

LEGISLATIVE SUMMARY SHEET

Tracking No. 0111-20

DATE: April 28, 2020

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RD-109-18, TO PROVIDE ADDITIONAL WAIVERS TO THE APPROVED THE GRANT OF RIGHT-OF-WAY TO BUREAU OF INDIAN AFFAIRS FOR UPPER FRUITLAND CHAPTER – OJO AMARILLO ROAD PROJECT NO. N101 (1) (2) 2&4, LOCATED ON NAVAJO NATION TRUST LANDS IN UPPER FRUITLAND CHAPTER. NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: Approving amendment of RD-109-18 which approved a right-of-way to the Bureau of Indian Affairs for the Ojo-Amarillo Road Project No. N101 (1) (2). These amendments include: a waiver of the due diligence provisions stated in 25 CFR § 169.105 (c); a waiver of 25 CFR § 169.125 (c) (2) thereby allowing the grantee rights to any of the products or resources of the land; and, to include construction of utilities within the right-of-way.

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.

5-DAY BILL HOLD PERIOD: 9/12/20
Website Posting Time/Date: 4:55pm 05-07-20
Posting End Date: 05-12-20
Eligible for Action: 05-13-20

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

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0111-20

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCD-109-18,
TO PROVIDE ADDITIONAL WAIVERS TO THE APPROVED THE GRANT OF
RIGHT-OF-WAY TO BUREAU OF INDIAN AFFAIRS FOR UPPER FRUITLAND
CHAPTER – OJO AMARILLO ROAD PROJECT NO. N101 (1) (2) 2&4, LOCATED
ON NAVAJO NATION TRUST LANDS IN UPPER FRUITLAND CHAPTER.
NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. Section §501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has the authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation land and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

SECTION TWO. FINDINGS

A. The Resources and Development Committee approved Resolution RDCD-109-18 attached as **Exhibit A**.

1 B. The Bureau of Indian Affairs requests amendments to the right-of-way resolution
2 RDCD-109-18 for the Ojo-Amarillo Road Project No. N101 (1) (2); these
3 amendments are additional waivers. These requested amendments include: a
4 waiver of the due diligence provisions stated in 25 CFR § 169.105 (c); a waiver of
5 25 CFR § 169.125 (c) (2) thereby allowing the grantee rights to any of the products
6 or resources of the land; and, to include construction of utilities within the right-of-
7 way.

8 C. The Resources and Development Committee finds a waiver of the due diligence
9 provisions stated in 25 CFR § 169.105 (c) is in the best interest of the Indian land
10 owners.

11 D. The Resources and Development Committee finds a waiver 25 CFR § 169.125 (c) (2)
12 to allow the grantee rights to any of the products or resources of the land is in the best
13 interest of the Indian land owners.

14
15 SECTION THREE. APPROVAL

16 A. The Resources and Development Committee of the Navajo Nation Council hereby
17 amends Resolution RDCD-109-18 by waiving the due diligence provisions stated in 25
18 CFR § 169.105 (c) because a waiver is in the best interest of the Indian landowners. 25
19 CFR § 169.105 (c).

20 B. The Resources and Development Committee of the Navajo Nation Council hereby
21 amends Resolution RDCD-109-18 by waiving 25 CFR § 169.105 (c) (2) thereby
22 allowing the grantee rights to any of the products or resources of the land, including
23 but not limited to, timber, forage, mineral, and animal resources. 25 CFR § 169.125
24 (c) (2).

25 C. The Resources and Development Committee of the Navajo Nation Council hereby
26 amends Resolution RDCD-109-18 by approving the grant of right-of-way to include
27 existing utilities or future utilities within the grantee's right-of-way. The utility
28 companies must first obtain the consent from the Navajo Nation in writing if the utility
29 is to enter and cross Navajo Nation land. The utility conveyance construction and
30 maintenance must not interfere with the integrity of the road prism, road ditches, road
design features and other road appurtenances.

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year,



AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO BUREAU OF INDIAN AFFAIRS FOR UPPER FRUITLAND CHAPTER - OJO AMARILLO ROAD PROJECT NO. N101(1)(2) 2&4, LOCATED ON NAVAJO NATION TRUST LANDS IN UPPER FRUITLAND CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO); APPROVING A WAIVER OF VALUATION AND CONSIDERATION; AND APPROVING A WAIVER OF BOND, INSURANCE, OR ALTERNATIVE FORM OF SECURITY

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations. 2 N.N.C. § 501 (B)(2).

SECTION TWO. FINDINGS

- A. The Bureau of Indian Affairs, Division of Transportation has submitted a right-of-way application to construct, operate and maintain an all-weather roadway for the Public Highway Navajo Route N101(1)(2) 2&4, on, over and across Navajo Nation Trust Lands in Upper Fruitland Chapter vicinity, San Juan County, New Mexico. The application request is attached hereto and incorporated herein as Exhibit B. See also Exhibit B-1.
- B. The proposed right-of-way is described in map and description attached hereto and incorporated herein as Exhibit C.
- C. The Grazing Committee or Land Board Member of District 13 has certified that there are no grazing permittees in the area to the existing road. The Consent To Use Navajo Tribal Lands attached hereto as Exhibit D.

- D. A waiver of consideration is requested. The Navajo Nation finds that the right-of-way project would benefit the Navajo Nation and is the best interest of the Navajo Nation to waive consideration.
- E. A waiver of the bond, insurance or alternative form of security on the part of the Bureau of Indian Affairs is requested. The Navajo Nation finds that the project benefits the Navajo Nation and the waiver of the bond, insurance, or alternative form of security is in the best interest of the Navajo Nation.
- F. The environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance Letter, Cultural Resources Compliance Form, and Cultural Resources Inventory Report have been completed and are attached as **Exhibit E**.
- G. The application for the Right-of Way as submitted by Bureau of Indian Affairs, Division of Transportation has been reviewed by the Navajo Land Department; Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division of Natural Resources, Department of Justice and Office of the President and Vice-President and "Approved" or found "Sufficient" by all. See **Exhibit F**.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to the Bureau of Indian Affairs, Division of Transportation, on, over and across Navajo Nation Trust Lands in Upper Fruitland Chapter vicinity, San Juan County, New Mexico. The location is more particularly described on the land description and survey map attached hereto as **Exhibit C**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby agrees upon compensation satisfactory to the Nation, which is no compensation for the Right-of-Way. The Resources and Development Committee waives any valuation and compensation and finds such waivers to be in the best interest of the Navajo Nation pursuant to 25 C.F.R. § 169.110, because the project will benefit the Navajo Nation.

- C. The Resources and Development Committee of the Navajo Nation Council hereby waives the requirement for a bond, insurance or alternative form of security on the part of the Grantee, based on the determination that the project benefits the Navajo Nation and such a waiver is in the best interest of the Navajo Nation, pursuant to 25 C.F.R. § 169.103(f)(2).
- D. The Resources and Development Committee of the Navajo Nation Council hereby approves the right-of-way subject to, but not limited to, the following terms and conditions incorporated herein and attached as **Exhibit A**.
- E. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

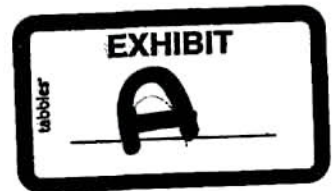
I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 27th day of December 2018.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Benjamin Bennett

Chairperson Alton Joe Shepherd not voting.



TERMS AND CONDITIONS

Right-of-Way for BIA
Project No. N101 (1)(2) 2&4
Ojo Amarillo Road

- a. The term of the right-of-way shall be 75 years.
- b. Consideration for the grant of the right-of-way is hereby waived, because the project will benefit Navajos living in the area.
- c. 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 may be hereafter in force and effect, including but not limited to the following:
 - i. Title 25, Code of Federal Regulations, Parts 162 and 169;
 - ii. All applicable Federal and Tribal antiquities laws and regulations, with the following additional condition: In the event of a 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 archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
 - iii. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 201 et seq.;
- d. 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 construction and maintenance of the project.
- e. 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 and all improvements thereon and make all necessary and reasonable repairs.
- f. The Grantee shall obtain permission to cross-existing rights-of-way from the appropriate parties before construction the proposed project.
- g. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
- h. The Grantee shall not 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, without the prior written consent of the Navajo Nation and the Secretary. 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.

- i. 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 or to any improvements located thereon.
- j. 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 buildings and other improvements erected or placed thereon.
- k. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.
- l. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, 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.
- m. Grantee shall retain as much of the natural vegetation within the right-of-way as possible.
- n. Grantee shall re-vegetate all disturbed areas.
- o. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the rights-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the traveling public, and all activities conducted or otherwise occurring within the right-of-way, and specifically including, but not limited to, jurisdiction to enforce speed limits and compliance with traffic control devices, jurisdiction to enforce Navajo Nation laws applicable to the operation of motor vehicles and jurisdiction to adjudicate disputes arising from motor vehicle accidents or other conduct, or activities occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction consistent with federal law.

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS



RIGHT-OF-WAY APPLICATION MUST IDENTIFY [§169.102(a)]:

1. Applicant Name and Address: Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87301
2. Tract(s) or parcel(s) affected by the right-of-way: See attached ROW Plat Map.
3. General location (easement description): See attached Legal Description.
4. Purpose: Construction of an all-weather roadway, operation and maintenance of Public Highway Navajo Route N101(1)(2)2&4 and accordance with 25 CFR, Part 170
5. Term (Renewal, if applicable): Perpetual term.
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

REQUIRED SUPPORTING DOCUMENTS [§169.102(b)]:

NOTE: DUE TO THE APPLICANT BEING THE US GOVERNMENT THE FOLLOWING IS REQUESTED:

- I. A REQUEST TO WAIVE ITEM No's. 3 and 6 WILL BE MADE TO THE NAVAJO NATION.
 - II. ITEM No. 7 IS NOT APPLICABLE.
-
1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
 2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. § 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
 3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;
 4. Record of notice that the right-of-way was provided to all Indian landowners;
 5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);

6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;
7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
 - a. The representative has authority to execute the application;
 - b. The right-of-way will be enforceable against the applicant; and
 - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.


THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

NAME: Herby J. Larsen
ADDRESS: BIA, NRO Division of Transportation
P.O. Box 1060
CITY/STATE: Gallup, New Mexico
ZIP: 87301
PHONE: (505) 863-8281
FAX: (505) 863-8355
EMAIL: Herby.Larsen@bia.gov

DATE: 12/15/17

APPLICANT: 
(Signature)

Herby J. Larsen
(Print Name)



In Reply Refer To:
Division of Transportation
M/C: N370

United States Department of the Interior

Bureau of Indian Affairs
Navajo Region
P. O. Box 1060
Gallup, New Mexico 87305

JAN 25 2018



Honorable Russell Begaye
President, The Navajo Nation
P.O. Box 7440
Window Rock, Arizona 86515



Dear President Begaye:

The Naa'bik'iyati Committee of the 22nd Navajo Nation Council has authorized the BIA Navajo Region Division of Transportation (BIA-NRDOT) to improve BIA Road Project N101(1)(2)2&4 located in Ojo Amarillo, San Juan County, New Mexico and traverses through Navajo Nation Trust lands. Therefore, the Bureau of Indian Affairs, Navajo Region Division of Transportation (BIA-NRDOT) is submitting an Application for Perpetual Right-of-Way (ROW) to construct and maintain this road.

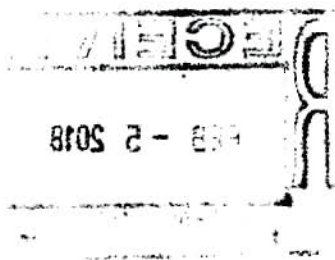
At the request of community members and the Navajo Nation Resource Development Committee (RDC), this road Project is scheduled for improvement so as to alleviate hardship/difficult traveling conditions during the winter and rainy seasons, especially for the school buses and elderly folks.

Pursuant to the enclosed Navajo Nation Council Resolution No. CN-67-02 "Approving Interim Standard Terms and Condition for the Granting of Right-of-Way for BIA Road Construction Projects on the Navajo Nation", the Nation has previously waived any compensation that is subject to a transportation project application. The Terms and Conditions have not been updated under the new Right-of-Way Regulations. However, the new 25 CFR Part 169 Regulations requires the Bureau of Indian Affairs (BIA) to request for a tribal consent/waiver for the following sections of the new regulation:

(1) 25 CFR § 169.103: *What bonds, insurance, or other security must accompany the application?*

(f) *We may waive the requirement for a bond, insurance, or alternative form of security:*

- a. *For individually owned Indian land, if the Indian landowners of the majority of the interests request it and we determine, in writing, that a waiver is in the Indian landowners' best interest considering the purpose of and risks*



associated with the right-of-way, or if the grantee is a utility cooperative and is providing a direct benefit to the Indian land or is a tribal utility.

- b. For tribal land, deferring, to the maximum extent possible, to the tribe's determination that a waiver of a bond, insurance or alternative form of security is in its best interest.

(2) 25 CFR §169.110: How much monetary compensation must be paid for a right-of-way over or across tribal land?

- a. A right-of-way over or across tribal land may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:
 - (1) Has agreed upon compensation satisfactory to the tribe;
 - (2) Waives valuation; and
 - (3) Has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest.

(3) § 169.105 What requirements for due diligence must a right-of-way grant include?

- a. If permanent improvements are to be constructed, the right-of-way grant must include due diligence requirements that require the grantee to complete construction of any permanent improvements within the schedule specified in the right-of-way grant or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the grant, the grantee must provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.
- b. Failure of the grantee to comply with the due diligence requirements of the grant is a violation of the grant and may lead to cancellation of the right-of-way under § 169.405 or § 169.408.
- c. BIA may waive the requirements in this section if we determine, in writing, that a waiver is in the best interest of the Indian landowners.

(4) § 169.125 What will the grant of right-of-way contain?

(c) The grant will state that:

(1) The tribe maintains its existing jurisdiction over the land, activities, and persons within the right-of-way under

§ 169.10 and reserves the right of the tribe to reasonable access to the lands subject to the grant to determine grantee's compliance with consent conditions or to protect public health and safety;

(2) The grantee has no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral, and animal resources, unless otherwise provided for in the grant;

Based upon the above requirements, BIA is requesting the Navajo Nation's concurrence (in writing) to: 1) waive the bonding requirements; 2) waive the valuation and compensation requirements as the Project is in the Nation's best interests; 3) waive the due diligence requirement or allow the timeline to begin when actual construction takes place up to the contract final construction deadlines, taking into account any time extensions authorized by BIA due to any change orders in the work or unforeseen construction issues; 4) that the term of the right-of-way grant be *"for as long as the project is used for its intended purpose and that the program can use the material within the easement to build the project"* and 5) in addition, we request the right-of-way grant of easement include a utility system provision/condition.

The ROW easement will include construction of utilities within the N101(1)(2)2&4 easement corridor. This provision will allow the road ROW granted to the BIA-NRDOT be used for such purpose which will benefit the tribal communities and their socioeconomic development needs with respect to utilities. The utility conveyance construction and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances. Any and all utility installations or relocations will be approved through the BIA-NRDOT permitting process where applicable and subject to: "Utility company(s) must first obtain consent from the underlying land owner in writing if the utility is crossing such land".

Enclosed is the ROW application and supporting documents for BIA Project N101(1)(2)2&4 which traverses through Navajo Nation Trust lands. The supporting documents are:

1. One original and a photocopy of the New Title 225, Part 169 Right-of-Way application;
2. One original reproducible right-of-way plat map;
3. Two photocopies of the right-of-way plat map;
4. Two photocopies of the legal description; and
5. One photocopy of the Abbreviated Environmental Assessment (EA) report consisting of the Finding of No Significant Impact (FONSI) Statement, Federal Highways Administration (FHWA) Archaeological/Cultural Compliance report, Biological Resources Compliance report and Categorical Exclusion Determination/Approval report.
6. One photocopy of the Navajo Nation Council Resolution No. CN-67-02 "Approving Interim Standard Terms and Condition for the Granting of Right-of-Way for BIA Road Construction Projects on the Navajo Nation";
7. One photocopy of a legislative action by the Navajo Nation Recourses Committee Resolution Number RCO-106-09 approving Utility Systems with the Navajo Mountain Road Project N16(6)/N162(1)/N164(1)2&4 Right-of-Way corridor;

BIA-NRDOT is requesting your office to process this application expeditiously to ensure this Project receives the ROW clearance before construction commences. We are planning for this Project to go into construction on or about April 2018.

If additional information is needed, please contact Mr. Herby Larsen, Division Manager, at (505) 863-8281 or Mr. Harold Riley, Planning & Design Chief at (505) 863-8284 with the BIA-NRDOT office. Thank you for your prompt attention in this matter as we await your reply.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Regional Director, Navajo

Enclosures

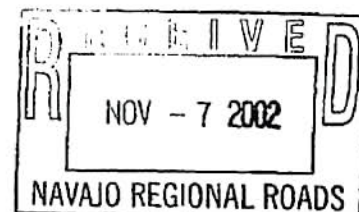
CN-67-02

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Approving Interim Standard Terms and Condition for the
Granting of Right-of-Way for BIA Road Construction Projects on
the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and
2. Pursuant to 2 N.N.C. §102 (C), the Navajo Nation Council shall supervise all powers delegated; and
3. Pursuant to 2 N.N.C. §423 (E), the Transportation and Community Development Committee is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and
4. Pursuant to 2 N.N.C. §695 (B)(2), the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of rights-of-way over Navajo lands in accordance with applicable federal and Navajo Nation laws; and
5. Based on the federal law, the Transportation Equity Act for the 21st Century (TEA-21) authorized funding for Federal Aid Highways, Highway Safety Programs, Transit, and Federal Lands Programs including the Indian Reservation Roads Program; and
6. TEA-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal year of 1999 and 2003; and
7. Based on annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of \$55 Million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of-way; and



CN-67-02

8. On April 23, 2002, the Transportation and Community Development Committee of the Navajo Nation Council was apprised that certain road projects, totaling an approximate amount of \$24.37 million, were experiencing delays due to unresolved right-of-way issues:

- N-21(2)2 & 4, Kaibeto to Red Lake
- N-32(2)2 & 4, Navajo to Mexican Springs
- N-27(2-1/N-2-1)(1-2)2 & 4, Nazlini to Chinle
- N-203 (1)1,2,3 Switchback Bridge Project at Kinlichee
- N-55(2)2 & 4, Alamo to I-40
- N-35(6)2 & 4, U.S. 191 Rock Point to Sweetwater;

and in subsequent years, additional delays and potential loss of federal funds may occur if the right-of-way issue is not resolved by the two (2) standing committees; and

9. The Navajo Nation President Kelsey A. Begaye has taken the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation must fully utilize the annual allocated IRR funds to improve badly needed roads; and

10. The Right-of-Way Clearance Program under the Navajo Land Department has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right-of-way; and

11. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of interim Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA Road Projects; and

CN-67-02

12. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and the Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Interim Terms and Conditions that would specifically address BIA road projects. The agreed upon Interim Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"; and

13. On May 15, 2002, the Transportation and Community Development Committee of the Navajo Nation Council met with the Resources Committee of the Navajo Nation Council in a joint meeting and discussed the status of road projects and the "Terms and Conditions" for the right-of-way. Such Interim Terms and Conditions were made available; and

14. On May 21, 2002, by Resolution TCDCMY-31-02, attached and marked herein as Exhibit "B", the Transportation and Community Development Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects; and

15. On July 25, 2002, by Resolution RCJY-108-02, attached and marked herein as Exhibit "C", the Resources Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects.

NOW THEREFORE BE IT RESOLVED THAT:

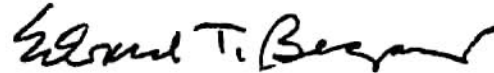
1. The Navajo Nation Council hereby approves the Interim Right-of-Way Terms and Conditions for Road Projects, attached hereto as Exhibit "A".

2. The Navajo Nation Council directs that the Interim Standard Terms and Conditions shall be used for all subsequent Right-of-Way for BIA Road Projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA road projects.

CN- 67-02

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 66 in favor, 0 opposed and 0 abstained, this 1st day of November 2002.



Edward T. Begay, Speaker
Navajo Nation Council

Nov 5, 2002

Date

Motion: Larry Noble

Second: Joe Dayzie

EXHIBIT "B"

TCDCMY-31-02

**RESOLUTION OF THE
TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL**

**Recommending that the Resources Committee Approve
Rights-of-Way Terms and Conditions for BIA Roads
Projects On the Navajo Nation**

WHEREAS:

1. Pursuant to 2 N.N.C. Sections 420 and 421(E), the Transportation and Community Development Committee of the Navajo Nation Council (hereinafter referred to as the "Committee") was established and continued as a standing committee of the Navajo Nation Council to oversee all matters pertaining to community development, including road and transportation activities of the Navajo Nation; and
2. Pursuant to 2 N.N.C. Section 423(E), the Committee is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and
3. The United States Congress enacted the Transportation Equity Act for the 21st Century (TEA-21) in 1998 which authorized funds for Federal Aid Highways, Highway Safety programs, Transit, and Federal Lands programs including the Indian Reservation Roads Program; and
4. TEA-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal year of 1999 through 2003; and
5. TEA-21 contains statutory language at Section 1115, Federal Lands Highway Program, subsection (b)(4)(2)(A), that funds authorized to be appropriated for Indian Reservations shall be allocated among Indian tribes for Fiscal Year 2000 and subsequent fiscal years to be distributed in accordance with a formula established by the Secretary of Interior under a Negotiated Rulemaking Procedure under Subchapter III of Chapter 5 of Title 5; and
6. TEA-21 further provides that the Secretary of Interior shall issue regulations governing Indian Reservation Roads (IRR) Program and establish a funding distribution formula in accordance with the negotiated rulemaking committee with such regulations to be issued in final form not later than April 1, 1999 and take effect no later than October 1, 1999; and

TCDCMY-31-02

7. Based on the annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of \$55 Million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of-way; and

8. The Committee has been apprised of the status of various roads projects and the following projects, totaling an approximate amount of \$24.37 Million, are experiencing delays due to unresolved right-of-way issues:

- N-21(2)2&4, Kaibeto to Red Lake
- N-31(2)2&4, Navajo to Mexican Springs
- N-27(2-1/N-2-1) (1-2)2&4, Nazlini to Chinle
- N-203(1)1,2,3, Switchback Bridge Project at Kinlichee
- N-55(2)2&4, Alamo to I-40
- N-35(6)2&4, U.S. 191 Rock Point to Sweet Water; and

9. On April 23, 2002, Navajo Nation President Kelsey A. Begaye was apprised of the matter and took the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation will fully utilize the annual allocated IRR funds to improve badly needed roads; and

10. The Committee discussed the circumstances surrounding the delay of projects in securing the archeological clearances, environmental assessments, and rights-of-way of projects. IRR funds must be obligated either through contract awards or by the Point of Obligation methods with approval of project plans, specifications, and engineer's estimates. Given the situation, the Committee assessed that it must have the right-of-way easements no later than June 15, 2002; and

11. The Project Review Department within the Division of Natural Resources has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right-of-way; and

12. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA roads projects; and

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13. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Terms and Conditions that would specifically address BIA roads projects. The agreed upon Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"

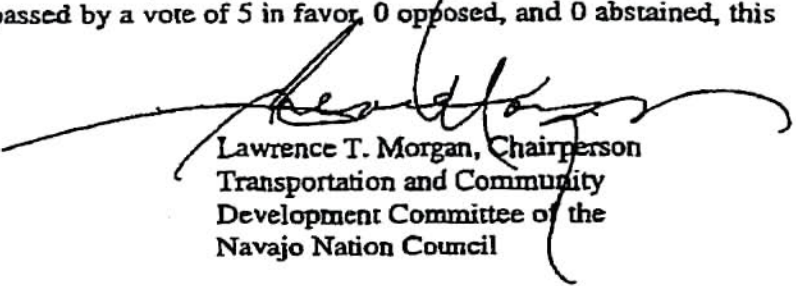
NOW THEREFORE BE IT RESOLVED THAT:

1. The Transportation and Community Development Committee of the Navajo Nation Council hereby recommends that the Resources Committee of the Navajo Nation Council approve the Right-of-Way Terms and Conditions for Road Projects, attached hereto as Exhibit "A".

