

**MEETING MINUTES**  
**OF THE FORT DEFIANCE NAVAJO AGENCY ROADS COMMITTEE**  
**BUDGET AND FINANCE COMMITTEE CONFERENCE ROOM**  
**Window Rock, Arizona**  
**REGULAR MEETING**  
**July 10, 2008 @ 9:00 am**

I CALL MEETING TO ORDER: 9:45 AM by Harrison Plummer, Chairperson

II ROLL CALL

District 7	X	Lee Jack, Sr.	X	Raymond Pete	<input type="checkbox"/>	<u>Vacate</u>
District 14	X	Harrison Plummer	<input type="checkbox"/>	Willis Nez	<input type="checkbox"/>	<u>Paul Denetdale</u>
District 17	X	Willie Tracey	X	Thomas H. Bia	<input type="checkbox"/>	<u>Martin Begay</u>
District 18	<input type="checkbox"/>	Lorenzo Curley	X	Raymond Berchman	X	<u>Roscoe Smith</u>
TCDC Membership		X Sampson Begay		<input type="checkbox"/>		Omer Begay, Jr.

III INVOCATION: By Raymond Pete

IV RECOGNITION OF GUEST/INTRODUCTION: Arnold Begay, Nahata Dziil Chapter President; Marie Dineyazhe and Steven Begay, HPD; Alvin Trujillo, Natural Resources, Robert Begay, NAD, Roy Dempsey, Oak Springs Council Delegate, Harold Wauneka, Fort Defiance Council Delegate, Ralph Bennett, Red Lake/Sawmill Council Delegate.

V READING/APPROVAL OF AGENDA: Raymond Berchman motioned to accept agenda as read and Raymond Pete second the motion.

**Meeting agenda was adopted by 5-0-0.**

VI READING/APPROVAL OF PREVIOUS MEETING MINUTES: June 12, 2008 Budget and Finance Conference Room, Window Rock. Roscoe Smith motioned to accept the previous meeting minutes and Thomas Bia second the motion.

**Meeting minutes was approved by 5-0-0.**

VII ANNOUNCEMENTS:

- White Cone School Access Paving next week.
- Navajo Nation Council Session July 21-25.
- Budget Hearings July 28-August 1.

VIII REPORTS:

- |    |                             |                                    |
|----|-----------------------------|------------------------------------|
| A. | TCDC Report:                | Sampson Begay, TCDC Representative |
| B. | Construction Status Report: | Julian Laughin, BIADOT Rep.        |

**Julian Laughin** announced that Mr. Calvin Castillo was on travel and will not be attending the meeting. He reported that N9001 Whitecone School access will be paved next week. Project is expected to be completed soon. He handed out the BIA ROW status for the Fort Defiance agency projects. He informed the meeting attendees that the ROW status reports are done at the Regional office. N9202-his office was asked to do an as-built ROW. Paving was done without all the required documents and clearances. This project was done several years ago.

**Harrison Plummer** stated that the information handed out was two months behind.

**Roscoe Smith** asked where N108 (3) was at on the priority listing?

**Julian Laughin** responded that the project being delayed by encroachment of NHA boundary. Discussions on-going to resolve issue.

Harrison Plummer stated that to his knowledge the situation was resolved.

**Raymond Berchman** commented that several routes have overlapping jurisdiction between the county, BIA and the Navajo Nation. Take for instance, Aspen loop. BIA owns the road but the county maintains the road. NDOT is planning graveling the road and coordinating with the county on this route.

**Franklin Sandoval** stated NDOT is proposing to utilize Navajo Nation Fuel Excise Tax.

**Marcus Tulley** clarified that some of the routes being maintained by the county was made possible by MOA agreements between the BIA and Counties. Although the BIA has ownership of the routes, the county agreed to maintain a specific route and the cost is reimbursed by BIA for the services.

**Roscoe Smith** asked if the road and bridge construction came from two separate funding.

**Julian Laughin** responded that the funding utilized to construct the roads and bridge is from the same funding source.

Raymond Berchman requested a current copy of the ROW status information and has it available for the next meeting.

