

Diné Atiin Bahane: Navajo Road Emergence



**Diné Atiin Bahane: Navajo Road Emergence
The Navajo Nation Transportation White Paper
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EXECUTIVE SUMMARY

Overview

There are multiple roads the Diné travel: the first roads we took through emergence to this world; the road we are now taking out of this COVID-19 pandemic; and the road to economic recovery. For us, all roads lead forward to self-determination, self-reliance and self-sufficiency.

The stakes have never been higher as the Navajo Nation pivots away from an economy based upon extractive resources to a self-sustainable economy that maximizes the talent, skills, and education of our most valuable asset: the Navajo People.

The Navajo Nation is the largest American Indian tribe in the United States, with 350,000 members whose ability to get to school, jobs, health care or any place else is compromised daily by a 14,167 mile road system that is 80% unimproved and mostly unmaintained due to paternalistic federal policies that prevent us from doing what we know needs to be done, and inequitable funding formulas that subsidize county and state roads with tribal transportation funds.

Despite our demonstrated leadership and technical expertise, the Navajo Nation is still subject to Secretarial oversight whenever we dig a hole or add gravel to a road. The Navajo Nation Environmental Protection Agency (NNEPA) has become our regulatory agency charged with “protection of human health and the environment.” Our Navajo Nation Environmental Policy Act provides guidance to NNEPA on the protection of air, water and land resources. Since the 1990s, NNEPA departments and programs have earned Treatment As a State status for delegated federal programs.

While secretarial oversight is appropriate for small villages or direct service tribes which lack the capacity to govern themselves, it should not apply to us and the dozens of other tribes similarly situated. The Navajo Nation has the capacity to administer transportation programs, fulfill our self-governance agreement with the U.S. Dept. of Transportation, and operate like any state department of transportation.

Transportation Successes

In 2017 the Navajo Division of Transportation (NDOT) began implementing the Navajo Nation’s direct funding agreement with USDOT’s Federal Highway Administration, finishing four major road projects within the past three years while enhancing NDOT’s human resources, equipment, accountability and responsibility.

We are making every effort to reduce fatal and serious injury accidents, which are the number one cause of death on the Navajo Nation. Our 2018 Strategic Highway Safety Plan found that overturn/rollover vehicles and head-on collisions were largely caused by lane departures that

could be avoided with structural improvements. We will systematically address these issues and expect to reduce crashes by at least 25% through use of chevron warning signs, fluorescent curve signs, and edge line pavement markings.

In January 2021 USDOT awarded us a \$2 million “Better Utilizing Investments to Leverage Development” (BUILD) planning grant for a railroad spur from the I-40 BNSF railway corridor to stimulate economic development and job creation in our region and install vitally needed infrastructure here on the Navajo Nation.

Persistent Transportation Challenges

Covid-19

COVID-19 continues to ravage Navajo families in large part because of the Federal bureaucracy that has plagued Navajo Nation infrastructure long before COVID-19 made hand washing a matter of life and death. 40% of Navajo families live without running water or sanitation, 32% of Navajo homes lack electricity, and 96% of Navajo families do not have broadband.

About 80% of our 14,167 road miles are unimproved dirt and sand roads that become washboards and sand traps in the dry season and impassable mud bogs whenever it rains or snows. These are the roads our patients must travel up to 150 miles one way just to access basic health care. Our public health teams and first responders travel these same roads to deliver home health care, personal protection equipment, food, water and education.

Safety

Arizona, New Mexico, and Utah each maintain their own records for motor vehicle crashes submitted by municipal, tribal, county, or state police agencies. Significant differences, therefore, exist between these databases. Coordination between police agencies, Navajo DOT, and state DOT's in reporting and sharing these crashes records is often incomplete, causing many crashes to go unreported. Inaccurately low numbers in turn undermine our ability to adequately access the federal and state funding we need to mitigate crashes.

Red Tape

The way in which the Navajo Regional Office of the Bureau of Indian Affairs (NRO) implements policy intended to fulfill the Secretary's trust responsibility results in a transportation system in which 85% of the roads, or 9,400 miles, have remained earthen, no different in 2021 than they were in 1921.

Inter-federal departmental differences undermine the National Environmental Policy Act's (NEPA) effectiveness on the Navajo Nation. NDOT is required to complete two environmental documents to address the federal action of funding the project (as required by Federal Highway

Administration (FHWA)) and the federal action of granting a right-of-way (ROW as required by BIA). NRO will not accept the FHWA CatEx document because BIA claims it does not comply with BIA formatting requirements.

NRO's focus on form over function, on formatting documents over processing them, prevents NDOT from being able to move beyond NEPA in a timely manner and causes the Navajo Nation major delays in completing projects. The time and effort it takes us to navigate duplicative and inconsistent administrative processes imperils the health and safety of our communities. Roads that remain unpaved and unmaintained contribute to increases in particulate matter levels that are harmful to our public health and environment.

Bennett Freeze

In 1966, Commissioner of Indian Affairs, Robert L. Bennett, ordered a development ban on 1.5 million acres of Navajo lands. This "freeze" prohibited three generations of Navajos from fixing their own roofs much less repairing roads. A 2008 study identified the impact of the freeze and prescribed necessary federal investments to mitigate its damage, yet nearly nothing has been done.