2. The Transportation and Community Development Committee of the Navajo Nation Council recommends that the Terms and Conditions shall be used for all subsequent Right-of-Way for BIA roads projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA roads projects.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Transportation and Community Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and the same was passed by a vote of 5 in favor, 0 opposed, and 0 abstained, this 21st day of May, 2002.



Lawrence T. Morgan, Chairperson
Transportation and Community
Development Committee of the
Navajo Nation Council

Motion: Joe Salt
Second: Larry Noble

EXHIBIT "C"

RCJY-108-02

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving Interim Standard Terms and Conditions for the
Granting of the Rights-of-Way for Bureau of Indian Affairs
Road Construction Projects on the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. § 695 (B) (2), the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of rights-of-way over Navajo lands in accordance with applicable federal and Navajo Nation laws; and

2. The Right-of-Way Clearance Program under the Navajo Land Department has the responsibility of processing rights-of-way for proposed road construction on the Navajo Nation and works in coordination with the Bureau of Indian Affairs/Branch of Roads and the Transportation and Community Development Committee of the Navajo Nation Council; and

3. Pursuant to 2 N.N.C. § 423 (E), the Transportation and Community Development Committee of the Navajo Nation Council is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and

4. The United States Congress enacted the Transportation Equity Act for the 21st Century (TEA-21) in 1998 which authorized funds for Federal Aid Highways, Highway Safety Programs, Transit and Federal Lands Programs including the Indian Reservation Roads Program; and

5. Tea-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal year of 1999 through 2003; and

RCJY-108-02

6. Based on the annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of \$55 million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of-way; and

7. On April 23, 2002, the Transportation and Community Development Committee of the Navajo Nation Council was apprised that certain road projects, totaling an approximate amount of \$24.37 million, were experiencing delays due to unresolved right-of-way issues:

- N-21(2)2&4, Kaibeto to Red Lake
- N-31(2)2&4, Navajo to Mexican Springs
- N-27(2-1/N-2-1) (1-2)2&4, Nazlini to Chinle
- N-203(1)1,2,3, Switchback Bridge Project at Kinlichee
- N-55(2)2&4, Alamo to I-40
- N-35(6)2&4, U.S. 191 Rock Point to Sweet Water; and

in subsequent years, additional delays and potential loss of federal funds if the right-of-way issue is not resolved by the two (2) standing committees; and

8. The Navajo Nation President Kelsey A. Begaye took the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation will fully utilize the annual allocated IRR funds to improve badly needed roads; and

9. The Right-of-Way Clearance Program under the Navajo Land Department has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right-of-way; and

10. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of Interim Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA road projects; and

RCJY-108-02

11. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Interim Terms and Conditions that would specifically address BIA road projects. The agreed upon Interim Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"; and

12. On May 15, 2002, the Transportation and Community Development Committee of the Navajo Nation Council met with the Resources Committee of the Navajo Nation Council in a joint meeting and discussed the status of road projects and the "Terms and Conditions" for the right-of-way. Such Interim Terms and Conditions were made available; and

13. On May 21, 2002, by Resolution TCDCMY-31-02, attached and marked herein as Exhibit "B", the Transportation and Community Development Committee of the Navajo Nation Council recommended approval of the "Terms and Conditions" for the right-of-way for road projects.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the Interim Standard Right-of-Way Terms and Conditions for BIA Road Projects, attached hereto as Exhibit "A".

2. The Resources Committee of the Navajo Nation Council directs that the Interim Standard Terms and Conditions be used for all subsequent rights-of-way for BIA road projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA road projects.

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,

RCJY-108-02

Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 25th day of July, 2002.



George Arthur, Chairperson
Resources Committee

Motion: Robert B. Whitehorse
Second: Herman Daniels

**RIGHT-OF-WAY LEGAL DESCRIPTION
OJO AMARILLO ROAD PROJECT No.'s N101(1)2&4
NAVAJO NATION, OJO AMARILLO, NEW MEXICO
NEW MEXICO PRINCIPAL MERIDIAN**

BIA ROAD PROJECT N101(1)(2)2&4 MAIN ALIGNMENT

A strip of land modeled at 13.000 to 18.000 meters left and 18.000 to 22.000m right wide along the following described centerline lying within Section 25, Township 29 North, Range 15 West, New Mexico Principal Meridian, San Juan County and more particularly described as follows:

Beginning at Engineer's surveyed centerline, **POINT OF BEGINNING** (P.O.B.) Station 0+000.000 meters, on BIA Road Project N101(1)(2)2&4, whence said point having North American Datum (NAD) 83 Geodetic Coordinates Values of $N = 36^{\circ}41'34.9081''$ $W = 108^{\circ}21'58.7672''$ and NAD83 GRID COORDINATES - NMSPC-WZ are $N = 631550.480m$ $E = 782371.328m$, said point having a section corner tie to the northeast corner of Section 25, common to Section 24, Township 29 North, Range 15 West, NMPM, San Juan County, and Sections 19 & 30, Township 29 North, Range 14 West, NMPM, San Juan County, New Mexico, bears $N 23^{\circ}53'34'' E$, a distance of 1425.260 meters, and whence a National Geodetic Control tie was made to "DUNE", bears $S 76^{\circ}45'29'' E$, a distance of 11657.092 meters;

**SECTION 25, TOWNSHIP 29 NORTH, RANGE 15 WEST, NMPM, SAN JUAN COUNTY,
NAVAJO NATION LANDS;**

THENCE, $N 89^{\circ}42'36'' E$, along said centerline BIA Road Project N101(1)(2)2&4, a distance of 190.000 meters to POT Station 0+190.000m, whence the right-of-way width is 13.000 meters left and 18.000 meters right and changes to 18.000 meters left and 18.000 meters right;

THENCE, $N 89^{\circ}42'36'' E$, continuing with said centerline N101(1)(2)2&4, a distance of 27.000 meters to P.O.T. Station 0+217.000m, whence the right-of-way width changes from 18.000 meters left and 18.000 meters right to 13.000 meters left and 18.000 meters right;

THENCE, $N 89^{\circ}42'36'' E$, continuing with said centerline N101(1)(2)2&4, a distance of 11.936 meters to P.C. Station 0+228.936m;

THENCE, continuing with said centerline N101(1)(2)2&4 along the arc of $3^{\circ}07'07''$ Curve 1A, having a radius of 560.000 meters, a central angle of $03^{\circ}10'42''$ LEFT, having an arc length of 31.063 meters, a tangent distance of 15.536 meters, a chord distance of 31.059 meters and a chord bearing of $N 88^{\circ}07'15'' E$, to P.O.C. station 0+260.000m, whence the right-of-way width changes from 13.000 meters left and 18.000 meters right to 18.000 meters left and 18.056 meters right;

THENCE, continuing with said centerline N101(1)(2)2&4 along the arc of $3^{\circ}07'07''$ Curve 1B, having a radius of 560.000 meters, a central angle of $01^{\circ}45'01''$ LEFT, having an arc length of 17.108 meters, a tangent distance of 8.555 meters, a chord distance of 17.107 meters and a chord bearing of $N 85^{\circ}39'24'' E$, to P.O.C. Station 0+277.107m, said point is the Point of Intersection with N101(1)(2)2&4 Spur alignment, Station 0+086.926m, and whence the right-of-way width changes from 18.000 meters left and 18.056 meters right to 18.000 meters left and 19.849 meters right;

THENCE, continuing with said centerline N101(1)(2)2&4 along the arc of 3°07'07" Curve 1C, having a radius of 560.000 meters, a central angle of 00°15'00" LEFT, having an arc length of 2.443 meters, a tangent distance of 1.222 meters, a chord distance of 2.443 meters and a chord bearing of N 84°39'23" E, to P.T. Station 0+279.551m, whence the right-of-way width changes from 18.000 meters left and 19.849 meters right to 18.000 meters left and 20.148 meters right;

THENCE, N 84°31'53" E, along said centerline BIA Road Project N101(1)(2)2&4, a distance of 14.684 meters to P.O.T. Station 0+294.235m, whence the right-of-way width is 18.000 meters left and 20.148 meters right and changes to 18.000 meters left and 22.000 meters right;

THENCE, N 84°31'53" E, along said centerline BIA Road Project N101(1)(2)2&4, a distance of 276.011 meters to POINT OF ENDING (POE) Station 0+570.247, said point intersects the east line of Section 25, Township 29 North, Range 15 West, NMPM, San Juan County and the west line of Section 30, Township 29 North, Range 14 West, NMPM, San Juan County, which a section corner tie is made to the northeast corner of said Section 25 and bears a "Protracted Bearing" of N 00°22'47" E, a distance of 1271.746 meters, and whence said point having North American Datum (NAD) 83 Geodetic Coordinates Values of N 36°41'36.0289" W 108°21'35.8587" and NAD83 GRID COORDINATES - NMSPC-WZ are N = 631581.884m E = 782940.168m, and whence a National Geodetic Control tie was made to "DUNE" and bears S 75°55'42", a distance of 11111.735 meters;

THENCE, N 84°31'53" E, along said centerline BIA Road Project N101(1)(2)2&4, a distance of 19.811 meters, which intersects BIA Road Project N3005(1)2&4 centerline alignment, Station 1624+43.74 feet;

The Project Right of Way width is modeled at 13.000 to 18.000 meters left and 18.000 to 22.000m right on each side of said centerline survey BIA Road Project N101(1)(2)2&4 contains a total of 0.570 kilometers (0.35 miles) in length, and contains 2.053 hectares (5.07 acres), more or less.

BIA ROAD PROJECT N101(1)(2)2&4 SPUR ALIGNMENT

A strip of land modeled at 18.000 meters left and 18.000m right wide along the following described centerline and lying within Section 25, Township 29 North, Range 15 West, New Mexico Principal Meridian, San Juan County and more particularly described as follows:

Beginning at Engineer's surveyed centerline, **POINT OF BEGINNING** (POB) Station 0+000.000 meters, on BIA Road Project N101(1)2&4 SPUR, whence said point having North American Datum (NAD) 83 Geodetic Coordinates Values of N = 36°41'32.3937" W = 108°21'48.4507" and NAD83 GRID COORDINATES - NMSPC-WZ are N = 631471.559m E = 782626.981m, said point having a section corner tie to the southwest corner of Section 25, common to section 26, 35 and 36 Township 29 North, Range 15 West, NMPM, San Juan County, bears S 81°52'42" W, a distance of 1266.243 meters, and whence a National Geodetic Control tie was made to "DUNE", bears S 76°50'59" E, a distance of 11390.173 meters;

SECTION 25, TOWNSHIP 29 NORTH, RANGE 15 WEST, NMPM, SAN JUAN COUNTY, NAVAJO NATION LANDS;

THENCE, N 25°14'43" E, along said centerline BIA Road Project N101(1)(2)2&4, a distance of 35.073 meters to P.C. Station 0+035.073m, whence the right-of-way width is 18.000 meters left and 18.000 meters right;

THENCE, continuing with said centerline N101(1)(2)2&4 SPUR the arc of 21°49'47" Curve 2A, having a radius of 80.000 meters, a central angle of 22°55'20" LEFT, having an arc length of 32.006 meters, a tangent distance of 16.220 meters, a chord distance of 31.793 meters and a chord bearing of N 13°47'03" E, to P.O.C. Station 0+067.079m and is the Point of Ending, whence said point intersects the right Right-of-Way line of the N101(1)(2)2&4 MAIN alignment and end the Right-of-Way width 18.00 meters left and right;

THENCE, continuing with said centerline N101(1)(2)2&4 SPUR the arc of 21°49'47" Curve 2B, having a radius of 80.000 meters, a central angle of 07°47'07" LEFT, having an arc length of 10.862 meters, a tangent distance of 5.443 meters, a chord distance of 10.862 meters and a chord bearing of N 01°34'11" W, to P.T. Station 0+077.948m;

THENCE, N 05°27'44" W, along said centerline BIA Road Project N101(1)(2)2&4 SPUR, a distance of 8.978 meters to Point of Intersection, Station 0+086.926m, whence the said point intersects BIA Road Project N101(1)(2)2&4 MAIN alignment Station 0+277.107;

The Project Right of Way width is modeled at 18.000 meters left and right along each side of said centerline survey BIA Road Project N101(1)(2)2&4 SPUR contains a total of 0.067 kilometers (0.04 miles) in length, and contains 0.242 hectares (0.60 acres), more or less.

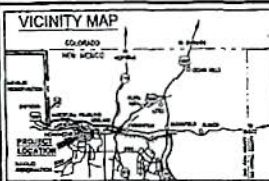
N101(1)2,&4 RIGHT OF WAY TAKINGS

SECTION	ALIGN.	PERIMETER	AREA (M²)	HECTARES	ACRES
25	MAIN	1226.766 (4024.82ft)	20530.287 (220905.89sqft)	2.053	5.07
25	SPUR	206.16 (676.38ft)	2414.819 (25983.45ft)	0.242	0.60
TOTALS		1432.926m (4701.20ft)	22945.106m (246889.34ft)	2.295	5.67

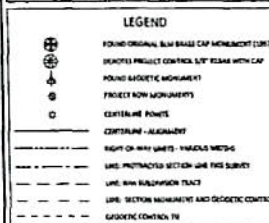
N101(1)2,&4 RIGHT OF WAY TABLE

N101(1)2,&4 MAIN ALIGNMENT							
LENGTH				WIDTH			
STATION to	STATION	METERS	FEET	LEFT	RIGHT	Hectares	ACRES
0+000.000 to	0+190.000	190.000	623.36	13m (42.65ft)	18m (59.05ft)	0.589	1.45
0+190.000 to	0+217.000	27.000	88.58	18m (59.05ft)	18m (59.05ft)	0.097	0.24
0+217.000 to	0+260.000	43.000	141.08	13m (42.65ft)	18.056m (59.24ft)	0.133	0.33
0+260.000 to	0+294.235	14.684	48.176	18m (59.05ft)	22m (72.18ft)	0.130	0.32
0+294.235 to	0+570.247	276.012	905.55	18m 59.05ft)	22m (72.18ft)	1.103	2.73

N101(1)2,&4 SPUR ALIGNMENT							
LENGTH				WIDTH			
STATION to	STATION	METERS	FEET	LEFT	RIGHT	Hectares	ACRES
0+000.000 to	0+067.079	67.079	220.075	18m (59.05ft)	18m (59.05ft)	0.589	1.45

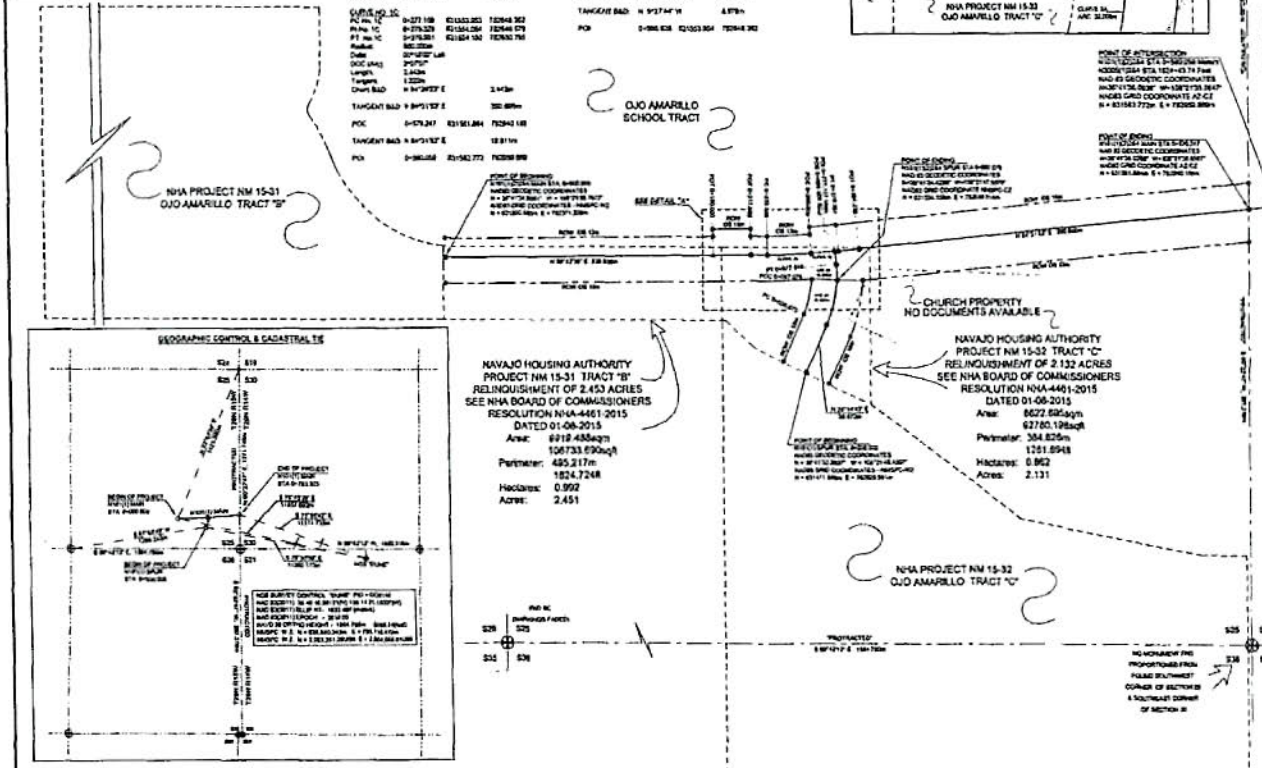
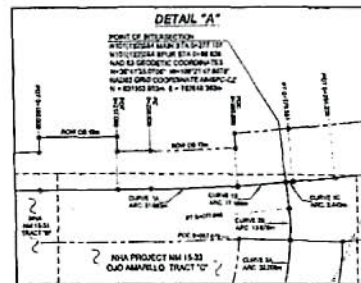


PLAT OF SURVEY
SHOWING THE RIGHT OF WAY FOR
PROJECT N101(1)(2)2&4 - OJO AMARILLO ROAD
T29N - R15W, NMPM; SECTION 25 NMPM
ALL WITHIN THE NAVAJO NATION, SAN JUAN COUNTY, NEW MEXICO



WITNESS LINE ALIGNMENT CORNER
 AND 25 NEW MEXICO STATE PLANNED COORDINATE (N101) 2015
 ALL ARE METRIC MEASUREMENTS

POINT	STATION	NORTHING	EASTING
POB	0+00.00	81286.445	78271.229
TANGENT BEG	0+00.00	81286.445	78271.229
CURVE BEG	0+00.00	81286.445	78271.229
PT 100	0+100.00	81286.445	78271.229
PT 200	0+200.00	81286.445	78271.229
PT 300	0+300.00	81286.445	78271.229
PT 400	0+400.00	81286.445	78271.229
PT 500	0+500.00	81286.445	78271.229
PT 600	0+600.00	81286.445	78271.229
PT 700	0+700.00	81286.445	78271.229
PT 800	0+800.00	81286.445	78271.229
PT 900	0+900.00	81286.445	78271.229
PT 1000	1+000.00	81286.445	78271.229
PT 1100	1+100.00	81286.445	78271.229
PT 1200	1+200.00	81286.445	78271.229
PT 1300	1+300.00	81286.445	78271.229
PT 1400	1+400.00	81286.445	78271.229
PT 1500	1+500.00	81286.445	78271.229
PT 1600	1+600.00	81286.445	78271.229
PT 1700	1+700.00	81286.445	78271.229
PT 1800	1+800.00	81286.445	78271.229
PT 1900	1+900.00	81286.445	78271.229
PT 2000	2+000.00	81286.445	78271.229
PT 2100	2+100.00	81286.445	78271.229
PT 2200	2+200.00	81286.445	78271.229
PT 2300	2+300.00	81286.445	78271.229
PT 2400	2+400.00	81286.445	78271.229
PT 2500	2+500.00	81286.445	78271.229
PT 2600	2+600.00	81286.445	78271.229
PT 2700	2+700.00	81286.445	78271.229
PT 2800	2+800.00	81286.445	78271.229
PT 2900	2+900.00	81286.445	78271.229
PT 3000	3+000.00	81286.445	78271.229
PT 3100	3+100.00	81286.445	78271.229
PT 3200	3+200.00	81286.445	78271.229
PT 3300	3+300.00	81286.445	78271.229
PT 3400	3+400.00	81286.445	78271.229
PT 3500	3+500.00	81286.445	78271.229
PT 3600	3+600.00	81286.445	78271.229
PT 3700	3+700.00	81286.445	78271.229
PT 3800	3+800.00	81286.445	78271.229
PT 3900	3+900.00	81286.445	78271.229
PT 4000	4+000.00	81286.445	78271.229
PT 4100	4+100.00	81286.445	78271.229
PT 4200	4+200.00	81286.445	78271.229
PT 4300	4+300.00	81286.445	78271.229
PT 4400	4+400.00	81286.445	78271.229
PT 4500	4+500.00	81286.445	78271.229
PT 4600	4+600.00	81286.445	78271.229
PT 4700	4+700.00	81286.445	78271.229
PT 4800	4+800.00	81286.445	78271.229
PT 4900	4+900.00	81286.445	78271.229
PT 5000	5+000.00	81286.445	78271.229
PT 5100	5+100.00	81286.445	78271.229
PT 5200	5+200.00	81286.445	78271.229
PT 5300	5+300.00	81286.445	78271.229
PT 5400	5+400.00	81286.445	78271.229
PT 5500	5+500.00	81286.445	78271.229
PT 5600	5+600.00	81286.445	78271.229
PT 5700	5+700.00	81286.445	78271.229
PT 5800	5+800.00	81286.445	78271.229
PT 5900	5+900.00	81286.445	78271.229
PT 6000	6+000.00	81286.445	78271.229
PT 6100	6+100.00	81286.445	78271.229
PT 6200	6+200.00	81286.445	78271.229
PT 6300	6+300.00	81286.445	78271.229
PT 6400	6+400.00	81286.445	78271.229
PT 6500	6+500.00	81286.445	78271.229
PT 6600	6+600.00	81286.445	78271.229
PT 6700	6+700.00	81286.445	78271.229
PT 6800	6+800.00	81286.445	78271.229
PT 6900	6+900.00	81286.445	78271.229
PT 7000	7+000.00	81286.445	78271.229
PT 7100	7+100.00	81286.445	78271.229
PT 7200	7+200.00	81286.445	78271.229
PT 7300	7+300.00	81286.445	78271.229
PT 7400	7+400.00	81286.445	78271.229
PT 7500	7+500.00	81286.445	78271.229
PT 7600	7+600.00	81286.445	78271.229
PT 7700	7+700.00	81286.445	78271.229
PT 7800	7+800.00	81286.445	78271.229
PT 7900	7+900.00	81286.445	78271.229
PT 8000	8+000.00	81286.445	78271.229
PT 8100	8+100.00	81286.445	78271.229
PT 8200	8+200.00	81286.445	78271.229
PT 8300	8+300.00	81286.445	78271.229
PT 8400	8+400.00	81286.445	78271.229
PT 8500	8+500.00	81286.445	78271.229
PT 8600	8+600.00	81286.445	78271.229
PT 8700	8+700.00	81286.445	78271.229
PT 8800	8+800.00	81286.445	78271.229
PT 8900	8+900.00	81286.445	78271.229
PT 9000	9+000.00	81286.445	78271.229
PT 9100	9+100.00	81286.445	78271.229
PT 9200	9+200.00	81286.445	78271.229
PT 9300	9+300.00	81286.445	78271.229
PT 9400	9+400.00	81286.445	78271.229
PT 9500	9+500.00	81286.445	78271.229
PT 9600	9+600.00	81286.445	78271.229
PT 9700	9+700.00	81286.445	78271.229
PT 9800	9+800.00	81286.445	78271.229
PT 9900	9+900.00	81286.445	78271.229
PT 10000	10+000.00	81286.445	78271.229



U.S. DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS
 NAVAJO REGIONAL OFFICE - DIVISION OF TRANSPORTATION
 NAVAJO INDIAN LANDS
 RIGHT-OF-WAY PLAT MAP

PROJECT NO. N101(1)(2)2&4 - OJO AMARILLO ROAD
 SECTION 25, T29N - R15W, NMPM; SECTION 25 NMPM
 COUNTY OF SAN JUAN

DATE: 01-06-2015
 BY: [Signature]
 TITLE: Surveyor

- NOTES:
1. SURVEY WAS CONDUCTED BY THE BUREAU OF INDIAN AFFAIRS UNDER THE DIRECTION OF THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 2. ALL CORNER POINTS ARE TO BE SET BY THE SURVEYOR AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 3. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 4. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 5. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 6. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 7. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 8. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 9. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.
 10. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE BUREAU OF INDIAN AFFAIRS SURVEYING DIVISION, DIVISION OF TRANSPORTATION, NAVAJO INDIAN LANDS.

