LEGISLATIVE SUMMARY SHEET
Tracking No. 0124-20

DATE: May 18, 2020

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

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

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

5-DAY BILL HOLD PERIOD: _____
Website Posting Time/Date: 3:05 PM 05-21-20
Posting End Date: 05-26-20
Eligible for Action: 05-27-20

Resources & Development Committee

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY

_____

(Prime Sponsor)

TRACKING NO. 0124-20

AN ACTION

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

BE IT ENACTED.

Section One. Authority

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

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

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

Section Two. Findings

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

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

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

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

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

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

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

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

Section Four. Delegation of Authority, Approval of Rules and Regulations, and Approval of Terms and Conditions

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

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

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

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

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

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

Section Six. Directive to Navajo Land Department Manager, Navajo Nation Division of Natural Resources

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

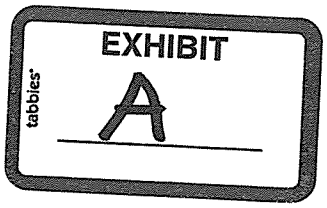


Exhibit "A"

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

I. AUTHORTIES

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

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

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

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

II. PURPOSE AND SCOPE

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

III. DELEGATION

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

a. To grant tribal authorization access for applications for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands. Legal entities wholly owned by the Navajo Nation included but not limited to: Navajo Tribal Utility Authority (NTUA), Navajo Transitional Energy Company (NTEC), Navajo Engineering and Construction Authority (NECA), Navajo Nation Oil and Gas (NNOG), Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise (NNHE) and Dine Power Authority (DPA).

b. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper surveys, easements, evaluations, and clearances as may be required by Federal and Navajo Nation Laws and Regulations.

c. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.

d. The Department Manager of the Navajo Land Department shall grant tribal authorization access, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference. The Resources and Development Committee retains the authority to approve all commercial tribal authorization accesses.

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

IV. AUTHORITY, DUTY AND RESPONSIBILITY

a. The Department Manager of the Navajo Land Department is authorized to implement and administer this delegation of authority to grant tribal authorization access for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands.

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

1. Letter of Application (Exhibit "A")
2. Survey of Right-of-Way and Location Maps with legal descriptions (Exhibit "A-1" and "A-1")
3. Biological Resource Compliance Forms (BRCF) (Exhibit "C")
4. Cultural Resources Compliance Forms (Exhibit "D")
5. Compliance Determination (Exhibit "E")
6. Grazing Permitee Consent Documents (Exhibit "F")
7. Chapter Support Resolution (Exhibit "G")
8. Other pertinent documents if necessary

c. Respective Departments (General Land Development Department, Fish and Wildlife Department, Heritage and Historic Preservation Department, Navajo Environmental Protection Administration and the Navajo Nation Department of Justice) shall receive one set of the application forms with the Signature Approval Sheet that is sent electronically. Each Tribal Department shall concurrently review the application. The respective Department's reviewer shall review, surname and return the application with the signed Signature Approval Sheet to the Department Manager of the Navajo Land Department within ten (10) business days for final approval. If the application is not reviewed and surnamed within the said timeline, the Department Manager of the Navajo Land Department may grant tribal authorization access for the application, provided; however, the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.

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

V. REVIEW AND AMENDMENT

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

EXHIBIT
tabbies
B

EXHIBIT "D"

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

1. The term of the TAA shall be for _____ (__) years, beginning on the date the TAA is authorized by the Navajo Nation.

2. Consideration for the TAA is assessed at $_____ and shall be paid to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within _____ (___) days of approval of and consent by the Navajo Nation.

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

3. The Assignee may develop, use and occupy the TAA for the purpose(s) of _____. The Assignee may not develop, use or occupy the TAA for any other purpose, nor allow others to use or occupy the TAA for any other purpose, without the prior written approval of the Navajo Nation. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Assignee may not develop, use or occupy the TAA for any unlawful purpose.

4. In all activities conducted by the Assignee within the Navajo Nation, the Assignee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

a. Title 25, Code of Federal Regulations, Part 169 4. (b); subject to the terms of this TAA.

b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and

d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., Assignee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

5. The Assignee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the TAA.

6. The Assignee shall clear and keep clear the lands within the TAA to the extent compatible with the purpose, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Assignee shall reclaim all surface lands disturbed related to the TAA, as outlined in a restoration and re-vegetation plan, which shall be approved by Navajo Nation Environmental Protection Agency (NNEPA). The Assignee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection is made.

8. The Assignee shall at all times during the term and at the **Assignee** sole cost and expense, maintain the land subject to the TAA and all improvements located thereon and make all necessary and reasonable repairs.

