

LEGISLATIVE SUMMARY SHEET

Tracking No. 0112-20

DATE: April 24, 2020

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY; WAIVING 13 N.N.C. §§ 1901-1903 (BURIAL STATUTE), 13 N.N.C. §§ 1951-1953 (CEMETERIES), 16 N.N.C. §§ 2251-2253 (NAVAJO NATION CIVIL TRESPASS ACT), 16 N.N.C. §§ 2301 *ET SEQ.* (NAVAJO NATION GENERAL LEASING REGULATIONS) AS RELATES TO OBTAINING A LEASE FOR FAMILY BURIAL PLOTS, GUIDANCE ON BURIALS, COMMUNITY CEMETERIES, FAMILY PLOT BURIALS AND RELATED SERVICES SECTION (G), RDCJN-33-15, THE NAVAJO LAND DEPARTMENT'S LAND WITHDRAWAL DESIGNATION REGULATIONS, AND, RDCO-74-16, AND HOMESITE LEASE REGULATIONS SECTION 17.08 (J) TO ALLOW FAMILY MEMBERS TO BURY THEIR LOVED ONES IN FAMILY BURIAL PLOTS DURING THIS STATE OF EMERGENCY DUE TO THE COVID-19 VIRUS; WAIVERS TO BE FOR A LIMITED TIME; AND COMPENSATION AND DUE PROCESS PURSUANT TO 16 N.N.C. §§ 1401 *ET SEQ.* SHALL BE AFFORDED TO LAND USERS WHO HAVE NOT CONSENTED TO THE USE OF THEIR LAND FOR FAMILY BURIAL PLOTS

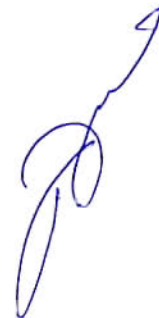
PURPOSE: The purpose of this legislation is to approve the waiver of 13 N.N.C. §§ 1901-1903 (Burial Statute); 13 N.N.C. §§ 1951-1953 (Cemeteries); 16 N.N.C. §§ 2251-2253 (Navajo Nation Civil Trespass Act); Guidance on Burials, Community Cemeteries, Family Plot Burials and Related Services Section (G); RDCJN-33-15, the Navajo Land Department's Land Withdrawal Designation Regulations; RDCO-74-16, Homesite Lease Regulations Section 17.08 (J); and the Navajo Nation General Leasing Regulations as relates to obtaining a lease for family burial plots so that family members may bury their loved ones in family burial plots during this Declared State of Emergency. This legislation will also authorizes the use of 16 N.N.C. §§ 1400 *et seq.* to afford land users who have not given their consent for the use of land for family burial plots just compensation and due process.

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 NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

(Prime Sponsor)



TRACKING NO. 0112-20

AN ACTION

RELATING TO AN EMERGENCY; WAIVING 13 N.N.C. §§ 1901-1903 (BURIAL STATUTE), 13 N.N.C. §§ 1951-1953 (CEMETERIES), 16 N.N.C. §§ 2251-2253 (NAVAJO NATION CIVIL TRESPASS ACT), 16 N.N.C. §§ 2301 *ET SEQ.* (NAVAJO NATION GENERAL LEASING REGULATIONS) AS RELATES TO OBTAINING A LEASE FOR FAMILY BURIAL PLOTS, GUIDANCE ON BURIALS, COMMUNITY CEMETERIES, FAMILY PLOT BURIALS AND RELATED SERVICES SECTION (G), RDCJN-33-15, THE NAVAJO LAND DEPARTMENT’S LAND WITHDRAWAL DESIGNATION REGULATIONS, AND, RDCCO-74-16, AND HOMESITE LEASE REGULATIONS SECTION 17.08 (J) TO ALLOW FAMILY MEMBERS TO BURY THEIR LOVED ONES IN FAMILY BURIAL PLOTS DURING THIS STATE OF EMERGENCY DUE TO THE COVID-19 VIRUS; WAIVERS TO BE FOR A LIMITED TIME; AND COMPENSATION AND DUE PROCESS PURSUANT TO 16 N.N.C §§ 1401 *ET SEQ.* SHALL BE AFFORDED TO LAND USERS WHO HAVE NOT CONSENTED TO THE USE OF THEIR LAND FOR FAMILY BURIAL PLOTS

BE IT ENACTED:

Section One. Authority

- 1 A. The Navajo Nation Council is the governing of body of the Navajo Nation. 2
2 N.N.C. § 102(A).
3 B. Pursuant to 2 N.N.C. §164 (A)(16) “[m]atters constituting an emergency shall be
4 limited to the cessation of law enforcement services, and disaster relief services,
5 fire protection services or other direct services required as an entitlement under
6 Navajo Nation or Federal law, or which directly threaten the sovereignty of the
7 Navajo Nation. Such an emergency matter must arise due to the pressing public
8 need for such resolution(s) and must be a matter requiring final action by the
9 Council.”