SECTION	ALIGNMENT	PERMITS	AREA (SQ)	ACRES
10	W-10	100.00	100.00	2.28
11	W-11	100.00	100.00	2.28
TOTAL			200.00	4.56

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS
 NAVAJO REGIONAL OFFICE - DIVISION OF TRANSPORTATION
 RIGHT OF WAY PLAT DRAWING
 ROAD PROJECT N101(1)(2)2&4

LOCATION: OJO AMARILLO, NEW MEXICO
 SURVEYED BY: [Signature]
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 FILE NAME: N101(1)(2)2&4.RVT

Sep/5/2018 09:45:40

upper fruitland chapter 5059605033

EXHIBIT

D

The Navajo Nation
Upper Fruitland Chapter
PO BOX 1257
Fruitland, New Mexico 87416
(505) 960-5032/9811
Fax (505) 960-5033



LoRenzo Bates, Chairman
Lynlarla Dickson, President
Faye Blueeyes, Vice-President
Lynelle Etsitty, Secretary/Treasurer
Vacant, Farm Board Representative
Ray Jim Jr., Grazing Representative

September 5, 2018

Irvin Chee
Navajo Nation Attorney General
Window Rock, NM



Dear Mr. Irvin Chee;

I Ray Jim Jr. Upper Fruitland Grazing Representative, is sending you this letter to inform you on NAPI area their existing highway is already in place and existing therefore on behalf of the Navajo Nation and Upper Fruitland Chapter Grazing Representative know there is no existing grazing permittee within the area of NAPI boundary. Questions or concerns contact Upper Fruitland Chapter (505)960-5032/9811

Sincerely,

A handwritten signature of Ray Jim Jr. in cursive script.

Ray Jim Jr.



CONSENT FORM 3
(Waiver of Compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Ray Jim Jr., hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs, Window Rock, Arizona, to permit:

BIA Right of Way Navajo Region

To use a portion of my land use area for the following purpose(s):

BIA Navajo Region Road Project OJO AMARILLO #9665, N101 Ojo Amarillo. In Section 25, Township 29 North, Range 15 West, NMPM, Upper Fruitland, Ojo Amarillo, San Juan County, Navajo Reservation, New Mexico. A strip of land modeled at 13.000 to 18.000 to 22.000m right wide along the, distance of 11,657.092 meters.

As shown on the map showing the location of the proposed project attached.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

Remarks: I Ray Jim Jr. am consenting on behalf of Navajo Nation because there is no Grazing Permittes in the area to this existing road.

Date _____ X _____ Census No. _____
Land User Signature / Thumbprint Permit No. _____

Address: _____
Telephone No. _____

Witness: _____

9-05-18 Ray Jim Jr. District No. 13
Date Grazing Committee Member
Ray Jim, Jr. of Upper Fruitland Chapter

ACKNOWLEDGEMENT OF FIELD AGENT

I acknowledge that the consents of this consent form was read / ☒ or fully explained / ☒ to the land user in Navajo / ☒ or English / ☒ (Check where applicable)

Belinda Chee
Field Agent Signature
Belinda Chee, Senior Right of Way Agent

Irvin Chee

From: Belinda Chee <belchee@frontier.com>
Sent: Wednesday, September 5, 2018 3:33 PM
To: Elerina Yazzie / GLDD; Irvin Chee
Cc: Stevie R Hudson / GLDD
Subject: FW: Consent Form for: BIA Navajo Region Road Project OJO AMARILLO #9665
Attachments: Consent - by Ray Jim Jr of Upper Fruitland Chapter.pdf

Elerina & Irvin,

Here is the scanned copy of the consent form that Mr. Ray Jim, Jr signed today. I will pick up the original signed consent at Upper Fruitland Chapter house tomorrow and take it to GLDD office in St. Michaels tomorrow.

Thanks,
Belinda Chee
Utah Land Office/General Land Development Dept.

From: Belinda Chee [mailto:belchee@frontier.com]
Sent: Wednesday, September 05, 2018 11:05 AM
To: 'Upper Fruitland Chapter' <upperfruitland@navajochapters.org>
Cc: Elerina Yazzie / GLDD (elerina_yazzie@frontier.com) <elerina_yazzie@frontier.com>; Irvin Chee / DOJ <ichee@nndoj.org>
Subject: Consent Form for: BIA Navajo Region Road Project OJO AMARILLO #9665

URGENT PROJECT!

Good Morning Upper Fruitland Chapter,

Subject: BIA Navajo Region Road Project OJO AMARILLO #9665

I've been trying to contact Mr. Ray Jim Jr., Grazing Committee Member, this morning Mr. Irvin Chee of DOJ was able to contact Mr. Jim. We want Mr. Ray Jim Jr to make remarks and sign the consent form and email it back to me as soon as possible. And then mail the original documents to: General Land Development Department, PO Box 69, St. Michaels, AZ 86511, or I can pick them up myself.

Thus, I am emailing "Consent Form #3" for Mr. Ray Jim, Jr. I was told that this proposed project is "within the existing road and no grazing permit holder area." Therefore, please write or type in at the remarks on the consent form. This consent form is awaiting at DOJ for project approval.

Any question(s) feel free to inquire. I will appreciate your immediate attention to this urgent matter.

Thanks,
Belinda Chee, Senior Right of Way Agent
Utah Land Office/General Land Development Department
Division of Natural Resources
Navajo Nation

Post Office Box 410, Montezuma Creek, Utah 84534. Office located in Aneth, Utah.

Phone: (435) 651-3504

Fax: (435) 651-3506

Cell: (928) 797-1839

Email: belchee@frontier.com



United States Department of the Interior
Navajo Region
P.O. Box 1060
Gallup, NM 87305



MC 460 Branch of Environmental Quality Act Review & Compliance

OCT - 3 2017

MEMORANDUM

TO: Division Manager, Department of Transportation
Attention: Raymond Lucero

FROM: Branch of Environmental Quality Act Compliance & Review
Supervisory Environmental Protection Specialist

SUBJECT: Proposed Project N101 Reconstruction for the School Access Route, Spur Road
and Navajo Housing Authority (NHA) Access Road for Ojo Amarillo

The Abbreviated Environmental Assessment (EA), EA-17-19781, completed on September 26, 2017, from the Bureau of Indian Affairs (BIA) Navajo Region Department of Transportation, for its Proposed Project N101 Reconstruction for the School Access Route, Spur Road and Navajo Housing Authority (NHA) Access Road for Ojo Amarillo, was reviewed in the Branch of Environmental Quality Act Compliance and Review, Navajo Regional Office.

The Bureau of Indian Affairs (BIA) Navajo Region Division of Transportation (NRDOT), is proposing to construct an all-weather access road N101(1) from the Ojo Amarillo Elementary School to N3005. The existing route is used to access two NHA complexes and the Ojo Amarillo Elementary School. The project will include upgrades to a spur road that will allow access during construction and the upgrading of an access route for the NHA homes, just south of the proposed school access N101(1) project.

In accordance with Section 102 (2) (c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508), the Bureau of Indian Affairs, Navajo Regional Office, finds that the Proposed Action is not a major federal action that will significantly impact the quality of the human environment. Therefore, an Environmental Impact Statement is not required for implementing the Proposed Action. This Finding of No Significant Impact (FONSI) is supported by the Environmental Assessment (EA) and the supporting appendices and documents.

If you have questions, please contact Ms. Harrilene Yazzie, Supervisory Environmental Protection Specialist at (505) 863-8287.

Attachment

**FINDING OF NO SIGNIFICANT IMPACT
ENVIRONMENTAL ASSESSMENT EA-17-19781
PROPOSED PROJECT N101 RECONSTRUCTION FOR THE SCHOOL ACCESS
ROUTE, SPUR ROAD AND NAVAJO HOUSING AUTHORITY (NHA) ACCESS ROAD
FOR OJO AMARILLO**

BIA NAVAJO REGION DEPARTMENT OF TRANSPORTATION

Location: Kirtland USGS 7.5 Minute Series Map
Section 25, T29N, R15W, NMPM
Section 30, T29N, R14W, NMPM

Ojo Amarillo, San Juan County, NM

The Environmental Assessment (EA), EA-17-19718, developed September 26, 2017, by the Branch of Environmental Quality Act Compliance and Review for the Navajo Region Department of Transportation (NRDOT) for its Proposed Project N101 Reconstruction for the School Access Route, Spur Road and Navajo Housing Authority (NHA) Access Road for Ojo Amarillo, was reviewed in the Branch of Environmental Quality Act Compliance and Review, Navajo Regional Office. The NRDOT is proposing to construct an all-weather access road N101(1) from the Ojo Amarillo Elementary School to N3005. The existing route is used to access two Navajo Housing Authority (NHA) complexes and the Ojo Amarillo Elementary School. The project will include upgrades to a spur road that will allow access during construction and the upgrading of an access route for the Navajo Housing Authority (NHA) homes, just south of the proposed school access N101(1) project.

With the construction of N101 and upgrade to an existing access road to two NHA complexes, a formal right-of-way will be sought for N101 and for the existing NHA access road. The N101 right-of-way easement will consist of 7.330 acres with a total length of 1,853.67 feet. The ROW easement for the existing NHA access road will consist of 0.596 acres with a total length of 220.75 feet in length. The ROW for both requests varies from 42.65 feet (13 meters) to 72.18 feet (22 meters). Please see the tables below for the variation in the requested right-of-way for this project.

Station to Station	Length (meters)	Length (feet)	Varying Corridor (feet)	Acres
0+000.000 0+190.061	190.061	623.56	From the left, 42.65	0.61
0+190.086 0+228.936	38.85	127.46	From the left 59.06	0.125
0+000.000 0+259.151	259.151	850.23	From the right, 59.06	1.15
0+228.936 0+261.779	32.843	107.75	From the left, 42.65	0.106
0+261.108 0+568.960	307.852	1010.01	From the left 59.06	2.253
0+259.151 0+294.236	35.085	115.11	From the right, 59.06- 72.18	0.009
0+294.236 0+564.856	270.45	887.30	From the right, 72.18	3.077
GRAND TOTAL				7.33 Acres

Table 1. N101 ROW Easement from Centerline Alignment.

Station to Station	Length (meters)	Length (feet)	Varying Corridor (feet)	Acres
0+000.000 0+066.755	66.755	219.01	From the left, 59.06	0.297
0+000.000 0+067.284	67.284	220.75	From the right, 59.06	0.299
GRAND TOTAL				0.596 Acres

Table 2. Existing NHA access road ROW Easement.

The BIA's deliberation as to whether a Finding of No Significant Impact (FONSI) is appropriate, or, whether an Environmental Impact Statement (EIS) should be prepared, took into consideration, the following issues, which are addressed in the environmental assessment (EA).

1. **Beneficial and adverse environmental impacts:** The EA demonstrates that there will be no significant adverse or beneficial impacts on the quality of the human environment, including, Land Resources, Water Resources, Living Resources, Cultural Resources, Resource Use Patterns, Environmental Justice, Other Impacts, and Cumulative Impacts.
2. **Public health and safety:** There will be no impacts to health and safety. The overall health and safety of the community will improve with the construction and improvements that are being proposed to Route N101 and the access road to the NHA Housing Complexes. All BMPs issued by the BIA NRDOT will be imposed to ensure that public safety is upheld during construction.
3. **Clean Water Act (CWA) Compliance:** When a project spans, crosses or results in work in a river bed, stream bed or wetland, permits from the U.S. Army Corps of Engineers (ACOE) and/or the Navajo Nation Environmental Protection Agency, Water Quality Program may be required, including: Section 401, Water Quality Certification; Section 402(p), Storm Water Pollution Prevention Plan, if the project activity will disturb surfaces of ½ acre or more; and Section 404, Permit for Discharge of Dredge or Fill Material into Waters of the US. The applicant shall submit and obtain approval for all required applications prior to construction. The applicant shall adhere to all mitigation measures and strategies developed with the U.S. Army Corps of Engineers and the Navajo Nation Environmental Protection Agency: There is one wash that drains to the San Juan River and one drainage pipe will be installed under Route N101. This will require a 401/404 permit. The Navajo Nation Environmental Protection Agency (NNEPA) and the United States Army Corps of Engineers (ACOE) will be consulted and the appropriate permits will be obtained prior to advertising for construction.
4. **Unique characteristics of the geographic area:** The project area is not unique within its geographical setting and is similar to other areas in the region. There are no prime farmlands, wild and scenic rivers, wilderness areas, refuges, park lands, unique ecological areas, or other unique or rare characteristics of the land and aquatic environs that will be significantly affected.
5. **Degree to which the effects on the quality of the human environment are likely to be highly controversial:** There are no known scientific controversies over the effects of the proposed project on the human environment.
6. **Degree to which the effects are highly uncertain or involve unique or unknown risks:** There are no known effects on the human environment that are highly uncertain or involve

unique or unknown risks.

7. **Degree to which this action will establish a precedent for future actions with significant effects:** This project will not set a precedent for similar projects that may be implemented by the BIA or other agencies.
8. **Relationship to other actions with cumulatively significant impacts:** There are no known incremental effects of the action that become significant when added to other past, present, or reasonably foreseeable future actions that have affected, or will affect, the project area.
9. **Degree to which the action may affect districts, sites, objects, or structures listed on, or eligible for, the National Register of Historic Places, or may cause loss of significant cultural resources:** The Navajo DOT recommended that the undertaking will have *No Effect* on any known historic properties or archaeological and cultural resources for the proposed project area. Please see the consultation letter between the Federal Highway Administration and the Navajo Nation Historic Preservation Department (NNHPD) dated August 1, 2016 which was assigned the reference NNHPD No. HPD-16-613. NNHPD provided a concurrence for the proposed project.

In the event of a discovery of a previously unidentified or incorrectly identified cultural resource(s), all operations in the immediate vicinity of the discovery must cease, and the NNHPD must be notified.

10. **Degree to which the action may affect threatened, endangered, or sensitive species or their habitat:** The Navajo Nation Department of Fish and Wildlife (NNDFW) issued, Biological Resources Compliance Form (BRCF), NNDFW Review No. 15BIA05a3 on March 24, 2015, approving the proposed action. The BRCF was issued with no avoidance/mitigation measures and no conditions of compliance.
11. **Whether the action violates Federal or local laws or requirements imposed for the protection of the environment:** The proposed project will not violate any Federal or Tribal environmental laws or requirements.
12. **Indian Trust Assets:** The project area does not contain Indian Trust assets in the form of perennial water resources, fisheries, saleable timber, paleontology resources or agricultural resources. The project area is not part of any right-of-way avoidance and exclusion areas, wilderness area, special management area, area of critical environmental concern, or other protected area.
13. **Climate Change, its effect on the proposed action and its environmental impacts:** The proposed action will have little to no effect on climate change. If any effects on climate change were to occur, the effects would be temporary and negligible due to construction.

CONCLUSION

The proposed action is the Preferred Alternative. It does not constitute a major federal action, which normally requires preparation of an environmental impact statement (EIS).

Based on the foregoing, it has been determined that an EIS is not required for this project and thus will not be prepared.


Regional NEPA Coordinator

10/3/2017

Date

Proposed Project: Navajo Department of Transportation's Proposed N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo Elementary School

Date: September 22, 2017

Preparer Information

Name: Justine Vaivai

Title: Environmental Protection Specialist

Email: justine.vaivai@bia.gov

Phone number: 505-863-8349

APPLICABILITY

This form can be used if the proposed project has been determined to be routine in nature having limited context and intensity (e.g. limited size and magnitude or short-term effects). This Form is intended to be used when a project cannot be categorically excluded from a formal environmental assessment, but when the environmental impacts of the proposed project are expected to be insignificant and a detailed EA would not be appropriate. Accordingly, this Form is intended to meet the intent of a short EA while satisfying the regulatory requirements of an EA. Proper completion of the Form will allow the BIA to determine whether the proposed project can be processed with a short EA, or whether a more detailed EA or EIS must be prepared.

The Form can be used if the project will result in no significant environmental impacts on threatened/endangered species, public health or safety, wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on the nationwide river inventory, prime or unique farmlands, and historic properties. The project will not have any highly controversial or uncertain effects on the environment or pose any unique or unknown environmental risks to the immediate and surrounding environment. The project will not establish a precedent.

AUTHORITY

This is an abbreviated EA written in accordance with 43 CFR 46.310: (b) "When the Responsible Official determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, the environmental assessment need only consider the proposed action and does not need to consider additional alternatives, including the no action alternative. (See Section 102(2)(E) of NEPA)." The EA contains the minimum EA requirements found in 43 CFR 46.310 (a); (a) At a minimum, an environmental assessment must include brief discussions of: (1) The proposal; (2) The need for the proposal; (3) The environmental impacts of the proposed action; (4) The environmental impacts of the alternatives considered; and (5) A list of agencies and persons consulted.

If you have questions as to whether the use of this form is appropriate for your project, please contact the Regional NEPA Coordinator or Environmental Protection Specialist BEFORE using this form.

.....

1. **Project Description** (List and clearly describe **ALL** components of project proposal including all connected actions). **Attach a map or drawing of the area with the location(s) of the proposed action(s) identified:** The Bureau of Indian Affairs (BIA) Navajo Region Division of Transportation (NRDOT), is proposing to construct an all-weather access road N101(1) from the Ojo Amarillo Elementary School to N3005. The existing route is used to access two Navajo Housing Authority (NHA) complexes and the Ojo Amarillo Elementary School. The project will include upgrades to a spur road that will allow access during construction and the upgrading of an access route for the Navajo Housing Authority (NHA) homes, just south of the proposed school access N101(1) project.

The project is located within Section 25, Township 29 North, Range 15 West and Section 30, Township 29 North, Range 14 West. The project is located within San Juan County, Kirtland quadrangle map, Ojo Amarillo, New Mexico. Please see Figures 1-3 for attached map for proposed realign and location of the project area.

With the construction of N101 and upgrade to an existing access road to two NHA complexes, a formal right-of-way will be sought for N101 and for the existing NHA access road. The N101 right-of-way easement will consist of 7.330 acres with a total length of 1,853.67 feet. The ROW easement for the existing NHA access road will consist of 0.596 acres with a total length of 220.75 feet in length. The ROW for both requests varies from 42.65 feet (13 meters) to 72.18 feet (22 meters). Please see the tables 1-2 below for the variation in the requested right-of-way for this project.

Station to Station	Length (meters)	Length (feet)	Varying Corridor (feet)	Acres
0+000.000 0+190.061	190.061	623.56	From the left, 42.65	0.610
0+190.086 0+228.936	38.850	127.46	From the left, 59.06	0.125
0+000.000 0+259.151	259.151	850.23	From the right, 59.06	1.15
0+228.936 0+261.779	32.843	107.75	From the left, 42.65	0.106
0+261.108 0+568.960	307.852	1010.01	From the left 59.06	2.253
0+259.151 0+294.236	35.085	115.11	From the right, 59.06-72.18	0.009
0+294.236 0+564.856	270.45	887.30	From the right, 72.18	3.077
GRAND TOTAL				7.33 Acres

Table 1. N101 ROW Easement from Centerline Alignment.

Station to Station	Length (meters)	Length (feet)	Varying Corridor (feet)	Acres
0+000.000 0+066.755	66.755	219.01	From the left, 59.06	0.297
0+000.000 0+067.284	67.284	220.75	From the right, 59.06	0.299
GRAND TOTAL				0.596 Acres

Table 2. Existing NHA access road ROW Easement.

BIA NRDOT has the formal ROW for N3005. Please see Attachment 4 for the map for the Formal ROW. Route N3005 is intersected by N101 within Block II and was built in 1976. The N3005 right-of-way was granted encompassing an area of 254.41 acres and a length of 13.993 miles and a width of 150 feet. All grazing permits on the alignment of the ROW have been negated for the Navajo Indian Irrigation Project.

Information from the Environmental Impact Statement titled "Navajo Indian Irrigation Project (NIIP)," written by the Bureau of Indian Affairs and approved in 1976, will be incorporated by reference in this document.

2. **Project Purpose and Need:** Based on a study completed by BIA NRDOT staff and a public meeting held at the Ojo Amarillo Chapter House, it was determined that the current design of the N101 and the NHA access road is dangerous for the community. There is a cluster of turnouts, which form two dangerous Y intersections. The existing intersections are dangerous as the road shows traffic patterns veering away from a nationally accepted two way street. The standard two land street is twenty-four feet (24') in width and the traffic pattern shows widths of up to sixty feet (60') in some areas. The constructed roadway does not comply with the American Association of Highway Transportation Officials (AASHTO). Please see Attachment 1 for the BIA NRDOT Field Review Report.
3. **Describe the affected environment (existing conditions) and land use in the vicinity of the project:**

Land Resources

The proposed project area is currently being utilized for N101 and the NHA access road located south of N101. The land adjacent to the project area is currently being utilized by the Ojo Amarillo Elementary School, the Navajo Housing Authority housing complex, and several scattered residences. Several NIIP farm plots are being utilized in the land adjacent to N101. Please see Figure 1 for details.

Water Resources

The site is located on the Chaco Plateau. Drainage and runoff (sheet flow) is the northwest which drains into the Chaco River, a tributary of the San Juan River. Elevation in the proposed project

area is approximately 5,500 feet (1,659 meters) above sea level. No natural washes, rivers or streams were seen within the area and only traces of flooding from the adjacent agricultural fields to the east and the north were observed. There is a manmade channel running from the south to the north paralleling N3005 on the east side. The channel crosses below the N3005 roadway and heads west on the north side of the southeastern NHA housing site and through the proposed project site below the N101 alignment. There was no evidence of recent flows within the channel based on the substrate's condition which is heavily populated with vegetation and is sandy.

Cultural Resources

The BIA NRDOT made a request to have the Navajo Department of Transportation (NDOT) perform an updated archaeological survey for this project. The letter for compliance and concurrence from the Navajo Nation Historic Preservation Department (NNHPD) can be found under Attachment 6.

Air Resources

Air stability in the Four Corners can be classified, in four ways: stable, transition, neutral and unstable. Each of these four stability categories will have a different effect on airflow across air-pollution sources. Both the transition (three hours out of each day) and the unstable (two and one-half hours of each day) potentially are the most harmful. Under these conditions, pollutants reach the ground surface with ease. Without good control of releases, pollutants could accumulate somewhere downwind (NIIP EIS Section 2.4.2 Air Quality).

Climate

The average annual rainfall, at nearby Fruitland, New Mexico is 6.80 inches. This is the closest data station to the proposed project area and although Fruitland is approximately 400 feet lower in elevation and three miles to the northeast the precipitation should be about the same. The proposed project area has no natural drainage patterns and N3005 traverses perpendicular to the aspect of the slope limiting the N101 from contributing large amounts of flow.

Soils

The soil around the proposed project area is the Shiprock-Sheppard association. The soils are predominately sandy and deep, and are developed in sandy alluvial and Aeolian deposits. This association occurs on the gently sloping to gently rolling upland areas.

Biotic Resources and Vegetation

Vegetation around the project consists of gramma grass (*Bouteloua gracilis*), Mormon tea (*Ephedra*) and Russian thistle (*Kali tragus*).

The riparian habitat is the most common habitat types on the valley floor. The vegetation in these types seems dependent upon the San Juan River for survival. With the exception of the larger arroyos, riparian habitats are not found outside of the valley floor in any appreciable extent. Riparian habitats in this area can be classified into the following types: riverbank, shrubland, woodland, marsh, and agricultural fields (NIIP EIS, Section 2.5.1.1 Riparian Habitats).

