholly owned by the Navajo Nation included but not limited to: Navajo Tribal Utility Authority (NTUA), Navajo Transitional Energy Company (NTEC), Navajo Engineering and Construction Authority (NECA), Navajo Nation Oil and Gas (NNOG), Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise (NNHE) and Dine Power Authority (DPA).
- b. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper surveys, easements, evaluations, and clearances as may be required by Federal and Navajo Nation Laws and Regulations.
- c. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.
- d. The Department Manager of the Navajo Land Department shall grant tribal authorization access, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference. The Resources and Development Committee retains the authority to approve all commercial tribal authorization accesses.

- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources and Development Committee of the Navajo Nation Council.

#### **IV. AUTHORITY, DUTY AND RESPONSIBILITY**

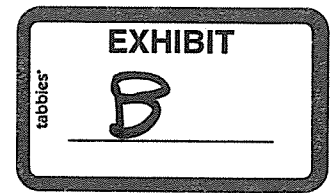
- a. The Department Manager of the Navajo Land Department is authorized to implement and administer this delegation of authority to grant tribal authorization access for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands.
- b. Requirements to process all rights-of-way applications and examples include:
  - 1. Letter of Application (Exhibit "A")
  - 2. Survey of Right-of-Way and Location Maps with legal descriptions (Exhibit "A-1" and "A-1")
  - 3. Biological Resource Compliance Forms (BRCF) (Exhibit "C")
  - 4. Cultural Resources Compliance Forms (Exhibit "D")
  - 5. Compliance Determination (Exhibit "E")
  - 6. Grazing Permittee Consent Documents (Exhibit "F")
  - 7. Chapter Support Resolution (Exhibit "G")
  - 8. Other pertinent documents if necessary
- c. Respective Departments (General Land Development Department, Fish and Wildlife Department, Heritage and Historic Preservation Department, Navajo Environmental Protection Administration and the Navajo Nation Department of Justice) shall receive one set of the application forms with the Signature Approval Sheet that is sent electronically. Each Tribal Department shall concurrently review the application. The respective Department's reviewer shall review, surname and return the application with the signed Signature Approval Sheet to the Department Manager of the Navajo Land Department within ten (10) business days for final approval. If the application is not reviewed and surnamed within the said timeline, the Department Manager of the Navajo Land Department may grant tribal authorization access for the application, provided; however, the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.



The Department Manager of the Navajo Land Department shall provide the Resources and Development Committee with an annual report on the status of all granted tribal authorization accesses applications.

**V. REVIEW AND AMENDMENT**

- a. This tribal authorization cannot be transferred, assigned or provided to another entity or LLC or any holding companies that are established or created in the future.
- b. The scope and administration of this delegation of authority to the Department Manager of the Navajo Land Department and Administrative Rules and Regulations may be amended or rescinded by the Resources and Development Committee of the Navajo Nation Council on the recommendation of the Navajo Land Department and the Division of Natural Resources Executive Director.



**EXHIBIT "D"**

**NAVAJO NATION TRIBAL AUTHORIZATION ACCESS TERMS AND CONDITIONS  
(ASSIGNEE)**

1. The term of the TAA shall be for \_\_\_\_\_ ( ) years, beginning on the date the TAA is authorized by the Navajo Nation.
2. Consideration for the TAA is assessed at \$\_\_\_\_\_ and shall be paid to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within \_\_\_\_\_ ( ) days of approval of and consent by the Navajo Nation.

If consideration has been waived, the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.