9. The Assignee shall obtain prior written permission to cross-existing TAA or rights-of-way, if any, from the appropriate parties.

10. The Assignee shall be responsible for and promptly pay all damages when they are sustained.

11. The Assignee shall indemnify and hold harmless the Navajo Nation, and respective authorized agents, employees and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of TAA by the Assignee.

12. The Assignee shall not assign, convey, transfer or sublet, in any manner whatsoever, the TAA or any interest therein, or in or to any of the improvements on the land subject to the TAA, without the prior written consent of the Navajo Nation. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

13. The Navajo Nation may terminate the TAA for violation of any of the terms and conditions stated herein. In addition, the TAA shall be terminable in whole or part by the Navajo Nation for any of the following causes:

    a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
    b. A non-use of the TAA for the purpose for which it is granted for a consecutive two-year period; and
    c. The use of the land subject to the TAA for any purpose inconsistent with the purpose for which the TAA is authorized.
    d. An abandonment of the TAA.

14. At the termination of this TAA, the Assignee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear accepted. Upon the written request of the Navajo Nation, the Assignee shall provide the Navajo Nation, at the Assignee sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

15. Holding over by the Assignee after the termination of the TAA shall not constitute a renewal or extension thereof or give the Assignee any rights hereunder or in to the land subject to the TAA or to any improvements located thereon.

16. The Navajo Nation shall have the right, at any reasonable time during the term of the TAA, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

17. By acceptance of the TAA, the Assignee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Assignee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

18. By acceptance of the TAA, the Assignee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the TAA or to the Navajo Nation.

19. Any action or proceeding brought by the Assignee against the Navajo Nation in connection with or arising out of the terms and conditions of the TAA shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Assignee against the Navajo Nation in any court of any state.

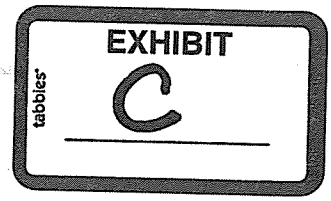
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

21. Except as prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Assignee, and the term "Assignee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the TAA and all lands burdened by the TAA, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TAA; and the TAA and all lands burdened by the TAA shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

24. The Navajo Nation reserves the right to grant TAA within a TAA or right-of-way referenced herein for utilities, provided that such the TAA or rights-of-way do not unreasonably interfere with the Assignee's use of the TAA or right-of-way.



RCD-104-10

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

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

BE IT ENACTED:

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

1. Pursuant to 2 N.N.C. § 691, the Resources Committee is authorized to give final approval of the rights-of-way, easements and other clearances related to power, water, sewer, natural gas distribution, communication, and transmission lines.

2. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegations.

3. There are many Navajo Nation residents that lack utility services and there are backlogs of pending requests for utility services.

4. The current system of processing rights-of-way is routine, time consuming and has resulted in the loss of project funds as well as delay in providing Navajo residents with the much-needed utility services across the Navajo Nation.

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

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

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

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

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

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

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

CERTIFICATION

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

George Arthur, Chairperson
Resources Committee

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

EXHIBIT
A

Exhibit "A"

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

I. AUTHORITIES

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

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

II. PURPOSE AND SCOPE

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

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

III. DELEGATION

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

a. To give final approval of NTUA rights-of-way applications for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable.

b. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper surveys, easements, evaluations, clearances as may be required by Federal and Navajo Nation Laws and Regulations.

c. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.

d. The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference.

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

IV. AUTHORITY, DUTY, AND RESPONSIBILITY

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

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

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

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

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

V. REVIEW AND AMENDMENT

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

B

EXHIBIT "B"

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

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of the Interior.

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

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

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

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

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

   a. Title 25, Code of Federal Regulations, Part 169;

   b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

   c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq; and

d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.

6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.

8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.

10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development, use or occupancy or use of the right-of-way by the Grantee.

12. The Grantee shall not sublet, assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:

a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;

b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;

c. An abandonment of the right-of-way;

d. The use of land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.

14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.

15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located hereon.

16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare of the Navajo people) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.

19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.

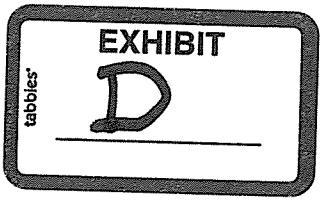
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

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



RDCS-97-17

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

AN ACTION

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

Section One. Authority

A. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A) (2015).

