

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

January 9, 2023

Hon. Otto Tso
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CD-75-22, *An Action Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committee, and the Navajo Nation Council; Approving a Memorandum of Agreement between the Navajo Nation and the Office of Navajo and Hopi Indian Relocation ("ONHIR") for the Lower Highway 89 Land From the Navajo Nation Gaming Enterprise and Submit an Application to Place the Lower Highway 89 Land Into Trust Under Public Law 96-305*

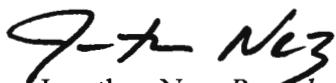
Dear Speaker Tso,


Pursuant to the authority vested in the Navajo Nation President, I am signing Resolution CD-75-22 into law. We appreciate the work of the Navajo Nation Council, the Navajo Hopi Land Commission, the Navajo Hopi Land Commission Office, the Navajo Nation Department of Justice and all others who worked together to present this legislation.

The Nez/Lizer Administration continues to show its support for those Navajo families who resided on the Hopi Partitioned Lands as of December 22, 1974 (HPL). In January 2022, we signed into law CD-75-22. This Resolution created the Diné Relocatee Fund to provide financial support to those families. This Memorandum of Agreement allows acceptance of this land from the Navajo Nation Gaming Enterprise and authorizes the Land into trust process to begin. The rental proceeds or other revenue generated from the development of this land may then be used to benefit those the Dine Relocatee Fund was created for.

The Nation must continue to support the HPL relocatees through innovative and progressive opportunities to provide assistance to ensure adequate infrastructure, housing and education.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
 NAVAJO NATION COUNCIL
 24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION ("ONHIR") FOR THE LOWER HIGHWAY 89 DEVELOPMENT; AUTHORIZING THE PRESIDENT OF THE NAVAJO NATION TO ACCEPT A GIFT OF THE LOWER HIGHWAY 89 LAND FROM THE NAVAJO NATION GAMING ENTERPRISE AND SUBMIT AN APPLICATION TO PLACE THE LOWER HIGHWAY 89 LAND INTO TRUST UNDER PUBLIC LAW 96-305

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Statements of Policy and intergovernmental agreements must be reviewed and approved by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein. 2 N.N.C. § 164(A).
- B. The Navajo-Hopi Land Commission ("NHLC") is established within the Legislative Branch of the Navajo Nation Government to "speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96-305," codified at 25 U.S.C. § 640d-10 et seq. (the "Act"), and the NHLC has authority to "act and speak on all matters and recommend legislation relating to . . . lands acquired using [the Act]". 2 N.N.C. §§ 851(A), 851(B)(2), and 853(B)(6), as amended by Resolution CD-91-20.
- C. The Resources and Development Committee is a standing committee of the Navajo Nation Council and has authority to "review and recommend to the Naabik'íyáti' Committee Intergovernmental Agreements and agreements between the Navajo Nation and any governmental entity relating to economic development [] and gaming for efficiency and timely comparison of those projects." 2 N.N.C. § 501(B)(12).
- D. The Budget and Finance Committee is a standing committee of the Navajo Nation Council and has authority to "[a]uthorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or

program which has applied for the agreement." 2 N.N.C. § 300(A); 2 N.N.C. § 301(B)(15).

- E. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council and has authority to "coordinate all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation." 2 N.N.C. § 700(A); 2 N.N.C. § 701(A)(4).
- F. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti' Committee. 2 N.N.C. § 164(A)(9).
- G. Gifts of lands outside the exterior boundaries of the Navajo Indian Reservation of a value exceeding ten thousand dollars (\$10,000), including the value of improvements thereon, shall be accepted by the President of the Navajo Nation only pursuant to special authorization of the Navajo Nation Council. 2 N.N.C. § 452(B).

SECTION TWO. FINDINGS

- A. The Navajo Nation Gaming Enterprises ("NNGE") is a wholly-owned enterprise of the Navajo Nation established pursuant to 5 N.N.C § 1701 et seq., and NNGE is authorized to carry out commercial activities.
- B. Pursuant to Resolution Nos. NNGEJUN-002-19 and NNGESEP-001-19, incorporated herein by reference, the Board of Directors of NNGE authorized NNGE to acquire three assembled parcels consisting of the Bellar Parcel, Horsemen Lodge Parcel, and Flying Heart Stables Parcel (collectively "Lower Highway 89 Land" more particularly described in Exhibit 1-A which is incorporated herein), which individually and collectively are outside the exterior boundaries of the Navajo Indian Reservation and have a value exceeding \$10,000. In accordance with these Resolutions, NNGE purchased the Lower Highway 89 Land.
- C. Pursuant to Resolution No. NHLCSMA-3-2020, the NHLCS, on behalf of the Navajo Nation, supported the purchase and development of Horsemen Lodge and directed the NNGE and the Navajo Nation (Department of Justice, Division of Natural Resources, and Navajo-Hopi Land Commission Office) to work with the U.S. Office of the Navajo-Hopi Indian Relocation ("ONHIR") and the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA"), to do all things necessary to expedite the mandatory

fee land into Navajo Nation trust land process. **Exhibit 2.**

- D. Pursuant to Resolution No. NHLCMY-5-2020, the NHLC selected three assembled parcels with a total area of approximately 13.8 acres ("Lower Highway 89 Land") to convert into trust status pursuant to the Act. **Exhibit 3.**
- E. Pursuant to Section 640d-10(h) of the Act: "The lands transferred or acquired pursuant to this section shall be administered by [ONHIR] until relocation under [ONHIR's] plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: Provided, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter".
- F. Pursuant to CJA-13-22, incorporated herein by reference, the Navajo Nation established the Diné Relocatee Fund ("Fund") for the purpose of providing "financial support to Navajo families who resided on the Hopi-partitioned lands as of December 22, 1974," and designated that revenue generated from lands acquired pursuant to the Act shall be deposited into the Fund.
- G. Pursuant to Resolution No. NHLCO-07-2022, attached as **Exhibit 1**, the NHLC approved, and recommended that the Naabik'iyati' Committee approve, a Memorandum of Agreement between the Navajo Nation and ONHIR ("Lower Highway 89 MOA") regarding the allocation of revenues arising from the Lower Highway 89 Land, deposit of revenues into the Fund, and ONHIR selection of the Lower Highway 89 Lands in accordance with the Act.

SECTION THREE. APPROVAL AND AUTHORIZATION

- A. The Navajo Nation Council hereby approves the Lower Highway 89 MOA in the form recommended by Resolution No. NHLCO-07-2022, attached as **Exhibit 1-A.**
- B. The President of the Navajo Nation is hereby authorized to take all actions necessary to execute the Lower Highway 89 MOA on behalf of the Navajo Nation.
- C. The President of the Navajo Nation is hereby authorized to accept the Lower Highway 89 Land as a gift from NNGE pursuant to 2 N.N.C. § 452(B).
- D. The President of the Navajo Nation is hereby authorized to take all actions necessary to submit an application to the United

States Department of the Interior to place the Lower Highway 89 Land into trust under P.L. 96-305, codified at 25 U.S.C. § 640d-10 et seq.