**Roscoe Smith** asked why the BIA priority listing was different for the NDOT listing.

**Marcus Tulley** explained that the Agency Roads Committee develops a listing of road priority projects based on the information it receives from the chapters. NDOT then collects all the information and forwards a recommendation to the TCDC. TCDC then evaluated all the projects from all the agencies and compares them based on project readiness and develops its own priority list. TCDC then recommends to BIA for funding based on the priority listing. BIA then evaluates the listing and makes the fiscal year appropriations. So the agency projects may get shuffle around based on the readiness of the project and where they are at in the clearance process.

C. Maintenance Status Report:

Franklin Sandoval, BIA Maint. Supervisor

**Franklin Sandoval** handed out his written report. He reported that the BIA had over 1,100 miles of road to maintain in the Fort Defiance Agency area. BIA was recently informed that the maintenance program is being cut back in funding. As it was, his maintenance crews are only out maintaining roads 3 of the 5 days a week. His program is severely being impacted by the funding cut backs.

**Roscoe Smith** asked if the MOA are in place.

**Franklin Sandoval** responded that MOA is being considered for some of the roads due to his lack of resources. However, the Navajo Nation needs to decide where funding will be secured to pay for the services. BIA does not at this point and time, afford to pay for services.

**Willie Tracey** commented that the Kinlichee Bridge has been discussed for several years and still does not see any progress being made. He now understands that the water flow plans were being rejected.

Franklin Sandoval clarified that the designed culverts were too small to accommodate the water flow calculations.

**Willie Tracey** expressed his concerns that the bridge needs to be constructed as soon as possible. Several other entities also use the road besides the community and schools. He shared that a house caught on fire and the fire and rescue service personnel were unable to get to the house because the bridge was impassible. So the personnel set across the road and watch the fire destroy the house. He asked Mr. Sandoval to get quotes to satisfy the multi-plate culvert concerns. Upon Mr. Sandoval's submission of the information, Mr. Tracey will ask for additional funding from TCDC. In the meanwhile, the other problem of obtaining an MOA to do a bypass needs to be expedited as well.

**Dennis Williams, Blue Canyon** resident commented and asked what the status was on N9073. He stated that the road was in very poor state and needed to be repaired before school starts again. He noted several areas that needed repair including narrow areas, pot holes, etc.

**Harold Wauneka, Council Delegate** echoed Mr. Williams' concerns. He stated that on several occasion, BIA was given the road information to no avail. He also expressed the urgency of repairing the road and moving the project in priority status. He was dismayed to learn that the project was being pushed back to 2013. His other concerns included the lack of school zone signs, road stripping, and pot holes on major roads. He stated that he had two resolutions to present to the committee for their consideration and support.

**Willie Tracey motioned to add resolutions to the meeting agenda and second by Roscoe Smith. Resolutions were added with a vote of 8-0-0.**

Raymond Berchman requested time for his Pine Springs residents to address the committee.

D. Road Clearance Status Report:

Alvin Trujillo, Executive Director  
Division of Natural Resources

**Alvin Trujillo** reported that he held meetings with the Historic Preservation Department and Navajo Archeology Department regarding the concerns raised at last ARC meeting. Some internal issues were discussed and communication and commitment were reestablished. He commented that he made a commitment to the committee and plans to monitor the two programs and ensure compliance. Discussion will be on-going until improvements are realized.

**Roy Dempsey, Council Delegate** asked/requested some clarification on program agreements. He thanked the committee for brining the two entities, BIA and Natural Resources together to discuss the on-going concerns with the prolong clearances on projects. He is appreciative to express his concerns.

**Alvin Trujillo** explained that the program agreement is between the two departments. HPD does the survey and NAD does the testing. This is in accordance with Section 106. N9010 finally got clearance to process with work. NAD will combine the two sites to expedite project. He also explained that N9010 was a different project and funds

did not come from BIA but from special congressional appropriation. This was a funding process his office had to work with. He also stated that it was difficult to complete a project with funding is being piece milled. For that reason they cannot complete projects within the time specified. His department does not have the resources to be bank rolling every project and is very dependent on funding being available to them. As part of his on-going discussion they proposed an internal pilot project that would address some concerns expressed by the two departments. He drew his diagram on the board: (see figure 1)

HPD is the arm of National EPA through the PL93-638 contract with BIA. NAD is a contract under this agreement. He stated that ironing out the kinks and bumps may take some time. He asked for the committee's patience so they can work through this process. He stressed that EPA audit possible so they have to maintain compliance with Section 106 at all times.