The pinon-juniper habitat is found between Navajo Dam and Gallegos Canyon. Dominant canopy cover is characterized by pinon pine (*Pinus edulis*), and junipers (*Juniperus* sp.). Canopy cover is greatest at the highest elevations near Navajo Dam and becomes less dense as elevation decreases near State Highway 44. (NIIP EIS, Section 2.5.1.2 Pinion Juniper Habitat).

Socioeconomic Conditions

There are currently 766 people who live in Ojo Amarillo based on the 2010 Census conducted by the United States Census Bureau. There are approximately 181 housing units with 46.1% of persons living in poverty. The average household income is \$21,364 a year (2011-2015 American Community Survey 5-Year Estimates, United States Census Bureau).

4. **Alternatives to the Project: Describe any other reasonable actions that may feasibly substitute for the proposed project, and include a description of the "No Action" alternative. If there are no feasible or reasonable alternatives to the proposed project, explain why (attach alternatives drawings as applicable):**

Preferred Alternative: The preferred alternative would be the realignment and paving of N101 with the improvements to the NHA access road located south of N101.

Explanation: The constructed roadway does not comply with the safety requirements and drainage requirements used by the Navajo Region Department of Transportation guidelines from the American Association of Highway Transportation Officials (AASHTO). The NRDOT and their engineers concurred with NHA's request to realign the existing housing access with the new N101 alignment after a field visit which took place on August 27 and 28, 2014. The result of the action is a safer road and this is completed by improving sight distances and direct access to all the users. The preferred alternative would remediate the concerns of the community and make driving safer for the community while fulfilling BIA's trust responsibilities to the Navajo people.

No Action Alternative: The No-Action Alternative would be business as usual. Routes N101 and N3005 would not be paved and realigned for safety.

Explanation: There would be no changes to the current road infrastructure and safety would continue to be an issue for the community of Ojo Amarillo.

No other alternatives were deemed feasible or explored.

5. **Environmental Consequences**

(A) LAND RESOURCES

Would the proposed project directly or indirectly impact land resources (topography, soils)? Briefly explain.

The project will briefly impact soils and topography. Routes N101 and N3005 are existing roadways with heavy disturbance. The temporary impacts will be from the construction and paving activities from the heavy machinery associated with the proposed action. The impacts will be mitigated with Best Management Practices (BMP) imposed by the BIA NRDOT. Please see Attachment 2 for the BMPs provided by BIA NRDOT.

The natural gradients shall be restored as close as possible to pre-project contours to the maximum extent possible. All NRDOT roadway designs are designed to maintain preconstruction downstream flow conditions (e.g. location, capacity, and down flow rates).

(B) WATER RESOURCES

Would the proposed project directly or indirectly impact water resources (including wetlands and floodplains)? Briefly explain.

There is one wash that drains to the San Juan River and one drainage pipe will be installed under Route N101. This will require a 401/404 permit. The Navajo Nation Environmental Protection Agency (NNEPA) and the United States Army Corps of Engineers (ACOE) will be consulted and the appropriate permits will be obtained prior to advertising for construction.

Based on a map provided by the NRDOT, no wetlands or floodplains will be impacted by the project. Please see Figures 1-3 for reference.

(C) LIVING RESOURCES

Would the proposed project directly or indirectly impact living resources. Briefly explain. (Attach record of consultation with federal and state agencies or Tribal biologist as appropriate)

The Navajo Nation Department of Fish and Wildlife (NNDFW) issued a Biological Resource Compliance Form (BRCF) with NNDFW Review No. 15BIA05a3 on March 24, 2015. Based on the consultation with the NNDFS, the project was approved with no conditions. Please see Attachment 5 for BRCF.

(D) CULTURAL RESOURCES

Would the proposed project directly or indirectly impact cultural resources? Briefly explain.

A Class III cultural resource survey was conducted by a Navajo Department of Transportation archaeologist in advance of the proposed road project. The Class III survey consisted of a review of pre-field records, interviews, a cultural resources pedestrian survey and assessment of potential impacts to cultural resources within the Area of Potential Effect (APE). Archaeological documentation was limited to the surface only. No excavation or subsurface probing was conducted during the current survey.

1. Describe any impact the proposed project might have on any properties in or eligible for inclusion in the National Register of Historic Places. (Include a record of your consultation with the State or Tribal Historic Preservation Officer (S/THPO)).

No historic properties or traditional cultural properties (TCPs) as defined under Section 106 of the NHPA were identified within the project area. Please see the consultation letter between the Federal Highway Administration and Ms. Tamara Billie from the Navajo Nation Historic Preservation Department (NNHPD) dated August 1, 2016 regarding the proposed project.

2. Describe any impacts to archaeological resources as a result of the proposed project. (Include a record of consultation with persons or organizations with relevant expertise, including the S/THPO, if applicable).

The Navajo DOT recommended that the undertaking will have *No Effect* on any known historic properties or archaeological and cultural resources. Please see the consultation letter between the Federal Highway Administration and Ms. Tamara Billie from the Navajo Nation Historic Preservation Department (NNHPD) dated August 1, 2016 which was assigned the reference NNHPD No. HPD-16-613. NNHPD provided their concurrence for the proposed project.

(E) RESOURCE USE PATTERNS

Would the proposed project directly or indirectly impact resource use patterns (hunting/fishing, agriculture, mining, recreation, transportation networks)? Briefly explain.

This project will not affect hunting and fishing, mining, recreation and agriculture. This project will improve the safety and reliability of transportation networks that are currently in place.

(F) ENVIRONMENTAL JUSTICE

Would the proposed project have a disproportionate impact on minority and/or low-income communities? Consider human health, social, economic, and environmental issues in your evaluation. Explain.

There may be a brief impact on the community during construction of the new road. An alternate road will be constructed and provided for the community to utilize while the new route is being constructed. Overall, there will be no impact to minority or low-income communities. The proposed road improvements will benefit the community and make traveling safer for the community.

(G) OTHER IMPACTS

Would the proposed project directly or indirectly impact any other area (sound/noise, wilderness, public health and safety)? Briefly explain.

There may be temporary impacts to sounds and noise during construction due to the heavy construction machinery that will be utilized. Based on Best Management Practices provided by BIA NRDOT, the construction hours will be between 6:00 am and 8:00 pm, Monday through Saturday. In high wildlife use areas, an alternate construction schedule may be used in consultation with the Navajo Nation Department of Fish and Wildlife (NNDFW).

Based on a consultation with NNDFW, there will be no impacts to wildlife. Please see Attachment 5 for BRCF.

There will be no impacts to health and safety. The overall health and safety of the community will improve with the construction and improvements that are being proposed to Route N101

and the access road to the NHA Housing Complexes. All BMPs issued by the BIA NRDOT will be imposed to ensure that public safety is upheld during construction.

(H) CUMULATIVE IMPACTS

Discuss impacts from past, present, and reasonably foreseeable future projects in the area. Would the proposed project produce a cumulative effect on any of the environmental impact categories above? Consider projects that are connected and may have common timing and/or location. For purposes of this Form, generally use 3 years for past project and 5 years for future foreseeable project.

This project will not have a cumulative effect on the environmental impact categories listed above. All of the effects listed in the categories above are temporary and will end once construction is complete.

6. PERMITS

List all required permits for the proposed project. Has coordination with the appropriate agency commenced and what is the expected time frame of receiving a permit?

A 401/404 Clean Water Act permit will need to be obtained prior to construction. Based on the information provided, consultation has not been initiated with the Navajo Nation Environmental Protection Agency and the United States Army Corps of Engineers (ACOE). Consultation will need to be initiated immediately in order to start construction.

7. MITIGATION

Describe those mitigation measures to be taken to avoid creation of significant impacts to a particular resource as a result of the proposed project, and include a discussion of any impacts that cannot be mitigated.

All Best Management Practices listed by the Navajo Department of Transportation will be implemented and followed during construction. Please see Attachment 2 for the list of all Best Management Practices. All mitigation measures outlined in the BMPs must be followed by the contractor selected by NRDOT.

8. LIST OF AGENCIES AND PERSON CONSULTED

Navajo Nation Historic Preservation Department (NNHPD), Tamara Billie, Senior Archaeologist
Navajo Nation Department of Fish and Wildlife (NNDFW), Pam Kryselka, Wildlife Biologist

9. LIST OF ATTACHMENTS

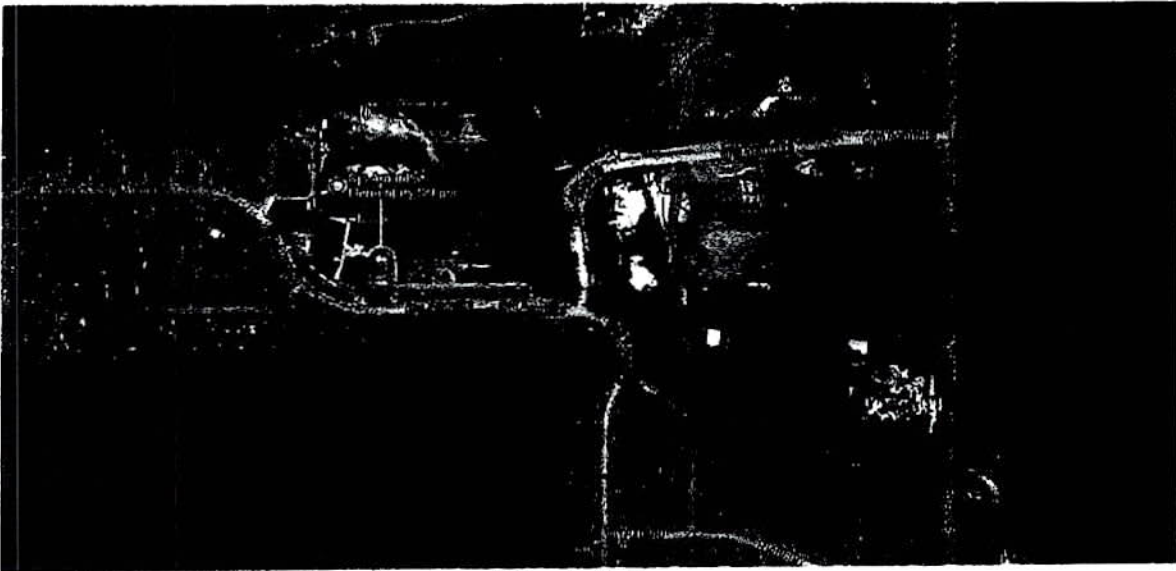


Figure 1. Proposed Project Area. Courtesy of Google Earth.

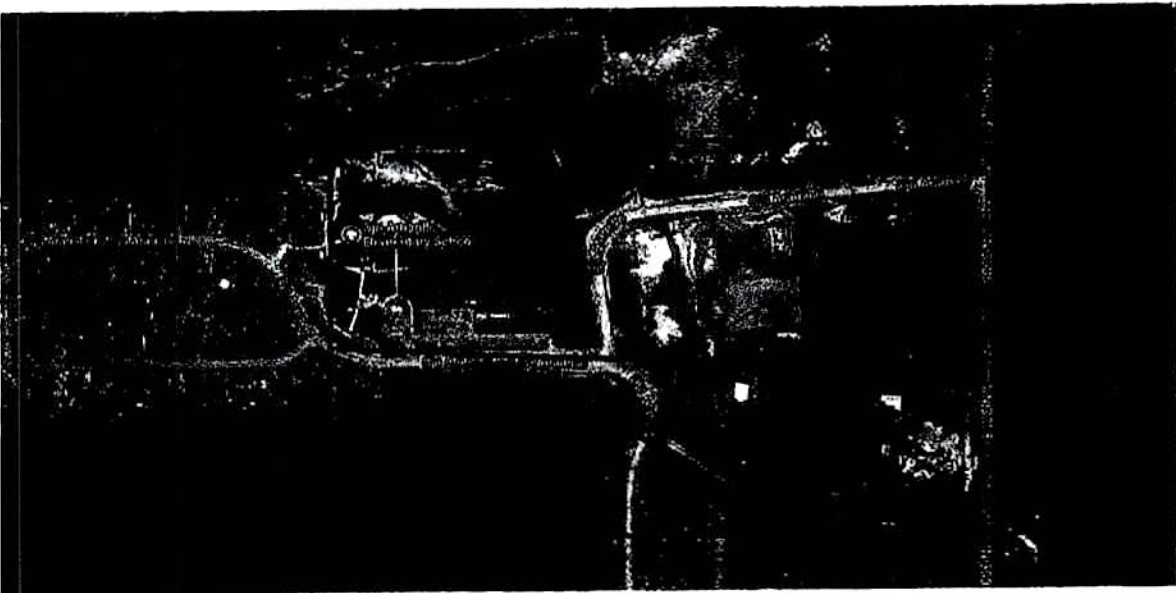


Figure 2. Proposed re-alignment of N101 to N3005. Courtesy of Google Earth.

Project Location Map

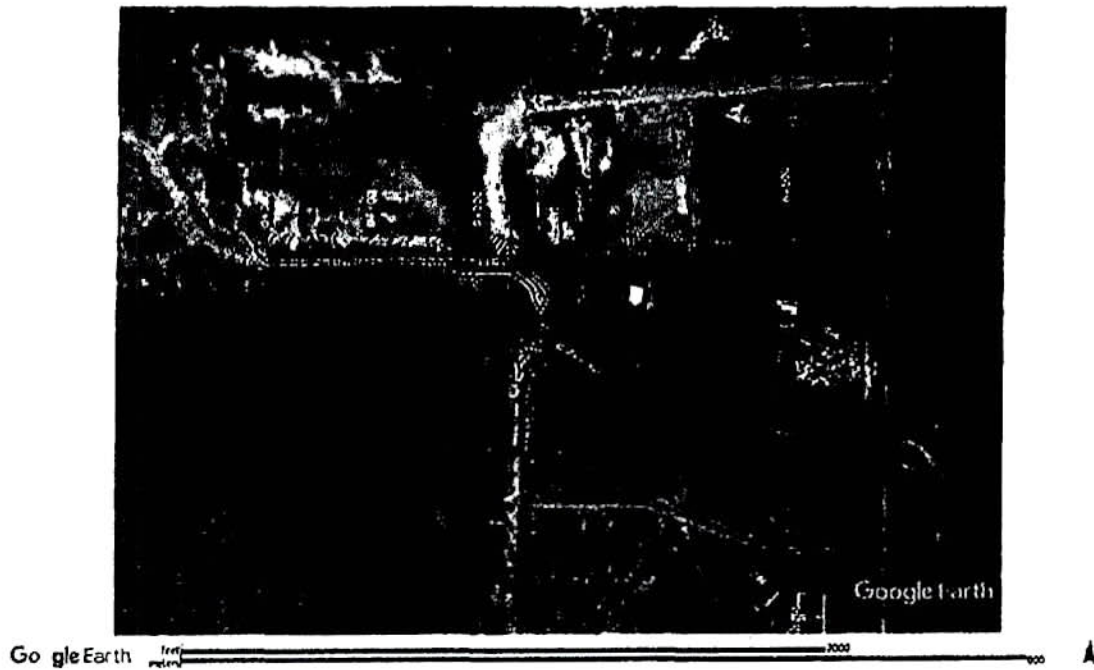


Figure 3. Proposed re-alignment of N101 to N3005 provided by BIA NRDOT.

Attachment 1: BIA NRDOT Field Review Report Dated August 27 and 28, 2017



**BUREAU OF INDIAN AFFAIRS
Navajo Regional Office
Division of Transportation**

FIELD REVIEW REPORT

Project: N101(1)2,4

I. DATE(s) OF REVIEW: August 27 and 28, 2014
Weather: clear skies, slight breeze, hot.

II. LOCATION OF REVIEW: Ojo Amarillo; N101/ NAPI- Block 2

III. PERSONS CONTACTED (name, title and organization):

A. BIA: See sign-in sheet

B. OTHER: See sign in sheet

IV. RESULTS OF REVIEW:

A. HIGHLIGHTS NOTED:

Group met at junction of BIA Route N3005 and N101 before proceeding to field inspection. Below is the plans-in-hand field review discussion and issue with comment and recommendations:

1. Station 0+000, BOP; the existing 4-unit cattle guard will be removed, clean, and salvaged. The adjacent chain link fencing will be removed up to 6.935m, left and right. Then, install new steel posts and tie-in existing fencing.
2. From BOP Station 0+000 to 0+200, left and right; the proposed typical cut ditches will be eliminated. And also to minimize additional grading work inside the school boundary on the left side. The profile grade is increasing while the drainage ditch flow towards Beginning of Project (into NHA housing complex), except for pavement street drainage. Or else the water will pond at this intersection. The group noticed there's no typical street back slope ditches within the NHA property.
3. Station 0+000 to 0+220, left. The existing chain link fencing will be removed during grading work. Also, the existing concrete curb cuts will be partially removed to match the new profile grade and curb radius. Then, re-install fencing at school boundary.
4. Station 0+000, both sides. Contractor to field adjust the new curb, gutter and sidewalk to match existing NHA street.
5. Station 0+005, centerline, the school officials recommend placing new pedestrian crosswalk. Also, remove the old solar powered school signal, located at station 0+180, 12m left. Then, install new solar powered school flashing beacon at Station -0+010, right (inside NHA boundary), and 0+190, left.
6. Station 0+100 to 0+130, right. Abandoned Fire Station. Remove the existing chain link fencing.
7. Station 0+218; left. Obliterate the turnout and existing road to N3005.
8. Station 0+200, 10m left. Exposed PVC and line not surveyed.
9. Station 0+207.70, centerline. New 2-barrel 762 mm pipes. In the profile view and drainage table showed 1-1219mm and location at 0+223. The length

- of pipe, invert elevation and storm runoff are incorrect completely.
10. All existing underground utilities information (type, size, elevation, valves, and manhole) not provided in the profile view.
 11. Station 0+320, left. Possible turnout to church entrance.
 12. Station 0+315, 1m left. Existing electrical power pole with low line clearance. Recommend to remove pole.
 13. Station 0+295 to 0+415, left. The existing fencing to remain in-place. The proposed construction limits to be fill back slope adjusted.
 14. Station 0+390 to 0+560, right, and Station 0+510 to 0+560, left. Recommend to install riprap check dams in the ditches. The profile grade to -3.85%. Install cut/fill riprap transition at station 0+500, left.
 15. Station 0+575, centerline. Newly installed underground fiber optic by Sacred Winds communication.
 16. Station 0+580, centerline. Recommend to install new drainage pipe. Designers to analyze the drainage and size the pipe accordingly.
 17. Group recommends adding turning lanes at the junction of N3005 and N101. P&D recommends having NDOT provide latest daily/weekly traffic and turning movement counts. Using data on intersection capacity analysis will determine if turning lanes are warranted.
 18. Station 0+000, Spur road. Existing 4-unit cattleguard will be removed, clean, and savaged. The adjacent chain link fencing will be removed up to 6.935m, left and right. Then, install new steel posts and tie-in existing fenceings.
 19. Station 0+021, centerline, Spur Road. New 2-barrel 762 mm pipes. The length of pipe, invert elevation and storm runoff are incorrect completely.
 20. Station 0+079, centerline, Spur Road. Recommend to install new drainage pipe. Designers to analyze the drainage and size the pipe accordingly.
 21. Inconsistent stationing of Spur Road and mainline intersection. The plan view shows 0+081.126, but points to the intersection. The profile view shows 0+082.142.

Group discussion held in Ojo Amarillo class room after the field walk.

22. All church tracts have expired. To date the properties not renewed yet. Therefore, we're not providing turnouts until were instructed by the school officials and Shiprock BIA Realty.
23. Station 0+000 to 0+200, from school property to +/- 50m, south, it's a Navajo Nation NHA property. The NHA officials claim future housings will be built in the future. They're not sure who owns the abandoned fire station fenceings.
24. P&D presented the overall project status, scoping, drainage issues on NHA property and funding of the project.
25. School officials to placed treated aggregate base on the existing (dog leg) dirt road. The road receives heavy large school buses and faculties on daily basis. They claim it's very bad on increment weather. But were instructed not to because the BIA Realty wants all environment assessment, archaeology report, and have the school apply for right-of-way.
26. School officials recommend removing the existing school lightening near the fencing located at station 0+150, left. Then, install additional light poles along the school property for children and other pedestrian safety.

V. FOLLOW UP NEEDED/ RECOMMENDATION:

27. The profile grade and roadway typical will be design adjusted when P&D receives the complete utilities (i.e. waterline & sewer valves/ manhole

depth/locations, underground electrical line, and all power poles), and the current land parcels.

26. Navajo Nation NHA to relinquish 1.48 acre of land located south of school boundary. Afterwards, the BIA-Division of Transportation will acquire rights-of-way to construct the street.

VI. OTHER OBSERVATIONS:

1. Lionel Haskie, NAPI Operation and Maintenance Manager, claims the Sacred Winds Communications installed the underground fiber optic cable without its approval.
2. P&D design staff drove thru the existing west side housing (adjacent to the school), and found numerous locations of ponding water, and pavement pot holes developing.

REPORTED BY: Albert Lee Supervisory Highway Engineer September 2, 2014

Name	Title	Date
<u>W. R. R. R.</u>	P&D Branch Chief	

Name	Title	Date
------	-------	------

cc: NIIP DOT Engineer
370, 371, 3718, 371H2-Design

APPENDIX B
Project: N101(1)
Best Management Practices
Navajo Regional Division of Transportation

In order to avoid, reduce, or mitigate potentially adverse impacts during the construction of this project, the Navajo Regional Division of Transportation Contractor will incorporate the following best management practices (to the fullest extent).

1. Construct the project in accordance with the Manual for Standard Specifications for Construction of roads on Federal Highway Projects (FP-03), and in compliance with all applicable Navajo Tribal and Federal laws, codes, safety regulations, and executive orders.
2. The BIA Contractor will avoid any increase in sedimentation of bodies of water on or near the project by preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP). The Contractor will implement the SWPPP prior to any ground-disturbing activities. Adjustments in the SWPPP, during construction, shall be coordinated with the AOTR to insure compliance with the Clean Water Act.
3. The BIA Contractor shall stockpile the existing topsoil for uses in re-vegetation of borrow pits and roadway slopes, where feasible in accordance with the FP-03 and contract specifications.
4. The cut and fill volumes will be balanced as much as possible to avoid the use of borrow sources and all slopes shall be rounded to blend into the existing terrain. All disturbed ground on the project will be disked, seeded, mulched, and re-vegetated as described in section 625 of the supplemental specifications.
5. The following BMPs will be followed for all structural improvements, including any pipelines, storage tanks, and troughs:
 - The pipeline would be ripped in the ground approximately 30 inches below the surface using a dozer or some other heavy equipment. All construction trash and debris would be removed from project site.
 - All equipment brought in from off the site will be power washed before entering the site to avoid the possible introduction and invasion of noxious and invasive weeds. All construction trash and debris would be removed from project site.
 - Ground disturbance from the heavy equipment would be re-seeded with a certified weed free seed mix. The seed would be suitable to area and match existing native species.
 - Water would be left on yearlong for use by wildlife

- Adequate wildlife escape ramps would be mandatory in the troughs to prevent entrapment and drowning of wildlife.
- The storage would be closed top and an adequate wildlife escape ramp would be mandatory in the trough to prevent entrapment and drowning of wildlife.
- The storage tank and troughs would be painted with natural colors to match the surroundings for visual resource management (VRM) if they are not highly visible from highway.
- If an archeological site is encountered, construction must cease in the area, and the AOTR and BIA Regional DOT office must be notified immediately.
- All pipelines shall be placed along the flagged route; any deviation from the above stated stipulations and or specifications will require further consultation with the BLM.
- Water bars shall be installed along the proposed route, where necessary, to reduce erosion.
- If at anytime, populations of noxious weeds are encountered, construction must cease and measures must be taken to clear the right of way. The problem area would be sprayed with the appropriate herbicide. By law, the target weed must be listed on the label of the herbicide being applied, and the rate applied must be in accordance with the manufacturer's recommendations in accordance with section 109.02(m) of the supplemental specifications for this project.

6. Construction hours will be between 6:00 am and 8:00 pm, Monday through Saturday, (weather permitting). In high wildlife use areas, an alternate construction schedule may be used in consultation with the Navajo Fish and Wildlife Department and/or U.S. Fish and Wildlife Service.