SECTION FOUR. EFFECTIVE DATE

This Action by the Navajo Nation Council shall be effective pursuant to 2 N.N.C. § 221(B).

SECTION FIVE. SAVINGS CLAUSE

Should any provision of this Action by the Navajo Nation Council be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions that are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by 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 21 in Favor, and 00 Opposed, on this 29th day of December 2022.



Honorable Otto Tso, Speaker
24th Navajo Nation Council

12.30.2022

DATE

Motion: Honorable Jamie Henio

Second: Honorable Eugene Tso

Speaker Otto Tso not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 9th day of January, 2023.

Jonathan Nez
Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

RESOLUTION
OF THE
NAVAJO-HOPI LAND COMMISSION
OF THE
24th NAVAJO NATION COUNCIL



Recommending Approval of a Memorandum of Agreement between the Navajo Nation and the Office of Navajo and Hopi Indian Relocation for the Lower Highway 89 Development

WHEREAS:

1. Pursuant to 2 N.N.C. § 851(A) and 851(B)(2), as amended by Navajo Nation Council ("NNC") Resolution CD-91-20, the Navajo-Hopi Land Commission ("NHLC") is established within the Legislative Branch of the Navajo Nation Government for the purpose, among other things, to "speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96-305," which public law is codified at 25 U.S.C. § 640d-10 *et seq.* and referred to herein as the "Act"; and
2. Pursuant to 2 N.N.C. § 853(B)(6), as amended by Navajo Nation Council Resolution CD-91-20, the NHLC is authorized and directed to "act and speak on all matters and recommend legislation relating to . . . lands acquiring using [the Act]"; and
3. Pursuant to Resolution No. NHLCMA-3-2020 the NHLC, on behalf of the Navajo Nation, supported the purchase and development of Horsemen Lodge and directed the Navajo Nation Gaming Enterprises and the Navajo Nation (Department of Justice, Division of Natural Resources, and Navajo-Hopi Land Commission Office) to work with the U.S. Office of the Navajo-Hopi Indian Relocation ("ONHIR") and the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA"), to do all things necessary to expedite the mandatory fee land into Navajo Nation trust land process; and
4. Pursuant to Resolution No. NHLCMY-5-2020 the NHLC selected three assembled parcels with a total area of approximately 13.8 acres (hereinafter referred to as the "Lower Highway 89 Land," also known as Horsemen Lodge) to convert into trust status pursuant to the Act, and directed the Navajo-Hopi Land Commission Office ("NHLCO") and the Navajo Nation Department of Justice ("NNDOJ") to: (i) communicate this selection, in writing, to ONHIR and the BIA to be acquired in trust by and for the Navajo Nation pursuant to the Act; (ii) cooperate with ONHIR to convert the land into trust status pursuant to the Act; (iii) cooperate with the BIA to convert the land into trust status pursuant to the Act; (iv) do all things necessary to expedite the land into trust process; and (v) perform any other duties necessary to fulfill the intent of Resolution No. NHLCMY-5-2020; and
5. Pursuant to the Section 640d-10(h) of the Act: "The lands transferred or acquired pursuant to this section shall be administered by [ONHIR] until relocation under [ONHIR's] plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: *Provided*, That the sole authority for final

planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter”; and

6. Pursuant to CJA-13-22, the Navajo Nation established the Diné Relocatee Fund (“Fund”), codified at 12 N.N.C. § 2801 *et seq.*, for the purpose of providing “financial support to Navajo families who resided on the Hopi-partitioned lands as of December 22, 1974,” and designated that revenue generated from lands acquired pursuant to the Act shall be deposited into the Fund (12 N.N.C. §§ 2801(A) and 2802(A)); and
7. Navajo Nation Department of Justice and ONHIR have negotiated and proposed a Memorandum of Agreement (“MOA”) between the Navajo Nation and ONHIR regarding the allocation of revenues arising from the Lower Highway 89 Land, deposit of revenues into the Fund, and ONHIR selection of the Lower Highway 89 Lands in accordance with the Act; and
8. Upon review and consideration of the MOA, attached as **Exhibit A**, the NHLC has determined that the Agreement is in the best interest of the Navajo Nation and Navajo families who resided on the Hopi-partitioned lands as of December 22, 1974.

NOW, THEREFORE, BE IT RESOLVED THAT:

NHLC approves the MOA, and hereby recommends the Naabik’iyati’ Committee and Navajo Nation Council approve the MOA.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission at a duly called teleconference headquartered at Window Rock, Navajo Nation (Arizona), at which a quorum was present by teleconference and that the same was passed by a vote of 5 in favor, 0 opposed, on this 25th Day of October, 2022.



Elmer P. Begay, Chairman Pro Temp
Navajo-Hopi Land Commission
24th Navajo Nation Council

Motion: Jimmy Yellowhair
Second: Vince R. James



Navajo Nation 9-8-2022

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

I. PARTIES

- a. The Navajo Nation, P.O. Box 9000, Window Rock, Navajo Nation (AZ) 86515 ("TNN")
- b. The Office of Navajo and Hopi Indian Relocation, P.O. Box KK, Flagstaff, AZ 86002 ("ONHIR")

II. RECITALS

- a. As provided in the Navajo-Hopi Settlement Act, P.L. 93-531, as amended, 25 U.S.C. §§ 640d *et seq.* ("the Act"), ONHIR, acting after consultation with TNN, has the authority to select certain lands acquired by the Navajo Nation to be taken into trust by the United States for the benefit of the Navajo Nation.

- b. As further provided in the Act:

(h) Administration of lands transferred or acquired

The lands transferred or acquired pursuant to this section shall be administered by the Commissioner [i.e., ONHIR] until relocation under the Commission's plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: Provided, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter.

25 U.S.C. 640d-10(h).

- c. For purposes of this MOA the benefitted class of persons under this provision of the Act is referred to as "Relocation Beneficiaries."
- d. TNN will acquire 13.79 acres, more or less, of fee lands including the Bellar parcel, the Horsemen Lodge parcel, and the Flying Hearts Stables parcel (hereinafter collectively, the "Lower Highway 89 Lands") located northeast

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

of Flagstaff, Arizona on Highway 89 and legally described on Exhibits A-1, A-2, and A-3. The TNN will acquire the Lower Highway 89 Lands through a gift deed from Navajo Nation Gaming Enterprise (the "NNGE"), a wholly owned enterprise of TNN (the "Gift Deed").

- e. TNN, through the NNGE, anticipates developing the Lower Highway 89 Lands for a casino and other related facilities (the "Lower Highway 89 Development").
- f. In May 2010, TNN and ONHIR executed a Memorandum of Agreement, as amended in August 2010, for the proposed Twin Arrows Development (together, the "Twin Arrows MOA"), which provides for certain benefits to the Relocation Beneficiaries (referred to as "Relocatees" in the Twin Arrows MOA) from rental revenues, employment, and enhanced economic opportunity arising from the Twin Arrows Development (as defined in the Twin Arrows MOA).
- g. On January 11, 2011, TNN and NNGE, with the concurrence of ONHIR, entered into a Business Site Lease for the land underlying the Twin Arrows Development, which provides for rental revenues that benefit the Relocation Beneficiaries in accordance with the Twin Arrows MOA.
- h. On May 24, 2021, the Secretary of the Department of the Interior published notice of approval of the Navajo Nation – State of Arizona Amended and Restated Gaming Compact ("Compact"), which establishes a limit of 300 gaming devices as of the date that a gaming facility begins operations on the Lower Highway 89 Lands. See Compact Section 4(c)(4)(A)(x)(b).
- i. The Navajo Hopi Land Commission of the Navajo Nation Council (the "NHLC") is vested by TNN with the authority to provide recommendations to ONHIR on behalf of the Navajo Nation as to lands to be acquired by the Navajo Nation under the Act.

