

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0154-22_

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to New Mexico Department of Transportation for the Purposes of Constructing, Operating, Upgrading and Maintaining the Existing Roadways, Culverts, Ditches and Bridges Along U.S. Highway 64, Project Numbers 5101171 and 5101172, Located on Navajo Nation Trust Lands in Beclabito Chapter, Navajo Nation (San Juan County, New Mexico)

Date posted: August 25, 2022 at 6:35PM

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Office of Legislative Services
P.O. Box 3390
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LEGISLATIVE SUMMARY SHEET

Tracking No. 0154-22

DATE: August 25, 2022

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE PURPOSES OF CONSTRUCTING, OPERATING, UPGRADING AND MAINTAINING THE EXISTING ROADWAYS, CULVERTS, DITCHES AND BRIDGES ALONG U.S. HIGHWAY 64, PROJECT NUMBERS 5101171 AND 5101172, LOCATED ON NAVAJO NATION TRUST LANDS IN BECLABITO CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: The purpose of this legislation is to approve the grant of Right-of-Way and to New Mexico Department of Transportation to construct, operate, upgrade and maintain the existing roadways, culverts, ditches and bridges along U.S. Highway 64, Project Numbers 5101171 and 5101172 located on Navajo Nation Trust Lands in Beclabito Chapter, Navajo Nation (San Juan County, New Mexico). This legislation would waive the requirement for a bond, insurance or alternative form of security on the part of the Grantee and would waive valuation and consideration for the right-of-way.

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

PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL—Fourth Year, 2022

INTRODUCED BY

Primary Sponsor

TRACKING NO. 0154-22

AN ACTION

Thomas Walker, Jr.

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING
THE GRANT OF RIGHT-OF-WAY TO NEW MEXICO DEPARTMENT OF
TRANSPORTATION FOR THE PURPOSES OF CONSTRUCTING, OPERATING,
UPGRADING AND MAINTAINING THE EXISTING ROADWAYS, CULVERTS,
DITCHES AND BRIDGES ALONG U.S. HIGHWAY 64, PROJECT NUMBERS
5101171 AND 5101172, LOCATED ON NAVAJO NATION TRUST LANDS IN
BECLABITO CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW
MEXICO)

BE IT ENACTED:

Section One. Authorities

Pursuant to 2 N.N.C. § 500 (B) (2), the Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, right-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

Section Two. Findings

- 1 A. The New Mexico Department of Transportation has submitted a right-of-way
2 application to construct, operate, upgrade and maintain the existing roadways,
3 culverts, ditches and bridges along U.S. Highway 64, Project Numbers 5101171 and
4 5101172 located on Navajo Nation Trust Lands in Beclabito Chapter, Navajo Nation
5 (San Juan County, New Mexico). The Terms and Conditions is attached as **Exhibit**
6 **A**. The proposed right-of-way map is attached as **Exhibit B**. The application is
7 attached as **Exhibit C**.
- 8 B. Two land users have been identified and their consent forms are attached as **Exhibit**
9 **D**.
- 10 C. Beclabito Chapter Resolution No. BECL-21-02-25, “hereby, approves and supports
11 the State of New Mexico, San Juan County, Federal and Navajo Nation Department
12 of Transportation and Highway Safety entities to partnership to continue to seek
13 grants and funds for improvement and reconstruction of the N.M. Highway 64 West
14 from N.M./AZ. Stateline to Shiprock.” Resolution BECL-21-02-25, additional
15 Beclabito Chapter Resolutions BECL-19-11-07, BECL-19-10-03, BECL-17-5-28,
16 BECL-17-05-30, BECL-15-07, BECL-15-12-07, and memorandum dated May 4,
17 2018 from Beclabito Chapter to NMDOT and NDOT are attached as **Exhibit E**.
- 18 D. The Navajo Nation Department of Fish and Wildlife Biological Resources
19 Compliance Form is attached as **Exhibit F**.
- 20 E. The U.S. Department of Transportation, Federal Highway Administration
21 memorandum dated November 3, 2020 to Mr. Richard Begay, Navajo Nation
22 Heritage & Historic Preservation Department states “The NMDOT, on behalf of the
23 FHWA, has determined that with the avoidance, minimization, or mitigation
24 measures stated above, finds that the proposed undertaking, CN 5101170,
25 Reconstruction of US 64 Between Shiprock, NM and the Arizona border (MP 0 to
26 20), will have no adverse effect to historic properties. Your concurrence with our
27 findings of eligibility, effect and resolution of adverse effect is respectfully
28 requested.” The concurrence of Mr. Richard Begay, Navajo Nation Tribal Historic
29 Preservation Officer is dated 11/10/20. The November 3, 2020 memorandum is
30 attached as **Exhibit G**.