Civil Rights

The 1994 civil rights case *Meyers v. Bd. of Education* is the *Brown v. Board of Education* of Indian Country, delivering the equal treatment promise of *Brown* to American Indian students. The case was born in the community of Navajo Mountain, one of the most remote areas of the Navajo Nation, located in Utah just over the Arizona border. Before *Meyers*, students had to travel 180 miles to Blanding, Utah in school busses that struggled to traverse the first 20 miles of Navajo Route 16, a BIA dirt road before finally reaching pavement. The federal court held that requiring Navajo children (who also happen to be county and state residents) to travel four hours in each direction to get to school is tantamount to denying them the constitutional promise of equal access to education that *Brown* makes to every child in America.

The court ruled that Utah's San Juan County School District had a duty to build a high school in the Navajo Mountain community and that the BIA had a duty to improve Navajo Route 16 to support the delivery of education. Despite this precedent, the NRO violates our students rights on a daily basis when our students spend as much time on a school bus as they do in class because their busses cannot traverse the dirt roads that are on BIA's inventory and the federal government fails to reasonably maintain or improve our roads

Funding Formula

The Tribal Transportation Program (TTP) funding formula is an inequitable tool forged by political might that has been muscled into the last three federal highway bills. In 2002, the Navajo Nation received \$79.91 million in TTP funds. Two years later, after passage of

SAFETEA-LU, we lost 52.45% of this funding, receiving only \$38 million. Today we receive the same amount of funding we received in 1995. MAP-21 eliminated the stand alone national tribal bridge program. Today, all tribes must now compete for annual bridge grants that are a 4% set aside of annual TTP funds. The current TTP funding formula subsidizes state and county roads not on tribal trust land and is composed with proposed road miles for non-roads.

Funding Flexibility

The BIA Road Maintenance Program is funded by the Department of Interior through annual Tribal Priority Allocations (TPA), funds dedicated to priorities that tribes identify. NRO receives about \$7 million annually to maintain roads on the Navajo Nation. Unfortunately, NRO uses these funds on BIA roads and not Navajo tribal roads, an agency discretion that has no basis in law. NRO's position undermines the very purpose of TPA, which is to invest in *tribal* priorities, not *agency* priorities.

Transportation Priorities

Resolve Conflicts of Law to protect Navajo people, environment and cultural resources.

We need a categorical exclusion that applies to all roads within the Navajo Nation, regardless of whose inventory they are on or which source of funding is being used to pay for road construction or maintenance activities.

Harmonize Agency Guidance with Law to make Navajo roads safe.

We need the U.S. Department of Transportation and Interior, as well as Congress, to come to an agreement about the definition of road maintenance and apply it uniformly, regardless of the location of the road or the source its funding.

Provide flexibility to the Tribal Priority Allocations (TPA) that BIA uses for road maintenance so that TPA funds may also be used to fund tribal roads.

We need Congress and the Secretary of Interior to direct the BIA to allow TPA funds to be used to maintain tribal roads upon a tribe's request.

Ensure agency practice is consistent with policy to make the Navajo road system equitable.

We need this policy spelled out by both the U.S. Department of Transportation and Interior Department and implemented consistently.

Protect the integrity of tribal road funds so that they do not subsidize non-tribal roads.

We need the U.S. Department of Transportation to 1) redefine, for the purpose of the National Tribal Transportation Facility Inventory (NTTFI), the definition of “roads” to access routes for vehicular ground surface traffic (explicitly excluding walking paths, dog mush routes and canoe trails; 2) require all proposed roads included within NTTFI to be supported by data, both going forward and retroactively; and 3) Prohibit Tribal Transportation Program funds from being invested in non-BIA or non-tribal road projects.

Recognize that tribal bridges and roads presents different exigencies of circumstance that require complimentary, not competitive, funding sources.

We need the U.S. Department of Transportation and Dept. of Interior to prioritize the reauthorization of a stand alone tribal bridge program that is funded at a level that takes the safety of federal facilities and federal trustees seriously.

Promote tribal sovereignty by retroceding Secretarial approval over tribes who have demonstrated their own capacity for federal regulatory compliance.

We need the Secretary of Transportation and Secretary of Interior to retrocede their authority over tribal roads in cases where tribal governments, like the Navajo Nation, have already assumed treatment as a state from U.S. EPA.

Conclusion

To attract business and create jobs and build homes we need to keep Diné families here on Dinétah, we need the federal government to move beyond colonial policies that make nation building on tribal lands a game of mother-may-I. We need fair and commonsense policies that honor our treaties and inherent sovereignty. We need federal partnerships whose terms are commensurate with a government to government relationship.

It is the mission of NDOT to provide a safe, efficient transportation system that supports economic opportunity and livable communities throughout the Navajo Nation and we need our federal partners to support, not supplant, our decision making authority for our own people on our own land. We look forward to working with this Administration and Congress to truly move tribal transportation policy forward for the 21st century

INTRODUCTION

When a road is built on the Navajo Nation it is blessed by a medicine man and celebrated by the community. We sing *atiin biyiin*, a Diné road song, to bless the road so that it will provide for the goodness or Hózhó of Navajo people - of the Diné - and of our neighbors so that all may travel safely and be well. We ask that you join us on this journey.