**Harrison Plummer** asked what time frame they were looking at in terms of working out all the kinks.

**Willie Tracey** expressed that the process is too complex and funding is based on population. He asked why BIA can't bid the clearance work out to other capable contractors. He said the HPD and NAD process is too complicated and hindering progress on the road projects. They just created a system within a system that ended up tying their own hands and it's too cumbersome. He recommended that the committee seriously consider doing away with Rights of First Refusal clause.

**Omar Bradley, BIA Regional Director** stated that he has been dealing with the HPD/NAD issue for some time now. He said that the BIA must offer the work to the tribe first as required of him. TCDC designates money for clearance work to BIA and BIA in turn contracts with HPD under 638 contracts. He stated that BIA has no reason to comment on what process is followed so long as the Section 106 is followed. Who does the work is insignificant to him or BIA so long as Section 106 is followed. Someone has to be held accountable for the work and compliance to the Section 106 clause. In terms of preference, it's the tribes responsibility who to award the contract to.

**Lee Jack, Sr.**, expressed that the work and discussion taking too long. Now is the time to act and make some decisions. He concurs with statement made by Delegate Tracey. Changes are needed at this point and time.

**Alvin Trujillo** stated that he understood the level of the committee's frustration. However he cautioned the committee not to act prematurely and assumptions are not always correct. He proposed that the committee give him 6 months to work on the pilot project. He will reevaluate the process. Coordinate with TDCD and BIA. He said he was confident that this concern will be worked out. People have always found ways to deal with situations to everyone's satisfaction.

**Marcus Tulley** reiterated that the committee and the chapters are frustrated with the current process and time it takes to complete the clearances. But most of the time finger pointing. He cautioned them to not take this too lightly and should work diligently in complying with their proposal.

**Franklin Sandoval** asked where the clearances fit into the program? Previously NDOT would do the survey and submit information to HPD.

**Willie Tracey** iterated a different approach to the clearance process. He proposed lumping the report, testing and data collection into one step and then proceed to the final report. However, given the circumstances and the willingness of Mr. Trujillo to address and refine the clearance, he would hold off on making any clearance process changes. He drew a diagram on the board to explain his perception of the changes. Basically consolidate all the reports, testing and data collections into a one step process before proceeding into the final report. He stated that he would also be willing to entertain a better and expedited process should one be proposed.

**Alvin Trujillo** simplified the process he follows as shown on figure 2. He stated that everything is assumed, i.e. funding and organization structure. Nothing is finally all is set in place. Projects have to be reviewed on case by case basis. Nothing is the same. Some projects can follow the simplified process as drawn Mr. Tracey but not all would fit that scenario and Section 106 compliance is imperative. BIA no longer has an Archeology department and will work closely with TCDC for all projects.

**Omar Bradley** commented on Mr. Tracey diagram. He drew his own process chart. (see figure 3). He stated the BIA cannot proceed on anything without input from the TDCD. He encouraged the HPD and NAD to redesign the process to expedite the clearances. He noted that there were three different versions and discussed but they all have the same intent.

Roy Dempsey commented that Mr. Bradley's concept was good however the process might create some problems. He gave an example of coordination concerns exist between NAD and HPD moving over to HPD and NDOT. The problem would still exist. He felt that HPD was over regulated and compliance too strict. Some exceptions and allowances have to be considered by them. He also stated that if NDOT assumed the clearance process through 638, they would have the same process concerns. It may even prolong the process.

**Harrison Plummer** stated that Mr. Trujillo has six months to refine and redesign the current clearance process. He requested a written proposal from Mr. Trujillo immediately so that the information and situation would be monitored.

**Sampson Begay** commented that there were several issues discussed and the discussions were good. He believes that discussion the issues are a good start in resolving and addressing the situation. NDOT is slowing building up their capabilities and will be in a good position to assume some of the responsibilities if need to.