3. The Assignee may develop, use and occupy the TAA for the purpose(s) of \_\_\_\_\_. The Assignee may not develop, use or occupy the TAA for any other purpose, nor allow others to use or occupy the TAA for any other purpose, without the prior written approval of the Navajo Nation. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Assignee may not develop, use or occupy the TAA for any unlawful purpose.
4. In all activities conducted by the Assignee within the Navajo Nation, the Assignee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169 4. (b); subject to the terms of this TAA.
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
  - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
  - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., Assignee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Assignee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the TAA.
6. The Assignee shall clear and keep clear the lands within the TAA to the extent compatible with the purpose, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Assignee shall reclaim all surface lands disturbed related to the TAA, as outlined in a restoration and re-vegetation plan, which shall be approved by Navajo Nation Environmental Protection Agency (NNEPA). The Assignee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection is made.
8. The Assignee shall at all times during the term and at the **Assignee** sole cost and expense, maintain the land subject to the TAA and all improvements located thereon and make all necessary and reasonable repairs.
9. The Assignee shall obtain prior written permission to cross-existing TAA or rights-of-way, if any, from the appropriate parties.
10. The Assignee shall be responsible for and promptly pay all damages when they are sustained.
11. The Assignee shall indemnify and hold harmless the Navajo Nation, and respective authorized agents, employees and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of TAA by the Assignee.
12. The Assignee shall not assign, convey, transfer or sublet, in any manner whatsoever, the TAA or any interest therein, or in or to any of the improvements on the land subject to the TAA, without the prior written consent of the Navajo Nation. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the TAA for violation of any of the terms and conditions stated herein. In addition, the TAA shall be terminable in whole or part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
  - b. A non-use of the TAA for the purpose for which it is granted for a consecutive two-year period; and
  - c. The use of the land subject to the TAA for any purpose inconsistent with the purpose for which the TAA is authorized.
  - d. An abandonment of the TAA.
14. At the termination of this TAA, the Assignee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear accepted. Upon the written request of the Navajo Nation, the Assignee shall provide the Navajo Nation, at the Assignee sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
15. Holding over by the Assignee after the termination of the TAA shall not constitute a renewal or extension thereof or give the Assignee any rights hereunder or in to the land subject to the TAA or to any improvements located thereon.
16. The Navajo Nation shall have the right, at any reasonable time during the term of the TAA, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

17. By acceptance of the TAA, the Assignee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Assignee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
18. By acceptance of the TAA, the Assignee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the TAA or to the Navajo Nation.
19. Any action or proceeding brought by the Assignee against the Navajo Nation in connection with or arising out of the terms and conditions of the TAA shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Assignee against the Navajo Nation in any court of any state.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Assignee, and the term "Assignee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the TAA and all lands burdened by the TAA, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TAA; and the TAA and all lands burdened by the TAA shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Navajo Nation reserves the right to grant TAA within a TAA or right-of-way referenced herein for utilities, provided that such the TAA or rights-of-way do not unreasonably interfere with the Assignee's use of the TAA or right-of-way.

RCD-104-10

RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

21<sup>st</sup> NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

RELATING TO RESOURCES; APPROVING THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE RIGHTS-OF-WAY FOR NAVAJO TRIBAL UTILITY AUTHORITY'S PROPOSED OVERHEAD AND UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS DISTRIBUTION LINES, TRANSMISSION LINES, SUBSTATION TRACTS, OFFICE TRACTS, WELL/STORAGE TANKS/WATERING POINT TRACTS, COMMUNICATION TRACTS, AND FIBER OPTIC CABLE FOR THE BENEFIT OF NAVAJO NATION RESIDENTS; APPROVING THE ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY; AND APPROVING THE RIGHT-OF-WAY TERMS AND CONDITIONS

BE IT ENACTED:

- A. The Navajo Nation hereby finds the following with respect to this legislation:
1. Pursuant to 2 N.N.C. § 691, the Resources Committee is authorized to give final approval of the rights-of-way, easements and other clearances related to power, water, sewer, natural gas distribution, communication, and transmission lines.
  2. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegations.
  3. There are many Navajo Nation residents that lack utility services and there are backlogs of pending requests for utility services.
  4. The current system of processing rights-of-way is routine, time consuming and has resulted in the loss of project funds as well as delay in providing Navajo residents with the much-needed utility services across the Navajo Nation.

5. Therefore, there is a need to delegate the authority to approve rights-of-way to the Director of the Navajo Land Department to expedite the right-of-way process enabling Navajo residents to obtain the much-needed utility services in a timely manner.

6. The process of reviewing documents associated with rights-of-way is essentially an administrative task that can be performed by the Director of Navajo Land Department under specific rules and regulations adopted by the Resources Committee.

7. The Project Review Office was established within the Division of Natural Resources Navajo Land Department to monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with Navajo Nation and Federal laws and regulations. The Project Review Office is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearance, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned.

8. The Navajo Nation finds it is in the best interest of the residents of the Navajo Nation to approve the delegation of authority.

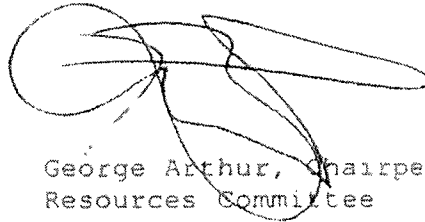
B. The Navajo Nation hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve Navajo Tribal Utility Authority ("NTUA") rights-of-way for overhead and underground electric, water, sewer, natural gas distribution lines, service taps, transmission lines, substation tracts, office tracts, well/storage tanks/watering point tracts, communication tracts, and fiber optic cable enabling Navajo Nation residents to obtain the much-needed utility services.