There are multiple roads the Diné travel. There were the first roads we took through emergence to this world, the road we are now taking out of this COVID-19 pandemic, and the road to economic recovery. *Atiin* is our life, our path, our journey as a person being one with Mother Earth and Father Sky.



As we go forth we realize there will be tribulations along the way, but for us there is no road backward. We have no choice but to look forward, lift ourselves up, and step into the future. We Diné continue to build our roads, to move forward and persevere, to celebrate what is possible on Dinétah, on Navajoland.

Where once all roads led to Chaco Canyon when it was the center of commerce and culture within a vast regional network, the Navajo Nation is emerging from federal paternalism to restore an indigenous economy in the marketplace of ideas, opportunity and innovation that once sustained our region and filled it with life. Our practice of the Navajo Way of Life Teachings for mental, physical and spiritual well-being prepare us daily for the rigors of self-governance, the challenges of self-sufficiency, and the imperative of Navajo unity.

In 2018 we convened over seventy community meetings to identify the priorities of the Navajo Nation and worked collaboratively to create solutions and positive change for our people. Together we created the [Hozhó Diné Bi Nahat'á](#), a strategic plan for improving Navajo governance to achieve peace, balance, beauty and harmony. *Nahat'a* is our roadmap to a better future.

The guiding lights, or core focus areas of *Nahat'a* include health care, housing, economic development, education and public safety. The predicate for all these guiding lights to shine is the same for improving every aspect of Navajo life = building a better Navajo transportation system. This is the road of emergence we are now traveling with our partners in state and local governments, the private sector, Congress, federal agencies, and the White House.

OVERVIEW

The Navajo Nation is the largest American Indian Tribe in the United States, with 350,000 tribal members and a land mass of over 27,000 square miles that spans Arizona, New Mexico, and Utah.



If Navajo was a state, it would rank 41st in size, close behind Indiana.¹ Dinétah is a land so beautiful that its red rock spires and rainbow deserts are the iconic landscape of the American West. Before COVID-19, we attracted two million visitors from around the world each year, especially from Europe and Asia, who visited us to meet the first Americans.



The Diné have traditionally been sheep ranchers and are celebrated for being master weavers, artists, jewelers and silversmiths whose work is highly prized and displayed in museums around the world. But the Navajo Nation is also home to nationally renowned Diné doctors, engineers, lawyers, biologists, educators, athletes, entertainers and thought leaders. Our families, friends, partners and guests rely upon the Navajo transportation road system to connect the sprawling southwest and access facilities within the Navajo Nation:

- Schools: 66 elementary & secondary schools and 2 post-secondary colleges
- Health care facilities: 6 hospitals, 1 cancer center, 7 health centers and 15 health stations
- Tribal government facilities: 1,139
- Chapter Houses (local government community facilities): 110
- National Parks and Monuments: 5
- Tribal Parks: 12
- Airport: 1
- Airstrip: 5
- Fair grounds: 3
- Museums: 6
- Trading Posts: 10
- Shopping Centers: 9
- Grocery Stores: 13

¹ <https://statesymbolsusa.org/symbol-official-item/national-us/uncategorized/states-size>.

- Small Businesses: 652
- Artisan Businesses: 1,796
- Post Offices: 26
- Banks: 5
- Hotels: 12
- Casinos: 4
- Churches: 375
- Agri-business: 14,500 farms
- Energy production facilities:
 - Solar: Two tribally owned large scale solar generating farms
 - Wind: One tribally owned megawatt facility
 - Natural gas: Six companies operate
 - Oil: Five companies operate
 - Methane conversion: 2 companies operate
 - Helium wells: 2 companies operate

The Navajo Nation Division of Economic Development (DED) is one of 14 offices and Divisions within the Executive Branch of the Navajo Nation Government. Its main purpose is to create an environment conducive to promoting and developing the commercial, tourism, industrial, small business, and other sectors we need to create jobs and business opportunities for Navajos and non-Navajos alike. The stakes have never been higher. DED is helping us pivot away from an economy that for generations has largely been based upon extractive energy production to a self-sustainable economy that maximizes the talent, skills, and education of our most valuable asset: our own Navajo People.

The Navajo Nation is home to warriors who serve in the United States armed forces at rates far higher than most other Americans and represent the highest portion of American Indian veterans² including the Navajo Code Talkers who created the fast, error-free and unbreakable code that helped defeat the Axis during World War II. We are also home to the environmental scientists who are leading the effort to clean up over 500 uranium mines that the United States abandoned after halting its atomic stampede across Navajo land.³

Yet despite our demonstrated leadership, judgement, patriotism and technical expertise, the Navajo Nation is still subject to Secretarial oversight whenever we dig a hole or add gravel to a road within our own borders.

² https://www.va.gov/tribalgovernment/docs/aian_report_final_v2_7.pdf

³ <https://www.epa.gov/navajo-nation-uranium-cleanup/abandoned-mines-cleanup>



A photograph of Navajo Code Talkers, Cpl Henry Bake, Jr. and PFC George H. Kirk in Bougainville, circa 1943.