7. The Contractor's camp and equipment storage area will be kept clean and free of oils, waste materials, and other litter at all times, to prevent such materials from entering bodies of water. All trash will be disposed of in accordance with EPA regulations and all camp sites and equipment storage areas will be restored to their natural condition at project completion (in accordance with Navajo Tribal permit requirements).

8. The Contractor will inspect daily all construction equipment for leaks and notify the BIA COTR/Project Manager on the removal of leaking equipment from the project site until the leaking equipment is repaired and spills cleaned up to the satisfaction of the Project Manager and Environmental Quality Office. Equipment will be washed down in a designated area to prevent transport of mud, noxious weeds, and other debris from leaving the project limits when transporting equipment off the project site. Such debris will be collected and hauled off to a disposal site by the Contractor. The Contractor must have a spill prevention plan in place to contain spills, mitigate the spills, and remove all the pollutants off the project to an approved waste repository.

9. Noxious weed control Standard Operating Procedures for work on Navajo Nation will be as follows:

- Ensure equipment involved in land disturbing actions, be clean of noxious weed seeds or propagative parts prior to entry on site. When working in areas with noxious weeds equipment should be cleaned prior to moving off site.
- Survey and inventory proposed work areas for noxious weeds; take reasonable measures to avoid spread of noxious weeds found (ie - cleaning equipment with pressure washers, stockpiling overburden material for later treatment, avoiding driving through weed patches). Consult with the BIA regional DOT office on any known species of noxious weeds in the project area before construction begins.
- Use only certified weed free erosion control and re-vegetation materials (eg. mulch, seed, natural fiber mats).
- If fill dirt or gravel will be required, the source needs to be noxious weed free to the fullest extent possible.
- The site should be monitored for the life of the project for the presence of noxious weeds (includes maintenance & construction activities). If weeds are found the COTR will be notified and the COTR will determine the best method for the control of the particular weed species.

Reclamation and re-vegetation of the work site will use species specified by the specifications. All seed should be certified weed free. The area will be monitored to determine the success of the re-vegetation, and re-vegetation may have to be continued until successful.

Any need for noxious weeds treatment shall be in accordance with section 109.02(m) of the FP-2003.

10. All oils, fuels, lubricants, and hydraulic fluids will be kept in sealed storage containers and or facilities that meet EPA regulations for preventing contamination of the environment. Again a spill prevention plan must be in place.

11. Damage to trees and shrubs outside of the construction limits will be replaced by the Contractor at his expense as directed by the COTR.

12. Parking and staging areas will be limited to the construction limits. Existing roads will be used for detours, storage of equipment, and the hauling of materials and water to the fullest extent possible. Storage areas within the construction limits will utilize existing disturbed areas and be kept as small as possible.

13. The installation of drainage structures will be undertaken in such fashion so as to minimize soil erosion and to provide for a minimum of 610 mm of cover over the pipe as

measured from the roadway shoulder.

14. Structural replacements will be performed during periods of low- or no-flow periods to minimize water quality impacts. The Contractor shall install Lined waste pits for concrete or asphalt on the project in a level ground at least 100 feet away from any drainage and outside the construction limits. No dumping of waste concrete will be allowed on the project site except in the lined pits which will immediately be removed from the project once the concrete or asphalt work is finished. Any and all excess concrete and asphalt materials will be disposed of (off site) in accordance to EPA regulations and the FP-2003.

15. The Contractor will acquire Navajo water-use and aggregate material permits through the BIA and Navajo Tribal process, and follow all requirements of such permits, including royalties and environmental protection.

16. The Navajo Regional Division of Transportation and construction Contractor will acquire and comply with the following regulations regarding the Federal Clean Water Act:

- a) Section 404 permit
- b) Water Quality (Section 402) Certification
- c) National Pollution Discharge Elimination System (NPDES) permit and the Storm Water Pollution Prevention Plan

Notice to Proceed with work that may impact the waters of the US or Navajo Nation will be NOT issued until the 401, 402, 404 and other project permits are in place and the requirements are reviewed and discussed with the contractor.

17. Comply with all mitigation requirements concerning archaeological sites on or near the project site as defined in the compliance documents.

POB0+000.000

ROW 13m

S 89°42'00" E 647.71'

ROW 18m

RELINQUISHED AREA

N 89°41'50" E 647.73'

NHA PROJECT NM 15-31
OJO AMARILLO TRACT "B"
2.453 ACRES

N101(1) ROW TAKINGS
AREA = 22906.562sqm
PERIMETER = 1361.117m
HECTARES = 2.291
ACRES = 5.66

PT0+279.551

0+260

POB0+086.936

ROW 13m

PC0+228.936

0+217

ROW 18m

PT0+077.948

PC0+035.073

ROW 18m

PCB0+000.000

N 25°14'43" E 35.073'

0+300

0+000

NHA PROJECT NM 15-32
OJO AMARILLO
61.053 ACRES
11.086 ACRES

UNITED STATES - DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS - NAVAJO REGION
DIVISION OF TRANSPORTATION

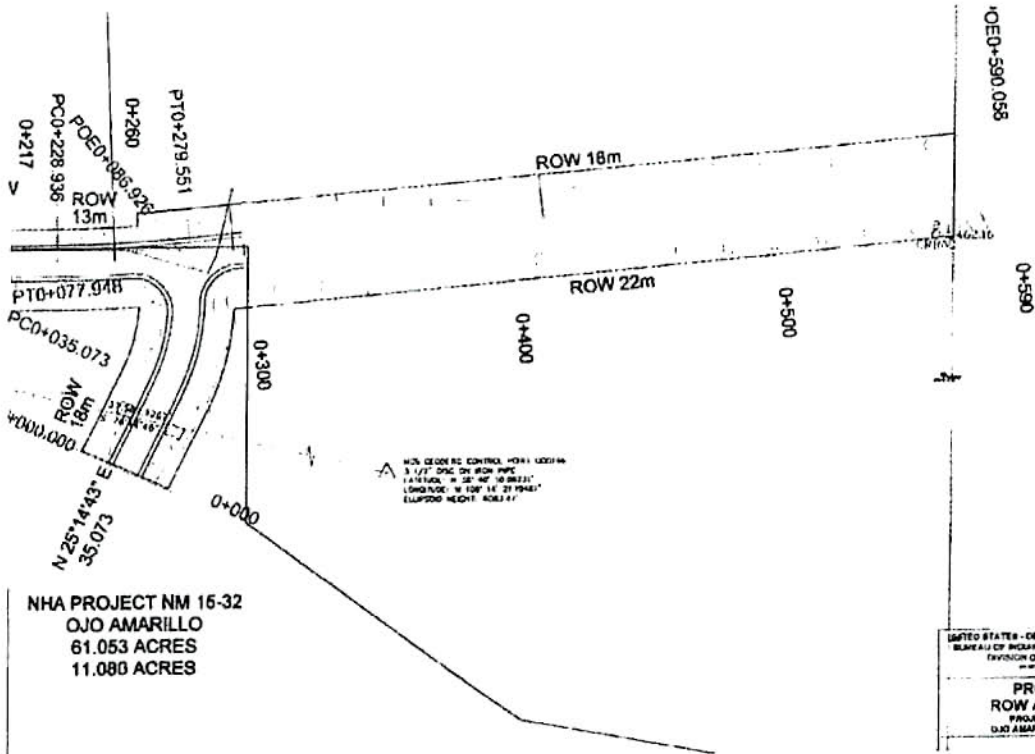
PROPOSED
ROW ALIGNMENT
PROJECT N101(1) &
N101(2)
OJO AMARILLO, NEW MEXICO

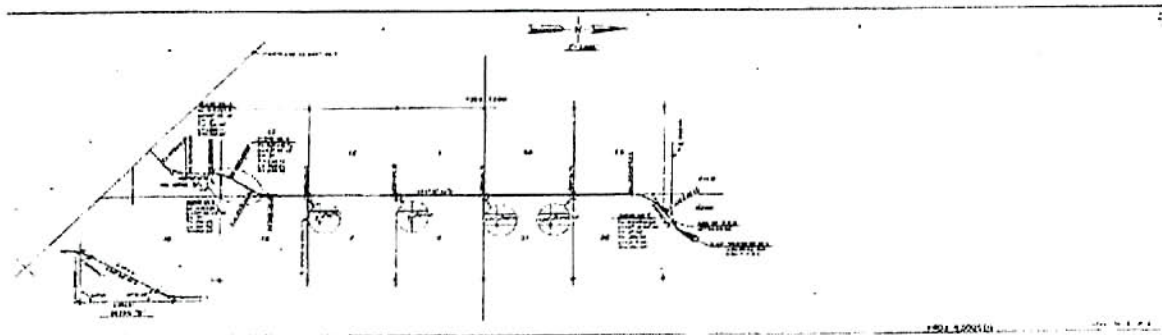
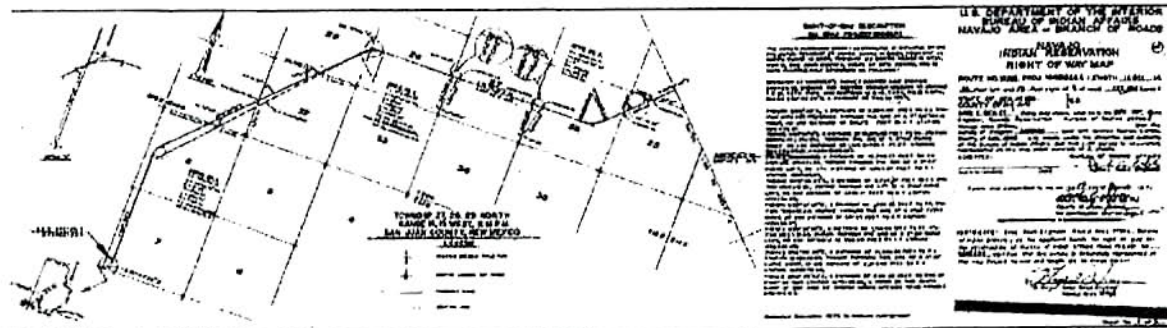
SHEET 1 OF 1

UNITED STATES - DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS - NAVAJO REGION
DIVISION OF TRANSPORTATION

**PROPOSED
ROW ALIGNMENT**
PROJECT WY01(1284
C/O AMARILLO, NEW MEXICO

MAILBOX





Attachment 5: Biological Resource Compliance Form

NNDFW Review No. 15BJA05a3

BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: N101(1) 2&4

DESCRIPTION: NRO-DOT proposes to pave the roadway that is used by the elementary school and the residences of the NHA sub-division located along N101.

LOCATION: Protracted T29N, R14W: Section 30 T29N, R15W: Section 25, San Juan County, New Mexico

REPRESENTATIVE: Lucero, Raymond, BIA, NRO-DOT

ACTION AGENCY: Bureau of Indian Affairs, Navajo Regional Office Division of Transportation (NRO-DOT)

B.R. REPORT TITLE / DATE / PREPARER: Request for review and concurrence/16 MAR 2015/Raymond Lucero

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA


AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/23 MAR 2015

COPIES TO: (add categories as necessary)



2 NTC § 164 Recommendation:	Signature	Date
<input checked="" type="checkbox"/> Approval		3/24/15
<input type="checkbox"/> Conditional Approval (with memo)		
<input type="checkbox"/> Disapproval (with memo)		
<input type="checkbox"/> Categorical Exclusion (with request letter)		
<input type="checkbox"/> None (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	

*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date

Attachment 6: Cultural Compliance Letter with Concurrence from Navajo Nation Historic Preservation Department (NNHPD)

HPD-16-613



U.S. Department
of Transportation
Federal Highway
Administration

Federal Lands Highway Office
Lakewood Field Office Tribal Transportation Program

August 1, 2016

12300 West Dakota Avenue
Suite 280
Lakewood, CO 80228
720-963-3528
david.cremers@dot.gov

In Reply Refer To:
LFO TTP (Ste. 280- Cremers)

~~Dr. Ora Marek-Martinez~~
Tribal Historic Preservation Officer
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, AZ 86515



Dear Dr. Marek-Martinez:

Subject: Section 106 consultation on Navajo DOT's proposed N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo elementary School in San Juan County, New Mexico.

We are contacting you at this time to perform Section 106 consultation relevant to the above-referenced project. The Federal Highway Administration, Federal Lands Highway Office Tribal Transportation Program (FHWA TTP), in cooperation with the Navajo Nation Division of Transportation (NDOT), is proposing to construct a new access road N101(1) from the Ojo Amarillo Elementary School to N3005. The project will also include the upgrades to a spur road that will allow access during construction and the upgrading of an access route for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. For the purposes of Section 106, and the National Environmental Policy Act, the FHWA is the lead Federal agency for this undertaking.

The project will comply with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended) and Executive Order 11593, Protection and Enhancement of the Cultural Environment. FHWA has made an effort to consider potential impacts to historic properties, which are defined as cultural resources listed or eligible for listing in the National or Register of Historic Places (NRHP), and to afford the Navajo Nation Tribal Historic Preservation Office (NNTHPO) an opportunity to comment on the undertaking.

Project Description

The undertaking consists of the construction of a new all-weather access road N101(1) from the Ojo Amarillo Elementary School to N3005. A spur road will also be upgraded to allow access while construction occurs on N101(1) and will provide the community with an alternate access

route. In addition, an access route will be upgraded for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. Extensive earth disturbance is expected during the course of the project.

Area of Potential Effect

The area of potential effect (APE) is defined as the areas in which construction impacts will take place and associated Right-of-way (ROW) areas. The total APE is 10.18 acres (4.12 ha). The APE was divided into three project areas for survey. Please see the enclosed Archaeological Inventory Report Documentation form (AIRs Form) and enclosed maps for exact locations and details.

Cultural Resource Survey Results

A Class III cultural resource survey was conducted by a Navajo DOT archaeologist in advance of the proposed road project. The Class III survey consisted of a pre-field records search, interviews, a cultural resources pedestrian survey and assessment of potential impacts to cultural resources within the APE. Archaeological documentation was limited to the surface only. No excavation or subsurface probing was conducted during the current survey.

Traditional Cultural Places (TCP) investigations and interviews indicated the presence of two TCPs within 25 miles of the project area but not within the APE.

The results of the research and survey are documented in the enclosed AIRs Form and Cultural Resources Inventory report.

Assessment of Effect and Conclusion

No historic properties or TCPs as defined under Section 106 of the NHPA were identified within the project area. The Navajo DOT recommended that the undertaking will have *No Effect* on any known historic properties or archaeological and cultural resources.

Given the above information, the FHWA TTP has determined that the N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo elementary School Project *will not affect* any historic properties. Please review the information in this letter and the enclosed information. If you concur with the findings of the cultural resources survey and with our effect and eligibility determinations, please indicate by checking the appropriate box below and signing on the designated line. Alternatively, we encourage you to contact us (e-mail is acceptable) with any comments you may have regarding this undertaking.

If you have questions or concerns, please contact David Cremer, TTP Environmental Specialist at david.cremer@dot.gov or 720-963-3528.

Sincerely yours,



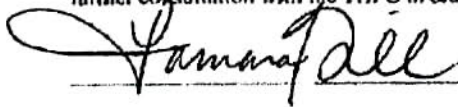
David E. Cremer
Environmental Coordinator
FHWA-Tribal Transportation Program

Enclosures
AIRs Form with maps
TCP Record Search Verification Form

cc (electronic copy only with enclosures):
Taft Blackhorse, Project Management Department Manager, Navajo DOT;
tblackhorse@navajodot.org

☒ The Navajo Nation THPO concurs with the findings of the AIRs Form and the determination of effect and eligibility outlined within this letter.

☐ The Navajo Nation THPO has determined that the proposed undertaking will affect objects, sites, or locations of traditional religious or cultural importance to the tribe. Please undertake further consultation with the THPO in order to evaluate, consider, or avoid such locations.



Date: 8/24/13

* reference HPD-16-6013



**NAVAJO REGION DIVISION OF TRANSPORTATION
PROJECT DESCRIPTION AND AMENDMENT TO ENVIRONMENTAL IMPACT
STATEMENT (EIS)
N101 (1)2&4**

Background:

The Bureau of Indian Affairs (BIA), Navajo Region Division of Transportation (NRDOT), in response to the community of Ojo Amarillo is planning to extend Navajo Route 101 (N101). The route survey centerline alignment data is displayed along with the project boundary on the enclosed map. The beginning of project (BOP) for N101 (1) is at station 0+000.000 m and ends at station 0+581.531 m. The project also includes a spur road to the NHA housing with the BOP station at 0+000.000 to EOP station of 0+082.142. The project is located within Township 29 North, Range 14 West: Section 30, Township 29 North, Range 15 West: Section 25 all within San Juan County, quadrangle map Kirtland, Ojo Amarillo, New Mexico.

The old existing route traverses from the beginning of the project (BOP) identified by a cattle guard which also identifies the Navajo Housing Authority (NHA) Complex located on the west end, then traverses past the school complex which is on the left or north side of the route. After the route passes the school compound it immediately turns left or to the north by a ninety degree angle at station 0+210m and traverse for one-hundred meters and makes another ninety degree turn to the east for three-hundred and forty meters (340m) where it intersects and ends at the junction with route N3005. A second housing complex exists south east from the curve at station 0+210 m. From station 0+210 access is provided to the southeastern NHA housing complex via a curve traversing for approximately fifty (50m) meters in a southeasterly direction until it ends at the housing boundary with a cattle guard. There is another turn out from station 0+210 which provides access to the Baptist Church that is more east than south. This cluster of turnouts forms two dangerous Y intersections. The existing intersections are dangerous as the road shows traffic patterns veering away from a nationally accepted two way street. The standard two lane street is twenty-four feet (24') in width, the traffic pattern show widths of up to sixty feet (60') in some areas. Vehicles have also been seen traveling at high speeds creating clouds of dust reducing visibility. The route from the BOP prior to the first intersection was previously paved with a hot asphalt concrete pavement and has curb and gutter but no sidewalks. A trail/path used by pedestrians exist three meters (3m) south of the edge of roadway it is delineated by blue painted stones that joins the two (2) housing complexes.

This route in early 2016 was milled and chip sealed from the BOP to the first intersection a distance of approximately two-hundred meters (200 m). The entire seven hundred meters of existing route has been chip seal (by the County) as a temporary driving surface with new drainage pipes installing at the intersection with the NHA housing access. The constructed roadway does not comply with the safety requirements and drainage requirements used by the NRDOT's guidelines from the American Association of Highway Transportation Officials (AASHTO).

Public Input Actions:

Prior to a field meeting a public meeting was held at the Ojo Amarillo Chapter House to discuss the propose design and to address any questions about the design (see minutes of the meeting in the **Appendix A**). During the meeting NHA's staff stated they had planned to realign N101 by providing a new intersection further south from its present location with N3005. This would realign the eastern half of the road or from station 0+200 which would provide a straighter alignment to the school. NHA also stated concerns that horses were getting into the residential area which crates safety hazards. A torn down fence and a silted cattle guard at the entrance of the housing complex is attributed to the interloping of horses.

It was decided that the new fence will tie into corner post defining the housing complex, and route N101 the fence should also restrict access for the horses. Since the entire N3005 is fenced in, open grazing is prohibited, and the proposed N101 (1) project will have right-of-way fence, there will be no need to install any cattle guards. The NHA and the NRDOT both agreed that all cattle guards should be removed since maintenance is too costly. The cattle guard at the beginning of the project or on the west end near the housing will also be removed and salvaged with no plans of replacing.

The NRDOT, Engineers after a field site visit concurred with NHA's request to realign the existing housing access with the new N101 alignment resulting in a safer road by improving sight distances and direct access to all the users. This would also better manage the flows of traffic from the points of origin. Therefore the proposed alignment is in a direct east to west direction or tangent with no horizontal curves as opposed to the existing road. The turnout leading to the eastern NHA housing complex will be relocated to provide better sight distances. The turnout will also provide better access for the church. Drainage pipes will be replaced on the main roadway near station 0+200m and also another near the NHA boundary to the south at station 0+015m.

Proposed Project Action:

The NRDOT will provide an all-weather road having a final driving surface of hot asphalt concrete pavement with curb gutter and pedestrian sidewalks where required. The sidewalks will provide students and local residence a safe and designated path rather than the existing dirt trail that is away from the roadway. This road serves as a bus route and also serves the elementary school staff and both housing complexes. See the overview map of the project in **Appendix C**.

The vehicle counts taken / measured shows that the average daily traffic count for the road in 2014 was 692 vehicles per day (vpd) and projected to be 865 vpd for 2035, with 1% truck traffic. Therefore, the proposed roadway width will be 9.60 meters, with driving lanes of 3.3 meters on each side of the road and 1.5 meter paved shoulders.

Concerning the cattleguard issue, there will be one 4 unit cattleguard placed at the N101/N3005

junction only. Gates will be provided at the new turnouts to the church, existing home sites, and north section of the old road turnout. The north leg of the old N101 access road, according to the NDOT, will be left for emergency and detour use during construction of the new alignment. This old section of access will be administratively turned over to NDOT, through an inventory update, for any future maintenance responsibility.

At the new entrance to the school and chapter, route N3005 will be widened to accommodate left and right turn lanes with a final paved surface.

Environmental Conditions:

The site is located on the Chaco Plateau. Drainage and runoff (sheet flow) is to the northwest which drains into the Chaco River a tributary of the San Juan River. Elevation is approximately 1659 meters (5500 feet) above sea level. No natural washes rivers or streams were seen within the area only traces of flooding from the adjacent agricultural fields to the east and the north. There is also a manmade channel running from south to north paralleling the N3005 on the east side. The channel crosses below the N3005 roadway and heads west on the north side of the southeastern NHA housing site and through the project site below the N101 alignment via a (711x508mm) arch culvert to be placed at approximate station 0+200. There was no evidence of recent flows within the channel based on the substrate's condition which is heavily populated with vegetation and is sandy.

The average annual rainfall, at nearby Fruitland, New Mexico is 6.80 inches. This is the closest data station to the project site and although Fruitland is approximately 400 feet lower in elevation and three miles to the northeast the precipitation should be about the same. The project site area has no natural drainage patterns and the N3005 traverses perpendicular to the aspect of the slope limiting the N101 from contributing large amounts of flow.

The soil around the project is the Shiprock-Sheppard association. The soils are predominately sandy and deep, and are developed in sandy alluvial and aeolian deposits. This association occurs on the gently sloping to gently rolling upland areas. Vegetation around the project consists of gamma grass, Mormon tea, and Russian thistle.

The natural gradients shall be restored as close as possible to pre-project contours to the maximum extent possible. All NRDOT roadway designs are designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and down flow rates).

Archaeological Compliance:

The NRDOT made a request to have NDOT perform an updated archaeological survey to be for this project. The results and compliance received from FHWA are in **Appendix D**.

Right-of-Way Impacts:

The proposed route survey stations start at the cattle guard on the west end at the NHA property boundary line and traverses directly east and abuts N3005. The right-of-way varies from 22 meters to 13 meters from centerline and is 0.565 kilometers in length. The entire right of way is within Indian Trust Lands this area was given in trust by an act of congress to develop the Navajo Indian Irrigation Project (NIIP) and associated facilities. The variation in the rights-of-way is to accommodate construction limits and reduce take from current land users. The project from the beginning is on a gradual ascending grade until it passes the turn to the north than transcend upward east to an approximate 5% northwestern facing slope. Since more fill will be required on the east end it will cause the toe or catch point of the fill to extend further out from the proposed roadway prism, therefore more right of ways are required. The right-of-way from centerline is as follows:

N101 Right of Way Easement From Centerline Alignment						
Station To	Station	Length	Left	Right	Hectares	Acres
0+000.00	0+190.061	190.061 m	13.00 m		0.247	0.61
0+190.086	0+228.936	38.85 m	18.00 m		0.07	0.125
0+000.00	0+259.151	259.151 m		18.00 m	0.467	1.15
0+228.936	0+261.779	32.843m	13.00m		0.043	0.106
0+261.108	0+568.960	307.852m	18.00m		1.022	2.253
0+259.151	0+294.236	35.085m		18-22m	0.0035	0.009
0+294.236	0+564.856	270.45 m		22.00 m	1.245	3.077
Grand Total					3.098	7.330

The right-of-way being acquired for the NHA turnout project is as follows:

Right of Way Easement From Centerline Turn Out NHA Housing						
Station To	Station	Length	Left	Right	Hectares	Acres
0+000.00	0+066.755	66.755 m	18.00 m		0.120	0.297
0+000.00	0+067.284	67.284m		18.0m	0.121	0.299
Grand Total					0.241	0.596

The proposed road improvement project NR101 begins in sections of T 29 N, R 15 W Section 25, T 29 N, R 14 W Section 30, Kirtland, N.M., and Quadrangle

Proposed Construction Actions:

BIA's construction contracts instructs the contractor to include Best Management Practices which are summarized as follows; that no debris, silt, sand, rubbish, cement or concrete washings

thereof, oil or petroleum products or washings thereof, shall be allowed to enter into or placed where it may be washed by runoff into the waterways. When the construction contract is complete, all excess construction materials, debris, and or other associated excess project materials shall be removed to an appropriate off-site location. At no time shall this material be side cast into the waters of the United States or areas where they are at risk of being transported into waters of the US. NRDOT BMP's are provided in **Appendix B**.

