

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0293-16_____

SPONSOR: Benjamin Bennett

TITLE: An Action Relating to Law And Order, Resources And Development, Budget And Finance, And Naabik'iyati Committees And Navajo Nation Council; Approving The Master Agreement For The Development Of The Grand Canyon Escalade Project; Approving The Funding Application Of Sixty Five Million Dollars (\$65,000,000) For The Development Of The Offsite Infrastructure To The Grand Canyon Escalade Project; Authorizing The Navajo Nation Hospitality Enterprise To Enter Into A Development And Operating Agreement; Accepting The Approval Of The Withdrawal Of Land In The Bodaway/Gap Chapter; Approving A Covenant Not To Compete; Waiving Certain Provisions Of 7 N.N.C. §§ 1101-1118

Date posted: August 29, 2016 at 5:31pm

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0293-16

DATE: June 8, 2016

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; APPROVING THE MASTER AGREEMENT FOR THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT; APPROVING THE FUNDING APPLICATION OF SIXTY FIVE MILLION DOLLARS (\$65,000,000) FOR THE DEVELOPMENT OF THE OFFSITE INFRASTRUCTURE TO THE GRAND CANYON ESCALADE PROJECT; AUTHORIZING THE NAVAJO NATION HOSPITALITY ENTERPRISE TO ENTER INTO A DEVELOPMENT AND OPERATING AGREEMENT; ACCEPTING THE APPROVAL OF THE WITHDRAWAL OF LAND IN THE BODAWAY/GAP CHAPTER; APPROVING A COVENANT NOT TO COMPETE; WAIVING CERTAIN PROVISIONS OF 7 N.N.C. §§ 1101 - 1118

PURPOSE: This resolution, if approved, will approve a Master Agreement with accompanying legal documents for the development of the Grand Canyon Escalade Project in the Bodaway/Gap Chapter, approve a funding application and negotiation of \$65,000,000 by the Navajo Nation for the development of the off-site infrastructure of the Project, authorize the Navajo Nation Hospitality Enterprise to enter into a development and operating agreement in the Project area, accept the land withdrawal for the development of the Project in the Bodaway/Gap Chapter, approve a covenant not to compete in the development of the Project and waive certain provision of the Navajo Nation Code relative to the Nation's dispute resolution law.

NOTE: waiver of 7 N.N.C. §§ 1101 – 1118 requires a 2/3rds vote of the Navajo Nation Council

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

OLC No. 15-291-1

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: _____
Posting End Date: 9/3/2016
Eligible for Action: 9/4/2016

Law & Order Committee

THENCE

Resources & Development Committee
THENCE

Budget & Finance Committee
THENCE

Naa'biik'iyáti' Committee
THENCE

Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 23RD NAVAJO NATION COUNCIL—SECOND YEAR, 2016

3 INTRODUCED BY

4 

5 Primary Sponsor

6 TRACKING NO. 0293-14

7 AN ACTION

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9
10 RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND
11 FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;
12 APPROVING THE MASTER AGREEMENT FOR THE DEVELOPMENT OF THE GRAND
13 CANYON ESCALADE PROJECT; APPROVING THE FUNDING APPLICATION OF SIXTY
14 FIVE MILLION DOLLARS (\$65,000,000) FOR THE DEVELOPMENT OF THE OFFSITE
15 INFRASTRUCTURE TO THE GRAND CANYON ESCALADE PROJECT; AUTHORIZING
16 THE NAVAJO NATION HOSPITALITY ENTERPRISE TO ENTER INTO A
17 DEVELOPMENT AND OPERATING AGREEMENT; ACCEPTING THE APPROVAL OF
18 THE WITHDRAWAL OF LAND IN THE BODAWAY/GAP CHAPTER; APPROVING A
19 COVENANT NOT TO COMPETE; WAIVING CERTAIN PROVISIONS OF 7 N.N.C. §§ 1101

20 - 1118

21
22 **Section One. Authority**

- 23 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102
24 (A).
25 B. The Naabik'iyati' Committee of the Navajo Nation Council is empowered to review all
26 proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C.
27 §164(A)(9).
28 C. The Budget and Finance Committee of the Navajo Nation Council is empowered to
29 review and recommend to the Navajo Nation Council the budgeting, appropriation,
30 investment, and management of all funds. 2 N.N.C. §300(8)(2).