10 **Section Two. Findings**

- 11 A. The Navajo Nation President issued Executive Order 001-20 declaring a state of
12 emergency due to COVID-19 on March 13, 2020.
13 B. On March 11, 2020, the Emergency Management Commission declared a state of
14 emergency due to COVID-19. CEM-20-03-11.
15 C. As of April 23, 2020, the COVID-19 disease has claimed 52 lives on the Navajo
16 Nation. Navajo Department of Health, April 23, 2020.
17 D. Not all Navajo Nation families who wish to bury their loved ones at a home burial
18 plot have had the time to comply with 13 N.N.C. §§ 1901-1903 (Burial Statute);
19 13 N.N.C. §§ 1951-1953 (Cemeteries); 16 N.N.C. §§ 2251-2253 (Navajo Nation
20 Civil Trespass Act); 16 N.N.C. §§ 2301 *et seq.* (Navajo Nation General Leasing
21 Regulations) as relates to obtaining a lease for family burial plots; Guidance on
22 Burials, Community Cemeteries, Family Plot Burials and Related Services
23 Section (G), attached as **Exhibit A**; the RDCJN-33-15, Navajo Land
24 Department’s Land Withdrawal Designation Regulations, attached as **Exhibit B**;
25 and, RDCO-74-16, the Homesite Lease Regulations Section 17.08 (Homesite
26 Lease Residential Use Restriction) (J).
27 E. In this Declared State of Emergency due to the COVID-19 disease, there is a need
28 to waive the requirements of 13 N.N.C. §§ 1901-1903 (Burial Statute); 13 N.N.C.
29 §§ 1951-1953 (Cemeteries); 16 N.N.C. §§ 2251-2253 (Navajo Nation Civil
30 Trespass Act); 16 N.N.C. §§ 2251-2253 (Navajo Nation Civil Trespass Act); 16

1 N.N.C. §§ 2301 *et seq.* (Navajo Nation General Leasing Regulations) as relates
2 to obtaining a lease for family burial plots; Guidance on Burials, Community
3 Cemeteries, Family Plot Burials and Related Services Section (G); RDCJN-33-15,
4 the Navajo Land Department's Land Withdrawal Designation Regulations; and
5 RDCO-74-16, Homesite Lease Regulations Section 17.08 (J).

6 F. "The Navajo Tribe has the power to take or authorize the taking of property
7 without the consent of the owners of the property or of any interest therein,
8 provided that the owners are given due process of law and just compensation.
9 *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95 (Nav. Sup. Ct. 1974).

10 G. Because of the waivers of the above Navajo Nation laws and regulations, land
11 users who have not given their consent for the use of land for family burial plots
12 shall be afforded just compensation and due process pursuant to 16 N.N.C. § 1401
13 *et seq.* (Compensation for Improvements and Customary Use Rights Upon
14 Adverse Disposition of Land).

15
16 **Section Three. Approving waivers of 13 N.N.C. §§ 1901-1903 (Burial Statute);**
17 **13 N.N.C. §§ 1951-1953 (Cemeteries); 16 N.N.C. §§ 2251-2253 (Navajo Nation**
18 **Civil Trespass Act); 16 N.N.C. §§ 2301 *et seq.* (Navajo Nation General Leasing**
19 **Regulations) as relates to obtaining a lease for family burial plots; Guidance on**
20 **Burials, Community Cemeteries, Family Plot Burials and Related Services**
21 **Section (G); the RDCJN-33-15, Navajo Land Department's Land Withdrawal**
22 **Designation Regulations; RDCO-74-16, and Homesite Lease Regulations Section**
23 **17.08 (J)**

24
25 The Navajo Nation approves the waiver of 13 N.N.C. §§ 1901-1903 (Burial
26 Statute); 13 N.N.C. §§ 1951-1953 (Cemeteries); 16 N.N.C. §§ 2251-2253 (Navajo
27 Nation Civil Trespass Act); 16 N.N.C. §§ 2301 *et seq.* (Navajo Nation General
28 Leasing Regulations) as relates to obtaining a lease for family burial plots;
29 Guidance on Burials, Community Cemeteries, Family Plot Burials and Related
30 Services Section (G); RDCJN-33-15, the Navajo Land Department's Land