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

- j. Pursuant to NHLC Resolution NHLCMY-5-20, attached as Exhibit B, TNN has requested that ONHIR select the Lower Highway 89 Lands to be taken into trust pursuant to the Act on an expedited basis (the "Selection").
- k. The parties have reached an understanding and agreement on a procedure to reach an agreement on the allocation of revenues arising from the Lower Highway 89 Development; approval of development of the Lower Highway 89 Lands, and related matters such that once all contingencies are resolved, ONHIR will make the Selection of the Lower Highway 89 Lands; accordingly, the parties desire to enter into this Memorandum of Agreement (the "MOA") on the terms and conditions set forth herein.
 - i. The "contingencies" are: 1) approval and execution of this MOA by ONHIR and TNN; 2) agreement with TNN on the amount of the annual contribution or payment to be made by TNN for the exclusive benefit of Navajo families residing on Hopi-Partitioned lands as of December 22, 1974 and the formula for escalation of this payment over time ("Agreement as to Rental Revenues"); 3) the actual acquisition of the Lower Highway 89 Lands by TNN, evidenced by the execution, acknowledgment, and recording of the Gift Deed; and 4) the issuance of a title insurance commitment or policy (or policies) in a form substantially consistent with the following title insurance policies currently issued by Old Republic National Title Insurance Company to the NNGE: Policy No. OX-12736860 for the Bellar parcel, Policy No. OX-12736869 for the Horsemen Lodge parcel, and Policy No. OX-12736868 for the Flying Hearts Stables parcel.

III. BENEFIT TO RELOCATION BENEFICIARIES

- a. The parties agree that the Lower Highway 89 Development will provide substantial benefits to Relocation Beneficiaries from (i) enhanced stability for Navajo gaming, which is needed to secure and protect benefits provided to Relocation Beneficiaries in the Twin Arrows MOA; (ii) rental revenues arising from the Development which are placed in a fund that acts exclusively for the

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

benefit of Relocation Beneficiaries; (iii) employment (construction phase and permanent) at the Lower Highway 89 Development; and (iv) enhanced economic opportunity in TNN which will benefit the communities in which Relocation Beneficiaries reside.

- b. Specifically, the parties agree that the Relocation Beneficiaries shall be the beneficiaries of the rental revenues from the lease of the Lower Highway 89 Lands ("Rental Revenues").

- i. The actual amount of the initial annual Rental revenues and the escalation of such amounts over time shall be the subject of a subsequent Agreement as to Rental Revenues between TNN and ONHIR and the payment of these rental revenues shall be provided for in the lease for the Lower Highway 89 Lands between TNN and NNGE.

- c. The lease for the Lower Highway 89 Lands will be prepared and executed in accordance with the Navajo Nation Business Leasing Regulations of 2005, as amended, and Navajo Nation law and applicable Federal law (the "Lease"). The Lease and any amendment thereto shall be subject to concurrence by ONHIR in accordance with Section V(b) of this MOA.

**IV. PAYMENT OF LOWER HIGHWAY 89 DEVELOPMENT REVENUES FOR THE BENEFIT OF
RELOCATION BENEFICIARIES**

- a. Rental revenue from the Lower Highway 89 Development shall be deposited in the Navajo Nation Diné Relocatee Fund ("Fund"), established pursuant to TNN Council Resolution No. CJA-13-22. Funds shall be expended for the benefit of the Relocation Beneficiaries in accordance with applicable law.

V. PLANNING DECISIONS; LOWER HIGHWAY 89 LEASE AGREEMENT; RIGHTS-OF WAY

- a. Section 640d-10(h) of the Act provides that ONHIR will have authority over final planning decisions regarding the development of the Lower Highway 89

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

Lands until such time as ONHIR's statutory responsibility is discharged. Consistent with that authority, this MOA hereby affirms ONHIR's approval of a Lower Highway 89 Development that is consistent with the Compact limit of 300 gaming devices for a project on the Lower Highway 89 Lands. ONHIR will have the right to consent to a final master plan for the Lower Highway 89 Development, which consent is subject to Section V(c) below.

- b. In connection with the Lower Highway 89 Development, TNN through the Navajo Division of Economic Development ("DED") will enter into a Lease with the NNGE for the Lower Highway 89 Lands. Until ONHIR no longer exists, ONHIR shall have the right to review and concur in provisions of the Lease that directly relate to final planning decisions regarding the Lower Highway 89 Development, or which may materially affect the amount and timing of funds to be received for the benefit of Relocation Beneficiaries, which concurrence is subject to Section V(c) below.
- c. When pursuant to this MOA ONHIR has the authority to approve, concur in, or consent to any document, agreement, or action, ONHIR shall provide its approval, concurrence, consent, objection, or conditional approval within thirty (30) days after notification by TNN, otherwise such approval, concurrence, consent, objection, or conditional approval shall not be required.
 - i. Approval, concurrence, and consent shall not be unreasonably withheld.
 - ii. Any objection or condition shall directly relate to final planning decisions regarding the Lower Highway 89 Development, and shall be reasonable, specific, and detailed in writing.
 - iii. Following receipt of an objection, or an objectionable condition, ONHIR, TNN, and NNGE shall meet and make a good faith effort to resolve the objection or objectionable condition in a manner that enables NNGE to remain competitive in the gaming, hospitality, and

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

entertainment market and thereby protects the long-term beneficial interest of the Relocation Beneficiaries. The parties acknowledge and agree that fostering the economic strength of NNGE will enhance the benefit to Relocation Beneficiaries provided by this MOA and the Twin Arrows MOA.

- iv. If the parties are unable to resolve the objection or objectionable condition, either party may, at its sole cost and expense, initiate the dispute resolution procedures set forth herein.
- d. TNN shall ensure a representative of ONHIR and a representative of NHLC shall serve on any master plan committee established for the Lower Highway 89 Development.
- e. Following acquisition of the Lower Highway 89 Lands by TNN, in trust status, TNN agrees that any right-of-way on or across the Lower Highway 89 Lands shall be issued by ONHIR with the prior written consent of TNN.

VI. TERM OF MOA

- a. This MOA shall continue in effect unless and until terminated by the mutual agreement of the parties.

VII. ENTIRE AGREEMENT: AMENDMENTS

- a. This MOA contains all terms and conditions agreed to by the parties herein. No other understanding, oral and otherwise, regarding the subject matter of this MOA shall be deemed to exist or to bind any of the parties hereto.
- b. Amendments to this MOA shall be in writing and approved by both parties to the MOA.