In the nearly 75 years since the Navajo Nation first passed a resolution granting the Bureau of Indian Affairs right of way to our most travelled roadways, the Navajo Nation has developed its own administrative regulatory regime. In 1995, Navajo Nation Council approved legislation for the Navajo Nation Environmental Protection Agency (NNEPA) to become a regulatory agency charged with “protection of human health and the environment,” and also passed a resolution approving the adoption of the Navajo Nation Environmental Policy Act that provides guidance for NNEPA on the protection of air, water and land resources and the recognition that a clean environment contributes to maintaining harmony and balance on the Navajo Nation.⁴

Since the 1990s, NNEPA departments and programs have worked diligently to seek authorities which enhanced more and more responsibilities to protect air, water and land resource of the Navajo Nation. The following represent a series of monumental progress by our department and programs:

- Treatment as State by Public Water Systems Supervision Program for Safe Drinking Water Act, August 1991
- Attained Section 106 Treatment as State for Clean Water Act, June 1993
- Attained Treatment as State for Safe Drinking Water Act by UIC, September 1994
- Attained Section 319 Treatment as State by Clean Water Act, October 1999
- Attained Primacy by Public Water System Supervision Program, December 2000
- Attained Title V Permitting for Clean Air Act, October 2004
- Attained Sub Section 303/401 Treatment as State for Clean Water Act, January 2006

⁴ <https://www.navajoepa.org/Pdf%20files/NN%20EnvPolicy.pdf>

- Attained Class II Primacy for Safe Drinking Water Act by UIC, October, 2008
- Approval for development of Uranium Policy Commission, 2015

Today NNEPA continues to work even harder to get treatment as a state for more programs, administer those programs for which NNEPA has been delegated federal credentials, and develop our own Navajo Nation environmental laws to further protect our own natural resources.

While secretarial oversight is appropriate for a 50 member village or a direct service tribe that lacks the capacity to govern itself, it should not apply to us and the dozens of other tribes similarly situated who have spent the last 50 years developing self-governance and working toward self-sufficiency. The Navajo Nation has the capacity to administer transportation programs, fulfill our self-governance agreement with the U.S. Dept. of Transportation, and operate like any state department of transportation.

RECENT TRANSPORTATION SUCCESSES

Navajo Tribal Transportation Self-Governance Program

In 2017 the Navajo Division of Transportation (NDOT) began implementing the Navajo Nation's direct funding agreement with the USDOT Federal Highway Administration, finishing four major road projects within the past three years while enhancing NDOT's human resources, equipment, accountability and responsibility. Our partnership with USDOT is enabling us to manifest self-governance in a capacity not previously available, allowing NDOT to better manage Navajo transportation programs, services, functions and activities:

Road and Bridge Improvements to Navajo Routes 27, 105 and 7:



- 10.9 miles of grading, paving, fencing, culverts, cattle guards, retaining walls, gates, signs, striping, lighting, bridge repairs, and miscellaneous work.
- This \$33,332,857.42 project protects motorists, pedestrians and livestock in Chinle, Arizona, a Navajo city with 5,000 residents and millions of tourists from around the world who come to Chinle to see Canyon de Chelly.
- Chinle is a regional hub with a Veterans Administration clinic, Indian Health Service hospital and medical center, BIA office, chapter house, Navajo Judicial District Court, Apache County Justice Court, Navajo Police Department, shopping centers, hotels, two churches and three schools.
- This project creates safe pedestrian passage, providing an LED school crossing sign with flashing beacon at pedestrian crossing at Chinle High School crosswalk.

Road Construction of Navajo Routes 6331, 6330 and 21 in K'ai'Bii'To, Arizona:

- 3.5 miles of paved road with retaining wall, rip rap, culverts, cattle guards, signage and solar lighting.
- This \$15,633,572.48 project now provides a safe and modern road facility through the K'ai'Bii'To Chapter (translates to “Willow Trees with Fresh Spring Water”) that is located in Coconino County just 36 miles east of Page, Arizona, near Lake Powell. The mission of K'ai'Bii'To Chapter is to “Inspire a Dynamic, Innovative and Prosperous Community through the Combined Talents of Our Citizens.”
- K'ai'Bii'To Chapter is home to the Kaibeto Boarding School, Shonto Preparatory School, 1 market, 1 chapter house (community center), and 322 farms and ranches.



Road Construction of Navajo Routes 481 and 7119 in Littlewater, New Mexico:

- 3.8 miles of paved road in San Juan County that cost \$3,374,503 and was awarded a 2020 Engineering Excellence Award from the American Council of Engineering Companies New Mexico on September 20, 2020.



Fencing Project along 21.1 miles of Navajo Route 15 in the Cornfields Chapter in Arizona:



- 42.2 miles of fencing installed with cattle guards, gates and graded turnouts.
- This \$2,290,287.92 project promotes road safety and livestock protection in a fertile farming community that is home to 1600 people whose vision statement is, “To develop a progressive self-sustaining community with strong and ethical leadership that is able to nurture the health and well-being of its residents, economy, environment and infrastructure.”
- Cornfield Chapter is generally isolated with the nearest commercial outlet at least ten miles away but is an enthusiastic lender of micro loans for local economic development and the home of the Navajo Nation’s only Tire Recycling Shop that manufactures durable door mats of all sizes using recycled tires to mitigate the illegal tire dumping activities on the Navajo Nation.