1 Withdrawal Designation Regulations; RDCO-74-16, and Homesite Lease
2 Regulations Section 17.08 (J) so that family members may bury their loved ones
3 in family burial plots during this Declared State of Emergency.
4

5 **Section Four. 16 N.N.C. §§ 1400 *et seq.* Compensation for Improvements and**
6 **Customary Use Rights Upon Adverse Disposition of Land**

7 The Navajo Nation hereby authorizes the use of 16 N.N.C. §§ 1400 *et seq.* to
8 afford land users who have not given their consent for the use of land for family
9 burial plots just compensation and due process.
10

11 **Section Five. Effective Date**

- 12 A. The provisions of this Action shall become effective pursuant to 2 N.N.C. §
13 221 (B).
14 B. The provisions of this Action shall expire sixty (60) days after its effective
15 date, unless otherwise determined by resolution of the Navajo Nation Council.
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30



April 16, 2020

Guidance on Burials, Community Cemeteries, Family Plot Burials and Related Services

EMERGENCY NAVAJO NATION CHAPTER PLAN

Public Health State of Emergency for the entire Navajo Nation: Commission on Emergency Management, President Jonathan Nez, and Vice-President Myron Lizer – CEM-20-03-11.

Public Health Emergency Orders: Navajo Department of Health, Navajo Office of Environmental Health & Protection Program – Public Health Emergency Order Nos. 2020-001, 2020-003, 2020-004.

Navajo Nation Laws, Regulations, and Policies: Burials, 13 N.N.C. §1901-§1906. Cemeteries, 13 N.N.C. §1951-§1953; Navajo Nation Council Resources and Development Committee Resolution No. RDCO-74-16; Navajo Nation Council Advisory Council Resolution No. ACMA-39-86.

Centers for Disease Control (CDC) Guidelines and Guidance for Tribal Communities on Burial Services at <https://www.cdc.gov/coronavirus/2019-ncov/community/tribal/faq-burial-practice.html>

I. Guidance to the Grieving Family

To the extent that Chapters administer community cemeteries, the following is a guide for Chapters and their membership to follow during the Covid-19 pandemic.

- A. Chapters are currently closed to the public but may be providing essential governmental services. Requests for chapter services shall be made to the Chapter's email address. Please visit the Chapter website to obtain the Chapter's email address. Even if you are able to contact a Chapter Official or Chapter employee by phone or any other means, the request for services shall be followed-up through the official Chapter email address.
- B. It is highly recommended, to perform all funeral planning over the phone, instead of in-person. The Navajo Nation has requested local funeral homes to plan event details by phone. Such funeral homes can email their price lists and packages, as well as any paperwork that needs to be signed (see list of approved Mortuaries).
- C. No more than ten (10) individuals may attend funeral services. Any concerns should be reported to HCOC/Safety Operations at (928) 871-7889.
- D. Family members shall instruct certain family members to stay at home:
 - 1. At-Risk members such as: a) individuals over the age of 65; b) those who have chronic lung disease or moderate to severe asthma; c) anyone with a serious heart conditions; d) those who are immunocompromised; e) those who are obese with a body mass index of 40 or higher; f) diabetics individuals; g) chronic kidney disease undergoing dialysis; and h) those with liver disease.

2. Members who are displaying any symptoms of Covid-19 should not attend any of the funeral services. Symptoms include fever, cough, or shortness of breath.

E. Personal Protective Equipment and Social Distancing is Required.

1. PPE: Whether services are indoors or outdoors, all attendees must wear a mask even if all attendees are healthy and not displaying any symptoms. Families shall help clean and disinfect any facilities used. Soap and water and/or hand sanitizer with at least 60% alcohol should be used.
2. Social Distancing: All attendees must maintain social distancing by staying at least six (6) feet apart from the next person.

F. The Navajo Nation highly recommends that families schedule in-person memorial services and celebrations of life ceremonies at a later date.

