

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0203-24_

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, and Maintaining Roadway and Travel Lanes Project Located from Arizona State Line Post 00 to Shiprock, NM, Located on Navajo Nation Trust Lands in Gadii'ahi Chapter and Shiprock Chapter, Navajo Nation (San Juan County, New Mexico)

Date posted: September 10, 2024 at 3:31PM

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0203-24

DATE: September 9, 2024

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, AND MAINTAINING ROADWAY AND TRAVEL LANES PROJECT LOCATED FROM ARIZONA STATE LINE POST 00 TO SHIPROCK, NM, LOCATED ON NAVAJO NATION TRUST LANDS IN GADII'AHU CHAPTER AND SHIPROCK CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: The purpose of this legislation is to approve a grant of right-of-way to New Mexico Department of Transportation to construct, operate, and maintain the roadway and travel lanes project located from Arizona state line mile post 00 to Shiprock, NM located on Navajo Nation Trust Lands in Gadii'ahi/To'koi Chapter and Shiprock Chapter, Navajo Nation (San Juan County, New Mexico). The legislation will waive the requirement for a bond, insurance or alternative form of security on the part of the Grantee, based on the determination that the project benefits the Navajo Nation and such a waiver is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.103 (f) (2). The legislation will also waive valuation and consideration for the right-of-way upon a determination that accepting the agreed-upon compensation and waiving valuation is in its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.

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.

5-DAY BILL HOLD PERIOD Al Mikeltz
Website Posting Time/Date _____
Posting End Date: 09/15/24
Eligible for Action: 09/16/24

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL—Second Year, 2024

3 INTRODUCED BY

4 
5
6

7 Primary Sponsor

8 TRACKING NO. 6203-24

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING
12 THE GRANT OF RIGHT-OF-WAY TO NEW MEXICO DEPARTMENT OF
13 TRANSPORTATION FOR THE PURPOSES OF CONSTRUCTING, OPERATING,
14 AND MAINTAINING ROADWAY AND TRAVEL LANES PROJECT LOCATED
15 FROM ARIZONA STATE LINE POST 00 TO SHIPROCK, NM, LOCATED ON
16 NAVAJO NATION TRUST LANDS IN GADII' AHI CHAPTER AND SHIPROCK
17 CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

18
19 BE IT ENACTED:

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21 **Section One. Authorities**

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

28
29 **Section Two. Findings**

- 1 A. The New Mexico Department of Transportation has submitted a right-of-way
2 application. The stated purpose of the request: “Transportation public use. Highway
3 US 64 easement. Right-of-way Parcels, Abandonment Parcels, Construction
4 Maintenance Easements and Temporary Construction Easements identified on CN
5 5101174-Ph3 ROW Parcel Table-BIA” located on Navajo Nation Trust Lands in
6 Gadii’ahi Chapter and Shiprock Chapter, Navajo Nation (San Juan County, New
7 Mexico).
- 8 B. The Terms and Conditions is attached as **Exhibit A**.
- 9 C. The proposed right-of-way map is attached as **Exhibit B**.
- 10 D. The application is attached as **Exhibit C**.
- 11 E. The land users have been identified and their consent forms are attached as **Exhibit**
12 **D**.
- 13 F. Shiprock Chapter Resolution No. 03-09-23-038-SHIP “Supports and Approves the
14 State of New Mexico, San Juan County, Federal, and Navajo Nation Department of
15 Transportation and Highway Safety entities to partnership to continue to seek grants
16 and funds for improvement and reconstruction of the N.M. Highway 64 West form
17 Shiprock to the New Mexico and Arizona Stateline.” Beclabito Chapter Resolution
18 No. BECL-24-03-29, “approves and supports staging lease as right of way for ingress
19 and egress from the site. The site is to express purpose of setting up a temporary
20 Construction yard site for use in road construction.” Gadii’ahi/To’koi Chapter
21 Resolution GAD/TOK FY 2024-036 “approves and supports the NMDOT US HWY
22 64 improvement Project CN 5101174 and to include road improvement,
23 maintenance, road rehabilitation and reconstruction of turning lanes off to N57 and
24 N571, within milepost 17 to 18.” Shiprock Chapter Resolution No. 03-09-23-038-
25 SHIP, Beclabito Chapter Resolution No. BECL-24-03-29, and Gadii’ahi/To’koi
26 Chapter Resolution GAD/TOK FY 2024-036 are attached as **Exhibit E**.
- 27 G. The Navajo Nation Department of Fish and Wildlife Biological Resources
28 Compliance Form is attached as **Exhibit F**.
- 29 H. The U.S. Department of Transportation, Federal Highway Administration
30 memorandum dated November 3, 2020 to Mr. Richard Begay, Navajo Nation