C. The Navajo Nation hereby approves the Administrative Rules and Regulations, attached hereto as Exhibit "A".

D. The Navajo Nation hereby approves the Terms and Conditions, attached hereto as Exhibit "B".

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 3<sup>rd</sup> day of December, 2010.



George Arthur, Chairperson  
Resources Committee

Motion: Phillip Harrison, Jr.  
Second: Harriett K. Becenti

## Exhibit "A"

**DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS FOR  
THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE  
OF NAVAJO LAND DEPARTMENT TO APPROVE RIGHTS-OF-WAY FOR  
NAVAJO TRIBAL UTILITY AUTHORITY'S PROPOSED OVERHEAD AND  
UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS  
DISTRIBUTION LINES, SERVICE TAPS, TRANSMISSION LINES,  
SUBSTATION TRACTS, OFFICE TRACTS, WELL/STORAGE  
TANKS/WATERING POINT TRACTS, COMMUNICATION TRACTS, AND  
FIBER OPTIC CABLE SO NAVAJO RESIDENTS CAN OBTAIN MUCH-  
NEEDED SERVICES**

**I. AUTHORITIES**

Pursuant to 2 N.N.C. §§ 691, 693 and 695 (B)(14), the Resources Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization of all resources of the Navajo Nation and to protect such resources. The Resources Committee serves as the Legislative oversight authority for the Division of Natural Resources, District Grazing Officers, Eastern Navajo Land Board and Farm Boards' policy of certain adjudication matters affecting Navajo resources.

By Resolution RCJN-105-91, the Project Review Office is a section within the Navajo Land Department under the Division of Natural Resources. This office is authorized to monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with the laws and regulations of the Navajo Nation, State, and Federal governments. The Project Review Office is further authorized to determine whether necessary field clearances are required; determine whether investigations or other appropriate actions as may be deemed necessary and proper are required; formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program; and conduct such special programs or projects as may be assigned.

**II. PURPOSE AND SCOPE**

The purpose of this Administrative Rule is to authorize and empower the Director of the Navajo Land Department of the Division of Natural Resources to approve Navajo Tribal Utility Authority (NTUA) rights-of-way for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts,



Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable consistent with applicable Federal and Navajo Nation Laws.

### **III. DELEGATION**

The Resources Committee hereby delegates to the Director of Navajo Land Department the following powers and authorities:

- a. To give final approval of NTUA rights-of-way applications for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable.
- b. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper surveys, easements, evaluations, clearances as may be required by Federal and Navajo Nation Laws and Regulations.
- c. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.
- d. The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference.
- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources Committee of the Navajo Nation Council.

### **IV. AUTHORITY, DUTY, AND RESPONSIBILITY**

- a. The Director of the Navajo Land Department is authorized to implement and administer this delegation of authority to approve NTUA rights-of-way for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable in accordance with this Administrative Rule.

b. Requirements to process NTUA rights-of-way applications and examples:

1. Letter of Application (Exhibit "A")
2. Legal Description (Exhibit "A-1")
3. Right-of-Way and Location Maps (Exhibit "A-2" and "A-3")
4. Biological Resource Compliance Form (BRCF) (Exhibit "C")
5. Cultural Resources Compliance Form (Exhibit "D")
6. Field Clearance Documents (Exhibit "E")
7. Chapter Resolution (Exhibit "F")
8. Environmental Assessment and/or Addendum
9. Other pertinent documents if required

c. Respective Departments (Project Review, Land, Fish & Wildlife, Historic Preservation, Environmental Protection Agency, and Department of Justice) shall receive one set of the right-of-way application with Signature Approval Sheet (SAS). Each Tribal Departments shall concurrently review the right-of-way application. The respective Department's reviewer shall review, surname, and return the right-of-way application with Signature Approval Sheet to the Director of the Navajo Land Department within three days for final approval. If the right-of-way application is not reviewed and surnamed within the said timeline, the Director of the Navajo Land Department may approve the right-of-way application, provided; however, the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.

d. The Director of the Navajo Land Department shall provide the Resources Committee with an annual report on the status of approved NTUA rights-of-way applications.

**V. REVIEW AND AMENDMENT**

- a. The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or rescinded by the Resources Committee of the Navajo Nation Council.