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

Section Two. Findings

A. The Resources Committee, on December 3, 2010, approved a delegation of authority to the Director of the Navajo Land Department to approve certain rights-of-way for the Navajo Tribal Utility Authority (NTUA), approved the Administrative Rules and Regulations for the delegation of authority, and approved the Right-of-Way Terms and Conditions. *See* RCD-104-10.

B. The Administrative Rules and Regulations, within RDC-104-10, provide a delegation from the Resources Committee to the Director of the Navajo Land Department that include: III. Delegation (d), "The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by reference." *See* RCD-104-10, Exhibit A.

C. The Administrative Rules and Regulations, within RDC-104-10, state, "The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or

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

D. References in the Navajo Nation Code and other official documents to the Resources, Transportation and Community Development and Economic Development Committees shall mean the Resources and Development Committee, unless the amendments enacted herein for the context of previous law indicates otherwise. *See* CJA-03-13, overriding President's veto of CO-45-12, Section 5(B).

E. Commercial operations on the Nation promote economic growth via taxation revenue and employment. The Nation receives a Sales Tax (currently 5%) revenue on the utility consumption of customers and commercial customers consume more than the average customer, therefore, the Nation receives more taxation revenue from these commercial operations. In addition, the costs to construct utilities within these right-of-ways are subject to the same tax, adding to the tax revenue.

F. Commercial operations on the Nation are subject to non-typical additional costs such as business site lease costs, dual taxation from the Nation and State, as well as federal taxes. The additional costs imposed for a right-of-way will add to the additional non-typical costs and continue to deter any businesses considering locating and investing on the Nation.

G. Obtaining the approval for each right-of-way used for commercial operations is time consuming and delays businesses from developing and operating. In addition, the costs assessed are not readily determinable to the business until the business has substantially made progress in its development, therefore, these unknown costs further act as a deterrent to develop on the Nation.

H. The consideration assessed for commercial operations rights-of-way is passed onto the business developer therefore, increasing their overall business development costs. This deters business development within the Nation because these fees are not typical outside the Nation. In addition, NTUA is a not-for-profit enterprise and if had to absorb these added costs it would have to pass them on to its customers therefore, the customers would subsidize these added costs.

I. This consideration assessment/cost is in addition to the actual costs to extend such utility service(s) to the commercial operator/customer.

J. Commercial operations promote employment for the economic self-sufficiency of the Navajo people and residents. The further development of commercial operations on the Nation will promote a more diverse economy therefore, promoting economic competition, resulting in competitive pricing. In addition, these added goods and services are provided to the residents of the Nation, which result in additional choices, reduced travel time and dollars staying on the Nation.

K. There has been no clear interpretation of what constitutes a "commercial operation". The term has had ambiguous interpretations to various departments desiring to assess consideration, therefore, it is more efficient to waive consideration until such time the Committee deems that it is not in the best interests of the Nation.

L. The Resources and Development Committee finds that the proposed language is in the best interests of the Nation to promote much needed economic growth.

Section Three. Proposed Amendment

A. RCD-104-10, Exhibit "B" states the Terms and Conditions of the Navajo Tribal Utility Authority's (NTUA's) rights-of-ways.

B. NTUA proposes an amendment to Exhibit "B"—Navajo Nation Right-of-Way Terms and Conditions: Navajo Tribal Utility Authority (Grantee).

C. Section of paragraph 2 of Exhibit "B" states:

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

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

D. NTUA is proposing this language to state:

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

Section Four. Approval

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

CERTIFICATION

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

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

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

EXHIBIT "1"

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

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.

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

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

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

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

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

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

   a. Title 25, Code of Federal Regulations, Part 169;

   b. All Applicable federal and Navajo Nation antiquated laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or Incorrectly Identified cultural resources, Including but not limited to archaeological

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

c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq; and

d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and Information to the Navajo Nation Water Resources Department, or its successor.

5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.

6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in the restorations and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Directory of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.

8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriated parties.

10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

11. The Grantee shall Indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development use or occupancy or use of the right-of-way by the Grantee.

12. The Grantee shall not sublet, assign, convey or transfer, In any manner whatsoever, the right-of-way or any Interest therein, or in or to any of the Improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In additions, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:

    a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;

b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;

c. An abandonment of the right-of-way;

d. The use of land subjects to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted

14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost an expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.

15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any Improvements located hereon.

16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any Improvements located thereon.

17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, Including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and Injunctive relief, in connection with all activities conducted by the property within the Navajo Nation.

18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is Inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (I.e., the power to legislate and regulate for the general health and welfare of the Navajo People) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in the provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.

19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.

20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, Including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

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

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

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

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

DATE: May 18, 2020

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

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0124-20__ **SPONSOR: Rickie Nez**

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

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

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

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*.