RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
24th NAVAJO NATION COUNCIL -- Third Year, 2021

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI' COMMITTEES; REQUESTING AND SUPPORTING THE INTRODUCTION OF FEDERAL LEGISLATION OR AMENDMENTS TO FEDERAL REGULATIONS TO EXPEDITE THE IMPROVEMENT OF HISTORIC ESTABLISHED FEDERAL ROADS AND OTHER INFRASTRUCTURE FOR THE BENEFIT OF NAVAJO COMMUNITIES

BE IT RESOLVED:

SECTION ONE. AUTHORITY

A. The Naabik'íyáti' Committee is established as a standing committee of Navajo Nation Council with authority to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments. 2 N.N.C. §§ 164(A)(9), 700(A), 701(A)(7).

B. The Resources and Development Committee was established as a standing committee of the Navajo Nation Council with oversight over water, land, grazing, environmental protection, cultural resources, agriculture, livestock, wildlife, roads and transportation, air transportation, communications and utilities, information technology, chapter activities, economic and community development, commerce and trade, gaming, rights-of-way, minerals, public utilities, telecommunication, and housing. 2 N.N.C. § 500(A)(C).

SECTION TWO. FINDINGS

A. The Eastern Navajo Land Commission (Commission) is established as a Commission of the Navajo Nation within the Legislative Branch. 2 N.N.C. § 861.

B. The Commission is charged with assisting in resolving land title issues, aiding Navajo residents with respect to land-related matters, and coordinating Navajo Nation efforts with respect to Eastern Navajo Agency land-related matters with other governmental authorities and private interests. 2 N.N.C. § 861.

C. The Eastern Navajo Land Commission has considered and passed Resolution ENLCAP-03-21 requesting that the Navajo Nation Council formally resolve to support federal legislation or

federal regulatory changes to the current federal regulatory process for approval of rights-of-way and utility corridors on Navajo Nation lands. Resolution ENLCAP-03-21 is attached as **Exhibit A**.

D. Communities within the Eastern Navajo Agency lack basic infrastructure and governmental services.

E. The current infrastructure situation in the Eastern Navajo Agency is the result of many factors including lack of funding for roads and other infrastructure, and the advent of federal laws and regulations that hinder infrastructure development.

F. In the early days of the Navajo Nation, Navajos used footpaths, horse trails, and wagon tracks to travel, and without authorization and permission from any governmental entities or other residents; many decades later the Indian Service (now the Bureau of Indian Affairs or "BIA") assisted transportation infrastructure by "dropping blades" that established community roads for access to schools, to windmills and to dams.

G. As time passed, those roads were improved to serve as school bus routes, mail delivery routes, and commercial routes for trading posts.

H. Navajo community residents and landowners accepted this federal government activity and the minor disturbances that it entailed as a necessary and proper exercise of federal governmental authority for the benefit of all community members, a form of eminent domain that no one required to be formally exercised and that did not require consent of Chapters, customary land users, or owners of allotment land held in trust by the United States.

I. After many decades, Congress then enacted federal statutes that governed rights-of-way and environmental laws (including the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act), and the U.S. President supplemented Congressional statutes with regulations. These regulations affected rights-of-way for new or improved roads, utilities, and other infrastructure that became costlier and more time-consuming within Indian country, further exacerbating the infrastructure deficit for communities and residents of the Eastern Navajo Agency.

J. For many decades, the federal government did not obtain rights-of-way or easements for many historic federal roads throughout Eastern Navajo Agency. The historic lack of any approved road right-of-way or easements is problematic because current

federal laws and regulations must be complied with to repair or maintain existing historic federal roads. It is very cumbersome, burdensome, problematic and almost impossible to obtain rights-of-way or easements on historic federal roads throughout Eastern Navajo Agency.

K. The infrastructure deficit in the Eastern Navajo Agency and other parts of the Navajo Nation is thus a product of history and the current federal legal environment, and, although history cannot be changed, the Navajo Nation seeks to employ innovative means to bring basic infrastructure to Navajo Chapters, Navajo communities, and all residents throughout the Navajo Nation by re-examining the relevant federal legal requirements.