EXHIBIT "B"

**NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:  
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)**

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of the Interior.
2. Consideration for the use of land covered by this Delegation is assessed at \$N/A, which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of construction and maintaining [Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable]. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

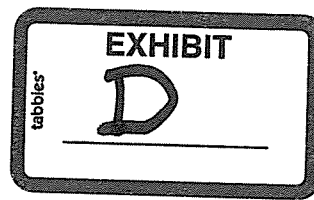
If the right-of-way is for a power line, then the maximum capacity of the power line shall be \_\_\_\_\_ kilovolts (kV). Once constructed, the capacity of the power line, whether expressed in terms of watts, volts, amperes, and ohms or otherwise, shall not be increased without the prior written consent of the Navajo Nation. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
  - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq.; and

- d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development, use or occupancy or use of the right-of-way by the Grantee.
12. The Grantee shall not sublet, assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;
  - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;
  - c. An abandonment of the right-of-way;
  - d. The use of land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.

14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.
15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located hereon.
16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare of the Navajo people) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

24. The Grantee shall construct the power line in accordance with "Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006".



RDCS-97-17

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
23<sup>rd</sup> Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RCD-104-10,  
EXHIBIT "B", NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:  
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE), COMMERCIAL OPERATIONS  
WAIVER

**Section One. Authority**

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A) (2015).
- B. The Resources and Development Committee of the Navajo Nation Council is empowered with oversight authority over land and the power to grant final approval for non-mineral leases and rights-of-way within the Navajo Nation. 2 N.N.C. § 500 (C), 501 (B) (2) (a).

**Section Two. Findings**

- A. The Resources Committee, on December 3, 2010, approved a delegation of authority to the Director of the Navajo Land Department to approve certain rights-of-way for the Navajo Tribal Utility Authority (NTUA), approved the Administrative Rules and Regulations for the delegation of authority, and approved the Right-of-Way Terms and Conditions. See RCD-104-10.
- B. The Administrative Rules and Regulations, within RDC-104-10, provide a delegation from the Resources Committee to the Director of the Navajo Land Department that include: III. Delegation (d), "The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by reference." See RCD-104-10, Exhibit A.
- C. The Administrative Rules and Regulations, within RDC-104-10, state, "The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or

rescinded by the Resources Committee of the Navajo Nation Council. See Administrative Rules and Regulations, Section V. Review and Amendment (a), Exhibit A, RDC-104-10.

- D. References in the Navajo Nation Code and other official documents to the Resources, Transportation and Community Development and Economic Development Committees shall mean the Resources and Development Committee, unless the amendments enacted herein for the context of previous law indicates otherwise. See CJA-03-13, overriding President's veto of CO-45-12, Section 5(B).
- E. Commercial operations on the Nation promote economic growth via taxation revenue and employment. The Nation receives a Sales Tax (currently 5%) revenue on the utility consumption of customers and commercial customers consume more than the average customer, therefore, the Nation receives more taxation revenue from these commercial operations. In addition, the costs to construct utilities within these right-of-ways are subject to the same tax, adding to the tax revenue.
- F. Commercial operations on the Nation are subject to non-typical additional costs such as business site lease costs, dual taxation from the Nation and State, as well as federal taxes. The additional costs imposed for a right-of-way will add to the additional non-typical costs and continue to deter any businesses considering locating and investing on the Nation.
- G. Obtaining the approval for each right-of-way used for commercial operations is time consuming and delays businesses from developing and operating. In addition, the costs assessed are not readily determinable to the business until the business has substantially made progress in its development, therefore, these unknown costs further act as a deterrent to develop on the Nation.
- H. The consideration assessed for commercial operations rights-of-way is passed onto the business developer therefore, increasing their overall business development costs. This deters business development within the Nation because these fees are not typical outside the Nation. In addition, NTUA is a not-for-profit enterprise and if had to absorb these added costs it would have to pass them on to its customers therefore, the customers would subsidize these added costs.



- I. This consideration assessment/cost is in addition to the actual costs to extend such utility service(s) to the commercial operator/customer.
- J. Commercial operations promote employment for the economic self-sufficiency of the Navajo people and residents. The further development of commercial operations on the Nation will promote a more diverse economy therefore, promoting economic competition, resulting in competitive pricing. In addition, these added goods and services are provided to the residents of the Nation, which result in additional choices, reduced travel time and dollars staying on the Nation.
- K. There has been no clear interpretation of what constitutes a "commercial operation". The term has had ambiguous interpretations to various departments desiring to assess consideration, therefore, it is more efficient to waive consideration until such time the Committee deems that it is not in the best interests of the Nation.
- L. The Resources and Development Committee finds that the proposed language is in the best interests of the Nation to promote much needed economic growth.