G. Family Burial Plots:

1. All "family plots" shall follow the Land Withdrawal Designation Regulations by applying for a lease of any burial plot on Navajo Nation Trust Lands. Further information can be provided by the Navajo Land Department at <http://dinehbikeyah.org/>.
2. Failure to obtain an approved lease will subject organizers, including the Funeral Home Directors, to be subject to civil trespass penalties under 16 N.N.C. §2253 and 2254.
3. Approved burial plots shall be at least nine (09) feet long by four (04) feet wide for adults and at least six (06) feet long by three (03) feet wide for children.
3. A passageway of three (03) feet between the next site shall be made for pedestrian travel.
4. Graves sites shall be clearly and permanently marked.

H. For Loved Ones Lost Due To Covid-19

The Navajo Nation COVID-19 Burial Assistance was designed to help Navajo families with financial assistance for family members lost as a result of Covid-19. This fund is from the Navajo Nation General Funds and there are no income requirements. This fund is administered by the Navajo Nation Division of Social Services (NNDSS) and more details can be obtained from the Navajo Family Assistance Services at (866) 347-2403. However, the following information is being provided as part of the guidance provided herein.

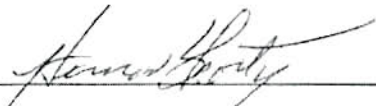
1. Decedent must be a member of the Navajo Nation with an enrolled census number.
2. Decedent must have expired from COVID-19 verified by an appropriate authority (i.e., Criminal Investigator, Coroner's Office).
3. A family member of the Decedent will contact one of the Mortuaries listed below and request for one of the following Navajo Nation Covid-19 Burial Assistance:
 - a. Standard Burial Package which includes a casket and services;

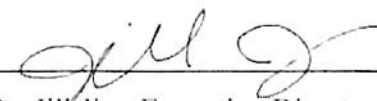
- b. Native Traditional Burial which basically means no casket; or
 - c. Cremation.
4. The Mortuary will submit documents directly to the NNDSS Navajo Family Assistance Services.
5. List of approved Mortuaries:
- a. Alameda Mortuary, Albuquerque, NM (505) 898-3160
 - b. Compassion Mortuary, Grants, NM (866) 292-0086
 - c. Cope Memorial Chapel Gallup, Gallup, NM (505) 722-6671
 - d. Cope Memorial Chapel Kirtland, Kirtland, NM (505) 598-9636
 - e. Daniel's Family Funeral Services, Socorro, NM (575) 835-1530
 - f. Desert View Funeral Home, Shiprock, NM (505) 368-4607
 - g. Rollie Mortuary, Gallup, NM (505) 863-4452
 - h. Silver Creek Mortuary, Gallup, NM (505) 371-3690
 - i. Tse Bonito Mortuary, Tse Bonito, NM (505) 371-5565
 - j. Summit Funeral Home, Saint Michaels, AZ (928) 871-1120
 - k. Valley Ridge Mortuary, Tuba City, AZ (928) 640-7677
6. Other important information;
- a. People should consider not touching the body of someone who has died of COVID-19. There may be less of a chance of the virus spreading from certain types of touching, such as holding the hand or hugging after the body has been prepared for viewing. Other activities, such as kissing, washing, and shrouding should be avoided.

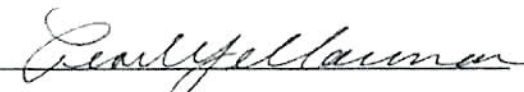
II. Guidance to Chapters

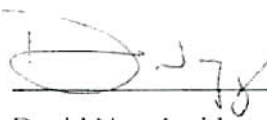
- A. Chapter buildings shall remain closed to the public. If Chapters are unable to provide limited non-contact services, it is recommended that Chapters utilize their Emergency Implementation Plans for safety precautions and CDC guidelines.
- B. If Chapters are able to provide limited contactless services, requests for services received by personal cell phone, personal email, and/or other means, the Chapter Official/Employee shall instruct the community member to follow-up their request through the official Chapter email. This will ensure proper documentation of services.
- C. Burial fees should be waived during this pandemic.
- D. Chapters shall report any violations to the Safety Section of the Health Command Operation Center.
- E. Burial Site Excavation & Backfill Policy
 - 1. Chapter provided excavation and backfill services by Public Employment Program (PEP) employees shall be obtain proper training and receive approval from the Division of Community Development before providing services.