**Robert Begay, NAD** stated that N9010 was delayed due to not have authorization from BIA to complete the project. They were finally given clearance recently and should be able to complete the project soon. He anticipated that they would start July 30<sup>th</sup> and be completed with data collection by September 3<sup>rd</sup>. he was given one pot of money to do 4 phase of work (i.e. Survey, recovery, assessment, mitigate). He stated also that not all project have to go to testing and assessment. He was willing to train on the Section 106 process and Archeology to any member of the ARC members if they so wish.

**Raymond Berchman** asked when is earliest they can complete the N9010 or can it be expedited?

**Robert Begay** responded that the project itself is done but they have to recovery and removal of two sites.

**Willie Tracey** requested Mr. Trujillo and Mr. Plummer to notify the committee when changes are discussed on the clearance process.

E. 638 Contract Status Report

Omar Bradley, Navajo Regional Director  
Irvin Bekis, BIADOT Manager

**Irvin Bekis** stated that written reports are usually provided he felt that his November report to the committee would still be current and asked the committee refer to the written report provided at the Naschitti meeting. He gave a brief history on N9010. He stated that the special appropriation from Congress for N9010 were a result of two Navajo Nation Council Delegates requesting funds directly from Congress and were successful. This process was the first time any Indian nation to do so. Subsequently, BIA applied and got funding. The MOA process to transfer the funding took longer than getting the funding. It took three years. Several problems were encountered but finally all were resolved and now can proceed with the project. Funds had to be redirected from BIA to the Navajo Nation to ADOT. Congress agreed to give BIA 20% of the 3.4 million dollars every year. The last funding is expected in 2009. N9010 had to be put TPP and will cost 14 million dollars as matching funds. The project encountered several problems but were able to overcome them. Allan Downer letter should address the concerns with NAD and HPD.

**Willie Tracey** commented that instead of waiting for the FY2009 appropriations, the committee should consider bond financing for N9010.

**Irvin Bekis** replied that bond financing was available and an option. However, NDOT or the Nation would have to find a sponsor and get someone to buy the bonds. Money has to be paid back with interest and whatever charges applied. NDOT or the Tribe has to develop a mechanism for bond financing first. Safety-Lu is schedule to expire in 2009. Funding for some of the projects could actually be used but not all projects in the construction ready status. This process has to be presented to TCDC and identified on the TPP.

**Willie Tracey** asked if the Navajo Nation can use the bond financing for loan. He also requested a copy of the utility status and asked if the BIA could provide a recommendation so that this process could be pursued or considered by the committee for N9010.

**Irvin Bekis** replied that all clearances have to be in place before anything is considered and the Tribe can start negotiation construction with NECA. Project estimate would also be required.

**Willie Tracey** requested that a letter be drafted for TCDC to start negotiating with NECA for N9010.

**Raymond Berchman** commented that the \$2.4 was available to be picked up. He suggested that NECA be paid in advance to start. He asked if parts not affected by the arch clearance can be started.

**Irvin Bekis** stated that the Tribe or NDOT cannot give Notice to Proceed to NECA or authorize permission to start. Funds are available and ready to start but the clearances have to be completed first. He also said that project scope and estimates still need to be completed.

**Omar Bradley** stated that BIA was still working on the RIFDS. He commented that the commitment was there and there is not need for bond financing for N9010. Arch clearance is the problem not the funding. He said that Mr. Bekis will start negotiating with NECA. The PS&E is for the section of land where classified as private.

**Lee Jack, Sr.**, suggested that a mechanism be established for bond financing for other project consideration.

**Irvin Bekis** stated that he will have a more extensive report for the council meeting.

**Arnold Begay**, Chapter President Nahata Dziil request information and status report on bridge number 666.

**Irvin Bekis** replied that subject bridge design was almost complete. The ROW approval is still pending with the railroad company.

TCDC Report:

Sampson Begay, TCDC Representative

**Sampson Begay** apologized to the committee for being late and was also in a Resources Committee meeting. He reported that following: N55 (I40 to Alamo) Resources Committee finally granted ROW for the road for 75 years. The Navajo Nation priority list still the same and 3,600 miles were recently added to the road inventory. Question 10, TCDC position statement being developed. TCDC relying on BIA for technical assistance. Reauthorization is being worked. He said that a couple of key US Congressmen are due to retire or not seeking re-election. This is going to affect the Navajo Nation. Need to find someone else to work with on Navajo Nation needs.