Clean Water Act Compliance:

The one wash that drains to the San Juan River, will have one drainage pipe installed under route N101 at approximate station 0+200 and will required a 401/404 permit which will be acquired in the summer of 2017 and the requirements of the permits incorporated into the contract documents prior to advertising for construction.

Categorical Exclusion Determination:

Information contained within the Environmental Impact Statement specifically page I-1, section I-1 General Description sixth paragraph it states that "Besides the 110,630 acres that will be irrigated, 1,500 are to be devoted to agribusinesses and another 11,231 taken up by roads, ditches, canals, etc." Page I-11 section 1.2.5 states that the Navajo Indian Irrigation Project plat has been assessed for road building and no long term negative effects are to be expected as a result of road building. Since there are no substantive changes after the study was performed and the conditions that exist the authorization or EIS issued on October 12, 1976 is valid. Therefore the NRDOT is requesting for a categorical exclusion to pave the access road. This road project was requested by the local chapter house through the Navajo Nation Resource Development Committee who has authorized funding for the project.

The onsite assessment of the proposed action found that a categorical exclusion would be best since it would not have a potentially significant effect and that the environmental impact statement had cleared the undertaking for the community. The proposed project is within the confines of a community area. Three hundred and sixty meters (360 m) of the proposed 634 meters of roadway has been heavily disturbed which 274 m will be within an area that has had disturbance due to the installation of utilities.

A categorical exclusion is being sought since similarities in: (1) Methods of implementing the actions; (2) characteristics of the actions; (3) frequency of the actions; (4) applicable standard operating procedures or implementing guidance; and (5) environmental settings in which the actions will take place are the same, and the actions do not individually or cumulatively have a significant effect on the human environment. The same scope of actions is being used as the NHA Housing roadways and the N3005 roadway.

No fragmenting of critical habitat will result since the area around the project site is populated and vehicle travel is constant. The N3005 is perpendicular to the grade of the water shed while

the proposed N101 is parallel to the watershed. Unlike the N3005 the N101 will not act as a dam to water flows.

Route N3005 that is intersected by N101 is within Block II, and was built in 1976. The N3005 right-of-way was granted encompassing an area of 254.41 acres and length of 13.993 miles and a width of 150 feet. The office of the Navajo Land administration of the Navajo tribe revealed that there were no individual tribal land users involved. All grazing permits on the alignment of the right of way have been negated for the Navajo Indian Irrigation Project.

We do not believe a separate environmental assessment and public hearing are necessary since the roads are an integral part of the entire irrigation project. A final Environmental Impact Statement was prepared by the Bureau of Indian Affairs. **Appendix E** is the completed BIA Categorical Exclusion document for action.

APPENDICES

APPENDIX A



**BUREAU OF INDIAN AFFAIRS
Navajo Regional Office
Division of Transportation**

FIELD REVIEW REPORT

Project: N101(1)2,4

I. DATE(s) OF REVIEW: August 27 and 28, 2014
Weather: clear skies, slight breeze, hot.

II. LOCATION OF REVIEW: Ojo Amarillo; NIIP/ NAPI- Block 2

III. PERSONS CONTACTED (name, title and organization):

A. BIA: See sign-in sheet

B. OTHER: See sign-in sheet

IV. RESULTS of REVIEW:

A. HIGHLIGHTS NOTED:

Group met at junction of BIA Route N3005 and N101 before proceeding to field inspection. Below is the plans-in-hand field review discussion and issue with comment and recommendations:

1. Station 0+000, BOP; the existing 4-unit cattleguard will be removed, clean, and savaged. The adjacent chain link fencing will be removed up to 6.935m, left and right. Then, install new steel posts and tie-in existing fencings.
2. From BOP Station 0+000 to 0+200, left and right; the proposed typical cut ditches will be eliminated. And also to minimize additional grading work inside the school boundary on the left side. The profile grade is increasing while the drainage ditch flow towards Beginning of Project (into NHA housing complex), except for pavement street drainage. Or else the water will pond at this intersection. The group noticed there's no typical street back slope ditches within the NHA property.
3. Station 0+000 to 0+220, left. The existing chain link fencings will be removed during grading work. Also, the existing concrete curb cuts will be partially removed to match the new profile grade and curb radius. Then, re-install fencings at school boundary.
4. Station 0+000, both sides. Contractor to field adjust the new curb, gutter and sidewalk to match existing NHA street.
5. Station 0+005, centerline, the school officials recommend placing new pedestrian crosswalk. Also, remove the old solar powered school signal, located at station 0+180, 12m left. Then, install new solar powered school flashing beacon at Station -0+010, right (inside NHA boundary), and 0+190, left.
6. Station 0+100 to 0+130, right. Abandoned Fire Station. Remove the existing chain link fencing.
7. Station 0+218, left. Obliterate the turnout and existing road to N3005.
8. Station 0+200, 10m left. Exposed PVC and line not surveyed.
9. Station 0+207.70, centerline. New 2-barrel 762 mm pipes. In the profile view and drainage table showed 1-1219mm and location at 0+223. The length of pipe, invert elevation and storm runoff are incorrect completely.

10. All existing underground utilities information (type, size, elevation, valves, and manhole) not provided in the profile view.
11. Station 0+320, left. Possible turnout to church entrance.
12. Station 0+315, 1m left. Existing electrical power pole with low line clearance. Recommend to remove pole.
13. Station 0+295 to 0+415, left. The existing fencing to remain in-place. The proposed construction limits to be fill back slope adjusted.
14. Station 0+390 to 0+560, right, and Station 0+510 to 0+560, left. Recommend to install riprap check dams in the ditches. The profile grade to +3.85%. Install cut/fill riprap transition at station 0+500, left.
15. Station 0+575, centerline. Newly installed underground fiber optic by Sacred Winds communication.
16. Station 0+580, centerline. Recommend to install new drainage pipe. Designers to analyze the drainage and size the pipe accordingly.
17. Group recommends adding turning lanes at the junction of N3005 and N101. P&D recommends having NDOT provide latest daily/weekly traffic and turning movement counts. Using data on intersection capacity analysis will determine of turning lanes are warranted.
18. Station 0+000, Spur road. Existing 4-unit cattleguard will be removed, clean, and savaged. The adjacent chain link fencing will be removed up to 6.935m, left and right. Then, install new steel posts and tie-in existing fencings.
19. Station 0+021, centerline, Spur Road. New 2-barrel 762 mm pipes. The length of pipe, invert elevation and storm runoff are incorrect completely.
20. Station 0+079, centerline, Spur Road. Recommend to install new drainage pipe. Designers to analyze the drainage and size the pipe accordingly.
21. Inconsistent stationing of Spur Road and mainline intersection. The plan view shows 0+081.126, but points to the intersection. The profile view shows 0+082.142.

Group discussion held in Ojo Amarillo class room after the field walk.

22. All church tracts have expired. To date the properties not renewed yet. Therefore, we're not providing turnouts until were instructed by the school officials and Shiprock BIA Realty.
23. Station 0+000 to 0+200, from school property to +/- 50m, south, it's a Navajo Nation NHA property. The NHA officials claim future housings will be built in the future. They're not sure who owns the abandoned fire station fencings.
24. P&D presented the overall project status, scoping, drainage issues on NHA property and funding of the project.
25. School officials to placed treated aggregate base on the existing (dog leg) dirt road. The road receives heavy large school buses and faculties on daily basis. They claim it's very bad on increment weather. But were instructed not to because the BIA Realty wants all environment assessment, archaeology report, and have the school apply for right-of-way.
26. School officials recommend removing the existing school lightening near the fencing located at station 0+150, left. Then, install additional light poles along the school property for children and other pedestrian safety.

V. FOLLOW UP NEEDED/ RECOMMENDATION:

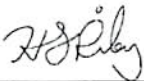
27. The profile grade and roadway typical will be design adjusted when P&D receives the complete utilities (i.e. waterline & sewer valves/ manhole depth/locations, underground electrical line, and all power poles), and the current land parcels.

28. Navajo Nation NHA to relinquish 1.48 acre of land located south of school boundary. Afterwards, the BIA-Division of Transportation will acquire rights-of-way to construct the street.

VI. OTHER OBSERVATIONS:

1. Lionel Haskie, NAPI Operation and Maintenance Manager, claims the Sacred Winds Communications installed the underground fiber optic cable without its approval.
2. P&D design staff drove thru the existing west side housing (adjacent to the school), and found numerous locations of ponding water, and pavement pot holes developing.

REPORTED BY: Albert Lee Supervisory Highway Engineer September 2, 2014

	Name	Title	Date
REVIEWED BY:	<u></u>	<u>P&D Branch Chief</u>	<u></u>

Name	Title	Date
------	-------	------

cc: NIIP DOT Engineer
370, 371, 371S, 371H2-Design

APPENDIX B
Project: N101(1)
Best Management Practices
Navajo Regional Division of Transportation

In order to avoid, reduce, or mitigate potentially adverse impacts during the construction of this project, the Navajo Regional Division of Transportation Contractor will incorporate the following best management practices (to the fullest extent).

1. Construct the project in accordance with the Manual for Standard Specifications for Construction of roads on Federal Highway Projects (FP-03), and in compliance with all applicable Navajo Tribal and Federal laws, codes, safety regulations, and executive orders.
2. The BIA Contractor will avoid any increase in sedimentation of bodies of water on or near the project by preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP). The Contractor will implement the SWPPP prior to any ground-disturbing activities. Adjustments in the SWPPP, during construction, shall be coordinated with the AOTR to insure compliance with the Clean Water Act.
3. The BIA Contractor shall stockpile the existing topsoil for uses in re-vegetation of borrow pits and roadway slopes, where feasible in accordance with the FP-03 and contract specifications.
4. The cut and fill volumes will be balanced as much as possible to avoid the use of borrow sources and all slopes shall be rounded to blend into the existing terrain. All disturbed ground on the project will be disked, seeded, mulched, and re-vegetated as described in section 625 of the supplemental specifications.
5. The following BMPs will be followed for all structural improvements, including any pipelines, storage tanks, and troughs:
 - The pipeline would be ripped in the ground approximately 30 inches below the surface using a dozer or some other heavy equipment. All construction trash and debris would be removed from project site.
 - All equipment brought in from off the site will be power washed before entering the site to avoid the possible introduction and invasion of noxious and invasive weeds. All construction trash and debris would be removed from project site.
 - Ground disturbance from the heavy equipment would be re-seeded with a certified weed free seed mix. The seed would be suitable to area and match existing native species.
 - Water would be left on yearlong for use by wildlife

- Adequate wildlife escape ramps would be mandatory in the troughs to prevent entrapment and drowning of wildlife.
- The storage would be closed top and an adequate wildlife escape ramp would be mandatory in the trough to prevent entrapment and drowning of wildlife.
- The storage tank and troughs would be painted with natural colors to match the surroundings for visual resource management (VRM) if they are not highly visible from highway.
- If an archeological site is encountered, construction must cease in the area, and the AOTR and BIA Regional DOT office must be notified immediately.
- All pipelines shall be placed along the flagged route; any deviation from the above stated stipulations and or specifications will require further consultation with the BLM.
- Water bars shall be installed along the proposed route, where necessary, to reduce erosion.
- If at anytime, populations of noxious weeds are encountered, construction must cease and measures must be taken to clear the right of way. The problem area would be sprayed with the appropriate herbicide. By law, the target weed must be listed on the label of the herbicide being applied, and the rate applied must be in accordance with the manufacturer's recommendations in accordance with section 109.02(m) of the supplemental specifications for this project.

6. Construction hours will be between 6:00 am and 8:00 pm, Monday through Saturday, (weather permitting). In high wildlife use areas, an alternate construction schedule may be used in consultation with the Navajo Fish and Wildlife Department and/or U.S. Fish and Wildlife Service.

7. The Contractor's camp and equipment storage area will be kept clean and free of oils, waste materials, and other litter at all times, to prevent such materials from entering bodies of water. All trash will be disposed of in accordance with EPA regulations and all camp sites and equipment storage areas will be restored to their natural condition at project completion (in accordance with Navajo Tribal permit requirements).

8. The Contractor will inspect daily all construction equipment for leaks and notify the BIA COTR/Project Manager on the removal of leaking equipment from the project site until the leaking equipment is repaired and spills cleaned up to the satisfaction of the Project Manager and Environmental Quality Office. Equipment will be washed down in a designated area to prevent transport of mud, noxious weeds, and other debris from leaving the project limits when transporting equipment off the project site. Such debris will be collected and hauled off to a disposal site by the Contractor. The Contractor must have a spill prevention plan in place to contain spills, mitigate the spills, and remove all the pollutants off the project to an approved waste repository.

9. **Noxious weed control Standard Operating Procedures** for work on Navajo Nation will be as follows:

- Ensure equipment involved in land disturbing actions, be clean of noxious weed seeds or propagative parts prior to entry on site. When working in areas with noxious weeds equipment should be cleaned prior to moving off site.
- Survey and inventory proposed work areas for noxious weeds; take reasonable measures to avoid spread of noxious weeds found (ie - cleaning equipment with pressure washers, stockpiling overburden material for later treatment, avoiding driving through weed patches). Consult with the BIA regional DOT office on any known species of noxious weeds in the project area before construction begins.
- Use only certified weed free erosion control and re-vegetation materials (eg. mulch, seed, natural fiber mats).
- If fill dirt or gravel will be required, the source needs to be noxious weed free to the fullest extent possible.
- The site should be monitored for the life of the project for the presence of noxious weeds (includes maintenance & construction activities). If weeds are found the COTR will be notified and the COTR will determine the best method for the control of the particular weed species.

Reclamation and re-vegetation of the work site will use species specified by the specifications. All seed should be certified weed free. The area will be monitored to determine the success of the re-vegetation, and re-vegetation may have to be continued until successful.

Any need for noxious weeds treatment shall be in accordance with section 109.02(m) of the FP-2003.

10. All oils, fuels, lubricants, and hydraulic fluids will be kept in sealed storage containers and or facilities that meet EPA regulations for preventing contamination of the environment. Again a spill prevention plan must be in place.

11. Damage to trees and shrubs outside of the construction limits will be replaced by the Contractor at his expense as directed by the COTR.

12. Parking and staging areas will be limited to the construction limits. Existing roads will be used for detours, storage of equipment, and the hauling of materials and water to the fullest extent possible. Storage areas within the construction limits will utilize existing disturbed areas and be kept as small as possible.

13. The installation of drainage structures will be undertaken in such fashion so as to minimize soil erosion and to provide for a minimum of 610 mm of cover over the pipe as

measured from the roadway shoulder.

14. Structural replacements will be performed during periods of low- or no-flow periods to minimize water quality impacts. The Contractor shall install Lined waste pits for concrete or asphalt on the project in a level ground at least 100 feet away from any drainage and outside the construction limits. No dumping of waste concrete will be allowed on the project site except in the lined pits which will immediately be removed from the project once the concrete or asphalt work is finished. Any and all excess concrete and asphalt materials will be disposed of (off site) in accordance to EPA regulations and the FP-2003.

15. The Contractor will acquire Navajo water-use and aggregate material permits through the BIA and Navajo Tribal process, and follow all requirements of such permits, including royalties and environmental protection.

16. The Navajo Regional Division of Transportation and construction Contractor will acquire and comply with the following regulations regarding the Federal Clean Water Act:

- a) Section 404 permit
- b) Water Quality (Section 402) Certification
- c) National Pollution Discharge Elimination System (NPDES) permit and the Storm Water Pollution Prevention Plan

Notice to Proceed with work that may impact the waters of the US or Navajo Nation will be NOT issued until the 401, 402, 404 and other project permits are in place and the requirements are reviewed and discussed with the contractor.

17. Comply with all mitigation requirements concerning archaeological sites on or near the project site as defined in the compliance documents.

APPENDIX C

Project Location Map



APPENDIX D



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

Federal Lands Highway Office
Lakewood Field Office Tribal Transportation Program

August 1, 2016

12300 West Dakota Avenue
Suite 280
Lakewood, CO 80228
720-963-3528
david.cremer@dot.gov

In Reply Refer To:
LFO TTP (Stc. 280- Cremer)



~~Dr. Ora Marek Martinez~~

Tribal Historic Preservation Officer
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, AZ 86515

Dear Dr. Marek-Martinez:

Subject: Section 106 consultation on Navajo DOT's proposed N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo elementary School in San Juan County, New Mexico.

We are contacting you at this time to perform Section 106 consultation relevant to the above-referenced project. The Federal Highway Administration, Federal Lands Highway Office Tribal Transportation Program (FHWA TTP), in cooperation with the Navajo Nation Division of Transportation (NDOT), is proposing to construct a new access road N101(1) from the Ojo Amarillo Elementary School to N3005. The project will also include the upgrades to a spur road that will allow access during construction and the upgrading of an access route for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. For the purposes of Section 106, and the National Environmental Policy Act, the FHWA is the lead Federal agency for this undertaking.

The project will comply with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended) and Executive Order 11593, Protection and Enhancement of the Cultural Environment. FHWA has made an effort to consider potential impacts to historic properties, which are defined as cultural resources listed or eligible for listing in the National or Register of Historic Places (NRHP), and to afford the Navajo Nation Tribal Historic Preservation Office (NNTHPO) an opportunity to comment on the undertaking.

Project Description

The undertaking consists of the construction of a new all-weather access road N101(1) from the Ojo Amarillo Elementary School to N3005. A spur road will also be upgraded to allow access while construction occurs on N101(1) and will provide the community with an alternate access

route. In addition, an access route will be upgraded for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. Extensive earth disturbance is expected during the course of the project.

Area of Potential Effect

The area of potential effect (APE) is defined as the areas in which construction impacts will take place and associated Right-of-way (ROW) areas. The total APE is 10.18 acres (4.12 ha). The APE was divided into three project areas for survey. Please see the enclosed Archaeological Inventory Report Documentation form (AIRs Form) and enclosed maps for exact locations and details.

Cultural Resource Survey Results

A Class III cultural resource survey was conducted by a Navajo DOT archaeologist in advance of the proposed road project. The Class III survey consisted of a pre-field records search, interviews, a cultural resources pedestrian survey and assessment of potential impacts to cultural resources within the APE. Archaeological documentation was limited to the surface only. No excavation or subsurface probing was conducted during the current survey.

Traditional Cultural Places (TCP) investigations and interviews indicated the presence of two TCPs within 25 miles of the project area but not within the APE.

The results of the research and survey are documented in the enclosed AIRs Form and Cultural Resources Inventory report.

Assessment of Effect and Conclusion

No historic properties or TCPs as defined under Section 106 of the NHPA were identified within the project area. The Navajo DOT recommended that the undertaking will have *No Effect* on any known historic properties or archaeological and cultural resources.

Given the above information, the FHWA TTP has determined that the N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo elementary School Project *will not affect* any historic properties. Please review the information in this letter and the enclosed information. If you concur with the findings of the cultural resources survey and with our effect and eligibility determinations, please indicate by checking the appropriate box below and signing on the designated line. Alternatively, we encourage you to contact us (e-mail is acceptable) with any comments you may have regarding this undertaking.

If you have questions or concerns, please contact David Cremer, TTP Environmental Specialist at david.cremer@dot.gov or 720-963-3528.

Sincerely yours,



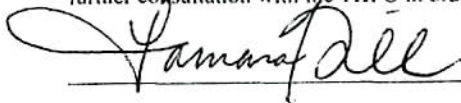
David E. Cremer
Environmental Coordinator
FHWA-Tribal Transportation Program

Enclosures
AIRs Form with maps
TCP Record Search Verification Form

cc (electronic copy only with enclosures):
Taft Blackhorse, Project Management Department Manager, Navajo DOT;
tblackhorse@navajodot.org

☒ The Navajo Nation THPO concurs with the findings of the AIRs Form and the determination of effect and eligibility outlined within this letter.

☐ The Navajo Nation THPO has determined that the proposed undertaking will affect objects, sites, or locations of traditional religious or cultural importance to the tribe. Please undertake further consultation with the THPO in order to evaluate, consider, or avoid such locations.



Date: 8/24/13

* reference HPD-16-613

Attachment 5: Biological Resource Compliance Form

NNDFW Review No. 15BIA05a3

BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: N101(1) 2&4

DESCRIPTION: NRO-DOT proposes to pave the roadway that is used by the elementary school and the residences of the NHA sub-division located along N101.

LOCATION: Protracted T29N, R14W: Section 30 T29N, R15W: Section 25, San Juan County, New Mexico

REPRESENTATIVE: Lucero, Raymond, BIA, NRO-DOT

ACTION AGENCY: Bureau of Indian Affairs, Navajo Regional Office Division of Transportation (NRO-DOT)

B.R. REPORT TITLE / DATE / PREPARED BY: Request for review and concurrence/16 MAR 2015/Raymond Lucero

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

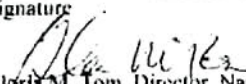
AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/23 MAR 2015

COPIES TO: (add categories as necessary)



2 NTC § 164 Recommendation:	Signature	Date
<input checked="" type="checkbox"/> Approval		3/24/15
<input type="checkbox"/> Conditional Approval (with memo)		
<input type="checkbox"/> Disapproval (with memo)		
<input type="checkbox"/> Categorical Exclusion (with request letter)		
<input type="checkbox"/> None (with memo)		
Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife		

*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date

APPENDIX E

EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS

Project: N101(1), Ojo Amarillo Date: December 13, 2016

Nature of Proposed Action:

The Bureau of Indian Affairs (BIA), Navajo Region Division of Transportation (NRDOT), in response to the community of Ojo Amarillo is planning to realign a portion of the Navajo Route 101 (N101). The existing route is used to access two Navajo Housing Authority (NHA) complexes and the Ojo Amarillo Elementary School. Because the alignment is located on the northern outskirts of the community it does not provide a convenient/efficient access to the two housing complexes and school. Since it was in the NHA's conceptual plan to realign the road by moving the intersection further south still intersecting with N3005 providing the users direct access to the school and housing, the NRDOT, Engineers after a plan in hand field site visit concurred with NHA since it would better serve and provide all parties of interest a safer road by improving sight distances and direct access to all the users.

The survey stationing starts at the cattle guard on the west end which is the NHA complex property boundary line and traverses east to N3005. The right-of-way varies from 22 meters to 13 meters from centerline and is 0.590 kilometers in length. The variation in the rights-of-way is to accommodate construction limits and restrict take from current land users. The project will be built onto an approximate 5% northwestern facing slope which flattens as the project merges the elementary school property. Since more fill will be required on the east end the toe or catch point of the fill will extend further out from the proposed roadway prism, therefore more right of ways are required. The roadway prism will have a hot asphalt concrete layer for the final driving surface with traffic control devices, such as traffic stripping and signs. The right of will also be fenced to stop roaming horses and cattle from encroaching.

The N3005 was built in the 1970's and is perpendicular to the water shed while the proposed N101 is parallel to the watershed. There will be no fragmenting of critical habitat since the area around the project site is populated and vehicle travel is constant. The vehicle counts taken / measured shows that the average daily traffic count for the road in 2002 was 582 vehicles per day (vpd) and projected to be 865 vpd for 2022, with 2% truck traffic (NRDOT BIA).