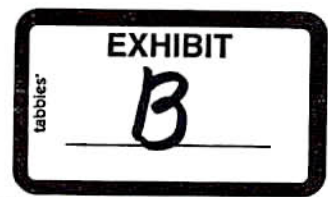
2. All approved PEP heavy equipment operators (Operator) are to check-in at the Chapter house before assisting with the essential service, for accountability purposes. No self-deployment shall be allowable.
3. Operator must wear proper Personal Protective Equipment (PPE) such as masks and non-latex/nitrile gloves before leaving the Chapter compound to the burial site. PPE shall be provided by the Chapter or the Division of Community Development. If PPE is unavailable, services should not be provided.
4. Disinfect the transportation vehicle and heavy equipment (steering wheel, door knobs, grab bars, other knobs and controls) before and after use. Disinfectant supplies will be provided by the Chapter or the Division of Community Development. If such supplies are unavailable, services should not be provided.
5. Operator to complete excavation before burial site service begins.
6. After excavation is complete, park heavy equipment a safe distance away from burial site and remain in the heavy equipment cabin. If no cabin, Operator must stay in the transportation vehicle.
7. When the burial service is complete, Operator may begin the backfill.
8. Operator shall exercise social distancing requirements of six (6) feet between any person at all times.
9. Upon return of the heavy equipment, Operator will inform the Chapter via the Chapter email. To the extent feasible, the Operator will perform check-out with the designated Chapter Official, Chapter Manager, or Community Service Coordinator.


Herman Shorty, Program Supervisor III
Navajo Office of Environmental Health &
Protection Program
Navajo Department of Health


Dr. Jill Jim, Executive Director
Navajo Department of Health


Dr. Pearl Yellowman, Executive Director
Division of Community Development


David Nez, Incident Manager
Dikos Nstaaigii-19
Health Command Center
Navajo Department of Health



RDCJN-33-15

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
OF THE 23RD NAVAJO NATION COUNCIL --- FIRST YEAR, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; DELEGATING AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE LAND WITHDRAWALS ON THE NAVAJO NATION; AND APPROVING THE ADMINISTRATIVE RULES AND REGULATIONS FOR LAND WITHDRAWALS

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 2 N.N.C. §502(B)(2), the Resources and Development Committee is authorized to give final approval of all land withdrawals; and
- B. Pursuant to 2 N.N.C. §501(B)(3), the Resources and Development Committee is authorized to delegate its powers to appropriate divisions of the Navajo Nation for efficiency and streamlining of government processes provided the Committee first grants final approval of rules and regulations governing such delegations and rescission of such delegations; and
- C. The current system of processing land withdrawals is confusing, time consuming, and inconsistent. It has resulted in delay and loss of development on the Navajo Nation; and
- D. Therefore, there is a need to delegate the authority to approve land withdrawals to the Director of the Navajo Land Department to streamline the land withdrawal process; and
- E. The process of reviewing documents associated with land withdrawals is an administrative task that can be performed by the Director of the Navajo Land Department; and
- F. The Resources and Development Committee finds it is in the best interest of the Navajo Nation to approve the delegation of authority.

Section Two. Delegation to the Director of the Navajo Land Department to Process Land Withdrawals and Approval of the Administrative Rules and Regulations for Land Withdrawals

- A. The Resources Committee of the Navajo Nation Council hereby approves the delegation of authority to the director of the Navajo Land Department, Division of Natural Resources, to approve Land Withdrawals on the Navajo Nation.

- B. The Navajo Nation hereby approves the Administrative Rules and Regulations, attached hereto as Exhibit "A".

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 0 abstain this 16th day of June, 2015.



Benjamin Bennett, Vice-Chairperson
Resources and Development Committee

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete
Vote : 3-0 (Vice Chair not voting)



LAND WITHDRAWAL DESIGNATION REGULATIONS

§ 1. Purpose.

The purpose of these Regulations is to clarify and expedite the Land Withdrawal Designation process on the Navajo Nation, and explains that a Land Withdrawal Designation does not authorize development or disturbance on Navajo Nation land. This Land Withdrawal Designation process does not apply to how to get a lease. Prior to any development on the land, a lease must be obtained in addition to the withdrawal. The purpose of a Land Withdrawal Designation is to designate an area of land for future development by,

- a. Ensuring that the rights of grazing permittees, who are in compliance with their grazing permits, are properly addressed as applicable and as required under 16 N.N.C. §§ 1401 *et seq.* and to prevent any subsequent claims to the land; and
- b. Ensuring that the affected Chapter supports the Land Withdrawal Designation and use of the land.

§ 2. Scope.

These regulations apply to all Land Withdrawal Designations on the Navajo Nation.