L. Upon careful deliberation, the Navajo Nation has determined that, to facilitate the improvement and development of infrastructure in the Eastern Navajo Agency, the roads established long ago by the federal government, including the BIA, should be denominated "historically established federal roads" (HEFR) and that any "historically established federal roads" should be able to be improved, widened, and/or paved, and that other infrastructure (such as electric utility lines, fiber optics connections, and wireless communications facilities) should be able to be installed or erected within or within a reasonable distance (i.e. utility corridor) from such "historically established federal roads" without requiring additional studies or clearances upon proper notice to the Resources and Development Committee (Committee), and failure of the Committee to file a formal objection promptly; provided, however, that upon completion of such improvements, the entity constructing or maintaining the road or utility shall promptly provide the Navajo Nation and/or the BIA, as appropriate, with as-built schematics or other documentation as may be required by either to show the nature and location of such improvements for recording and other purposes.

SECTION THREE. REQUEST FOR FEDERAL LEGISLATION OR AMENDMENTS TO FEDERAL REGULATIONS

The Navajo Nation Council hereby requests and supports the introduction of federal legislation or amendments to federal regulations that would classify roads established in Navajo Indian Country prior to 1970 as "historically established federal roads." That designation as "historically established federal roads" will allow for these "historically established federal roads" to be improved, widened, and/or paved without requiring additional studies or clearances upon notice to the Navajo Nation. That utility corridors along these "historically established federal

roads" providing for infrastructure such as electric utility lines, fiber optics connections and wireless communications facilities will be installed or erected without requiring additional studies or clearances upon notice to the Navajo Nation. That notice to the Navajo Nation regarding these "historically established federal roads" improvements would be provided to the Navajo Nation Council's Resources and Development Committee, or standing committee with oversight for roads, providing for the Resources and Development Committee to file a formal objection within thirty (30) days of receipt of such notice in the event the Committee determines an objection is necessary. That upon completion of such improvements, the entity making them shall be required to promptly provide the Navajo Land Department and/or the U.S. Department of the Interior, Bureau of Indian Affairs, as appropriate, with as-built schematics or other documentation as may be required to show the nature and location of such improvements for recording and other purposes.

SECTION FOUR. AUTHORIZATION FOR NAVAJO NATION PRESIDENT AND SPEAKER OF THE NAVAJO NATION COUNCIL TO ADVOCATE ON THE NATION'S BEHALF

The Navajo Nation hereby authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and their designees, to advocate and communicate with the United States Congress and its federal agencies the Navajo Nation's request and support of the introduction of federal legislation or amendments to federal regulations to expedite the improvement of historic established federal roads and other infrastructure for the benefit of Navajo communities.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24th 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 20 in Favor, and 00 Opposed, on this 18th day of November 2021.

Honorable Seth Damon, Chairman
Naabik'íyáti' Committee

Nov 25 2021
Date

Motion: Honorable Raymond Smith, Jr.
Second: Honorable Pernell Halona
Chairman Seth Damon not voting

EXHIBIT
A

Resolution No. ENLCAP-03-21

RESOLUTION OF THE
EASTERN NAVAJO LAND COMMISSION

Supporting the Introduction of Legislation or Regulatory Changes to Expedite the Improvement of Historic, Established Federal Roads and Other Infrastructure for the Benefit of Navajo Communities

WHEREAS:

1. The Eastern Navajo Land Commission ("ENLC" or "Commission") is established as a Commission of the Navajo Nation within the Legislative Branch, 2 N.N.C. § 861 (2005), as amended by Navajo Nation Council Legislation No. 0589-07 (Apr. 22, 2008); and

2. Among other authorities and duties under the amended ENLC Plan of Operation, the Commission is charged with assisting in resolving land title issues, providing assistance to Navajo residents with respect to land-related matters, and coordinating Navajo Nation efforts with respect to Eastern Navajo Agency ("ENA") land-related matters with other governmental authorities and private interests; and

3. Most of the residents of the Navajo Nation in general and the Eastern Navajo Agency in particular do not enjoy the basic infrastructure and governmental services and amenities that are common in non-Navajo areas of the states of New Mexico, Arizona and Utah; and

4. The current infrastructure situation in the Eastern Navajo Agency is the product of many factors, including the historical neglect of the region, the historical lack of funding for roads and other infrastructure, and the advent of laws and regulations that hinder infrastructure development disproportionately when compared to non-Indian areas; and

5. In the early days, Navajos used footpaths, horse trails, and wagon tracks to go from place to place, and did so without needing to obtain permission from any governmental entities or other residents; later the Indian Service (now the Bureau of Indian Affairs or "BIA") assisted by "dropping blades" to establish community roads and to facilitate access to schools and windmills and to build dams; and

6. As time passed, those roads were improved to serve as school bus routes, mail delivery routes, and commercial routes for trading posts; and