### **Section Three. Proposed Amendment**

- A. RCD-104-10, Exhibit "B" states the Terms and Conditions of the Navajo Tribal Utility Authority's (NTUA's) rights-of-ways.
- B. NTUA proposes an amendment to Exhibit "B"--Navajo Nation Right-of-Way Terms and Conditions: Navajo Tribal Utility Authority (Grantee).
- C. Section of paragraph 2 of Exhibit "B" states:

"2. Consideration for the use of land covered by the Delegation is assessed at \$N/A, which shall be the Navajo Nation's contribution to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s)."

D. NTUA is proposing this language to state:

~~NTUA must obtain the approval of the Resources Committee if any portion of the right of way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).~~

Consideration shall be assessed and waived for the portion of the line used for commercial operation(s) until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration. The Director of the Land Department shall obtain the approval of the Resources and Development Committee to not waive the consideration. Attached is amended Navajo Nation Right-of-Way Terms and Conditions; Navajo Tribal Utility Authority (Grantee), **Exhibit 1**.

#### **Section Four. Approval**

The Resources and Development Committee hereby finds that the proposed language is in the best interests of the Nation and amends the language of RCD-104-10, Exhibit "B", paragraph 2, as stated above and in **Exhibit 1**, and hereby requires NTUA to work together with the NN Land Department and Minerals Department and to report to the Resources and Development Committee quarterly as to the total amount of commercial use fees waived, new service areas opened and other relevant information demonstrating the effect of this legislation.

#### **CERTIFICATION**

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Standing Rock Chapter, Standing Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained on this 20th day of September, 2017.



Benjamin Bennett, Vice Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Davis Filfred  
Second: Honorable Leonard Pete

**EXHIBIT "1"**

**NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:  
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)**

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.
2. Consideration for the use of land covered by this Delegation is assessed at \$N/A, which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

~~NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).~~

Consideration shall be assessed and waived for the portion of the line used for commercial operation(s) until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration. The Director of the Land Department shall obtain the approval of the Resources Committee to not waive the consideration.

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of construction and maintaining [Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage, Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable]. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

If the right of way is for a power line, then the maximum capacity of the power line shall be \_\_\_\_\_ kilovolts (kV). Once constructed, the capacity of the power line, whether expressed in terms of watts, volts, amperes, and ohms or otherwise, shall not be increased without the prior written consent of the Navajo Nation. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole direction of the Navajo Nation.

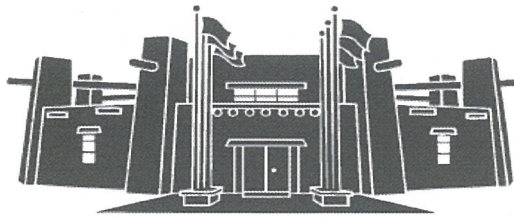
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169;
  - b. All Applicable federal and Navajo Nation antiquated laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or Incorrectly Identified cultural resources, including but not limited to archaeological

deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

- c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq. and
  - d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and Information to the Navajo Nation Water Resources Department, or its successor.
- 5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
  - 6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
  - 7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in the restorations and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Directory of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
  - 8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
  - 9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriated parties.
  - 10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
  - 11. The Grantee shall Indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development use or occupancy or use of the right-of-way by the Grantee.
  - 12. The Grantee shall not sublet, assign, convey or transfer, In any manner whatsoever, the right-of-way or any Interest therein, or in or to any of the Improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
  - 13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In additions, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
    - a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;

- b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;
  - c. An abandonment of the right-of-way;
  - d. The use of land subjects to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted
14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.
  15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any Improvements located hereon.
  16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any Improvements located thereon.
  17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, Including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and Injunctive relief, in connection with all activities conducted by the property within the Navajo Nation.
  18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is Inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (I.e., the power to legislate and regulate for the general health and welfare of the Navajo People) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in the provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
  19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.
  20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
  21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Grantee shall construct the power line in accordance with "Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006".



## MEMORANDUM

TO: Honorable Rickie Nez  
T'iistoh Sikaad, Nenahnezad, Upper Fruitland, Tse' Daa' Kaan, Newcomb, San Juan Chapters

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: May 18, 2020

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING TRIBAL AUTHORIZATION AUTHORIZING ACCESS WITHOUT BUREAU OF INDIAN AFFAIRS APPROVAL FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED AND OPERATED BY THE NAVAJO NATION; APPROVING THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL ACCESS FOR RIGHTS-OF-WAY ON THE NAVAJO NATION FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED BY THE NAVAJO NATION; APPROVING THE DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS AND THE TERMS AND CONDITIONS FOR THE DELEGATION OF AUTHORITY; AND, RESCINDING RCD-104-10, RDCS-97-17 AND OTHER PRIOR INCONSISTENT RESOURCES AND DEVELOPMENT RESOLUTIONS

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).