Navajo Highway Safety Project

The Navajo Nation is making every effort to provide safe travels on our roadways to reduce fatal and serious injury accidents, which are the number one cause of death on the Navajo Nation.⁵ In January 2021 we were awarded \$592,740 in FY 2020 Tribal Transportation Program Safety Funds to assess and improve three routes (Navajo Routes 15, 12, and 7) that have experienced some of the highest number of fatal and serious injury crashes within the Navajo Nation. These federal facilities are owned and maintained by the BIA so NDOT is administering this project in cooperation with the BIA to construct the improvements.⁶

The Navajo Nation's 2018 Strategic Highway Safety Plan found that overturn/rollover vehicles and head-on collisions were largely caused by lane departures that could be avoided with structural improvements. This project's intention is to systematically address lane departure crashes along Navajo Routes 15, 12 and 7 by assessing and improving warning/delineation signage and pavement markings on curves that have lane departure crash causation characteristics. It is anticipated that more than 77 horizontal curves on these routes will have these low-cost and high-value crash countermeasures installed.

The expected outcome of this project is to provide crash reductions of at least 25% by use of chevron warning signs, 35% by use of fluorescent curve signs, and 37.7% by use of edge line pavement markings. Still, there is an enormous need at hundreds of other locations similar to these 3 routes for roadway safety improvements on the Navajo Nation, where motor vehicle injuries are a significant public health problem accounting for 10.6% of all deaths.⁷ The fatality rate for motor vehicle injuries on the Navajo Nation is 44.80/100,000 compared to 11.9/100,000 in the rest of the United States.⁸

Navajo BUILD Grant

In 2018, the Navajo Nation, 4 Corners Economic Development Inc. (4CED) and San Juan County, New Mexico (County) took on the challenge of diversifying our regional economy in the wake of ongoing coal-fired electric generating processing plant closures. We agreed that a railroad spur from the I-40 BNSF railway corridor to San Juan County is essential to stimulate economic development and job creation in our region and install vitally needed infrastructure here on the Navajo Nation. To emphasize the importance of our partnership, a Memorandum of

⁵ <https://www.nec.navajo-nsn.gov/Portals/0/Announcements/Navajo%20Epidemiology%20Center%20Update%20May%202016.pdf>

⁶ <https://www.azrts.org/2018-docs/azrts-pres.pdf>

⁷ https://www.nec.navajo-nsn.gov/Portals/0/Reports/Navajo%20Fatal%20Car%20Crashes%20Report%202005-2014_opt.pdf, p. 1

⁸ Kochanek KD, Murphy SL, Xu JQ, Tejada-Vera B. Deaths: Final data for 2014. National vital statistics reports; vol 65 no 4. Hyattsville, MD: National Center for Health Statistics. 2016.

Understanding was established between the Navajo Nation and the County in 2020. In January 2021 USDOT awarded our coalition a \$2 million “Better Utilizing Investments to Leverage Development” (BUILD) grant for planning and we look forward to the USDOT BUILD team taking the developed plan and Federal Railroad Administration to converting this planning effort grant into a capital railroad project that is estimated to cost about \$200 million, and a transloading facility on the Navajo Nation estimated to cost \$350 million.

PERSISTENT TRANSPORTATION CHALLENGES

COVID-19

The *Diné Bahane*, or Navajo Creation Story, tells how Changing Woman created the original clans of the Navajo people and bore the Monster Slayer Twins who saved us from destruction by the *Naayéé*, or monsters. Today the Navajo Nation is facing a modern-day monster in COVID-19, which we call *Dikos Nitsaaígíí Náhást'éíts'áadah* - "Big Cough 19."



Community Health Representative visits her patient who requires assistance to move around his home near Crownpoint, New Mexico. *Photo by Cecille Joan Avila / Partners In Health*

The first tentacles of *Dikos Ntsaaígíí-19* reached the Navajo Nation about a year ago and we have since lost over 1,000 tribal members, many of them beloved elders who are our connection to traditional Diné culture, stories and language. Last year we suffered a higher per capita COVID-19 rate than New York and today we still suffer a COVID-19 death rate that is 3.5 times higher than the U.S. average.

According to Johns Hopkins University, the coronavirus infection rate on the Navajo Nation is over 2,304.41 per 100,000 people. By comparison, New York State has a rate of 1,806 cases per 100,000 people.⁹

⁹ <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index.html>

We flattened our curve once before and will do so again. The Navajo Nation is outpacing the vaccination rate of the rest of the country by getting 94% of the vaccines we have received into people's arms. The national vaccine rate is just 68% of vaccines received.¹⁰



San Juan County social worker delivering weekly meals to seniors in the Navajo Mountain Chapter in 2017. *Photo courtesy of Brandy Tomhave.*

COVID-19 continues to ravage Navajo families in large part because of the federal bureaucracy that has plagued Navajo Nation infrastructure development since long before COVID-19 made hand washing a matter of life and death. 40% of Navajo families live without running water or sanitation¹¹, 32% of Navajo homes lack electricity (comprising 75% of all un-electrified homes in the United States)¹², and 96% of Navajo families do not have broadband.¹³

The Navajo Nation has 14,167 miles of roads - enough miles to stretch from our capital in Window Rock, Arizona to Canberra, the capital of Australia. About 80 percent of them are unimproved dirt and sand roads that become washboards and sand traps in the dry season and impassable mud bogs whenever it rains or snows.