1 D. The Resource Development Committee of the Navajo Nation Council is empowered to
2 exercise oversight authority over economic and community development, commerce and
3 trade, and public utilities and telecommunications. 2 N.N.C. §500 (C).

4 E. The Law and Order Committee of the Navajo Nation Council has oversight of law
5 enforcement to enhance the operations and coordination of all departments within the
6 Navajo Division of Public Safety. 2 N.N.C. § 601(B)(14)

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8 **Section Two. Findings**

9 A. For the last 48 years, many Bodaway/Gap Chapter members and their families have
10 suffered extreme economic hardship and physical dislocation due to the U.S. Government
11 imposed Bennett Freeze, which has prevented the Bodaway/Gap Chapter and much of the
12 Western Navajo Agency from achieving adequate community and economic
13 development.

14 B. The members of the Bodaway/Gap Chapter considered the positive aspects and the
15 negative aspects of the Grand Canyon Escalade Project with the Confluence Partners,
16 L.L.C. and on October 3, 2012 the Bodaway/Gap Chapter approved the withdrawal of up
17 to 420 acres of land within the Bodaway/Gap Chapter for the purposes of development of
18 the Grand Canyon Escalade Project by Confluence Partners, L.L.C., including a tram to
19 the bottom of the Grand Canyon, the adjacent business development and the
20 accompanying rights of way necessary to provide access and utilities. *See* Bodaway/Gap
21 Chapter Resolution, Exhibit A.

22 C. The need for employment and economic development in the Bodaway/Gap Chapter and
23 the entire Bennett Freeze Area is overwhelming.

24 D. The Grand Canyon Escalade Project (“Escalade Project”) is a prospective tourism
25 destination featuring a gondola tramway from the rim to the floor of the Grand Canyon, a
26 Riverwalk, amphitheater, food pavilion and is located on the western edge of the Navajo
27 Nation at the confluence of the Colorado River and Little Colorado River. *See* Grand
28 Canyon Escalade Council Briefing Book (Briefing Book), Exhibit B.

29 E. The Escalade Project estimates, that at build out, basic operations, including the
30 Navajoland Discovery Center, will require 800 to 1,100 employees with an estimated \$28

1 to \$38.5 million payroll for all levels of the various skills and experience required to
2 operate a world class venue. This estimate does not include employment from the Lease
3 Pads for the hotels, RV-park or convenience store, which are anticipated to generate
4 another 1,300 jobs onsite. The total estimated job creation for onsite and offsite is an
5 estimated 3,500 jobs. *See* Briefing Book, Tab 3, Exhibit B.

6 F. Confluence Partners, L.L.C. possess specialized experience in the tourism industry and
7 tourism business performance as is evidenced in the track record of its individual
8 members with projects comparable in complexity and scope to the tourism facility which
9 the Nation desires to develop and operate.

10 G. The Confluence Partners, L.L.C. propose a Master Agreement with the Navajo Nation
11 that includes a Development and Operating Agreement with the Navajo Hospitality
12 Enterprise, the Navajo Nation funding the cost of constructing the road, electric, water
13 and communications to the site (estimated at \$65 million) with an option for the
14 Confluence Partners to secure funding, and for the Navajo Nation to have ownership of
15 all improvement within the Operator Area. *See* Master Agreement, Exhibit C.

16 H. The Navajo Nation Hospitality Enterprise, (“Enterprise”) a wholly-owned enterprise of
17 the Navajo Nation, will act as the Nation’s representative to enable development and
18 operation of the Grand Canyon Escalade Project.

19 I. The Enterprise, through the Master Agreement, will enter into a Development and
20 Operating Agreement with the Confluence Partners for design, permitting and
21 construction of the road, electric, water, communications to, and the development of the
22 420 acre project site. *See* Master Agreement (Exhibit E and F), Exhibit C.