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION**



**LEGISLATION NO: \_0124-20\_\_**

**SPONSOR: Rickie Nez**

**TITLE: An Action Relating to Resources and Development Committee; Approving Tribal Authorization authorizing access without Bureau of Indian Affairs approval for independent legal entities wholly owned and operated by the Navajo Nation; Approving the Delegation of Authority to the Department Manager of the Navajo Land Department to grant Tribal access for rights-of-way on the Navajo Nation for independent legal entities wholly owned by the Navajo Nation; Approving the Departmental Administrative Rules and Regulations and the Terms and Conditions for the Delegation of Authority; and, Rescinding RCD-104-10, RDCS-97-17 and other prior inconsistent Resources and Development Resolution**

***Date posted: May 21, 2020 at 3:05PM***

**Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto: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) 871-7586**

**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.**

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THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0124-20

SPONSOR: Honorable Rickie Nez

**TITLE: An Action Relating to Resources and Development Committee; Approving Tribal Authorization authorizing access without Bureau of Indian Affairs approval for independent legal entities wholly owned and operated by the Navajo Nation; Approving the Delegation of Authority to the Department Manager of the Navajo Land Department to grant Tribal access for rights-of-way on the Navajo Nation for independent legal entities wholly owned by the Navajo Nation; Approving the Departmental Administrative Rules and Regulations and the Terms and Conditions for the Delegation of Authority; and, Rescinding RCD-104-10, RDCS-97-17 and other prior inconsistent Resources and Development Resolution**

Posted: May 21, 2020 at 3:05 PM

5 DAY Comment Period Ended: May 26, 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

05/27/20      8:05 AM  
 Date/Time

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Posted: May 21, 2020 at 3:05 PM

5 DAY Comment Period Ended: May 26, 2020

Digital Comments received:

Comments Supporting	1) Arash Moalemi, NTUA
Comments Opposing	<i>None</i>
Inconclusive Comments	1) Oljato Chapter

  
Legislative Tracking Secretary  
Office of Legislative Services

05/27/20      9:53AM  
Date/Time





## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

### MEMORANDUM

TO: Ricky Nez, Chair  
Resources and Development Committee  
Navajo Nation Council

FROM: Arash N. Moalemi  
Arash Moalemi, General Counsel  
Navajo Tribal Utility Authority

DATE: May 26, 2020

SUBJECT: Legislation 0124-20: Exercising Tribal Sovereignty and Modernizing Navajo Nation Land Access

NTUA is very pleased to see that the Resources and Development Committee (RDC) is exercising tribal sovereignty by taking BIA out of the process for the issuance of Rights of Ways (ROWs) to wholly owned entities of the Navajo Nation. It appears that the RDC also wants to streamline the process for obtaining ROWs, which is critical in this time of COVID-19 and the need to get water and electricity to people. Please know that as drafted the legislation places additional burdens placed on obtaining short lines for utilities. NTUA understood that the process for issuing ROWs to wholly owned entities and its departments was to be similar to the current process for issuing what are referred to as service line agreements, also referred to as short lines. NTUA assumes that these additional burdens are unintended and therefore NTUA offers the following suggested changes to the legislation so that the process reflects the current process of obtaining short lines, currently referred to as service line agreements (SLAs).

**Suggested drafting changes to Departmental Administrative Rules and Regulations for the Delegation of Authority to the Department Manager of the Navajo Land Department to Grant Tribal Access Authorization for Proposed Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Transmission Lines, Substation Tracts, Fiber Optic Cable and Roads for Navajo Residents on Fee and Trust Lands Including the Eastern Navajo Agency, Exhibit A to Legislation 124-20**

**Delete the following two words from the Title:** (1) the extra "For" and (2) Residents.

*Reason for deleting the language:* the first word appears to be a typo and the second word also appears to be a typo in that it was used in prior legislation. As this legislation is for all wholly owned entities of the Nation, these entitles serve more than residents. They serve hospitals,



schools, businesses, and similar organizations. Having the word Residents in the title creates confusion and should be deleted.

**Delete Section III(c) and replace it with the following language:** The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper surveys. The Department Manager of the Navajo Land Department shall defer to the Heritage and Historic Preservation Department (HHPD) for what is required for archaeological and cultural resources. The Department Manager of the Navajo Land Department shall defer to the Fish and Wildlife Department (F&WD) for what is required for biological clearances.