VIII. GOVERNING LAW: This MOA shall be governed by applicable Federal and Navajo law.

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

IX. DISPUTE RESOLUTION

a. Negotiation and Mediation

- i.** In the event of any dispute, the parties to this MOA shall use their diligent good faith efforts to resolve the dispute, and each party shall continue to perform in accordance with the other provisions of this MOA during the pendency of the dispute.
- ii.** As a first step to resolving any dispute, the parties shall attempt to negotiate a just and equitable settlement thereof. If either party fails or refuses to participate in such negotiations or such negotiations do not result in the parties resolving the dispute within twenty (20) days after one party has requested that negotiations begin (and that period is not extended with the consent of the parties), then either party may cause the dispute to be referred to mediation. The mediation shall take place through a proceeding conducted over no more than two business days and shall be completed within ten (10) business days after the parties agree upon a mediator or a mediator is appointed.

X. ONHIR SUCCESSOR ENTITY: When ONHIR ceases to exist the rights and obligations of ONHIR under this MOA shall be transferred to such entity as provided for in applicable Federal and Navajo law.

XI. COUNTERPARTS. This MOA may be executed in counterparts, each of which shall constitute an original, both of which when taken together shall constitute a single MOA. Each Party shall deliver two (2) original executed counterpart MOAs to Katherine Belzowski, Acting Assistant Attorney General, Navajo Nation Department of Justice, P.O. Box 2010, Window Rock, Navajo Nation (AZ) 86515. Ms. Belzowski shall hold the executed counterpart MOAs in escrow until both counterparts are received. Upon receipt of both Parties' executed counterpart MOAs, Ms. Belzowski shall promptly deliver one (1) original fully executed MOA to each Party.

XII. EXECUTION

Navajo Nation 9-8-2022

**MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO NATION AND
THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION FOR THE PROPOSED
LOWER HIGHWAY 89 (HORSEMEN LODGE) DEVELOPMENT**

THE NAVAJO NATION

By: _____

Jonathan Nez, President

Date: _____

THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

By:  _____

Christopher J. Bavasi, Executive Director

Date: 10/6/22

EXHIBIT "A-1" LEGAL DESCRIPTION

PARCEL NO. 1:

A parcel of land in the Northeast quarter of Section 28, Township 22 North, Range 8 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, H.E.S. 373, said corner also being the Center of said Section 28, a marked stone;

Thence North 89°53'00" East, along the East-West midsection line of Section 28, a distance of 120.00 feet to a point, said point being a 5/8 inch iron pin with an aluminum cap and the TRUE POINT OF BEGINNING;

Thence North 00°05'00" East, a distance of 336.61 feet to a point marked by a 5/8 inch iron pin with an aluminum cap;

Thence North 89°53'00" East, a distance of 451.81 feet to a point marked by a 5/8 inch iron pin with an aluminum cap;

Thence South 20°48'30" West, a distance of 360.38 feet more or less, to a point on the East-West midsection line of Section 28, marked by a 5/8 inch iron pin with an aluminum cap;

Thence South 89°53'00" West, along the East-West midsection line of Section 28, a distance of 324.28 feet, more or less to the Point of Beginning.

PARCEL NO. 2:

A parcel of land in the Northeast quarter of Section 28, Township 22 North, Range 8 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, H.E.S. 373, said corner also being the Center of said Section 28, a marked stone;

Thence North 00°05'00" East, along the North-South midsection line of said Section 28, a distance of 516.00 feet;

Thence North 89°51'19" East, a distance of 774.00 feet to a point on the Westerly right-of-way line of U.S. Highway 89, as shown in A.D.O.T. Project No. P-037=1-008, Drawing No. D-3-T0600, sheets 9 and 10;

Thence South 20°42'53" West, along said Westerly right-of-way line, a distance of 278.53 feet to a found A.D.O.T. brass tablet marked "STA. 10095+27.92 R/W LT";

Thence continue South 20°42'53" West, along said Westerly right-of-way line, a distance of 6.07 feet to a point of curvature;

Thence Southwesterly along said Westerly right-of-way line, along a curve to the right, having a central angle of 5°29'39" and a radius of 2764.79, for a distance of 273.16 feet to a nontangent point, said point being the intersection of said Southerly right-of-way line and the East-West midsection line of said Section 28;

Thence South 89°51'19" West (Record South 89°53'00" West, as recorded in Docket 1042, page 701, records of Coconino County, Arizona.) a distance of 121.55 feet to the Southeast corner of a parcel of land described in Docket 1042, page 700;

Thence North $20^{\circ}46'49''$ East, along the East parcel line of said parcel, a distance of 360.38 feet (Record North $20^{\circ}48.30''$ East, 360.38 feet per Docket 1042, page 700) to the Northeast corner of said Parcel;

Thence South $89^{\circ}52'00''$ West, along the North parcel line of the said parcel, a distance of 451.61 feet (Record South $89^{\circ}05'25''$ West, 451.81 feet per Docket 1042, page 700) to the Northwest corner of said Parcel;

Thence South $0^{\circ}05'25''$ West, along the West parcel line of said Parcel, a distance of 336.70 feet (Record South $0^{\circ}-5'00''$ West, 336.61 feet per Docket 1042, page 700) to a point on the aforementioned East-West midsection line of Section 28;

Thence South $89^{\circ}51'19''$ West, along the said East-West midsection line, a distance of 120.00 feet (Record South $89^{\circ}53'00''$ West, 120.00 feet per Docket 1042, page 700) to the Point of Beginning

Thence South $00^{\circ}30'00''$ East, perpendicular to said North line, a distance of 17.65 feet;

Thence South $39^{\circ}38'02''$ West, a distance of 37.99 feet;

Thence South $89^{\circ}30'00''$ West, parallel to said North line, a distance of 37.54 feet;

Thence North $45130'00''$ West, perpendicular to said North line, a distance of 18.95 feet to the Point of Beginning

EXHIBIT "A-2" LEGAL DESCRIPTION

That part of the Southeast quarter of Section 28, Township 22 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, Homestead Entry Survey No. 373, said corner also being the Center of said Section 28, a marked stone;

Thence North 89 degrees, 53 minutes, 00 seconds East along the East-West midsection line of Section 28, a distance of 120.00 feet to a point, said point being a 5/8 inch iron pin with an aluminum cap and the TRUE POINT OF BEGINNING;

Thence South 0 degrees, 05 minutes, 00 seconds West, a distance of 245.38 feet to a point, said point being a 5/8 inch iron pin with an aluminum cap;

Thence South 82 degrees, 55 minutes, 00 seconds East, a distance of 342.98 feet to a point on a curve of the Northwesterly right of way line of U.S. Highway 89, said point being a 5/8 inch iron pin with an aluminum cap;

Thence Northeasterly along the Northwesterly right of way line of U.S. Highway 89, along a curve to the left, having a central angle of 6 degrees, 44 minutes, 32 seconds, a radius of 2814.79 feet and a length of 331.2 feet, more or less, to a point, said point being the intersection of the said Northwesterly right of way line of U.S. Highway 89 with the East-West midsection line of said Section 28, and said point being a 5/8 inch iron pin with an aluminum cap;

Thence South 99 degrees, 53 minutes, 00 seconds West along the East-West midsection in of Section 28, a distance of 502.00 feet, more or less to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM that portion conveyed to the State of Arizona, by and through its Department of Transportation in Deed recorded January 28, 1986 in Docket 1071, Pages 236-237.