§ 3. Delegation

- a. The Resources and Development Committee hereby delegates to the Director of the Navajo Land Department the power and authority to give final approval of all Land Withdrawal Designations on the Navajo Nation. The Director may sub-delegate this authority to a person under the Director's supervision, but this delegation of authority shall not be re-delegated to any other Department or Division within the Nation without the consent and approval of the Resources and Development Committee of the Navajo Nation Council.
- b. Resources and Development Committee hereby delegates authority to the Navajo Land Department to administer and manage Land Withdrawal Designations on the Navajo Nation, with the express power to adopt rules to further implement these regulations.

§ 4. Definitions.

- a. **Community Development:** Community Development encompasses infrastructure, economic development projects, installation of public facilities, community centers, housing, public services, businesses, schools, hospitals, government offices, and other similar projects.
- b. **Designation Holder:** Any person or entity who has obtained a Land Withdrawal Designation.
- c. **Industrial Development:** Economic activity concerned with the manufacture, and processing of materials or construction.
- d. **Land Withdrawal Designation:** A formal action used to designate and reserve a parcel of land for:
 - i. Community Development
 - ii. Industrial Development
- e. **The Navajo Nation Business Site Leasing Regulations of 2005 (Business Site Leasing Regulations):** Navajo Nation regulations that make business site leases mandatory for all businesses operating on the Navajo Nation.
- f. **The Navajo Nation General Leasing Regulations of 2013 (General Leasing Regulations):** Navajo Nation regulations that apply to all leases and permits for the use or possession of Navajo Nation trust land, with the exception of business and mineral leases.
- g. **The Navajo Nation Government:** The Navajo Nation Government is comprised of the legislative, executive, and judicial branches, as well as political subdivisions. For the purpose of land use, ownership, and these regulations, enterprises, businesses, housing authorities, or other entities created or owned by the Navajo Nation are not entities of the Navajo Nation Government.
- h. **The Navajo Nation Trust Land Leasing Act of 2000 (Navajo Leasing Act, 25 U.S.C. §415(e)):** A federal law that regulates the leasing of Navajo Nation lands. It allows the Nation to lease certain lands without Secretarial approval.
- i. **Resolution of Support:** A Resolution of Support is a resolution passed by an affected Chapter stating that they are in support of a particular entity or business locating within their chapter on withdrawn land.

§ 5. Use and Occupation of Navajo Nation Land.

A Land Withdrawal Designation does not authorize an entity outside the Navajo Nation Government to use, occupy, or disturb Navajo Nation land. The Navajo Leasing Act, Business Site Leasing Regulations, and General Leasing Regulations apply to all land use on the Navajo Nation. A lease is always required if the land is being developed by any entity outside the Navajo Nation Government.

§ 6. Land Withdrawal Designations for Navajo Nation Government.

The Navajo Leasing Act, Business Site Leasing Regulations, and General Leasing Regulations do not apply to the Navajo Nation Government. The Navajo Nation Government may develop on land designated by a Land Withdrawal Designation without a lease for government purposes only.

§ 7. Procedure to Acquire a Land Withdrawal.

- a. Every individual, chapter, or entity desiring a Land Withdrawal Designation on the Navajo Nation shall submit an Application for Land Withdrawal to the Navajo Land Department (NLD). The Application shall be accompanied by the following supporting documents:
 - i. A letter of application or cover letter;
 - ii. A proposal for the planned use of the land; and
 - iii. A legal survey or GPS land description indicating the location.
- b. An entity requesting a Land Withdrawal Designation shall then submit their proposal to the Chapter to obtain a Resolution of Support.
 - i. All Chapter Resolutions should contain standard language approving a Land Withdrawal for either community development or industrial development.
 - ii. Resolutions of Support for community development Land Withdrawal Designations shall contain the following language: "The _____ Chapter hereby supports and recognizes this land withdrawal for community development, which may include, but is not limited to, the following purposes: housing, education, economic development, healthcare facilities, public use, or governmental use. Industrial development is not supported for this area." To change the use, Chapter approval must be obtained.

