

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0204-24_

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to Resources and Development Committee; Approving the Grant of Temporary Construction Easement to New Mexico Department of Transportation for Roadway/Travel Lanes Located from Arizona Stateline 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 3:48PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0204-24

DATE: September 9, 2024

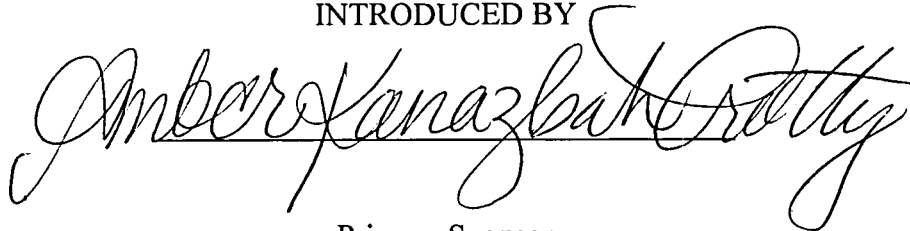
TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF TEMPORARY CONSTRUCTION EASEMENT TO NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR ROADWAY/TRAVEL LANES LOCATED FROM ARIZONA STATELINE MILEPOST 00 TO SHIPROCK, NEW MEXICO, LOCATED ON NAVAJO NATION TRUST LANDS IN GADII'AHÍ CHAPTER AND SHIPROCK CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: The purpose of this legislation is to approve a grant of temporary construction easement to New Mexico Department of Transportation to develop, use and occupy the TCE for the purpose(s) of a temporary construction, operation & maintenance easement (TCE) of roadway/travel lanes project located from AZ stateline MP 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.

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

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0204 24

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF TEMPORARY CONSTRUCTION EASEMENT TO NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR ROADWAY/TRAVEL LANES LOCATED FROM ARIZONA STATELINE MILEPOST 00 TO SHIPROCK, NEW MEXICO, LOCATED ON NAVAJO NATION TRUST LANDS IN GADII' AHI CHAPTER AND SHIPROCK 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 request for a
2 temporary construction easement on Navajo Nation Trust Lands in Gadii’ahi Chapter
3 and Shiprock Chapter, Navajo Nation (San Juan County, New Mexico).
- 4 B. The Terms and Conditions is attached as **Exhibit A** and state that the “Grantee may
5 develop, use and occupy the TCE for the purpose(s) of a temporary construction,
6 operation & maintenance easement (TCE) of roadway/travel lanes project located
7 from AZ stateline MP 00 to Shiprock, NM.”
- 8 C. The proposed temporary construction easement description and maps are attached as
9 **Exhibit B**.
- 10 D. The application is attached as **Exhibit C**.
- 11 E. The Navajo Nation Department of Justice through memorandum dated August 29,
12 2024 and the Utah Navajo Land Department have reviewed the land user consent
13 forms. The Navajo Nation Department of Justice memorandum and the land user
14 consent forms are attached as **Exhibit D**.
- 15 F. Shiprock Chapter Resolution No. 03-09-23-038-SHIP “Supports and Approves the
16 State of New Mexico, San Juan County, Federal, and Navajo Nation Department of
17 Transportation and Highway Safety entities to partnership to continue to seek grants
18 and funds for improvement and reconstruction of the N.M. Highway 64 West form
19 Shiprock to the New Mexico and Arizona Stateline.” Beclabito Chapter Resolution
20 No. BECL-24-03-29, “approves and supports staging lease as right of way for ingress
21 and egress from the site. The site is to express purpose of setting up a temporary
22 Construction yard site for use in road construction.” Gadii’ahi/To’koi Chapter
23 Resolution GAD/TOK FY 2024-036 “approves and supports the NMDOT US HWY
24 64 improvement Project CN 5101174 and to include road improvement,
25 maintenance, road rehabilitation and reconstruction of turning lanes off to N57 and
26 N571, within milepost 17 to 18.” Shiprock Chapter Resolution No. 03-09-23-038-
27 SHIP, Beclabito Chapter Resolution No. BECL-24-03-29, and Gadii’ahi/To’koi
28 Chapter Resolution GAD/TOK FY 2024-036 are attached as **Exhibit E**.
- 29 G. The Navajo Nation Department of Fish and Wildlife Biological Resources
30 Compliance Form is attached as **Exhibit F**.

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

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

17 J. The New Mexico Department of Transportation, Environmental Assessment for the
18 US 64 Alignment Study: Arizona Border to Shiprock, New Mexico, dated January
19 27, 2022 with Appendices A, B, C, are attached as **Exhibit I**.

20 K. The New Mexico Department of Transportation requests that the grant of easement
21 be for the lifetime of US highway 64. The Navajo Nation Resources and
22 Development Committee has determined that the grant of easement shall be for five
23 (5) years.

24 L. The New Mexico Department of Transportation requests a waiver of valuation and
25 waiver of bond, insurance or alternative forms of security compensation for the
26 temporary construction easement.

27 M. A waiver of consideration for this temporary construction easement is requested.
28 The Terms and Conditions document, **Exhibit A**, states that the term of the
29 temporary construction easement shall be for five (5) years and the consideration is
30 assessed at \$22,286.55.

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

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

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

7 *(2) Waives valuation; and*

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

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

14 *(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require*
15 *that the grantee pay fair market value based on a valuation in accordance with §*
16 *169.114.*

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

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

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

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

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

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

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

30 * * * *

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

3 * * * *

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

7 P. The application for the temporary construction easement has been reviewed by the
8 Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental
9 Protection; Division of Natural Resources and the Department of Justice and
10 “Approved” or found “Sufficient.” Executive Official Review Document Number
11 023173 and memorandum dated August 13, 2024 from the Navajo Nation
12 Environmental Protection Program are attached as **Exhibit J**.

13
14 **Section Three. Approval**

15 A. The Resources and Development Committee of the Navajo Nation Council hereby
16 approves the grant of temporary construction easement to New Mexico Department
17 of Transportation subject to, but not limited to, the terms and conditions attached as
18 **Exhibit A**, to construct, operate, and maintain the roadway and travel lanes project
19 located from Arizona state line mile post 00 to Shiprock, NM located on Navajo
20 Nation Trust Lands in Gadii’ahi/To’koi Chapter and Shiprock Chapter, Navajo
21 Nation (San Juan County, New Mexico), as described in maps attached as **Exhibit**
22 **B**.

23 B. The Resources and Development Committee of the Navajo Nation Council hereby
24 waives the requirement for a bond, insurance or alternative form of security on the
25 part of the Grantee, based on the determination that constructing, operating,
26 upgrading and maintaining roadway and travel lanes along U.S. Highway 64, benefits
27 the Navajo Nation and such a waiver is in the best interest of the Navajo Nation,
28 pursuant to Title 25 CFR § 169.103 (f) (2).

29 C. The Resources and Development Committee of the Navajo Nation Council hereby
30 waives valuation and consideration for the temporary construction easement. It has

1 determined that accepting the agreed-upon compensation and waiving valuation is in
2 its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.

3 D. The Resources and Development Committee of the Navajo Nation Council hereby
4 authorizes the President of the Navajo Nation to execute any and all documents to
5 affect the intent and purpose of this resolution.
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