The site is located on the Chaco Plateau. Drainage and runoff (sheet flow) is to the northwest which drainages into the Chaco River a tributary of the San Juan River. Elevation is approximately 1659 meters (5500 feet) above sea level. No natural washes rivers or streams were seen within the area only traces of flooding from the adjacent agricultural fields to the east and the north. There is also a manmade channel running from south to north paralleling the N3005 on the east side. The channel then crosses below the N3005 roadway and heads west into the project site through the NHA housing access road and below the N101 alignment at station 0+200. There was no evidence of recent flows within the channel based on the substrate and the weeds that

have grown inside the channel. The existing drainage pipes will be replaced by appropriate engineered sized structures.

The NHA attendants according to the NHA administrators during a plan in had expressed concerns that horses were getting into the residential area which instigates dogs to bark during late hours of the night. The interloping of horses is partly caused by a silted up cattle guard allowing horses to migrate to and from the adjacent properties. Since the entire N3005 is fenced and the proposed N101 will be fenced there will be no need to install another cattle guard the NHA agreed that the cattle guard should be removed. The cattle guard at the beginning of the project or on the west end near the housing will also be removed and salvaged with no plans of replacing.

516 DM 10.4

Exclusion category and number:

Evaluation of Exceptions to use of Categorical Exclusion:

- | | | |
|--|-------------|-----------|
| 1. This action would have significant adverse effects on public health or safety. | No <u>X</u> | Yes _____ |
| 2. This action would have an adverse effect on unique geographical features, such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands. | No <u>X</u> | Yes _____ |
| 3. The action will have highly controversial environmental effects. | No <u>X</u> | Yes _____ |
| 4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risks. | No <u>X</u> | Yes _____ |
| 5. This action will establish a precedent for future actions. | No <u>X</u> | Yes _____ |
| 6. This action is related to other actions with individually insignificant, but cumulatively significant environmental effects. | No <u>X</u> | Yes _____ |
| 7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. | No <u>X</u> | Yes _____ |
| 8. This action will affect a species listed, or proposed to be listed as endangered or threatened. | No <u>X</u> | Yes _____ |

9. This action threatens to violate federal, state, local or tribal law or requirements imposed for protection of the environment. No X Yes _____
10. This action will have a disproportionately high and adverse effect on low income or minority populations. No X Yes _____
11. This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites. No X Yes _____
12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. No X Yes _____

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action - - - CE X EA _____

Preparer's Name and Title: Raymond Lucero, Planning and Design Branch, Division of Transportation

Regional Archeologist concurrence with Item 7 _____

Concur: _____ Date: _____
Regional Director/Superintendent

Concur: _____ Date: _____
Regional Office/Agency Environmental Coordinator

Attachment 6: Cultural Compliance Letter with Concurrence from Navajo Nation Historic Preservation Department (NNHPPD)

HPD-16-613



U.S. Department
of Transportation
Federal Highway
Administration

Federal Lands Highway Office
Lakewood Field Office Tribal Transportation Program

August 1, 2016

12300 West Dakota Avenue
Suite 280
Lakewood, CO 80228
720-963-3528
david.cremery@dot.gov

In Reply Refer To:
LFO TTP (Sic. 280 - Cremery)



~~Dr. Ora Marek-Martinez~~

Tribal Historic Preservation Officer
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, AZ 86515

Dear Dr. Marek-Martinez:

Subject: Section 106 consultation on Navajo DOT's proposed N101(1) School Access Route, Spur Road and N11A Access near Ojo Amarillo elementary School in San Juan County, New Mexico.

We are contacting you at this time to perform Section 106 consultation relevant to the above-referenced project. The Federal Highway Administration, Federal Lands Highway Office Tribal Transportation Program (FHWA TTP), in cooperation with the Navajo Nation Division of Transportation (NDOT), is proposing to construct a new access road N101(1) from the Ojo Amarillo Elementary School to N3005. The project will also include the upgrades to a spur road that will allow access during construction and the upgrading of an access route for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. For the purposes of Section 106, and the National Environmental Policy Act, the FHWA is the lead Federal agency for this undertaking.

The project will comply with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended) and Executive Order 11593, Protection and Enhancement of the Cultural Environment. FHWA has made an effort to consider potential impacts to historic properties, which are defined as cultural resources listed or eligible for listing in the National or Register of Historic Places (NRHP), and to afford the Navajo Nation Tribal Historic Preservation Office (NNTHPO) an opportunity to comment on the undertaking.

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route. In addition, an access route will be upgraded for the Navajo Housing Authority Homes, just south of the proposed school access N101(1) project. Extensive earth disturbance is expected during the course of the project.

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The area of potential effect (APE) is defined as the areas in which construction impacts will take place and associated Right-of-way (ROW) areas. The total APE is 10.18 acres (4.12 ha). The APE was divided into three project areas for survey. Please see the enclosed Archaeological Inventory Report Documentation form (AIRs Form) and enclosed maps for exact locations and details.

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The results of the research and survey are documented in the enclosed AIRs Form and Cultural Resources Inventory report.

Assessment of Effect and Conclusion

No historic properties or TCPs as defined under Section 106 of the NHPA were identified within the project area. The Navajo DOT recommended that the undertaking will have *No Effect* on any known historic properties or archaeological and cultural resources.

Given the above information, the FHWA TTP has determined that the N101(1) School Access Route, Spur Road and NHA Access near Ojo Amarillo elementary School Project *will not affect* any historic properties. Please review the information in this letter and the enclosed information. If you concur with the findings of the cultural resources survey and with our effect and eligibility determinations, please indicate by checking the appropriate box below and signing on the designated line. Alternatively, we encourage you to contact us (e-mail is acceptable) with any comments you may have regarding this undertaking.

If you have questions or concerns, please contact David Cremer, TTP Environmental Specialist at david.cremer@dot.gov or 720-963-3528.

Sincerely yours,



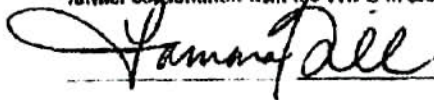
David E. Cramer
Environmental Coordinator
FHWA-Tribal Transportation Program

Enclosures
AIRs Form with maps
TCP Record Search Verification Form

cc (electronic copy only with enclosures):
Taft Blackhorse, Project Management Department Manager, Navajo DOT:
tblackhorse@navajodot.org

☒ The Navajo Nation THPO concurs with the findings of the AIRs Form and the determination of effect and eligibility outlined within this letter.

☐ The Navajo Nation THPO has determined that the proposed undertaking will affect objects, sites, or locations of traditional religious or cultural importance to the tribe. Please undertake further consultation with the THPO in order to evaluate, consider, or avoid such locations.



Date: 8/24/13

* reference HPD-16-613



COPY @ 9/29/16

THE NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT

PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCE COMPLIANCE FORM

ROUTE COPIES TO:	NNHPD NO.: HPD-16-613
<input checked="" type="checkbox"/> NDOT	OTHER PROJECT NO.: NNDOT 16-008

PROJECT TITLE: An Archaeological Inventory and Survey of the Proposed N101(1) School Access Route, Spur Road, and NHA Access near Ojo Amarillo Elementary School in San Juan County, New Mexico

LEAD AGENCY: Navajo Nation

SPONSOR: Garrett Silversmith, Navajo Division of Transportation, P.O. Box 4620, Window Rock, AZ 86515

PROJECT DESCRIPTION: The proposed undertaking will involve the construction of an all-weather access road N101(1) from Ojo Amarillo Elementary School to N3005. A spur road will also be upgraded to allow access while construction occurs on N101(1) and to provide the community with an alternate access route. In addition to the access route will be upgraded for the NHA homes. The area of effect is 6.87-acres. Ground disturbing activities will be intensive and extensive with the use of heavy equipment.

LAND STATUS:	Navajo Tribal Trust													
CHAPTER:	Upper Fruitland													
LOCATION:	T.	23	N.	R.	15	W-	Sec.	25	Kirtland	Quadrangle,	San Juan	County	New Mexico	NMPM
PROJECT ARCHAEOLOGIST:	Peter J. Kakos													
NAVAJO ANTIQUITIES PERMIT NO.:	NTC													
DATE INSPECTED:	6/15/2016													
DATE OF REPORT:	7/19/2016													
TOTAL ACREAGE INSPECTED:	10.18 - ac													
METHOD OF INVESTIGATION:	Class III pedestrian inventory with transects spaced 20 m apart.													
LIST OF CULTURAL RESOURCES FOUND:	In-Use Facilities/Areas													
LIST OF ELIGIBLE PROPERTIES:	None													
LIST OF NON-ELIGIBLE PROPERTIES:	In-Use Facilities/Areas													
LIST OF ARCHAEOLOGICAL RESOURCES:	None													

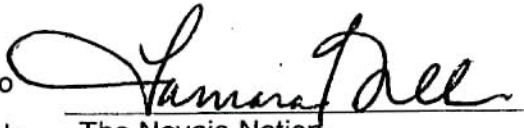
EFFECT/CONDITIONS OF COMPLIANCE: No historic properties affected.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7198.

FORM PREPARED BY: **Lukai Nez**
FINALIZED: September 28, 2016

Notification to Proceed
Recommended
Conditions:

☒ Yes ☐ No
☐ Yes ☒ No


The Navajo Nation
Historic Preservation Office

9/28/16
Date

HPD-16-613

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM

1. HPD REPORT NO.	2. (For HPD use only)	3. RECIPIENTS ACCESSION NO.
4. TITLE OF REPORT: An Archaeological Inventory and Survey of the Proposed N101(1) School Access Route, Spur Road, and NHA Access near Ojo Amarillo Elementary School in San Juan County, New Mexico	5. FIELDWORK DATES: June 15, 2016	
AUTHOR: Peter J. Kakos	6. REPORT DATE(S): July 19, 2016	
7. CONSULTANT NAME & ADDRESS: Gen'l Charge: Navajo Division of Transportation (NDOT) Name: Taft Blackhorse, Department Manager Address: P. O. Box 4950, Window Rock, AZ 86515 Phone: 928/ 871-7688	8. PERMIT NO.: NTC ✓	
	9. CONSULTANTS REPORT NO.: NDOT Project Number 16-008	
10. SPONSOR NAME & ADDRESS: Ind. Responsible: Garrett Silversmith Org. Name: Navajo Division of Transportation Address: P.O. Box 4620, Window Rock, AZ 86515 Phone: 505 371-8388	11. SPONSORS PROJECT NO.: Navajo Route 101 (1) Road Construction Easement	
	12. AREA OF EFFECT: 6.87 ac (2.78 ha) AREA SURVEYED: 10.18 ac (4.12 ha)	
13. LOCATION (See Insert on Figure 1) a. Chapter: Upper Fruitland b. Agency: Shiprock c. County: San Juan d. State: New Mexico	e. Land Status: Tribal Trust f. UTM: See supplemental sheet g. Area: See supplemental sheet h. 7.5' Map Name: Kirtland, New Mexico 1966 (Photo Revised 1979)	
14. REPORT /x/ OR SUMMARY (Report Attached) / / OR PRELIMINARY REPORT / / a. Description of Undertaking: The sponsor proposes construction and upgrade of Navajo Route 101(1), a school access route connecting N 101 (1) with the Ojo Amarillo Elementary School, an upgrade of an existing spur road, and an access to the NHA Housing area. Extensive ground disturbance with the use of heavy equipment is expected in the areas of effect to construct an all-weather asphalt road. b. Existing Data Review: See page 3. c. Area Environmental & Cultural Setting: See page 4. d. Field Methods: See page 5.		
15. CULTURAL RESOURCE FINDINGS: a. Location/Identification of Each Resource: page 5. b. Evaluation of Significance of Each Resource: page 5.		
16. MANAGEMENT SUMMARY (RECOMMENDATIONS): page 5.		
17. CERTIFICATION:		
SIGNATURE: <u>Peter J. Kakos</u>		DATE: <u>July 19, 2016</u>
Direct Charge Name: Peter J. Kakos, Senior Archaeologist		
SIGNATURE: <u>Taft Blackhorse</u>		DATE: <u>07/20/2016</u>
General Charge Name: Taft Blackhorse, Department of Project Management		

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM
NDOT 16-008, Page 2

a. Description of Undertaking

Navajo DOT is proposing to construct a new all-weather access road N101 (1) from the Ojo Amarillo Elementary School to N3005 (See figures 1 and 2). A spur road will also be upgraded to allow access while construction occurs on N101 (1) and to provide the community with an alternate access route. In addition, an access route will be upgraded for the Navajo Housing Authority Homes just south of the proposed school access N101 (1) project (see no. 12 below for areas of effect and areas surveyed). In short three areas of effect will be considered as part of this undertaking. All three areas will undergo the use of heavy construction equipment, and earth removal vehicles such as scrapers, backhoes, and belly loaders. Extensive earth disturbance is expected during the course of the project.

12. AREA OF EFFECT:

Table 1. Areas of Potential Effect (APE and Right-of-way) and Areas Surveyed:

CENTERLINE ALIGNMENT	STATION to STATION		LENGTH (m)	Arch Survey Corridor Lt (m)	Arch Survey Corridor Rt (m)	HECTARES (ha)	ACRES (ac)	ROW WIDTH CORRIDOR (m)	HECTARES (ha)	ACRES (ac)
N101(1) PROPOSED ALIGNMENT	0+000.000	0+202.686	202.686	19.50		0.395	0.98	13.00 Lt	0.266	0.66
	0+202.686	0+590.058	387.372	27.00		1.046	2.58	18.00 Lt	0.693	1.71
	0+000.000	0+302.584	302.584		27.00	0.817	2.02	18.00 Rt	0.465	1.15
	0+302.584	0+590.058	287.474		33.00	0.949	2.34	22.00 Rt	0.730	1.80
					TOTAL:	3.207	7.92	TOTAL:	2.154	5.32
SPUR ROAD TO NHA HOUSING	0+000.000	0+060.000	60.000	27.00		0.143	0.35	18.00 Lt	0.108	0.27
	0+000.000	0+060.000	60.000		27.000	0.181	0.45	18.00 Rt	0.125	0.31
					TOTAL:	0.324	0.80	TOTAL:	0.233	0.58
NDOT SPUR ROAD	0+000.000	0+476.380	476.380	6.00		0.298	0.74	4.00 Lt	0.196	0.48
	0+000.000	0+476.380	476.380		6.00	0.293	0.72	4.00 Rt	0.198	0.49
					TOTAL:	0.591	1.46	TOTAL:	0.394	0.97
					TOTALs	4.12	10.18	TOTALs	2.78	6.87

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM
NDOT 16-008, Page 3

13. LOCATION:

f. UTM:

Table 2. UTM Coordinates (NAD83) for the Proposed Project Areas, Zone 12

New School Access N101(1)	Location Station Numbers	Northing	Easting
Beginning of Project	BOP Sta. 0+000 (center point)	631550.480	782371.328
End of Project	EOP Sta. 0+059 (center point)	631583.773	782959.888
Spur Road from N3005 to School Access			
Beginning of Project	BOP Sta. 0+000 (center point)	631733.096	782960.403
Point on Curve	Sta. 0+373.511 (center point)	631685.322	782592.322
End of Project (at School Access) N101(1)	EOP Sta. 0+492.665 (center point)	631569.864	782579.875
NHA Housing Access			
Beginning of Project	BOP Sta. 0+000 (center point)	631471.559	782626.981
End of Project	End of Project 0+060.000 (center point)	631527.108	782648.915

Note: GIS Data provided by BIA-NR-DOT Gallup, NM; Station Numbers are metric

g. Area:

Table 3. Project Area Designation with Projected Township and Range*

Project Area Designation or Area of Potential effect (APE)	Township/Range	Section
New School Access N101(1)	Township 29 North, Range 15 West	25
Spur Road from N3005 to School Access	Township 29 North, Range 15 West	25
NHA Housing Access	Township 29 North, Range 15 West	25

***Kirtland, New Mexico 7.5 ' USGS Quad 1966 (PHOTOREVISED 1979)**

14. REPORT /x/ OR SUMMARY (Report Attached) / / OR PRELIMINARY REPORT / /

b. Existing Data Review:

Files at the Navajo Nation Historic Preservation Department, Shiprock Field Office and the NDOT files in Farmington indicated that there are numerous sites within a one kilometer radius of the project area and were noted as a result of previous inventories and data recovery projects for the Navajo Indian Irrigation Project (Kirkpatrick 1980). These sites include Archaic Period camps, Anasazi habitations and field houses or special use sites, and Historic Navajo properties. Unfortunately, the files containing the site forms for this area of Block II were missing from the Shiprock HPD file system, and therefore exact descriptions of the sites were unavailable. The site numbers associated near or adjacent to the project area included NM-H-22-86, NM-H-22-94, and NM-H-22-106.

Van Valkenburgh (1974) indicates that there are two sacred places in the general region. The closest is Huerfano (*Dzilt' na' ooh dithlii*)—*People Encircling Around Mountain*. Huerfano is a prominent mesa located about 30 miles east of the project area and is about 7470 feet (2277 m) in elevation and is visible as far away as the Chuska Mountains to the west.

According to Navajo stories the mesa is suspended by sunbeams and is associated with *yodi' ashkii*, or "Goods of Value Boy," and *yodi' at'eed*, "Goods of Value Girl." Interestingly, there are the remains of two

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM

NDOT 16-008, Page 4

old trading posts south of the mesa which lends credence to the stories about "Goods of Value Boy" and Goods of Value Girl."

Stories of A'tsee' Hastiin (First Man), and Atse' Asdzaan (First Woman) are also associated with the many homes and stories regarding First Man and First Woman (Lindford 2000: 219).

Shiprock Pinnacle (Tse' it'a'i—Winged Rock) is another Traditional Cultural Place and is located about 25 miles west of the project area and is about 7178 ft (2188 m) in elevation. It has been ascribed ceremonial significance, but the earliest written accounts of Navajo ceremonialism do not mention it at all (Lindford 2000:264). According to Van Valkenburgh (1974) Shiprock is associated with a number of ceremonies including Bead Chant, and the Naayee'ee

Ceremony to ward off evil monsters. It also appears in the Enemy Side ceremony and according to some represents a large medicine pouch (*Jish*). The Shiprock Pinnacle is also associated with Monster Slayer in a number of stories (Lindford 2000:265).

Peckham and Wilson (1967) and Vogler, Langenfeld, and Gilpin (1993) present overviews of the general area near the Chuska Mountains and the NIIP respectively. It was Peckham and Wilson's work that was originally done to provide background information before the construction of Navajo Reservoir which was developed to provide water for the Navajo Nation and ultimately for the Navajo Indian Irrigation Project (NIIP).

c. Area Environmental & Cultural Setting:

The Ojo Amarillo area is fairly well-developed with power lines, water/sewer lines, an elementary school and parking facility, street lights, paved streets, and Navajo Housing Authority (NHA) homes. Three churches are in the vicinity as well and are located adjacent to the immediate project area. A local community member indicated to the author that the housing area was constructed in about 1973. The school may have been built about 1975+ and recently renovated as well. No Traditional Cultural Properties (TCPs) were indicated to me by a local resident living adjacent to the school access route. A search of the Traditional Cultural Property (TCP) Record also turned up negative results (see attached TCP Record Verification Form).

Navajo 101(1) School Access is at an elevation of about 5400 feet (1646 m) and runs from the Ojo Amarillo School to Navajo Route 3005 which runs due south of the Ojo Amarillo area and north to Navajo Route 36 which is about one mile away.

Vegetation is characterized by saltbush, Russian thistle, some yucca, prickly pear cactus, a small variety of ephedra (Morman Tea), various grasses, and some tamarisk (Salt Cedar) and cottonwood, which is dense along the eastern portion of the project area along N3005. Higher elevation occurs in the east end of the project and dips toward the west and north. The nearest major river of course is the San Juan River to the north. The nearest named wash is Ojo Amarillo Canyon located about one (1) mile to the east of the project area. The La Plata Mountains to the north and the Chuska Mountains to the west frame this area of dry dunes and hummocks. Although rainfall is sparse, the NIIP project demonstrated that the soils in the area are fertile if given enough water. The immediate surrounding landscape contains various washes and canyons that were carved by intermittent rain and snow melt. Soils are predominately aeolian in origin and exhibit deep deposits in some areas and deflated in other areas.

Soils are of predominately aeolian sands and silt in origin with shallow swales exposing underlying sandstone bedrock which supports a sparse vegetation cover in the immediate project area. However, as noted above salt cedar and cottonwood trees line the eastern end of the project area indicating deeper soils and more moisture from run-off along an existing paved highway (N3005).

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM
NDOT 16-008, Page 5

Local wildlife as seen by residents include small birds of all kinds, ducks and geese, coyote, deer, elk and prairie dogs. In fact, prairie dog holes were observed along the eastern end of the project area. Bobcats and cougars are also seen on rare occasions.

d. Field Methods:

A Class III pedestrian survey was performed by Peter J. Kakos, senior archaeologist for the Navajo DOT by walking parallel transects within the proposed right-of-way and spaced about 12 to 15 m apart. This entailed several transects to cover the entire area. An engineering plan-and-profile map was used for orientation which provided project area dimensions, and project station numbers for the beginning of the project (BOP), the end of the project (EOP). Station markers were spaced at 20 m intervals along the entire length of the proposed road project and access routes.

Field notes were taken on the types of soil, vegetation and wild life recognized. An interview with a local resident adjacent to the project area was conducted in English and notes were taken. The members of the community, school officials, BIA, and NDOT have conducted numerous pre-planning meetings on this project for over a year and sufficient time for public comment was thus available. It should be noted that the school board and community members are completely supportive of this project.

15. CULTURAL RESOURCE FINDINGS:

a. Location/Identification of Each Resource:

IN-USE facilities, including Ojo Amarillo Elementary School, homes, churches, and infrastructure are present throughout the area and adjacent to the proposed N101(1) School access, spur road, and NHA Housing area.

b. Evaluation of Significance of Each Resource:

Within the proposed rights-of-way no historic properties were identified as defined under the Section 106 process. Nor were there burial locations or TCPs identified within the proposed project area. There are existing homes, three churches, and the Ojo Amarillo Elementary School adjacent to the Areas of Potential Effect (APE). Furthermore, no TCP's within the APEs were identified, and although Huerfano Mesa and Shiprock are two places considered sacred and important to the Navajo People they are both well outside the Areas of Potential Effect. Therefore a *No Effect* finding is recommended for the proposed undertaking.

16. MANAGEMENT SUMMARY (RECOMMENDATIONS)

The proposed undertaking will have no effect on any known historic properties or archaeological and cultural resources. And since the proposed access will enhance access to the Ojo Amarillo Elementary School, the NHA housing area, and provide a community-based alternate route to the school and surrounding residential area it is recommended that construction be conducted within the proposed rights-of-way without any restrictions or stipulations except where existing fences are located; it is recommended that these fences

CULTURAL RESOURCES INVENTORY REPORT DOCUMENTATION FORM
NDOT 16-008, Page 6

remain in place and flagged prior to construction to prevent inadvertent damage to them. These fences demark private residences and in one case an existing church area

REFERENCES

Kirkpatrick, David T.

1980 Prehistory and History of the Ojo Amarillo: Archaeological Investigation of Block II, Navajo Indian Irrigation Project, San Juan County, New Mexico. Edited by David T. Kirkpatrick. Report Number 276.

Lindford, Laurence D.

2000 *Navajo Places: History, Legend, Landscape*. Utah Press, Salt Lake City.