¹⁰ <https://www.aljazeera.com/news/2021/2/9/navajo-nation-to-receive-29k-more-vaccines-has-used-94-percent>

¹¹ <https://www.pbs.org/newshour/show/how-off-the-grid-navajo-residents-are-getting-running-water>

¹² <https://www.publicpower.org/LightUpNavajo>

¹³ <https://www.ntia.doc.gov/blog/2014/narrowing-digital-divide-navajo-nation>

These are the roads our patients must travel up to 150 miles one way just to access basic health care. These are the same roads our public health teams and other first responders heroically persevere to deliver home health care, personal protection equipment, food, water and education to help our families defeat *Dikos Nitsaaígíí Náhást'éíts'áadah* - “Big Cough 19.” But we need to be able to do more than safely travel drive upon these roads to defeat disease. We need to be able run, walk and bike upon these facilities safely so that we may each embark upon our own personal journey to good health. We must be physically strong to fight all the monsters that imperil Diné health at rates that far exceed national averages - monsters like diabetes and other chronic diseases. Here on Dinétah all weather access roads for vehicles - and sidewalks, pathways and bike paths for pedestrians - are integral components of our overall strategy to improve Diné wellness, during this pandemic and beyond.

Safety

As bad as vehicular injury and fatality rates are on the Navajo Nation, our people’s suffering on Navajo roadways is underreported. The Navajo Nation’s tri-state jurisdiction makes tracking and reporting crash data a challenge. Inaccurately low numbers in turn undermine our ability to adequately access the federal and state funding we need to mitigate crashes.

The problem is one of process. Arizona, New Mexico, and Utah each maintain their own records for motor vehicle crashes from crash reports submitted by municipal, tribal, county, or state police agencies. The Navajo Nation also maintains records of the same crashes across all three states. Coordination between police agencies, Navajo DOT, and state DOT’s in reporting and sharing these crashes records is often incomplete, causing many crashes to go unreported.

Significant differences, therefore, exist between the tribal and state databases of crash records. For example, the total count of car crashes within the Arizona section of the Navajo Nation from 2008 to 2012 varies by 3,160, or 46.35%.¹⁴

The Navajo Nation is working closely with the Arizona and New Mexico Departments of Transportation on a GIS data integration and analysis pilot study to improve the sharing of crash data that characterizes our roadway safety problem.

Red Tape

There is a saying on the Navajo Nation that “You can’t move a shovel of dirt without triggering NEPA” because of the way in which the Navajo Regional Office (NRO) of the Bureau of Indian Affairs (BIA) in Gallup, New Mexico implements BIA policy intended to fulfill the Secretary’s trust responsibility for tribal trust land. The result is a transportation system in which 85% of the roads, or 9,400 miles, have remained earthen, no different in 2021 than they were in 1921.

¹⁴ <https://www.azrts.org/2018-docs/azrts-pres.pdf>

The National Environmental Policy Act (NEPA) covers three areas: Environmental Assessments, Environmental Impact Statements and Categorical Exclusions (CatEx) to protect the environment and its resources, but inter-federal departmental differences undermine NEPA's effectiveness on the Navajo Nation. For example, NDOT is currently required to complete two environmental documents to address the federal action of funding the project (as required by Federal Highway Administration (FHWA)) and the federal action of granting a right-of-way (ROW as required by BIA). NRO will not accept the FHWA CatEx document because NRO claims it does not comply with BIA formatting requirements.

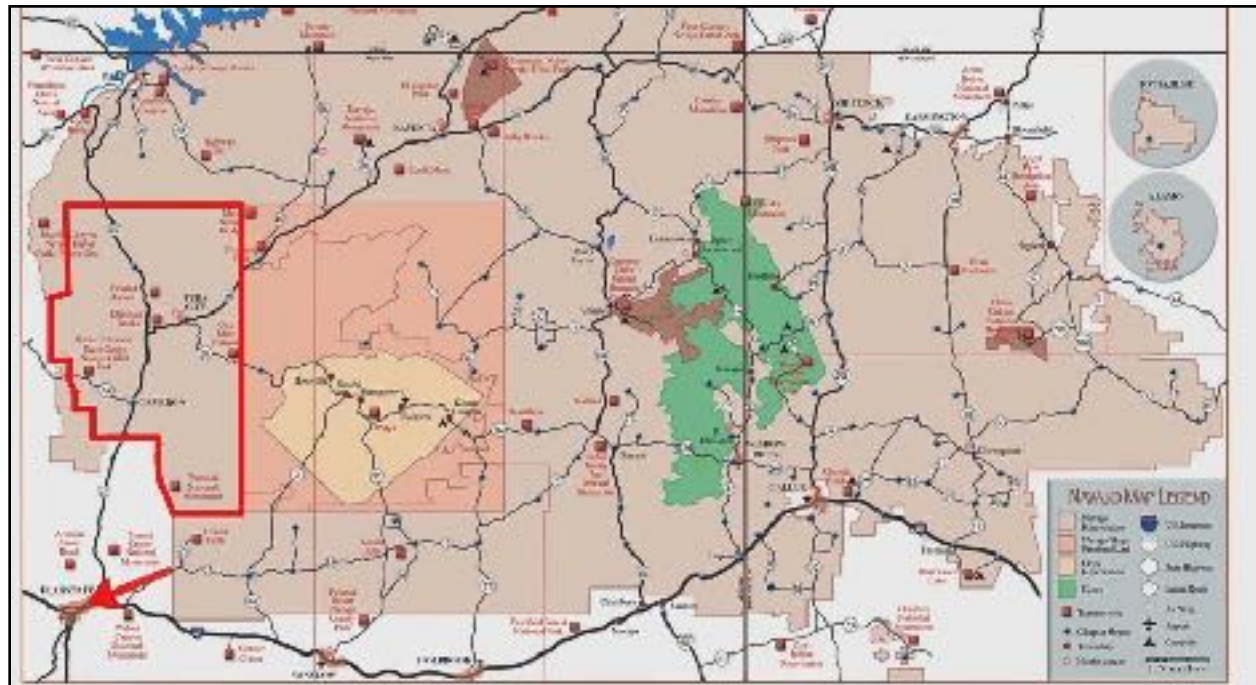
25 CFR Part 170 states that the Secretary of the Interior gives the road system responsibility to the Secretary of Transportation and their agent, which on the Navajo Nation is NDOT. Through NDOT the Navajo Nation is completing its NEPA responsibility. However, the NRO's focus on form over function, on formatting documents over processing them, prevents NDOT from being able to move beyond NEPA in a timely manner and causes the Navajo Nation major delays in completing projects. NRO's involvement in approval of a FHWA ROW application on the Navajo Nation often takes up to three years to get the project passed through red tape to final construction readiness.

