



## Resources & Development Committee authorizes tribal access regulations without BIA approval for Navajo enterprises

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**WINDOW ROCK, Ariz.** — The Resources and Development Committee (RDC) of the 24th Navajo Nation Council approved and adopted uniform rules for Navajo Nation enterprises to allow access to Navajo Nation trust and fee lands for development that no longer require the normal Bureau of Indian Affairs rights-of-way approval. Pursuant to 25 CFR §169.4(b)(3)(iii) concerning rights-of-way over Indian Land, the RDC passed a tribal authorization authorizing access without BIA approval on June 3 for independent legal entities wholly owned by the Navajo Nation.

RDC chair and sponsor Council Delegate Rickie Nez (T'iistoh Sikaad, Nenahnezad, Upper Fruitland, Tse' Daa' Kaan, Newcomb, San Juan) explained that Legislation No. 0124-20 is the result of an effort to streamline the project development process by establishing uniform rules and regulations for all Navajo Nation enterprises that are working on land controlled by the Navajo Nation.

The Navajo Land Department can now grant tribal authorization access (TAA) for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads that are consistent with applicable Federal and Navajo Nation Laws.

In passing the legislation, the committee approved a delegation of authority from the RDC to the Navajo Land Department manager at the Navajo Nation Division of Natural Resources to grant TAA for development projects, subject to the terms and conditions included in the legislation.

According to Navajo Land Department Manager Mike Halona, the Navajo Nation's involvement in a federal government-to-government consultation in 2014 led to the submission of a 7-page comment on 25 CFR §169. The federal government accepted and adopted some of the comments submitted by the Nation and published the new regulations in the Federal Register in 2016.

The RDC and the Land Department worked collaboratively throughout the past 5 years to authorize and implement incremental changes to the general land leasing program through the Navajo Nation. Halona said the Nation knows the challenges of obtaining formal rights-of-way and that the legislation exercises tribal sovereignty and self-governance. The Navajo Nation has slowly assumed greater self-governance responsibilities through an established track record of building out an accountable leasing program.

Although the action by RDC greatly streamlines the process for Navajo Nation enterprises, biological and cultural clearances will be required under the streamlined TAA rules to ensure Navajo Nation natural resources and cultural properties are protected. "We worked on this legislation with [the Department of Justice] and the attorneys from [the Division of Natural Resources]," said Halona.

Council delegates acknowledged the tribal access authorization was a critical step in the ongoing process of getting projects completed on Navajo Nation trust and fee lands. "A lot of our Navajo People out there don't have electricity. They're on a waiting list," said Council Delegate Herman M. Daniels, Jr. (Tсах Bii Kin, Navajo Mountain, Shonto, Oljato).

Speaking on the legislation from the Bureau of Indian Affairs, Eastern Navajo Agency Superintendent Lester Tsosie commended Halona and the Land Department for researching the improvements and timeline impacts the streamlined policies will have for Navajo-controlled land. Some forest lands would also be covered with the new policies, he said.

“At the end of the day, the government-to-government consultation is important,” said Tsosie. The Land Department will continue to provide official notification to the BIA when approval actions are taken, as required by the federal regulations.

Council Delegate Wilson Stewart, Jr. (Crystal, Fort Defiance, Red Lake, Sawmill) expressed his support for the legislation because the tribal access authorization and the delegation of authority would be the first of its kind in Indian Country. The new policies will help tribal nations more quickly undertake infrastructure projects for the benefit of their people.

Council Delegate Kee Allen Begay, Jr. (Tachee/Blue Gap, Many Farms, Nazlini, Tselani/Cottonwood, Low Mountain) posed questions regarding local involvement in the projects approved by the Land Department. Halona said that improved rules and regulations were being developed that take into consideration the temporary land surface disturbances of most overhead and underground projects. The forthcoming rules would further streamline the project development process.

The Navajo Tribal Utility Authority and the Navajo Nation Division of Transportation each provided further support and offered future recommendations on the policy. With the need to expedite a high number of infrastructure and water projects currently being discussed by the Navajo Nation Council, RDC voted to approve the new rules. RDC holds final authority for the legislation.

The Resources and Development Committee is a standing committee of the Navajo Nation Council. The Committee has legislative oversight authority for all land-related programs and approvals for projects involving Navajo Nation land interests.

The Navajo Nation’s wholly-owned independent enterprises include the Navajo Tribal Utility Authority (NTUA), Navajo Engineering Construction Authority (NECA), Navajo Nation Oil and Gas Company (NNOGC), Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise (NNHE), Dine Power Authority (DPA) and others.

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