- iii. Resolutions of Support for industrial development Land Withdrawal Designations shall contain the following language: "The _____ Chapter hereby supports and recognizes this Land Withdrawal Designation for the sole purpose of industrial development. Industrial development shall be considered the economic activity concerned with the manufacture, and processing of materials or construction." To change the use, Chapter approval must be obtained.
 - iv. Once the Chapter Resolution of Support is passed by the affected Chapter, return the signed Resolution of Support to the NLD.
- c. The NLD will acquire the necessary consent from all grazing permittees holding a valid grazing permit with an interest in the land as applicable and required under 16 N.N.C. sections 1402 *et seq.* Consent will include infrastructure that supports the development and no additional consents are necessary.
- d. In the event the grazing permittees will not consent, but the proposed project is in the best interest of the community and the Navajo Nation, the appropriate authorities may undertake eminent domain as allowed pursuant to 16 N.N.C. §§ 1401-1403.
- e. Approval from NLD.
- i. If all requirements are met, the NLD will approve the Land Withdrawal Designation. NLD will subsequently record the Land Withdrawal Designation on the Navajo land title recording system.
 - ii. The NLD will not approve and record a Land Withdrawal Designation until all required documents are provided for review.
- f. If the Designation Holder is not the Navajo Nation Government, they must then begin the leasing process pursuant to The Navajo Leasing Act, Business Site Leasing Regulations, or General Leasing Regulations prior to any development, disturbance, use, or occupation of the land.

§ 8. Change in purpose.

- a. If the Designation Holder changes the purpose of the Land Withdrawal Designation, they must go back to the affected Chapter to obtain a new Resolution of Support.
- b. If a Chapter, as Designation Holder, wishes to permit an outside entity use of a portion of or the entire Land Withdrawal Designation, the Chapter must relinquish

the Land Withdrawal Designation and the outside entity must apply for their own Land Withdrawal Designation in their name for their specific purpose.

§ 9. **Duration and Renewal.**

- a. All Land Withdrawals shall be issued for a term of no more than five (5) years, with the possibility of extension of the term every five years thereafter, so long as the Designation Holder is not in violation of any provision set forth in these Regulations. The term shall be determined by NLD on a case-by-case basis.
- b. If the Designation Holder wishes to extend the Land Withdrawal Designation, the Designation Holder shall give written notice to NLD ninety (90) days prior to expiration of the original term. Renewal of the Land Withdrawal Designation will be at the sole discretion of NLD.
- c. A Land Withdrawal Designation will be terminated if any provision set forth in these Regulations is violated by a Designation Holder.
- d. A Land Withdrawal will be removed from the Navajo Nation land title recording system and open to other applicants for Land Withdrawal Designation or other land use at the expiration of the term or if the Land Withdrawal Designation is terminated for any reason. In the case of a Land Withdrawal Designation for a portion of a pre-existing Chapter land withdrawal, the area will revert back to the Chapter withdrawal status prior to the Land Withdrawal Designation application.

§ 10. **Environmental Review Process.**

- a. No environmental review is required for Land Withdrawal Designations issued to the non-Navajo Nation Government entities; however, when the entity obtains a lease, the General Leasing Regulations require environmental review.
- b. Since the Navajo Nation Government is not required to obtain a lease prior to development on the land, when the Navajo Nation Government obtains a Land Withdrawal Designation for Navajo Nation Governmental use, an environmental review must be completed.
- c. In the event that a Land Withdrawal Designation was done by the Navajo Nation Government, but the Navajo Nation Government relinquished the Land Withdrawal Designation for use by another non-Navajo Nation Governmental entity, the new Designation Holder must still undergo environmental review when a lease is obtained. Each program conducting an environmental review will determine if the use is

consistent with the former environmental review and will determine whether further analysis needs to be conducted.

§ 11. Oversight and Enforcement.

- a. Every department within the Navajo Nation Government that is responsible for such oversight shall work to ensure that all Land Withdrawal Designations are in compliance with these Regulations and other applicable Navajo Nation law.
- b. The Navajo Nation shall have the authority to enforce the provisions set forth in these Regulations in accordance with applicable Navajo Nation and federal law.

§ 12. Penalties.

- a. If a Designation Holder develops or otherwise disturbs the land without first having a valid lease, the Designation Holder is subject to trespass, and a penalty will be assessed by the NLD. 16 N.N.C. §§ 2251 and 2252.

§ 13. Transfer of Land Withdrawal Designations.

The NLD will approve transfers of Land Withdrawal Designations if the following conditions are met:

- a. Consent from the original Designation Holder has been acquired.
- b. The original Designation Holder or the transferee are not in violation of the Land Withdrawal Designation;
- c. No development or disturbance has taken place on the land in question;
- d. The purpose of the new Designation Holder is in accordance with the Resolution of Support, or a new Resolution of Support has been obtained;
- e. The transferee agrees to be bound by the terms of the Land Withdrawal Designation; and
- f. The NLD finds no compelling reason to withhold approval.

§ 14. Review and Amendments.