Peckham, Stuart L., and John P. Wilson

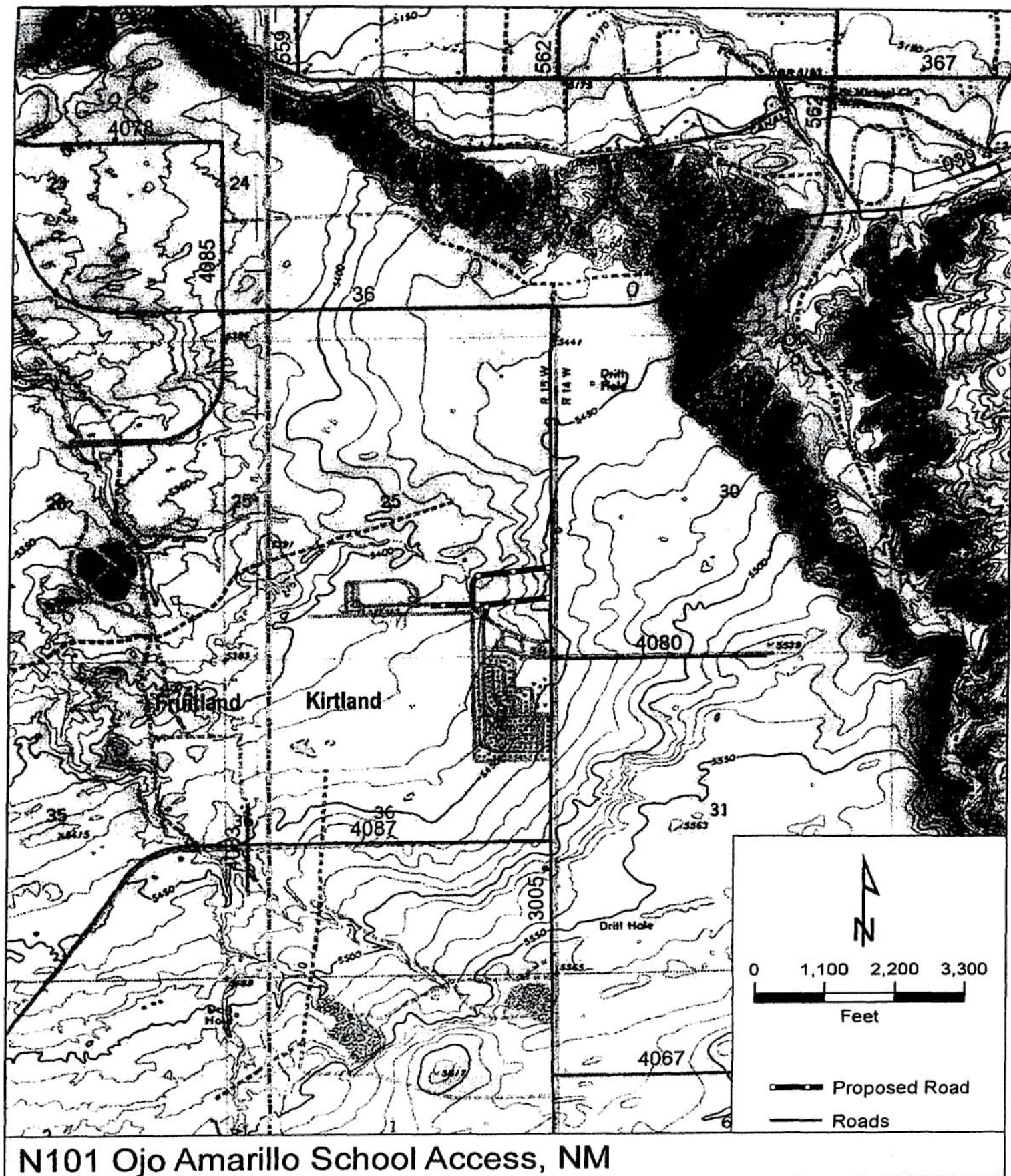
1967 *Archaeological Survey of the Chuska Valley and Chaco Plateau, New Mexico, Part I: Survey*. Ms. Onfile. Laboratory of Anthropology, Museum of New Mexico, Santa Fe, New Mexico.

Van Valkenburgh, Richard F.

1974 Navajo Sacred Places. In *Navajo Indians III*, edited by Clyde Kluckhohn, pp. 9-199. Garland Publishing, New York, New York.

Volger, Lawrence E., Kristen Langenfeld, and Dennis Gilpin

1993 *Daa' ak eh Nitsaa: An Overview of the Cultural Resources of the Navajo Indian Irrigation Project, Northwestern New Mexico*. Navajo Nation Papers in Anthropology No. 29, Window Rock, Arizona.



N101 Ojo Amarillo School Access, NM

Figure 1 Project Location Map
Kirtland, NM 1981 7.5' USGS
Quadrangle Map (Scale 1: 24,000)

UTM Zone: 12
Easting: 782960.403m
Northing: 631733.096m
NM-SPC NAD83



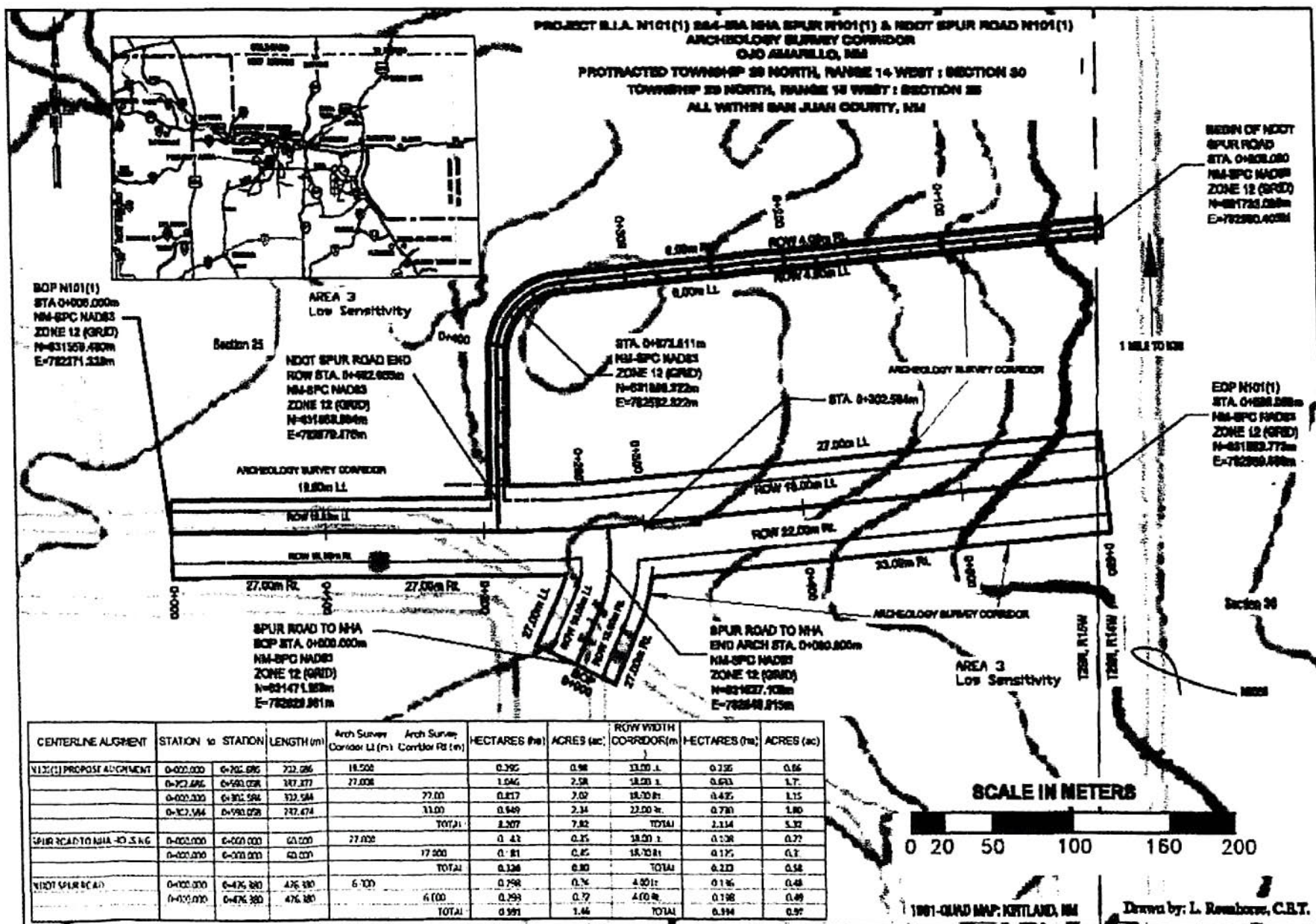
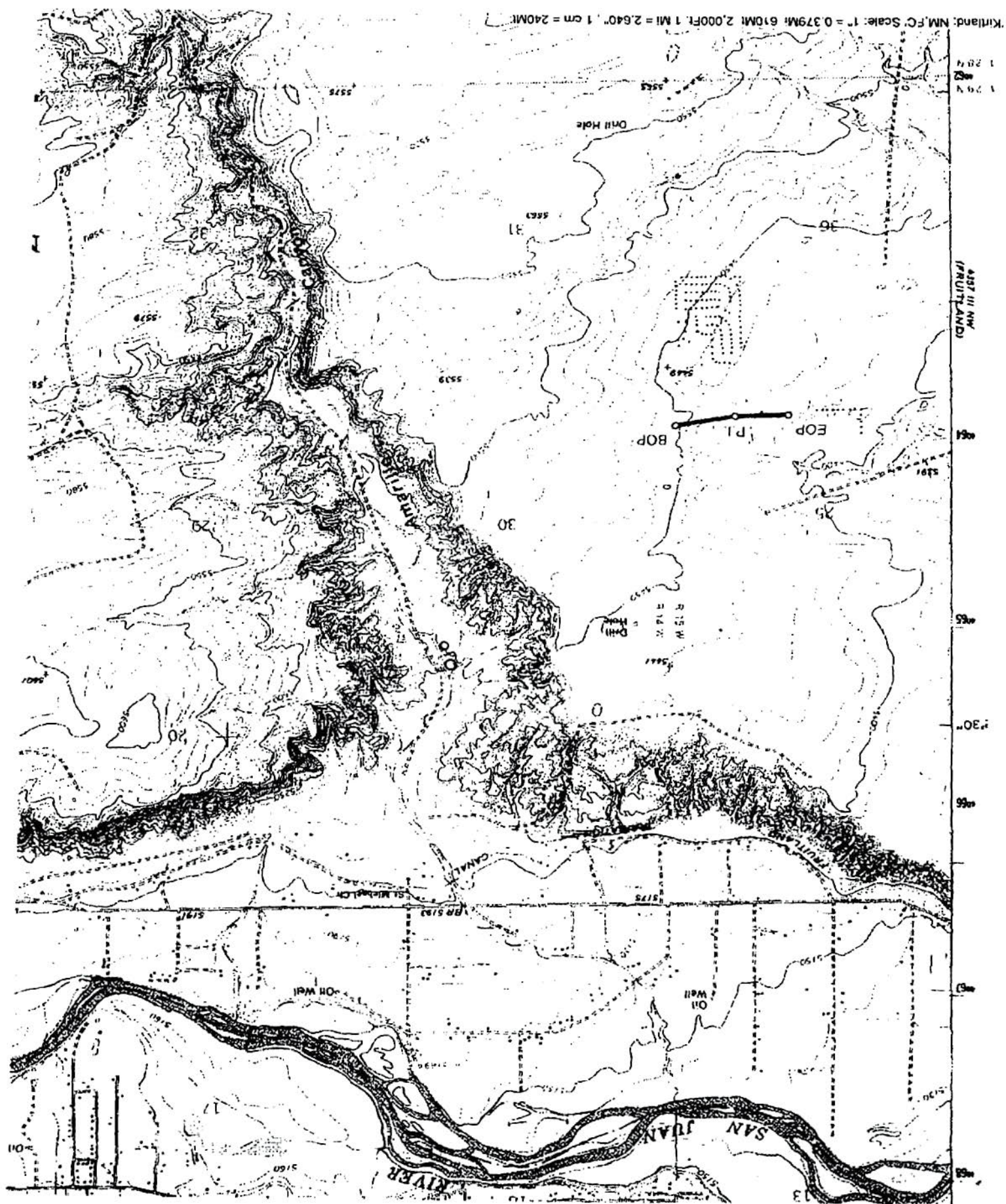


Figure 2. Map showing proposed rights-of-way and survey corridor.



Document No. 009665

Date Issued: _____

EXECUTIVE OFFICIAL REVIEWTitle of Document: BIA-ROW N101(1)(2)2&4 OJO Amarillo Contact Name: YAZZIE, ELERINA BProgram/Division: DIVISION OF NATURAL RESOURCESEmail: e_yazzie@navajo-nsn.gov Phone Number: 928-871-6447☐ **Business Site Lease** Sufficient Insufficient

- | | | | |
|---|----------------------|-------------------------------------|--------------------------|
| 1. Division: <u>[Signature]</u> | Date: <u>9/22/15</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review) | | | |
| 3. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**

- | | | | |
|--|-------------|--------------------------|--------------------------|
| 1. Division: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**

- | | | | |
|---|-------------|--------------------------|--------------------------|
| 1. Office of Management and Budget: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Navajo Housing Authority Request for Release of Funds**

- | | | | |
|--|-------------|--------------------------|--------------------------|
| 1. NNEPA: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Lease Purchase Agreements**

- | | | | |
|--|-------------|--------------------------|--------------------------|
| 1. Office of the Controller: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| (recommendation only) | | | |
| 2. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Grant Applications**

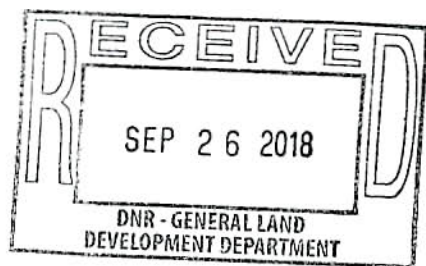
- | | | | |
|---|-------------|--------------------------|--------------------------|
| 1. Office of Management and Budget: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**

- | | | | |
|--|-------------|--------------------------|--------------------------|
| 1. Division: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Relinquishment of Navajo Membership**

- | | | | |
|--|-------------|--------------------------|--------------------------|
| 1. Land Department: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Elections: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |



☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

Sufficient Insufficient

1. Division: _____ Date: _____ ☐ ☐
2. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases**

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. DNR _____ Date: _____ ☐ ☐
7. DOJ _____ Date: _____ ☐ ☐

☐ **Rights of Way**

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. Office of the Attorney General: _____ Date: _____ ☐ ☐
7. OPVP _____ Date: _____ ☐ ☐

☐ **Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease**

1. Minerals _____ Date: _____ ☐ ☐
2. OPVP _____ Date: _____ ☐ ☐
3. NLD _____ Date: _____ ☐ ☐

☐ **Assignment of Mineral Lease**

1. Minerals _____ Date: _____ ☐ ☐
2. DNR _____ Date: _____ ☐ ☐
3. DOJ _____ Date: _____ ☐ ☐

☒ **ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)**

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. DNR _____ Date: _____ ☐ ☐
7. DOJ *(ic)* VB _____ Date: 9/19/18 ☒ ☐
8. OPVP 2 _____ Date: 05-07-2018 ☒ ☐

☐ **OTHER:**

1. _____ Date: _____ ☐ ☐
2. _____ Date: _____ ☐ ☐
3. _____ Date: _____ ☐ ☐
4. _____ Date: _____ ☐ ☐
5. _____ Date: _____ ☐ ☐



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
09/19/18 11:20a
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 009665 #2
SAS #:
UNIT: NM

☒ RESUBMITTAL
(July 2018)

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	9/5/2018	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie or Stevie Hudson	DEPARTMENT:	GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447 or x 6423	E-MAIL:	steviehudson@frontier.com

TITLE OF DOCUMENT: 9665 BIA ROW N101 (1)(2)2&4, OJO AMARILLO, NEW MEXICO

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	9.19.18 1134 Am	REVIEWING ATTORNEY/ADVOCATE:	Irwin Chee 9.28.18
DATE TIME OUT OF UNIT:	9.19.18 4:40 p		

DOJ ATTORNEY / ADVOCATE COMMENTS

- The Consent/Field Clearance is now attached. Therefore, document is now legally sufficient.


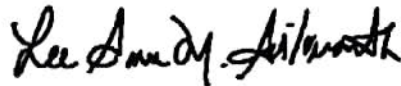



REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Irwin Chee	9/18/18	V Blackhat	9/19/18 2:07 pm

DOJ Secretary Called: Michelle H. for Document Pick Up on 9.19.18 at 4:15 By: B

PICKED UP BY: (Print)	DATE / TIME:
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NNDOJ/DRRF-July 2013

COMPLETED

User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date	Signature
Eugenia Quintana EPA (Navajo Land Title Data System - Windowrock AZ)	Air and Toxics - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. Sufficient documentation and applicable references to previous environmental documents.	1. No Reply	21-Feb-2018	
Lee Anna Martinez EPA (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. * CONDITIONAL * BIA is aware that this project will include a CWA Section 401/404 Certification. They indicate it on their EA. Thank you for including that and taking the time to recognize our CWA Standards. BIA is familiar with our process and our office looks forward to working with you on this upcoming transportation project. Thank you.	1. No Reply	21-Feb-2018	
Najamh Tariq (Navajo Land Title Data System - Windowrock AZ)	Approver	Department of Water Resources	Approved	no comments	No Reply	21-Feb-2018	
Pam Kyselka F&W (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	1. #15BIA05a3	1. No Reply	16-Feb-2018	
Pam Maples EPA (Navajo Land Title Data System - Windowrock AZ)	Storage Tanks Program - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. WITH CONDITIONS	1. No Reply	26-Feb-2018	
Patrick Antonio (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Supervisor	Navajo Nation Environmental Protection Agency	Approved	1. Land surface disturbance in excess of 1.0 acre requires coverage under the federal Construction General Permit for	1. No Reply	15-Feb-2018	

storm water discharges from construction sites. A Notice of Intent (NOI) must be submitted to USEPA 14 days prior to earthmoving. A storm water pollution prevention plan must be developed prior to NOI submission.

Robert Allan Deputy
DNR Director
(Navajo Land DNR
Title Data
System -
Windowrock
AZ)

DNR
Administration

Approved

1. Conditional--
the land user
consents
should be
added to the
record when
they become
available, if
actual
construction
begins on an
unknown
date in the
future.

1. No
Reply

09-Mar-2018

Robert O. Allan

Tamara Billie HPD
NNHP Reviewer
(Navajo Land
Title Data
System -
Windowrock
AZ)

Historic
Preservation
Department

Approved

1. HPD-16-
613

1. No Reply

15-Feb-2018

Tamara Billie

Yolanda Public
Barney EPA Water
(Navajo Land System
Title Data Supervision
System - Program
Windowrock
AZ)

Navajo Nation
Environmental
Protection
Agency


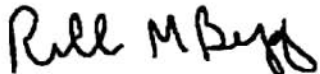

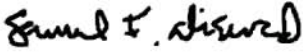


Approved

1. no comments

No Reply

16-Feb-2018

Yolanda

User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date	Signature
Bidtah N. Becker (FBFA)	FBFA Users	FBFA Action Team	Approved	1. I am marking this document sufficient with the request that DOJ review BIA's application letter and determine what, if any edits, need to be made to the terms and conditions. In addition, I am asking GLDD to answer THPO Richard Begay's questions. Thank you.	1. No Reply	15-May-2018	
Richard Begay NNHP (Navajo Land Title Data System - Windowrock AZ)	Navajo Nation Historic Preservation Officer	Historic Preservation Department	Approved	no comments	No Reply	02-Jul-2018	
Ronnie Ben EPA (Navajo Land Title Data System - Windowrock AZ)	Underground Injection Control - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. Conditional Approval contingent on compliance with all NNEPA and USEPA environmental laws.	1. No Reply	12-Mar-2018	
Sam Diswood (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	no comments	No Reply	27-Mar-2018	
Steven Prince MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	1. Please attach the uploaded "Terms and Conditions" document permanently with this package. slp	1. No Reply	19-Mar-2018	
W. Mike Halona (Navajo Land Title Data System - Windowrock AZ)	Manager III Navajo Land Department	NLD Administration	Approved	no comments	No Reply	23-Mar-2018	

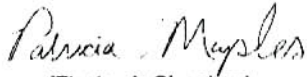


ENVIRONMENTAL PROTECTION AGENCY
WASTE REGULATORY COMPLIANCE DEPARTMENT
P.O. BOX 3089, WINDOW ROCK, NAVAJO NATION, AZ 86515
TEL (928) 871-7993 ~ FAX: (928)871-7783



MEMORANDUM

To : NLTDS Reviewers

From : 
(Electronic Signature)
Patricia Maples, Environmental Specialist
NNEPA Leaking Storage Tank Program

Date : February 26, 2018

**Ref: Navajo Land Title Data System Electronic 164 Process Review
Waterline Extensions**

005_O004_00009665_BIA_ROW_N101_1__2_2_zip_12_48_53

To Whom It May concern

Navajo Nation Environmental Protection Agency Leaking Storage Tank Program
(NNEPA/LSTP) would like the developer to be aware that leaking petroleum contaminated sites
may be present within the proposed areas.

NNEPA/LSTP must be notified immediately if petroleum contamination is discovered during
any activities anywhere within the specified Right of Way area(s).

If you have any questions, please call the program at 928-871-7993.

C: Diane Malone, Department Manager, NNEPA WRCD
Warren Roan, Environmental Specialist NNEPA
Ms. Rebecca Jamison, USEPA Region IX Project Officer
NNEPA Files

RESOURCES AND DEVELOPMENT COMMITTEE
Regular Meeting

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0439-18: An Action Relating to the Resources and Development; Approving the Grant of Right-of-Way to Bureau of Indian Affairs for Upper Fruitland Chapter – Ojo Amarillo Road Project No. N101(1)(2) 2 & 4, located on Navajo Nation Trust Lands in Upper Fruitland Chapter, Navajo Nation (San Juan County, New Mexico); Approving a Waiver of Valuation and Consideration; And Approving a Waiver of Bond, Insurance, or Alternative form of Security. *Sponsor: Honorable LoRenzo C. Bates*

MAIN MOTION:

M: Davis Filfred S: Benjamin Bennett Vote: 4-0-1 (CNV)
YEAS: Davis Filfred, Benjamin Bennett, Walter Phelps and Jonathan Perry
NAYS:
EXCUSED: Leonard Pete


AMENDMENT # 1:

M: Benjamin Bennett S: Davis Filfred Vote: 4-0-1 (CNV)
YEAS: Davis Filfred, Benjamin Bennett, Walter Phelps and Jonathan Perry
NAYS:
EXCUSED: Leonard Pete

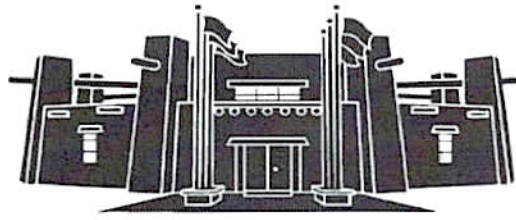
Date: December 27, 2018 –Special Meeting
Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona



Honorable Alton Joe Shepherd, Presiding Chairman
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services



MEMORANDUM

TO: Honorable Rickie Nez
Chairperson, Resources and Development Committee

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

DATE: April 28, 2020

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCD-109-18, TO PROVIDE ADDITIONAL WAIVERS TO THE APPROVED THE GRANT OF RIGHT-OF-WAY TO BUREAU OF INDIAN AFFAIRS FOR UPPER FRUITLAND CHAPTER – OJO AMARILLO ROAD PROJECT NO. N101 (1) (2) 2&4, LOCATED ON NAVAJO NATION TRUST LANDS IN UPPER FRUITLAND CHAPTER. NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

I have prepared the above-referenced proposed 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. Please ensure that his particular resolution request is precisely what you want.

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: _0111-20__

SPONSOR: Rickie Nez

TITLE: An Action Relating to Resources and Development; Amending RDCD-109-18, to provide additional waivers to the approved the grant of right-of-way to Bureau of Indian Affairs for Upper Fruitland Chapter – Ojo Amarillo Road Project No. N101 (1) (2) 2&4, located on Navajo Nation Trust Lands in Upper Fruitland Chapter, Navajo Nation (San Juan County, New Mexico)

Date posted: May 7, 2020 at 4:55 PM

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) 871-7586

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.

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.: 0111-20

SPONSOR: Honorable Rickie Nez


TITLE: An Action Relating to Resources and Development; Amending RDCD-109-18, to provide additional waivers to the approved the grant of right-of-way to Bureau of Indian Affairs for Upper Fruitland Chapter – Ojo Amarillo Road Project No. N101 (1) (2) 2&4, located on Navajo Nation Trust Lands in Upper Fruitland Chapter, Navajo Nation (San Juan County, New Mexico)

Posted: May 07, 2020 at 4:55 PM

5 DAY Comment Period Ended: May 12, 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

05/13/20 8:30 AM

Date/Time