7. Navajo community residents and landowners accepted this activity and the minor disturbances that it entailed as a necessary and proper exercise of federal governmental authority for the benefit of all community members, a form of eminent domain that no one required to be formally exercised and that did not require consent of Chapter governments, customary land users, or owners of allotment land held in trust by the United States; and

8. After neighboring jurisdictions had completed much of the road and other

infrastructure that was then lacking in the Eastern Navajo Agency, Congress enacted Indian right-of-way and environmental laws (including the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act), and the Executive Branch supplemented them with detailed regulations, which make the acquisition of rights-of-way for new or improved roads, utilities, and other infrastructure more costly and time-consuming within Indian country than elsewhere, further exacerbating the infrastructure deficit that communities and residents of the Eastern Navajo Agency face; and

9. Paving or otherwise improving historic federal roads is now done as if those roads are just now being established, with the contemporary regulatory burdens being added; and

10. The infrastructure deficit in the Eastern Navajo Agency and other parts of the Nation is thus a product of history and the current legal environment, and, although history cannot be changed, this Commission seeks to employ innovative ways to bring basic infrastructure to Navajo Chapter communities and residents by examining the relevant legal requirements; and

11. Upon careful deliberation, this Commission has determined that, to facilitate the improvement and development of infrastructure in the Eastern Navajo Agency, the roads established long ago by the BIA should be denominated "historically established federal roads" ("HEFR") and that any HEFR should be able to be improved, widened, and/or paved, and that other infrastructure (such as electric utility lines, fiber optics connections, and wireless communications facilities) should be able to be installed or erected within or within a reasonable distance from such HEFR without requiring additional studies or clearances upon notice to the Navajo Nation Council's Resources and Development Committee ("RDC") and failure of the RDC to file a formal objection promptly; provided, however, that upon completion of such improvements, the entity making them shall promptly provide the Navajo Nation and/or the BIA, as appropriate, with as-built schematics or other documentation as may be required by either to show the nature and location of such improvements for recording and other purposes.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Eastern Navajo Land Commission hereby respectfully recommends and requests that the Navajo Nation Council, upon the recommendation of its appropriate Committees, formally resolve to propose and support federal legislation or regulatory changes that would denominate roads established in Navajo Indian country prior to 1970 as "historically established federal roads" ("HEFR") such that any HEFR will be able to be improved, widened, and/or paved, and that other infrastructure (such as electric utility lines, fiber optics connections and wireless communications facilities) will be able to be installed or erected within or within a reasonable distance from such HEFR without requiring additional studies or clearances upon notice to the Navajo Nation Council's Resources and Development Committee ("RDC") and the failure of the RDC to file a formal objection within thirty (30) days of receipt of such notice; provided, however, that upon completion of such improvements, the entity making them shall be required to promptly provide the Navajo Nation Land Department and/or the BIA, as appropriate, with as-built schematics or other documentation as may be required to show the nature and location of such improvements for recording and other purposes, and that the President of the Navajo Nation, in furtherance of the government-to-government relationship

between the Navajo Nation and the United States, communicate and advance the Nation's position in this respect to all appropriate federal officials and agencies.

2. The Chairperson of the Commission is authorized to take any necessary and appropriate action to facilitate the favorable consideration of such proposed legislation and/or regulatory action.

CERTIFICATION

I hereby certify that the foregoing Resolution was considered at a duly called telephonic meeting of the Eastern Navajo Land Commission at which a quorum was present and that the same was passed by vote of _5_ in favor, and _0_ opposed, this 9th day of April, 2021.

Edmund Yazzie, Chairman
Eastern Navajo Land Commission

Motion: Danny Simpson
Second: Mark Freeland

NAVAJO NATION

11/18/2021
02:19:40 PM

Naa'bik'iyati' Committee Special Meeting

Amd# to Amd#	Consent to Agenda;	PASSED
MOT Smith	Legislations: 0194-21, 0209-21,	
SEC Halona, P	0213-21, 0215-21, 0216-21,	
	0217-21, 0221-21, 0235-21...	

Yeas : 20 **Nays : 0** **Excused : 1** **Not Voting : 2**

Yea : 20

Begay, E	Crotty	James, V	Tso, E
Begay, K	Daniels	Nez, R	Tso, O
Begay, P	Freeland, M	Slater, C	Walker, T
Brown	Halona, P	Smith	Wauneka, E
Charles-Newton	Henio, J	Tso, C	Yellowhair

Nay : 0

Excused : 1

Yazzie

Not Voting : 2

Tso, D Stewart, W

Presiding Speaker: Damon