1 Heritage & Historic Preservation Department states “The NMDOT, on behalf of the
2 FHWA, has determined that with the avoidance, minimization, or mitigation
3 measures stated above, finds that the proposed undertaking, CN 5101170,
4 Reconstruction of US 64 Between Shiprock, NM and the Arizona border (MP 0 to
5 20), will have no adverse effect to historic properties. Your concurrence with our
6 findings of eligibility, effect and resolution of adverse effect is respectfully
7 requested.” The concurrence of Mr. Richard Begay, Navajo Nation Tribal Historic
8 Preservation Officer is dated 11/10/20. The November 3, 2020 memorandum is
9 attached as **Exhibit G**.

10 I. The United States Department of Interior in a memorandum dated June 14, 2022,
11 attached as **Exhibit H**, issued a FINDING OF NO SIGNIFICANT IMPACT,
12 ENVIRONMENTAL ASSESSMENT EA-21-080421-1 US 64 ALIGNMENT
13 STUDY: ARIZONA BORDER TO SHIPROCK, NEW MEXICO PROPOSED
14 ROAD IMPROVEMENT AND RIGHT-OF-WAY.

15 J. The New Mexico Department of Transportation, Environmental Assessment for the
16 US 64 Alignment Study: Arizona Border to Shiprock, New Mexico, dated January
17 27, 2022 with Appendices A, B, C, are attached as **Exhibit I**.

18 K. The New Mexico Department of Transportation requests a waiver of valuation and
19 waiver of bond, insurance or alternative forms of security compensation for the right-
20 of-way.

21 L. A waiver of consideration for this right-of-way is requested. The Terms and
22 Conditions document, **Exhibit A**, states that the term of the right-of-way shall be
23 for twenty (20) years and the consideration is assessed at \$163,099.60.

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

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

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

30 *(2) Waives valuation; and*

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

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

7 (c) If the conditions in paragraph (a) or (b) of this section are not met, we will require
8 that the grantee pay fair market value based on a valuation in accordance with §
9 169.114.

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

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

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

15 (2) The estimated damages resulting from the construction of any permanent
16 improvements;

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

19 (4) The operation and maintenance charges for any land located within an irrigation
20 project;

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

23 * * * *

24 (f) We may waive the requirement for a bond, insurance, or alternative form of
25 security:

26 * * * *

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

30

- 1 O. The New Mexico Department of Transportation requests that the right-of-way be for
2 the lifetime of U.S. highway 64 as the improvements are for transportation purposes
3 and are considered in the best interest of the tribal community.
- 4 P. 25 CFR § 169.110 addresses how long the duration of a grant of right-of-way may
5 be. It states:
6 *(a) All rights-of-way granted under this part are limited to the time periods stated*
7 *in the grant.*
8 *(b) For tribal land, we will defer to the tribe's determination that the right-of-way*
9 *term is reasonable.*
- 10 Q. The application for the Right-of-Way has been reviewed by the Fish and Wildlife;
11 Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division
12 of Natural Resources and the Department of Justice and “Approved” or found
13 “Sufficient.” Executive Official Review Document Number 022932, memorandum
14 dated August 13, 2024 from the Navajo Nation Environmental Protection Program
15 and a General Land Development Department Environmental Compliance
16 Determination are attached as **Exhibit J**.

17 **Section Three. Approval**

- 18 A. The Resources and Development Committee of the Navajo Nation Council hereby
19 approves the grant of right-of-way to New Mexico Department of Transportation
20 subject to, but not limited to, the terms and conditions attached as **Exhibit A**, to
21 construct, operate, and maintain the roadway and travel lanes project located from
22 Arizona state line mile post 00 to Shiprock, NM located on Navajo Nation Trust
23 Lands in Gadii’ahi/To’koi Chapter and Shiprock Chapter, Navajo Nation (San Juan
24 County, New Mexico), as described in maps attached as **Exhibit B**.
- 25 B. The Resources and Development Committee of the Navajo Nation Council hereby
26 waives the requirement for a bond, insurance or alternative form of security on the
27 part of the Grantee, based on the determination that constructing, operating, and
28 maintaining roadway and travel lanes along U.S. Highway 64 from Arizona state line
29 mile post 00 to Shiprock, New Mexico, benefits the Navajo Nation and such a waiver
30 is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.103 (f)
(2).

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- C. The Resources and Development Committee of the Navajo Nation Council hereby waives valuation and consideration for the right-of-way. It has determined that accepting the agreed-upon compensation and waiving valuation is in its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.
- D. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents to affect the intent and purpose of this resolution.