EXHIBIT "A-3" LEGAL DESCRIPTION

A portion of a parcel of land lying within the Southeast quarter of Section 28, Township 22 North, Range 8 East of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

BEGINNING at a 2.5 inch aluminum cap stamped "Woodson Eng. LS 16630" marking the center 1/4 of said Section 28;

Thence North 89 degrees, 50 minutes, 52 seconds East, 119.60 (North 89 degrees, 53 minutes, 00 seconds East, 120.00 feet record) along the Northerly line of said Southeast quarter;

Thence South 00 degrees, 06 minutes, 14 seconds East, 245.68 feet (South 00 degrees, 05 minutes, 00 seconds West 245.38 feet record);

Thence South 83 degrees, 06 minutes, 14 seconds East, 285.88 feet (South 82 degrees, 55 minutes, 00 seconds East, 349.98 feet record) to a point on the Westerly right of way of US Highway 89. Said point being on a curve concave to the Northwest, having a radius of 2764.79 feet to which the radius point bears South 56 degrees, 45 minutes, 50 seconds East;

Thence Southwesterly 170.02 feet along the arc of said right of way, through a central angle of 03 degrees, 31 minutes, 25 seconds;

Thence South 36 degrees, 40 minutes, 59 seconds West, 512.63 feet (South 38 degrees West, 811.14 feet record) along said right of way to the point of intersection with the Westerly line of said Southeast quarter;

Thence North 00 degrees, 00 minutes, 29 seconds West (Basis of bearings), 830.05 feet (North 00 degrees, 05 minutes, 00 seconds East, 998.58 feet record) along said line to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM that portion of the Southeast quarter of Section 28, Township 22 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, deeded to the State of Arizona, by and through its Department of Transportation in instrument recorded in Docket 1070, Pages 967-968, records of Coconino County, Arizona, described as follows:

That portion of the above described property which lies between the existing Westerly right of way line of U.S. Highway 89 (Flagstaff-Cameron Highway) and the following described line;

BEGINNING at a point on the South line of said Section 28, which point bears North 89 degrees, 31 minutes, 39 seconds East, a distance of 1291.75 feet from the Southwest corner thereof;

Thence North 36 degrees, 58 minutes, 18 seconds East, a distance of 2816.52 feet;

Thence along the arc of a curve to the left, having a radius of 2764.79 feet, a distance of 500.00 feet, more or less to the POINT OF ENDING on the North line of said Section 28.

RESOLUTION OF THE
NAVAJO-HOPI LAND COMMISSION
OF THE NAABIK'IYATI COMMITTEE



24TH NAVAJO NATION COUNCIL – Second Year, 2020

Supporting the Horsemen Lodge Purchase and Development; and Directing the Navajo Nation Gaming Enterprise, the Navajo Nation (Navajo Nation Department of Justice, Division of Natural Resources and Navajo-Hopi Land Commission Office) to Work with the U.S. Office of Navajo-Hopi Indian Relocation and the U.S. Department of the Interior, Bureau of Indian Affairs to Expedite the Mandatory Land Into Trust Process

WHEREAS:

1. Pursuant to 2 N.N.C. § 851(A), the Navajo-Hopi Land Commission of the Navajo Nation Council ("NHLC") is established within the Legislative Branch of the Navajo Nation Government; and
2. Pursuant to Navajo Nation Council Resolution No. CN-69-80, codified at 2 N.N.C. § 853 (B)(2), the Navajo Nation Council delegated to the NHLC the authority to act and speak for the Navajo Nation with respect to land selections and land exchange provisions pursuant to Navajo-Hopi Indian Relocation Amendment Act of 1980, Public Law 96-305, and Navajo Hopi Settlement Act, Public Law 93-531, 25 U.S.C. § 640d-10 (collectively "Act"); and
3. The Navajo Nation Gaming Enterprise, in consultation with Navajo Nation leadership, purchased approximately 14 acres of fee lands including the Horsemen Lodge (hereinafter "Horsemen's Lodge) located northeast of Flagstaff, Arizona on Highway 89; and
4. The Horsemen Lodge is a historical iconic property and can offer excellent potential to create additional employment opportunities for members of the Navajo Nation and local community, as well as establish partnerships with the City of Flagstaff and Coconino County by creating additional tourism attractions to the area; and
5. The Navajo-Hopi Land Commission is aware that an independent market assessment is being commissioned to identify the mix of amenities that will be of the greatest interest to visitors in the area, on Highway 89 and traveling to the Grand Canyon. According to the Arizona Office of Tourism, a total of 5,974,411 people visited the Grand Canyon in 2019. The market assessment will also identify amenities of interest to local and regional residents; and
6. The Navajo-Hopi Land Commission fully supports the Horsemen Lodge purchase

and development and recognizes the economic development potential based upon its location;
and

7. The Navajo-Hopi Land Commission also recognizes that once the U.S. Department of the Interior, Bureau of Indian Affairs mandatorily places Horsemen Lodge into Navajo Nation trust lands, and the Navajo Nation Gaming Enterprise establishes its business operations, immediate and long-term benefits will be realized by the Navajo Nation, Navajo Relocates, and Coconino County. These benefits include payment of various taxes to the Navajo Nation, employment opportunities for Navajo Nation and local community members, long-term payments made directly to the Rehabilitation Trust Fund, and additional revenue payments made to Coconino County.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo-Hopi Land Commission supports the Horsemen Lodge purchase and development; and hereby directs the Navajo Nation Gaming Enterprise, the Navajo Nation (Department of Justice, Division of Natural Resources and Navajo-Hopi Land Commission Office) to work with the U.S. Office of the Navajo-Hopi Indian Relocation and the U.S. Department of the Interior, Bureau of Indian Affairs to do all things necessary to expedite the mandatory fee land into Navajo Nation trust land process.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission 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 5 in favor, 0 opposed, this 19th Day of March, 2020.