23 J. The Confluence Partners, L.L.C. will fund \$20 million for and manage the conceptual
24 design, permitting and construction of the road, electric, water and communications to,
25 and development of the 420 acre project site; will fund \$145 million for and manage the
26 development of the 420 acre project site; and will manage the entire 420 acre project site,
27 including managing the Operator Area and leasing of the Lease Pads. *See* Briefing Book,
28 Tab 1, Exhibit B.

29 K. The Navajo Nation will receive a franchise fee of eight percent (8%) to 18% of gross
30 revenues based on various visitor attendance levels and the Navajo Nation will receive

1 50% of the leasing rental revenues from the development pads outside of the Operator
2 Area. See Master Agreement, Article 6, Exhibit C.

3 L. The Navajo Nation and the National Park Service's Grand Canyon National Park share a
4 common border as set out in the Navajo Boundary Act of 1934 and the National Park
5 Service has expressed concerns about the effects of the Escalade project.

6 M. The Navajo Nation has authority for environmental protection of its lands and the federal
7 government, through the Navajo Nation Trust Land Leasing Act of 2000 (25 U.S.C. §
8 415), has authorized the Navajo Nation to conduct business site leasing without
9 subsequent federal approval and the Escalade project environmental review will comply
10 with Navajo laws, including but not limited to:

- 11 1. Navajo Nation Cultural Resources Protection Act – 19 N.N.C. § 1001;
- 12 2. Navajo Nation Policy to Protect Traditional Cultural Properties – 19 N.N.C. § 1021;
- 13 3. Navajo Nation Endangered Species List - 17 N.N.C. § 507 (Endangered species as
14 determined by RCS-41-08);
- 15 4. Navajo Nation Biological Resource Land Use Clearance Policies and Procedures
16 (which incorporates the federal Endangered Species Act) – RCS-44-08;
- 17 5. Navajo Nation Environmental Protection Act - 4 N.N.C. § 901; and,
- 18 6. Navajo Nation Clean Water Act – 4 N.N.C. § 1301.

19 N. The Confluence Partners, L.L.C. will initiate the process for the 420 acre land withdrawal
20 and the required right-of-way with the Navajo Nation Land Department pursuant to
21 RDCJN-33-15, in which the Resources and Development Committee delegated authority
22 to the Director of the Navajo Land Department to approve land withdrawals on the
23 Navajo Nation.

24 O. Pursuant to RDCJN-33-15 the Resources and Development Committee approved the
25 Administrative Rules and Regulations for Land Withdrawals; Section One states *[t]he*
26 *purpose of a Land Withdrawal Designation is to designate an area of land for future*
27 *development by, a. Ensuring that the rights of grazing permittees, who are in compliance*
28 *with their grazing permits, are properly addressed as applicable and as required under*
29 *16 N.N.C. §§ 401 et seq. and to prevent subsequent claims to the land; and b. Ensuring*
30 *that the affected Chapter supports the Land Withdrawal Designation and use of the land.*