*Reason for proposed language:* the reason this is suggested is because the Heritage and Historic Preservation Department (HHPD) is responsible for archaeological and cultural resources clearances and the Fish and Wildlife Department (F&WD) is responsible for determining what is required for biological clearances. NLD is not responsible for these clearances.

**Delete the following language from Section III (d):** The Resources and Development Committee retains the authority to approve all commercial tribal authorization accesses.

*Reason for deleting this language:* There is no definition of commercial. By not defining the term, there will be inconsistent application of this language. In order to meet RDC's intent of uniform application, it is better to delegate the authority to the Navajo Land Department to approve all and any type of ROW needed by the government or by a wholly owned and separate entity of the Nation.

**Add the following language to Section IV (b) (2):** "Survey Grade GPS Points or" so that it will read:  
2. Survey Grade GPS Points or Survey of Right-of-Way and Location Maps with legal descriptions.

**Delete IV (b) (3) as drafted and replace with the following language:** "Biological resources clearances as approved by the Navajo Nation Department of Fish and Wildlife."

*Reason for replacing the language:* If the language is left as is, a new level of bureaucracy will be placed on obtaining ROWS, because RDC has already authorized Fish and Wildlife to not require a Biological Resources Compliance Form (BRCF) when Fish and Wildlife deems it necessary.

**Delete IV (b) (4) as drafted and replace with the following language:** "Archaeological and Cultural resources clearance as approved by the Heritage and Historic Preservation Department."

*Reason for replacing the language:* If the language is left as is, a new level of bureaucracy will be placed on obtaining ROWs, because RDC has already authorized the Heritage and Historic Preservation Department to not require a Cultural Resources Compliance Form (CRCF) when HHPD deems it not necessary.

**Delete IV (b) (7)** because obtaining a Chapter Support Resolution is very burdensome and allows the Chapter to block Navajos from being able to access utilities to their homes.



**Add the following language to end of Section IV (b) (8): “and as explained in writing why other pertinent documents are necessary”** so that the language will state: Other pertinent documents if necessary and as explained in writing why other pertinent documents are necessary.

**Delete Section IV (c)** because it adds an entirely new layer of bureaucracy to the issuance of short utility lines to homes and businesses. If the committee chooses to keep this new requirement, then please delete the following: “the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.” The reason for deleting the language is addressed above in comments on III(C), which is that NLD is not responsible for ensuring compliance but other departments are responsible for ensuring compliance. NLD needs to work with the departments ensuring compliance.

**Add the following language to Section IV.** “The Department Manager has 5 business days after receipt of application from reviewers to approve the application or request changes.”

*Reason for the proposed language:* The reason for adding this section is that the intent of the legislation is to streamline the approval process. We need to assess timelines on final approval by the Department Manager or else this defeats the purpose of the legislation.

**Suggested drafting changes to the Terms and Conditions, Exhibit B to Legislation 124-20; the number refers to the Term:**

**1. NTUA requests the following language be inserted: “The term for utility lines for residential purposes is perpetual.”**

**2. NTUA requests that the following language be inserted: “If NTUA is the applicant, consideration is waived.”**

*Reason for the proposed language:* The reason for this inserted language is that the status quo is that RDC has waived consideration for all NTUA ROWs and this legislation will change the status quo if this language is not inserted. NTUA previously worked with RDC to waive consideration under RDCS 97-17 and both parties felt that this was a win-win for the Nation and businesses who wanted to open on the Nation.

**3. Add the following to the term: the word purpose should be replaced with “purpose(s)” throughout the term except in the last sentence.**

*Reason for the proposed language:* This term should allow for multiple uses of a ROW and multiple utilities within a ROW. Allowing for multiple uses and multiple utilities promotes increased efficiency and cost savings to business and homeowners. The first time the word purpose is used it is used as “purpose(s).” After that only the term purpose is used. In the past, this is one of the reasons why the Nations departments have not allowed multiple purposes. By making the change, RDC clarifies that it wants ROWs to have multiple purposes.

**4. Strike out the words “of the” and replace with “any applicable laws and regulations”** so the term now reads: “...the Assignee shall abide by all laws and regulations of the Navajo nation and any applicable laws and regulations of the United States...”



**7. The following language needs to be stricken:** “which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA).”

*Reason for deleting the language:* NNEPA does not approve restoration and re-vegetation plans.