Honorable Otto Tso, Chairperson

Motion: Honorable Jimmy Yellowhair
Second: Honorable Elmer P. Begay

RESOLUTION OF THE
NAVAJO-HOPI LAND COMMISSION
OF THE NAABIK'IYATI COMMITTEE



24TH NAVAJO NATION COUNCIL – Second Year, 2020

Selection of Approximately 13.8 Acres near Lower Highway 89
for Conversion from Fee to Trust to Benefit Navajo Relocates and Communities
Pursuant to Public Law 96-305 and Public Law 93-531

WHEREAS:

1. Pursuant to 2 N.N.C. § 851(A), the Navajo-Hopi Land Commission ("NHLC") is established within the Legislative Branch of the Navajo Nation Government; and
2. Pursuant to Navajo Nation Council Resolution No. CN-69-80, codified at 2 N.N.C. § 853(B)(2), the Navajo Nation Council delegated to the NHLC the authority to act and speak for the Navajo Nation with respect to land selections and land exchange provisions pursuant to Navajo-Hopi Indian Relocation Amendment Act of 1980, Public Law 96-305, and Navajo Hopi Land Settlement Act, Public Law 93-531, 25 U.S.C. § 640d-10 (collectively "Act"); and
3. Pursuant to the *Memorandum Re Ratification of 2008 Attorney General Opinion Concerning Navajo Land Selection: Authority of the NHLC*, dated April 20, 2020 (Attachment A), land selections by the NHLC pursuant to a duly executed Resolution fulfill the obligations of the Office of Navajo and Hopi Indian Relocation ("ONHIR") under the Act regarding "consultation" with the Tribe; and
4. The NHLC pursuant to Resolution No. NHLCJA-01-10 (Attachment B) finds land into trust acquisitions pursuant to the Act mandatory and subject to certain exceptions under 25C.F.R. 151; and
5. Pursuant to 25 U.S.C. § 640d-30(b), the NHLC seeks to rehabilitate and improve the economic, educational, and social conditions of the Navajo families and communities that have been affected by the *Healing v. Jones* decision and related proceedings, by the provisions of Public Law 96-305, as amended and/or by the establishment by the U.S. Secretary of Interior of Grazing District Six as lands exclusively for the use of the Hopi Tribe, including the use of Navajo Rehabilitation Trust Fund ("NRTF") established for the purpose; and

6. Pursuant to Resolution No. NHL CJN-17-2000, the NHL C adopted criteria for recommending Arizona Land Selections to ONHIR, including “lands with economic development potential, including potential to provide sustaining income to beneficiaries and affected communities” and “lands that address special needs of the beneficiaries and affected communities including but not limited to preservation of cultural resources, control of liquor establishments and their consequences, [and] new home sites for those who have been displaced from their first relocation sites”; and

7. There remains approximately 12,423 acres in Arizona for selection in accordance with § 640d-10(a)(2) to be acquired within eighteen (18) miles of the boundary of the Navajo Reservation and conveyed to the United States in trust for the benefit of the Navajo Nation pursuant to § 640d-10(a)-(b) of the Act; and

8. The Navajo Nation Gaming Enterprise (“NNGE”) acquired approximately 13.8 acres of land near lower Highway 89 in Coconino County, Arizona, more specifically described in Attachments C-1, C-2, and C-3 (collectively, the “Horsemen’s Lodge Properties”), which Navajo Nation Gaming Enterprise intends to transfer to the Navajo Nation as soon as reasonably practicable; and

9. Pursuant to Resolution No. NHL CMA-3-2020 (Attachment D), the NHL C acknowledged the economic development potential of the Horsemen’s Lodge Properties and expressed support for the purchase and development of the Horsemen’s Lodge Properties and further directed NNGE and certain Navajo Nation agencies and offices to work with ONHIR and the U.S. Department of the Interior, Bureau of Indian Affairs (“BIA”) to do all things necessary to expedite the mandatory fee-to-trust process under the Act.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo-Hopi Land Commission hereby selects Horsemen’s Lodge Properties, more specifically described in Attachments C-1, C-2, and C-3, to convert into trust status pursuant to the Act.

2. The Navajo-Hopi Land Commission hereby determines this project to be an important economic development venture that fulfills the requirements of the Act, and as such directs the Navajo-Hopi Land Commission Office and Navajo Nation Department of Justice to do the following:

A. Communicate, in writing, this selection to ONHIR and the BIA to be acquired in trust by and for the Navajo Nation pursuant to the Act.

- B. Cooperate with ONHIR to convert the land into trust status pursuant to the Act.
- C. Cooperate with the BIA to convert the land into trust status pursuant to Public Law Act.
- D. Do all things necessary to expedite the land into trust process.
- E. Perform any other duties necessary to fulfill the intent of this Resolution.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission at a duly called teleconference headquartered at Window Rock, Navajo Nation (Arizona), at which a quorum was present by teleconference and that same was passed by a vote of 6 in favor, 0 opposed, on this 21st Day of May, 2020.



Honorable Otto Tso, Chairperson

Motion: Honorable Herman M. Daniels
Second: Honorable Paul Begay

ATTACHMENT A

Navajo Nation Attorney General's Memorandum
Re Ratification of 2008 Attorney General Opinion
Concerning Navajo Land Selection: Authority of the NHL, dated April 20, 2020



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DOREEN N. MCPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

TO: Christopher J. Bavasi, Executive Director
Office of Navajo and Hopi Indian Relocation

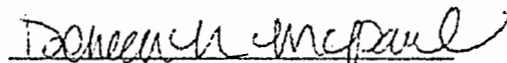
FROM: Doreen McPaul, Attorney General
Office of the Attorney General, Navajo Nation Department of Justice

DATE: Monday, April 20, 2020

SUBJECT: Signature Approval – Ratification of 2008 Attorney General Opinion Concerning “Navajo
Land Selection: Authority of the Navajo Hopi Land Selection”

The attached Attorney General Opinion re Navajo Land Selection: Authority of the Navajo Hopi Land Commission, dated October 16, 2008, is hereby ratified and confirmed. The attached 2008 Attorney General Opinion may be relied upon to carry out the purposes enumerated in Resolution, NHI.CMA-3-2020 as approved by the Navajo-Hopi Land Commission of the Naabik’iyáti’ Committee of the Navajo Nation Council on March 19, 2020.

Approved:


Attorney General of the Navajo Nation

4/20/2020
Date

Attachment

Cc: Kimberly Dutcher, Deputy Attorney General
Office of the Attorney General, Navajo Nation Department of Justice

Veronica Blackhat, Assistant Attorney General.
Natural Resources Unit, Navajo Nation Department of Justice

Susan Eastman, Attorney and Director
Navajo-Hopi Legal Services Program, Navajo Nation Department of Justice

Honorable Otto Tso, Chair
Navajo Hopi Land Commission

Robert Black Jr., Executive Director
Navajo Hopi Land Commission Office



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOIE
ATTORNEY GENERAL

Attachment

"A"

HARRISON TSOSIE
DEPUTY ATTORNEY GENERAL

October 16, 2008.

Christopher J. Bavasi
Executive Director
Post Office Drawer KK
Flagstaff, AZ 86002

RE: Navajo Land Selection: Authority of the Navajo
Hopi Land Commission

Dear Mr. Bavasi:

Your Agency has requested for an Attorney General opinion regarding the proper legal entity the Office of Navajo and Hopi Indian Relocation ("ONHIR") must consult with pursuant to the Navajo Hopi Indian Relocation Amendment Act of 1980, Public Law 96-305 as codified in 25 U.S.C. § 640d-10(c) (the "Act"). The Act requires the Commissioner/Executive Director of the Office of Navajo and Hopi Indian Relocation ("ONHIR") to consult with the Navajo Tribe on land selections.