Further complications arise around implementation of regulations to enforce the Clean Water. Any Surface disturbance of one acre or more requires a Storm Water Pollution Prevention Plan. Any crossing of the Water of the U.S. may require 404 and 401 Certification. The US Army Corps of Engineer has authority over 404 permits while the Navajo Nation Water Quality program has authority over the 401 program. If NNEPA had the authority to grant permits without oversight, we could potentially move projects along much faster.

The time and effort it takes us to navigate duplicative and inconsistent administrative processes imposed by multiple federal agencies further imperils the health and safety of our communities. Roads that remain unpaved and unmaintained contribute to increases in particulate matter (PM) levels that are harmful to our public health and environment. The 2005 Navajo Nation Emissions Inventory found that the main PM10 and PM2.5 emission sources are wildfires, prescribed fires, residential wood combustion, *paved road dust and unpaved road dust*. The southwest Indian Health Services region reports the highest rates for asthma hospitalizations among the six Indian Health Services regions (10.0 per 10,000 population; range, 1.8–10.1 per 10,000 population).¹⁵ Paving roads is key to reducing PM levels and reducing red tape is key to paving roads.

¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207133/>

Bennett Freeze



Red Outline indicates the former Bennett Freeze area.

In 1966 the Federal government ordered a development ban on 1.5 million acres of Navajo lands as part of the largest forced relocation of American citizens since the internment of Japanese Americans during WWII.¹⁶ This moratorium was named for the Commissioner of Indian Affairs at the time, Robert L. Bennett, and lasted 40 years until 2006. This “freeze” prohibited Navajos from fixing their own roofs much less repairing roads.

The Bennett Freeze is a national tragedy that remains invisible to most Americans, even though it continues to play out just 50 miles as the crow flies from the Grand Canyon, where 6 million people visit each year. 20,000 Diné, all U.S. citizens, live in the formerly frozen area and continue to suffer its effects:

Although a 2008 study identified the impact of the Freeze and prescribed necessary federal investments to mitigate its damage, nearly nothing has been done, effectively extending the Freeze into its 55th year. The nine Navajo Nation chapters located in the Former Bennett Freeze are:

- Bodaway Gap Chapter
- Cameron Chapter

¹⁶ “Unraveling the Anchoring Chord, Navajo Relocations 1974 to 1996”, Maureen Trudelle Schwartz for the University of Washington, Published in the American Anthropologist, Vol 99 No. 1

- Tolani Lake Chapter
- Tonalea Red Lake Chapter
- Coalmine Canyon Chapter
- Coppermine Chapter
- Tuba City Chapter
- Kaibeto Chapter
- Leupp Chapter

As a consequence of the federal government not only denying but prohibiting infrastructure investment in this region for nearly three generations, in the year 2021 Navajo families are still hauling water hundreds of miles multiple times per week upon unsafe dirt roads that are reminiscent of wagon routes and paved roads that have not been maintained since Lyndon Johnson was President.

But now, after twelve years of diligent community effort, the Navajo Nation has developed a strategic plan called the Navajo Thaw Regional Recovery Plan that is designed to undo the damage the federal government has wrought. It is the vision of the Navajo Thaw to build out new highways that better connect this region to public health, education and safety, and contribute to the economic development of the Western Agency of the Navajo Nation.