The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Regulations may be amended or rescinded by the Resources and Development Committee of the Navajo Nation Council.

6/16/2015 (3)

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

FIRST YEAR 2015

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0192-15: Proposed Standing Committee Resolution: An Action Relating to Resources and Development, Delegating Authority to the Director of the Navajo Land Department to Approve Land Withdrawals on the Navajo Nation; and Approving the Administrative Rules and Regulations for Land Withdrawals. *Sponsor: Alton Joe Shepherd*

Has had it under consideration and report the same with a **DO PASS** with one amendment:

Delete current Exhibit "A" attached to legislation and replace with new Exhibit "A".

and thereafter approved the legislation.

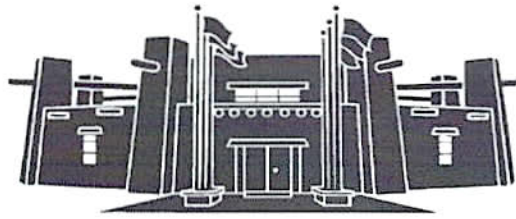
Respectfully submitted,



Benjamin Bennett, Vice-Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

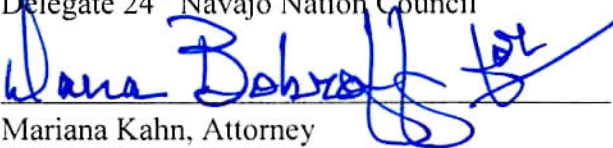
Date : June 16, 2015
Motion: Davis Filfred
Second: Leonard Pete
Vote : 3-0 (Chair Not Voting)

AMENDMENT # 1:
Motion: Davis Filfred
Second: Leonard Pete
Vote: 3-0 (Chair Not Voting)



MEMORANDUM

TO: Honorable Amber Crotty
Delegate 24th Navajo Nation Council

FROM: 
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: April 24, 2020

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY; WAIVING 13 N.N.C. §§ 1901-1903 (BURIAL STATUTE), 13 N.N.C. §§ 1951-1953 (CEMETERIES), 16 N.N.C. §§ 2251-2253 (NAVAJO NATION CIVIL TRESPASS ACT), 16 N.N.C. §§ 2301 *ET SEQ.* (NAVAJO NATION GENERAL LEASING REGULATIONS) AS RELATES TO OBTAINING A LEASE FOR FAMILY BURIAL PLOTS, GUIDANCE ON BURIALS, COMMUNITY CEMETERIES, FAMILY PLOT BURIALS AND RELATED SERVICES SECTION (G), RDCJN-33-15, THE NAVAJO LAND DEPARTMENT'S LAND WITHDRAWAL DESIGNATION REGULATIONS, AND, RDCO-74-16, AND HOMESITE LEASE REGULATIONS SECTION 17.08 (J) TO ALLOW FAMILY MEMBERS TO BURY THEIR LOVED ONES IN FAMILY BURIAL PLOTS DURING THIS STATE OF EMERGENCY DUE TO THE COVID-19 VIRUS; WAIVERS TO BE FOR A LIMITED TIME; AND COMPENSATION AND DUE PROCESS PURSUANT TO 16 N.N.C §§ 1401 *ET SEQ.* SHALL BE AFFORDED TO LAND USERS WHO HAVE NOT CONSENTED TO THE USE OF THEIR LAND FOR FAMILY BURIAL PLOTS

I have prepared the above-referenced proposed pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, “the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration.” 2 N.N.C. §164(A)(5).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0112-20

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to an Emergency; Waiving 13 N.N.C. §§ 1901-1903 (Burial Statute), 13 N.N.C. §§ 1951-1953 (Cemeteries), 16 N.N.C. §§ 2251-2253 (Navajo Nation Civil Trespass Act), 16. N.N.C. §§ 2301 et seq. (Navajo Nation General Leasing Regulations) as relates to obtaining a lease for family burial plots, guidance on burials, community cemeteries, family plot burials and related services Section (G), RDCJN-33-15, the Navajo Land Department's Land Withdrawal Designation Regulations, and, RDCO-74-16, and Homesite Lease Regulations Section 17.08 (J) to allow family members to bury their loved ones in family burial plots during this State of Emergency due to the COVID-19 virus; Waivers to be for a limited time; and compensation and due process pursuant to 16 N.N.C. 1401 et seq. shall be afforded to land users who have not consented to the use of their land for family burial plots

Date posted: May 7, 2020 at 5:03PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 et. seq.