I am the duly appointed Attorney General for the Navajo Nation and find that for the purposes of the Act, the proper legal authority for the Navajo Tribe is the Navajo Hopi Land Commission. This opinion is based on the Navajo Nation Council Resolution CN-69-80 and Title 2, Section 851(B)(2) of the Navajo Nation Code. In 1980, the Navajo Nation Council designated the Navajo Hopi Land Commission to be the entity to act and speak for the Navajo Nation with respect to any land selection or exchange provisions of P.L. 96-305. This legislation was later codified in the Navajo Nation Code.

Therefore upon the receipt of a duly executed Resolution of the Navajo Hopi Land Commission, ONHIR may act on that Resolution and in so doing will have fulfilled its obligation of the Act to consult with the Navajo Tribe. This opinion is limited to matters of applicable Navajo Nation law,

Mr. Christopher J. Bayasi

RE: Navajo Land Selection: Authority of the Navajo Hopi Land
Commission

October 16, 2008

Page 2

Navajo custom and applicable federal law, and I assume no responsibility for the applicability of laws of other jurisdictions. No part of this opinion may be published or delivered to any other person or relied upon for any other purpose without my express written permission.

Respectfully submitted,

NAVAJO NATION DEPARTMENT OF JUSTICE

Louis Denatsosie

Louis Denatsosie, Attorney General
Office of the Attorney General

cc: Harrison Tsosie, Deputy Attorney General
Office of the Attorney General

Karis N. Begaye, Attorney
Economic/Community Development Unit
Navajo Nation Department of Justice

Honorable Raymond Maxx, Chair
Navajo Hopi Land Commission

Roman Bitsuie, Executive Director
Navajo Hopi Land Commission

ATTACHMENT B

Resolution No. NHLCJA-01-10

RESOLUTION
OF THE
NAVAJO-HOPI LAND COMMISSION
OF THE
NAVAJO NATION COUNCIL

Fee to Trust process pursuant to Public Law 96-305, 25 U.S.C. §640d-10 is a Mandatory Acquisition and subject to certain exceptions under the 25 C.F.R. 151 general requirements.

WHEREAS:

1. Pursuant to 2 N.N.C. §851(A), the Navajo-Hopi Land Commission is established within the Legislative Branch of the Navajo Nation Government; and
2. Pursuant to Navajo Nation Council Resolution CN-69-80, codified at 2 N.N.C. §853(B)(2), the Navajo Nation Council delegated to the NHLC the authority to act and speak for the Navajo Nation with respect to land selections and land exchange provisions pursuant to Navajo-Hopi Indian Relocation Amendment Act of 1980 ("Act"), Public Law 96-305, 25 U.S.C. § 640d-10; and
3. Pursuant to 25 U.S.C. § 640d-30(b), the NHLC seeks to rehabilitate and improve the economic, educational, and social conditions of the Navajo families and communities that have been affected by the *Healing v. Jones* decision and related proceedings, by the provisions of Public Law 96-305, as amended and/or by the establishment by the Secretary of the Interior of Grazing District Six as lands exclusively for the use of the Hopi Tribe, including the use of Navajo Rehabilitation Trust Fund (NRTF) established for the purpose; and
4. Pursuant to Resolution NHLCJ 17-2000, the NHLC adopted criteria for recommending Arizona Land Selections to ONHIL including "lands with economic development potential, including potential to provide sustaining income to beneficiaries and affected communities" and "lands that address special needs of the beneficiaries and affected communities including but not limited to preservation of cultural resources, control of liquor establishments and their consequences, [and] new home sites for those who have been displaced from their first relocation sites;" and
5. There remains approximately 13,315.33 acres in Arizona for selection in Resolution NHLC-17-2000 to be acquired within 18-miles of the exterior boundaries of the Navajo Reservation and conveyed to the United States in trust for the benefit of the Navajo Nation pursuant to § 640d-10(a) and (b) of the Act; and
6. Pursuant to Public Law 96-305, 25 U.S.C. § 640d-10 lands taken into trust under the Act are mandatory acquisitions and subject to certain exceptions under 25 C.F.R. 151; and
7. Mandatory land into trust acquisitions do not provide the Secretary of the Interior with discretionary authority as to whether a parcel should be placed into trust. Trust acquisitions are mandatory when designated by a specific statute enacted by Congress. The statute must include some restrictions on the Secretary's discretion and the word "shall." (See Acquisition of Title to Land Held in Fee or Restricted Fee, May 20, 2008.)

8. The Navajo-Hopi Land Settlement Act contains both elements necessary to determine that land into trust acquisitions under the Act are mandatory. First, the language of the Act restricts the Secretary's authority to take land into trust by limiting the amount of both private trust land and Bureau of Land Management lands that may be acquired for the benefit of the Navajo Nation. 25 U.S.C. § 640d-10(a). The Secretary's authority is also restricted by the requirement that all lands taken into trust under the Act be within 18 miles of the Nation's current reservation. 25 U.S.C. § 640d-10(b). Second, in regards to private lands, the Act states, "[t]itle thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation." 25 U.S.C. § 640d-10(b)(2)(italics added). Both the restrictions on authority and the use of the word "shall," qualify any acquisition of private lands under the Act as a mandatory trust acquisition.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Navajo-Hopi Land Commission of the Navajo Nation Council takes an official position that land into trust acquisitions pursuant to Public Law 96-305 are mandatory.
2. The Navajo-Hopi Land Commission authorizes and directs the Navajo-Hopi Land Commission Office, Navajo Nation Department of Justice and the Navajo Nation President and other Navajo Nation Officials to communicate this position to the appropriate Officials and do all things necessary to ensure land into trust acquisitions pursuant to Public Law 96-305 are deemed mandatory.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission 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 9 in favor, 0 opposed, this 22nd day of February, 2010.

Leslie Dele

Leslie Dele, Chairperson
Navajo-Hopi Land Commission
The Navajo Nation Council

Motion : Amos F. Johnson
Second : Lee Jack, Sr.

ATTACHMENT C-1

(Bellar Parcels)

Legal Property Description

APN 301-28-027:

PARCEL 1

A parcel of land in the Northeast quarter of Section 28, Township 22 North, Range 8 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, H.E.S. 373, said corner also being the Center of said Section 28, a marked stone;

Thence North 89°53'00" East, along the East-West midsection line of Section 28, a distance of 120.00 feet to a point, said point being a 5/8 inch iron pin with an aluminum cap and the TRUE POINT OF BEGINNING;

Thence North 00°05'00" East, a distance of 336.61 feet to a point marked by a 5/8 inch iron pin with an aluminum cap;

Thence North 89°53'00" East, a distance of 451.81 feet to a point marked by a 5/8 inch iron pin with an aluminum cap;

Thence South 20°48'30" West, a distance of 360.38 feet more or less, to a point on the East-West midsection line of Section 28, marked by a 5/8 inch iron pin with an aluminum cap;

Thence South 89°53'00" West, along the East-West midsection line of Section 28, a distance of 324.28 feet, more or less to the Point of Beginning.