**13. This term is word for word from federal regulations and should be deleted or amended.**

*Reason for the proposed language:* RDC is taking BIA out of the process but is adopting federal policy that is not necessarily in the best interest of the Navajo Nation if RDC includes this term as drafted. Specifically, section b of this term continues to support an old fashioned idea that a ROW can only be used for one purpose. This federal policy of using a ROW for only one purpose is one of the reasons that there is a lack of development on the Nation and is not in the best interest of the Nation. If RDC wishes to keep this term, the term “purpose” needs to be changed to “purpose(s).”

**20. The language “or the Assignee” needs to be inserted so that the term reads:** Nothing contained herein shall be interpreted as constituting a waiver of the sovereign immunity of the Navajo Nation or the Assignee.

*Reason for the proposed language:* The Assigned has sovereign immunity as they are government departments or wholly owned entities who also have sovereign immunity.

**21. The following language should be deleted:** “Except as prohibited by applicable federal law,” and the “t” in the word “the” needs to be capitalized.

*Reason for the proposed deletion:* this is an agreement between the Nation and itself or the Nation and its wholly owned entities. Only Navajo law should apply to these agreements and there should be no suggestion that the Nation would allow federal law to be used to govern the construction, performance, and enforcement of the terms and conditions in an agreement between the Nation and its wholly owned entities or itself.

## Leg: 0124-20

Oljato Chapter <oljato@navajochapters.org>

Fri 5/22/2020 8:22 AM

To: Comments <comments@navajo-nsn.gov>;

**If Council is considering to uniform all the entities, Navajo Nation should establish its own land survey crew. NTUA contracts out its survey or ROW consultants and it costs a lot of money which is included in NTUA bid.**

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LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0124-20

SPONSOR: Honorable Rickie Nez

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Posted: May 21, 2020 at 3:05 PM

5 DAY Comment Period Ended: May 26, 2020

Digital Comments received:

Comments Supporting	1) Darryl Bradley, Navajo DOT
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>

  
\_\_\_\_\_  
Legislative Tracking Secretary  
Office of Legislative Services

05/27/20 3:51pm  
Date/Time





## NAVAJO DIVISION OF TRANSPORTATION

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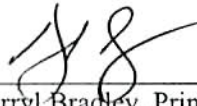
TEL: 505.371-8300  
FAX: 505.371-8399

Jonathan Nez, President

Myron Lizer, Vice President

### MEMORANDUM:

TO: Honorable Rick Nez, Chair  
Resources and Development Committee  
24<sup>th</sup> Navajo Nation Council

FROM:   
Darryl Bradley, Principal Civil Engineer  
Navajo Division of Transportation

DATE: May 27, 2020

SUBJECT: Legislation 0124-20: Tribal Authorization Authorizing access without BIA Approval for  
Independent Legal Entities Wholly Owned and Operated by the Navajo Nation

Under the new 25 CFR Part 169, the regulations now allow a Tribal governing body to pass a tribal authorization authorizing access (tribe that owns 100 percent of the trust or restricted interests in the land) without Bureau of Indian Affairs (BIA) approval. The Navajo Division of Transportation (DOT) applauds the effort that changed the Federal regulations to support Tribes ability to grant Right-of Way (ROW) to independent legal entities wholly owned by the Tribe to cross Tribal lands and thus taking the BIA out of the process.

The Navajo DOT fully supports the Resources and Development Committee (RDC) effort to take the BIA out of the process for the granting of ROW to wholly owned entities of the Navajo Nation such as the Navajo DOT. This legislation will greatly streamline the right-of-way acquisition process for the Navajo DOT and we fully support RDC's Delegation of Authority to the Department Manager of the Navajo Land Department. Once this legislation is approved by the RDC, the Navajo DOT would only submit our Right-of-Way (ROW) application package to NN General Land Development Department for review and approval, and thus avoiding the lengthy time it takes of going through the Section 164 Review process, legislative process, obtaining RDC approval, and submitting to the BIA Navajo Region for their review and approval. This lengthy process can take up to one year or longer to complete.

The Navajo DOT has reviewed the proposed Terms and Conditions in this legislation and found that it is similar to the Terms and Conditions that was issued for the Navajo DOT's grant of ROW for the N7119 Littlewater, NM project. For future road improvement projects, the Navajo DOT requests the RDC's consideration to grant ROW to the Navajo DOT for a term in "perpetuity" and waived the consideration since this project would serve a public purpose and benefit Navajo residents.

In closing, I recommend to the RDC to keep the Navajo DOT included in this legislation to greatly streamline the ROW application process for future road and bridge improvement projects.