**Willie Tracey** requested a special meeting to address the Blue Canyon Road (N9073). He asked what became of the road study. Need to revisit the study.

**Franklin Sandoval** reiterated that NDOT lacks the necessary training for them to provide maintenance. BIA does not have sufficient funds to provide regular maintenance to the road due to budget shortfalls. He is only allowing 3 days of the week for his crew to go out.

**Willie Tracey** asked that the county and Tom Platero be invited to attend.

**Harold Wauneka** accepted to hold meeting at the Fort Defiance Chapter.

**Raymond Berchman** asked what the status was on the MOA to have NDOT 638 maintenance the roads.

**Sampson Begay** stated that the Corp of Engineers did not do an adequate job on Blue Canyon road. Now BIA maintenance funds have been reduced by half. What is the Navajo Nation going to do? He said the NDOT is moving forward to pick up where BIA is leaving off. 12 graders have been purchased and another 22 more being proposed. He encouraged the BIA operators to move over to NDOT and help out the Nation. When the time comes, TCDC can always take 25% of the IRR funds and designate it for maintenance. FET is another option. The committee is discussing designating \$27 million over the next three years to implement this task.

**Roscoe Smith** asked if the MOA is in place to effectuate this task. He said that Calvin Castillo informed him that all dirt roads belong to Navajo Nation. He asked for a clarification this also.

**Willie Tracey motion to accept all reports. Second by Raymond Berchman. The committee accepted the reports with a 7-0-0 vote.**

IX OLD BUSINESS:

- A. Report: Division Natural Resources. **(Report accepted by 7-0-0 vote)**
- B. FDARC 5-1-08 N15 Overlay-Omer Begay, Jr. **(deferred at previous meeting).**

X NEW BUSINESS:

- A. Resolution: LUPT-2008-07 Road Maintenance Request **Roscoe Smith motioned to approved resolution and Raymond Pete second his motion with a vote of 7-0-0. Resolution was approved.**
- B. Resolution: FD 08-06-08-08 Harold Wauneka. Resolution was not acted on and request was satisfied.
- C. Resolution: FD 08-06-08-04 Harold Wauneka. Resolution was not acted on and request was satisfied.

XI ADJOURNMENT/NEXT MEETING DATE, LOCATION AND TIME: **Raymond Berchman, motioned to adjourn meeting with Lee Jack, Sr. seconding his motion with a 6-0-0 vote.** Meeting was adjourned at 3:16 PM. Next meeting will be August 13<sup>th</sup> at the Fort Defiance Chapter.