PARCEL 2

A parcel of land in the Northeast quarter of Section 28, Township 22 North, Range 8 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, H.E.S. 373, said corner also being the Center of said Section 28, a marked stone; Thence North 00°05'00" East, along the North-South midsection line of said Section 28, a distance of 516.00 feet;

Thence North 89°51'19" East, a distance of 774.00 feet to a point on the Westerly right-of-way line of U.S. Highway 89, as shown in A.D.O.T. Project No. P-037=1-008, Drawing No. D-3-T0600, sheets 9 and 10;

Thence South 20°42'53" West, along said Westerly right-of-way line, a distance of 278.53 feet to a found A.D.O.T. brass tablet marked "STA. 10095+27.92 R/W LT";

Thence continue South 20°42'53" West, along said Westerly right-of-way line, a distance of 6.07 feet to a point of curvature;

Thence Southwesterly along said Westerly right-of-way line, along a curve to the right, having a central angle of $5^{\circ}29'39''$ and a radius of 2764.79, for a distance of 273.16 feet to a nontangent point, said point being the intersection of said Southerly right-of-way line and the East-West midsection line of said Section 28;

Thence South $89^{\circ}51'19''$ West (Record South $89^{\circ}53'00''$ West, as recorded in Docket 1042, page 701, records of Coconino County, Arizona.) a distance of 121.55 feet to the Southeast corner of a parcel of land described in Docket 1042, page 700;

Thence North $20^{\circ}46'49''$ East, along the East parcel line of said parcel, a distance of 360.38 feet (Record North $20^{\circ}48'30''$ East, 360.38 feet per Docket 1042, page 700) to the Northeast corner of said Parcel;

Thence South $89^{\circ}52'00''$ West, along the North parcel line of the said parcel, a distance of 451.61 feet (Record South $89^{\circ}05'25''$ West, 451.81 feet per Docket 1042, page 700) to the Northwest corner of said Parcel;

Thence South $0^{\circ}05'25''$ West, along the West parcel line of said Parcel, a distance of 336.70 feet (Record South $0^{\circ}-5'00''$ West, 336.61 feet per Docket 1042, page 700) to a point on the aforementioned East-West midsection line of Section 28;

Thence South $89^{\circ}51'19''$ West, along the said East-West midsection line, a distance of 120.00 feet (Record South $89^{\circ}53'00''$ West, 120.00 feet per Docket 1042, page 700) to the Point of Beginning

PARCEL 3

An easement for ingress, egress over a portion of the Southeast quarter of Section 28, Township 22 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, being a portion of that certain parcel described in Docket 1071, page 236 (R1), records of Coconino County, Arizona, said easement being more particularly described as follows:

COMMENCING at the Northwest corner of said Southeast quarter of Section 28, a found aluminum capped rebar stamped LS16630, from which a found aluminum capped rebar at the intersection of the North line of the Southeast quarter of Section 28 and the West right-of-way of Highway 89 bears North $89^{\circ}30'00''$ East a distance of 565.05 feet (Basis of Bearings;

Thence North $89^{\circ}30'00''$ East, along said North line a distance of 89.78 feet;

Thence South $00^{\circ}30'00''$ East, perpendicular to said North line, a distance of 17.65 feet;
Thence South $39^{\circ}38'02''$ West, a distance of 37.99 feet;

Thence South $89^{\circ}30'00''$ West, parallel to said North line, a distance of 37.54 feet;

Thence North $45130'00''$ West, perpendicular to said North line, a distance of 18.95 feet to the Point of Beginning.

ATTACHMENT C-2

(Flying Heart Stables Parcel)

Legal Property Description

APN 301-27-001C:

A portion of a parcel of land lying within the southeast quarter of Section 28, Township 22 North, Range 8 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

BEGINNING at a 2.5" aluminum cap stamped 'Woodson Eng. LS 16630' marking the center ¼ of said Section 28,

Thence North 89°50'52" East, 119.60 feet (North 89°53'00" East, 120.00 feet record) along the northerly line of said southeast quarter;

Thence South 00°06'14" East, 245.68 feet (South 00°05'00" West, 245.38 feet record);

Thence South 83°06'14" East, 285.88 feet (South 82°55'00" East, 349.98 feet record) to a point on the westerly right of way of US Highway 89. Said point being on a curve concave to the northwest, having a radius of 2764.79 feet to which the radius point bears South 56°45'50" East;

Thence southwesterly 170.02 feet along the arc of said right of way, through a central angle of 03°31'25;

Thence South 36°40'59" West, 512.63 feet (South 38° West, 811.14 feet record) along said right of way to the point of intersection with the westerly line of said southeast quarter;

Thence North 00°00'29" West (Basis of Bearings), 830.05 feet (North 00°05'00" East, 998.58 feet record) along said line to the **TRUE POINT OF BEGINNING**.

ATTACHMENT C-3

(Horsemen's Lodge Parcel)

Legal Property Description

APN 301-27-001D:

That part of the Southeast quarter of Section 28, Township 22 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at Corner No. 17, Homestead Entry Survey No. 373, said corner also being the Center of said Section 28, a marked stone;

Thence North 89 degrees, 53 minutes, 00 seconds East along the East-West midsection line of Section 28, a distance of 120.00 feet to aw point, said point being a 5/8 inch iron pin with an aluminum cap and the TRUE POINT OF BEGINNING;

Thence South 0 degrees, 05 minutes, 00 seconds West, a distance of 245.38 feet to a point, said point being a 5/8 inch iron pin with an aluminum cap;

Thence South 82 degrees, 55 minutes, 00 seconds East, a distance of 342.98 feet to a point on a curve of the Northwesterly right of way line of U.S. Highway 89, said point being a 5/8 inch iron pin with an aluminum cap;

Thence Northeasterly along the Northwesterly right of way line of U.S. Highway 89, along a curve to the left, having a central angle of 6 degrees, 44 minutes, 32 seconds, a radius of 2814.79 feet and a length of 331.2 feet, more or less, to a point, said point being the intersection of the said Northwesterly right of way line of U.S. Highway 89 with the East-West midsection line of said Section 28, and said point being a 5/8 inch iron pin with an aluminum cap;

Thence South 99 degrees, 53 minutes, 00 seconds West along the East-West midsection in of Section 28, a distance of 502.00 feet, more or less to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM that portion conveyed to the State of Arizona, by and through its Department of Transportation in Deed recorded January 28, 1986 in Docket 1071, Pages 236-237.

ATTACHMENT D

Resolution No. NHLCMA-3-2020

NAVAJO NATION

1271

12/29/2022

Navajo Nation Council Special Session

05:09:11 PM

Amd# to Amd#

New Business: (Item L.)

PASSED

MOT Henio, J

CONSENT AGENDA-(12)Legislations:

SEC Tso, E

0221-22,0234-22,0239-22,0262-22,

0263-22,0265-22,0268-22,. . .

Yeas : 21

Nays : 0

Excused : 2

Not Voting : 0

Yea : 21

Begay, E

Damon

James, V

Tso, E

Begay, K

Daniels

Nez, R

Walker, T

Begay, P

Freeland, M

Smith

Wauneka, E

Brown

Halona, P

Stewart, W

Yazzie

Charles-Newton

Henio, J

Tso, D

Yellowhair

Crotty

Nay : 0

Excused : 2

Tso, C

Slater, C

Not Voting : 0

Presiding Speaker: Tso