- 1 P. The Navajo Nation Office of the Controller, in memoranda dated October 17, 2014 and
2 November 17, 2014, raised concern of the project funding with no loan in place which
3 had a stated interest rate or number of years but acknowledged that the project funding
4 will be provided by a third party and with the Navajo Nation pledging its franchise fee
5 revenue (see Paragraph K above) to repay the loan. *See* Office of Controller Memoranda,
6 October 17, 2014 and November 17, 2014 attached as Exhibit D-1 and D-2. The Navajo
7 Division of Economic Development responded to the concerns raised by the Office of the
8 Controller. *See* Letter from Albert Damon, Jr., Division Director, Division of Economic
9 Development attached as Exhibit D-3.
- 10 Q. The Navajo Nation Office of Management and Budget, in a memorandum dated August
11 19, 2014, raised a concern of the source of the \$65 million project funding but
12 acknowledged that the project funding will be provided by a third party. *See* Office of
13 Management and Budget Memorandum, August 19, 2014 attached as Exhibit E.
- 14 R. The Navajo Nation Department of Justice, in a memorandum dated December 18, 2014,
15 raised several concerns including financing of the project, no identified source of funds to
16 provide public safety services, a challenged boundary with the National Park Service,
17 master lease terms, formal determination on the estimate of damage completed by the
18 Navajo Land Department, compliance matters under the Navajo Business Opportunity
19 Act, and Master Lease terms that conflict or violate Navajo Nation law; however, the
20 then-Executive Director, Division of Economic Development and the then-Special
21 Advisor to the President, in a memorandum dated January 14, 2015, responded to each of
22 the concerns raised by the Navajo Nation Department of Justice above. *See* Department
23 of Justice Memorandum, December 18, 2014 attached as Exhibit F-1 and Division of
24 Economic Development Memorandum, January 14, 2015 attached as Exhibit F-2.
- 25 S. The Master Agreement, Article 15, Covenant Not to Compete, provides that neither the
26 Navajo Nation, nor any of its political subdivisions, agencies, departments or
27 instrumentalities, shall authorize or engage in a Nation Competing Business within the
28 Restricted Area defined as the Navajo Reservation within 15 miles of the Escalade
29 Project and within two and one-half (2.5) miles on either side of the access road to the
30

1 Escalade Project and the entrance to the Escalade Project's access at US 89. The
2 Confluence Partners may waive the prohibitions on a case-by-case basis.

3 T. The Master Agreement, Article 12, Dispute Resolution, provides for arbitration of any
4 controversy, claim or dispute arising out of or related to the Master Agreement and
5 provides that the governing law with respect to the validity, meaning and effect of the
6 Master Agreement shall be in accord with Navajo Nation law; however, certain
7 provisions of Article 12 will require a waiver of 7 N.N.C. §§ 1101 – 1118.

8 U. The Master Agreement, Article 8, Operation of the Project, provides that the Navajo
9 Nation will provide law enforcement services to and from, as well as within, the Escalade
10 Project area.

11 V. The Grand Canyon Escalade Project will provide:

- 12 1. Hundreds of onsite jobs with millions of dollars in annual payroll at built-out;
- 13 2. Millions of dollars of annual revenue to the Navajo Nation;
- 14 3. Millions of dollars in tax revenue;
- 15 4. Millions of dollars in infrastructure development for the Bennett Freeze area;
- 16 5. Access for on the ground monitoring and law enforcement protection of sacred
17 sites;
- 18 6. A brighter future for the families and youth of Bodaway/Gap and the Western
19 Navajo Agency; and
- 20 7. Help realize the Grandparents' hopes of families moving back to Bennett Freeze
21 area.

22 W. On July 20, 2015 the Navajo Nation Branch Chiefs signed the historic Navajo Nation
23 Three Branch Agreement, declaring One Nation, One Voice by establishing the common
24 priorities of the Navajo Nation Government. The development of the Grand Canyon
25 Escalade Project meets the objectives in the Economy Priority of creating jobs and
26 business opportunity and in the Infrastructure Development and Improvements Priority
27 the Grand Canyon Escalade Project addresses the recovery of the Former Bennett Freeze
28 Area; in addition the development of the Grand Canyon Escalade Project will provide the
29 fiscal freedom for the Navajo Nation to achieve the Common Priorities of the Navajo
30 Nation Three Branch Agreement.

1 X. Development of the Grand Canyon Escalade Project is in the best interests of the Navajo
2 Nation, the Western Navajo Agency and the Bodaway/Gap Chapter.
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4 **Section Three. Approvals, Acceptance and Authorizations**

5 A. The Master Agreement appended hereto is hereby approved.

6 B. The Development Agreement and the Operating Agreement appended hereto as Exhibits
7 E and F of the Master Agreement are hereby approved. The Enterprise is hereby
8 authorized to enter into the Development Agreement and the Operating Agreement.