# PROGRAMATIC AGREEMENT PROCESS

## SECTION 106

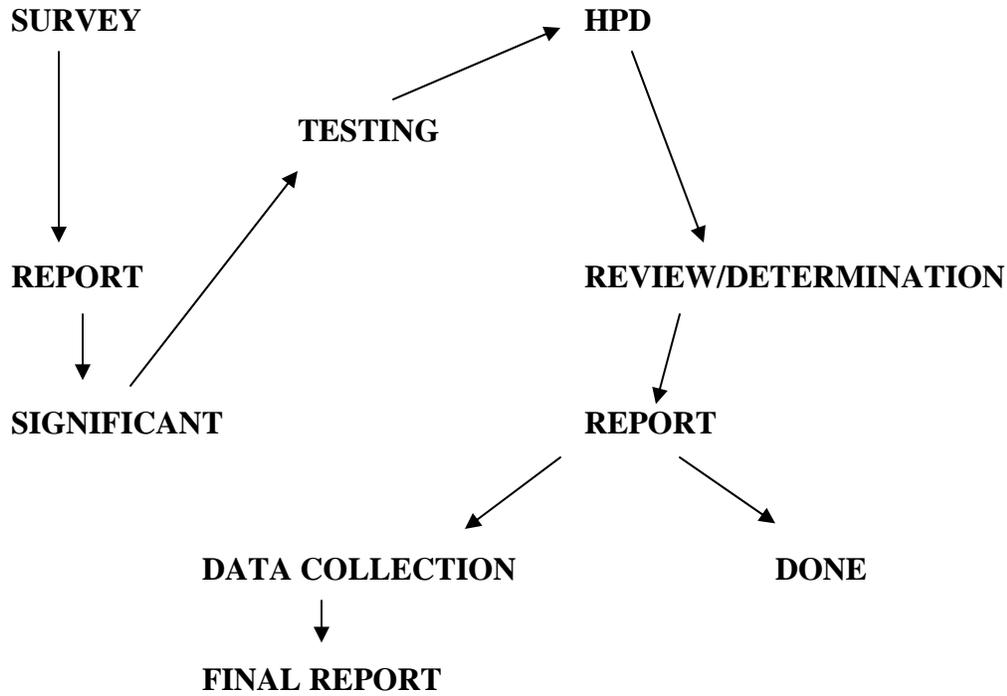


Figure 1

## TRUJILLO CONCEPT

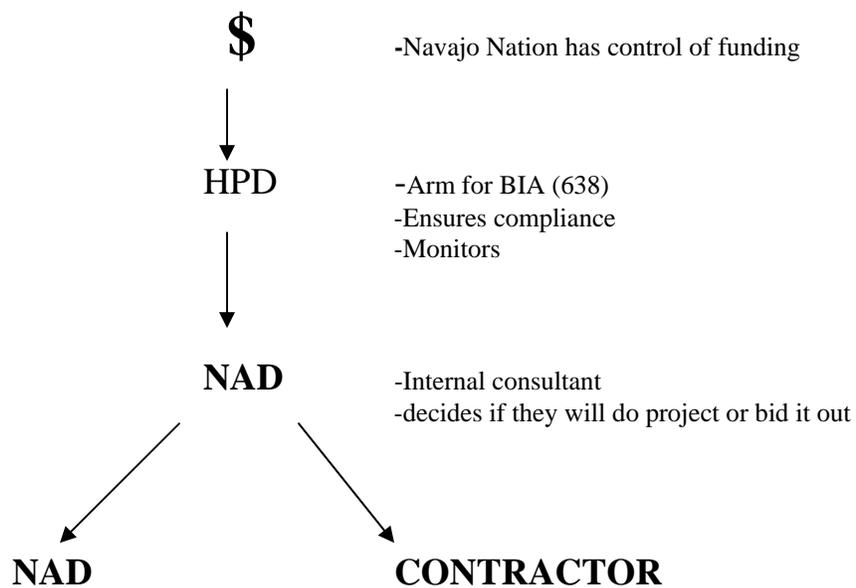
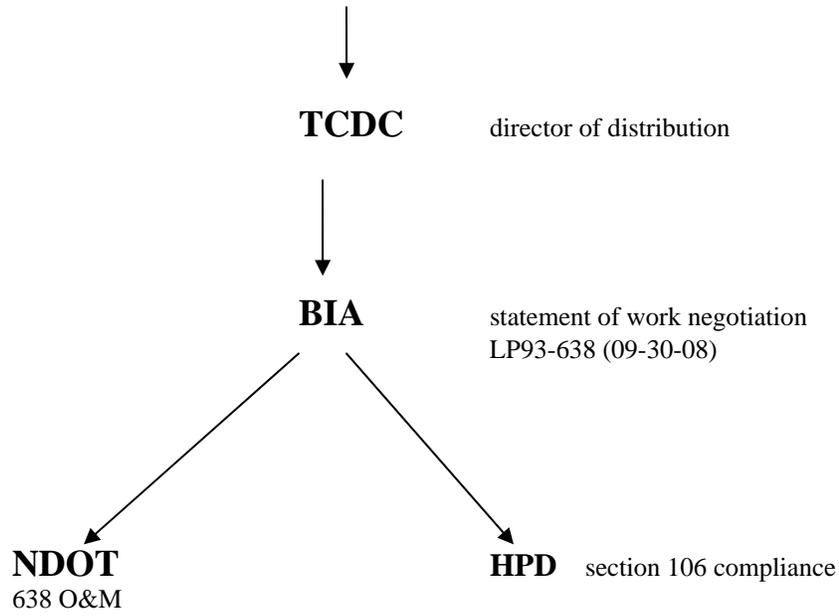


Figure 2

# **BIA CONCEPT**

## **Indian Reservation Roads**



**Figure 3**