1 F. The New Mexico Department of Transportation, Environmental Assessment for the
2 US 64 Alignment Study: Arizona Border to Shiprock, New Mexico, dated January
3 27, 2022 with Appendices A, B, C, are attached as **Exhibit H**.

4 G. The New Mexico Department of Transportation requests a waiver of valuation and
5 waiver of bond, insurance or alternative forms of security compensation for the right-
6 of-way.

7 H. A waiver of consideration for this right-of-way is requested. The Terms and
8 Conditions document, **Exhibit A**, states that the term of the right-of-way shall be
9 for twenty (20) years and the consideration is assessed at \$102,663.36.

10 I. 25 CFR § 169.110 addresses how much monetary compensation must be paid for a
11 right-of-way over or across tribal land. It states:

12 *(a) A right-of-way over or across tribal land may allow for any payment amount*
13 *negotiated by the tribe, and we will defer to the tribe and not require a valuation if*
14 *the tribe submits a tribal authorization expressly stating that it:*

15 *(1) Has agreed upon compensation satisfactory to the tribe;*

16 *(2) Waives valuation; and*

17 *(3) Has determined that accepting such agreed-upon compensation and waiving*
18 *valuation is in its best interest.*

19 *(b) The tribe may request, in writing, that we determine fair market value, in which*
20 *case we will use a valuation in accordance with § 169.114. After providing the tribe*
21 *with the fair market value, we will defer to a tribe's decision to allow for any*
22 *compensation negotiated by the tribe.*

23 *(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require*
24 *that the grantee pay fair market value based on a valuation in accordance with §*
25 *169.114.*

26 J. 25 CFR § 169.103 address bond, insurance or alternative forms of security. It states:

27 *(a) You must include payment of bonds, insurance, or alternative forms of security*
28 *with your application for a right-of-way in amounts that cover:*

29 *(1) The highest annual rental specified in the grant, unless compensation is a one-*
30 *time payment;*

1 (2) *The estimated damages resulting from the construction of any permanent*
2 *improvements;*

3 (3) *The estimated damages and remediation costs from any potential release of*
4 *contaminants, explosives, hazardous material or waste;*

5 (4) *The operation and maintenance charges for any land located within an irrigation*
6 *project;*

7 (5) *The restoration of the premises to their condition at the start of the right-of-way*
8 *or reclamation to some other specified condition if agreed to by the landowners.*

9 * * * *

10 (f) *We may waive the requirement for a bond, insurance, or alternative form of*
11 *security:*

12 * * * *

13 (2) *For tribal land, deferring, to the maximum extent possible, to the tribe's*
14 *determination that a waiver of a bond, insurance or alternative form of security is in*
15 *its best interest.*

16 K. The application for the Right-of-Way has been reviewed by the Fish and Wildlife;
17 Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division
18 of Natural Resources and the Department of Justice and “Approved” or found
19 “Sufficient.” Executive Official Review Document Number 018335 and
20 memorandums dated July 19, 2022 and July 22, 2022 from the Navajo Nation
21 Environmental Protection Program are attached as **Exhibit I**.

22
23 **Section Three. Approval**

24 A. The Resources and Development Committee of the Navajo Nation Council hereby
25 approves the grant of right-of-way to New Mexico Department of Transportation to
26 construct, operate, upgrade and maintain the existing roadways, culverts, ditches and
27 bridges along U.S. Highway 64, Project Numbers 5101171 and 5101172, located on
28 Navajo Nation Trust Lands in Beclabito Chapter, Navajo Nation (San Juan County,
29 New Mexico), as described in maps attached as **Exhibit B**.

30

1 B. The Resources and Development Committee of the Navajo Nation Council hereby
2 approves the grant of right-of-way subject to, but not limited to, the terms and
3 conditions attached as **Exhibit A**.

4 C. The Resources and Development Committee of the Navajo Nation Council hereby
5 waives the requirement for a bond, insurance or alternative form of security on the
6 part of the Grantee, based on the determination that construct, operate, upgrade and
7 maintain the existing roadways, culverts, ditches and bridges along U.S. Highway 64,
8 Project Numbers 5101171 and 5101172, benefits the Navajo Nation and such a
9 waiver is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.103
10 (f) (2).

11 D. The Resources and Development Committee of the Navajo Nation Council hereby
12 waives valuation and consideration for the right-of-way. It has determined that
13 accepting the agreed-upon compensation and waiving valuation is in its best interest
14 of the Navajo Nation, pursuant to Title 25 CFR § 169.110.

15 E. The Resources and Development Committee of the Navajo Nation Council hereby
16 authorizes the President of the Navajo Nation to execute any and all documents to
17 affect the intent and purpose of this resolution.

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