9 C. The Enterprise and the President of the Navajo Nation are authorized to enter into
10 Business Site Leases for the Project, the Offsite Infrastructure-Road and the Offsite
11 Infrastructure-Utilities, by and between the Nation as lessor and the Enterprise as lessee,
12 for a term of twenty-five (25) years, with automatic renewals for two (2) subsequent
13 twenty-five (25) year terms, in substantially the forms attached as Exhibits to the Master
14 Agreement.

15 D. The Enterprise is hereby authorized to grant to Confluence Partners, L.L.C. a non-
16 revocable license to market and use the Enterprise's Marks in accordance with the
17 License Agreement appended as an Exhibit to the Master Agreement.

18 E. The Master Agreement is hereby accepted in the event the Navajo Nation Land
19 Department approves the land withdrawal of 420 acres of land and the right-of-way,
20 within the Bodaway/Gap Chapter, for the purposes of development of the Grand Canyon
21 Escalade Project, including a tram to the bottom of the Grand Canyon and the adjacent
22 businesses, as described in the Master Agreement.

23 F. The Conditional Use Permits between the Navajo Nation and Confluence Partners,
24 L.L.C. for the Project Area and for the Offsite Infrastructure Study Corridors, attached as
25 Exhibits to the Master Agreement, are approved for the purposes of conducting
26 preliminary and final design and engineering work, and environmental, archeological and
27 cultural clearances for the location of the Project Improvements and the Business Site
28 Leases for the Project Area and the Offsite Infrastructure.

29 G. Confluence Partners, L.L.C. is hereby appointed and engaged as the developer and
30 operator of the Project in accordance with the terms of, and having the duties,

1 obligations, and authorities set forth in the Master Agreement, the Development
2 Agreement and the Operating Agreement.

3 H. Confluence Partners, L.L.C. is hereby granted a non-revocable license and right to enter
4 upon and occupy the Project Area in order to develop and operate the Project in
5 accordance with the Master Agreement.

6 I. The Covenant Not to Compete, Article 15 of the Master Agreement, is approved. Any
7 construction or operation of any businesses in violation of those covenants shall be
8 resolved under the Dispute Resolution, Article 12 of the Master Lease Agreement and by
9 applicable Navajo Nation law.

10 J. Any revenues received by the Enterprise from the Project will not be subject to Navajo
11 Nation taxes.

12 K. Article 12 of the Master Agreement concerning Dispute Resolution is hereby approved
13 and the Navajo Nation waives the necessary sections of 7 N.N.C. §§ 1101 – 1118 to
14 effectuate the terms of Article 12..

15 L. The expenditure of Navajo Nation funds, or third party financing, to meet the obligations
16 of Article 9.2 of the Master Agreement for the construction of the Offsite Infrastructure
17 to the Project, presently estimated at Sixty-five Million Dollars (\$65,000,000.00), is
18 hereby authorized. However, the substitution of Navajo Nation funds can be used,
19 subject to future Navajo Nation Council appropriations or direction. The Navajo Nation
20 Office of the Controller, the Navajo Nation Office of Management and Budget with the
21 Navajo Nation Council's Budget and Finance Committee, and other appropriate
22 Committees, are directed to negotiate the terms and conditions of financing the Navajo
23 Nation's obligations for the development of the Grand Canyon Escalade Project; on
24 agreement of the Navajo Nation's obligations, the terms and conditions shall be presented
25 to the appropriate Standing Committees and the Navajo Nation Council for approval.

26 M. The Navajo Nation Division of Economic Development is hereby directed to budget the
27 annual fee the Division is to receive from the Navajo Nation pursuant to the Master
28 Agreement.
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1 N. The Navajo Nation Division of Public Safety is hereby directed to budget the annual cost
2 of providing law enforcement services to the Escalade Project area and adjacent right-of-
3 way.

4 O. The President of the Navajo Nation is hereby authorized to execute, on behalf of the
5 Navajo Nation, all documents necessary to effectuate the intent of this resolution.
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7 **Section Four. Effective Date**

8 The Action is effective upon its approval pursuant to 2 N.N.C. §221(B).
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