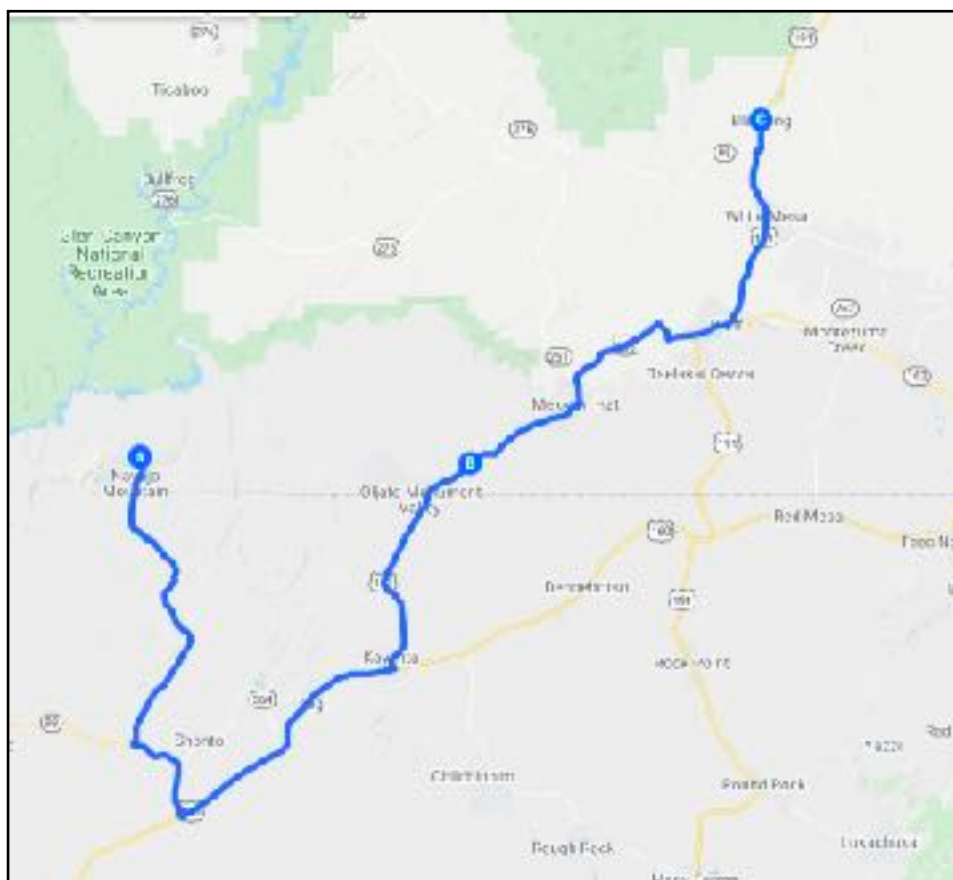
Navajo families travel up to 2 hours to haul water home on dirt roads.

Unfortunately, without federal regulatory reform, the path forward will be littered with red tape and remain slow precisely - and ironically - because the federal government does not trust that the Navajo Nation can protect Navajo land better than the very agency that caused this mess.

Civil Rights

Navajo students have the same right to get an education as other students in Arizona, Utah and New Mexico. Rules, policies or practices that deny our children that right violate their constitutional rights under the 14th amendment. This was the holding in Meyers v. Bd. of Education,¹⁷ the seminal 1994 civil rights case that was born in the community of Navajo Mountain and is the Brown v. Board of Education of Indian Country, delivering the equal treatment promise of Brown to American Indian students.

The Naatsis'áán Chapter is one of the most remote areas of the Navajo Nation, located in Utah just over the Arizona border between Lake Powell to the north, 10,388-foot Navajo Mountain to the west, and the impassable Paiute mesa to the east. Before Meyers, students from the Naatsis'áán Chapter had to travel 180 miles to Blanding, Utah in school busses that struggled to



The school bus route from Navajo Mountain to Blanding.

traverse the first 20 miles of Navajo Route 16, a dirt road that is a federal facility on the BIA's road inventory that was alternately rutted, wash-boarded or mud-bogged, and strewn with

¹⁷ Meyers v. Bd. of Educ., 905 F. Supp. 1544 (D. Utah 1995).

boulders, switch-backing without guardrails before finally reaching pavement. The federal court held that requiring Navajo children (who also happen to be county and state residents) to travel four hours in each direction to get to school is tantamount to denying them the constitutional promise of equal access to education that Brown makes to every child in America.

The court ruled that Utah's San Juan County School District had a duty to build a high school in the Navajo Mountain community of the Naatsis'áán Chapter and that the BIA had a duty to improve Navajo Route 16 to support the delivery of education.¹⁸

What this ruling did for the families of the Naatsis'áán Chapter was to finally get Navajo Route 16 paved (a project that took until 2015 to complete). What this ruling did for all other families throughout the Navajo Nation and Indian Country was say that our children have a constitutional right to get to where they are going when their destination is school, and that the federal government has a duty to build and maintain the roads necessary to get them there.

Unfortunately, this is a right that is violated daily when our students spend as much time on a school bus as they do in class because their busses cannot traverse the dirt roads that are on BIA's inventory and the federal government fails to reasonably maintain or improve our roads because:



Blading exposes the exact archaeological properties that federal law is supposed to protect. *Photo courtesy of Brandy Tomhave.*

¹⁸ Ibid.

- The BIA defines “maintenance” so narrowly that graveling a dirt road is considered “construction” making blading the only option, even though blading dirt roads provides merely temporary benefit but permanently channels the road below its surrounding surface, thus creating gully washes and sometimes even exposing archaeological properties.
- The BIA insists that adding gravel to an existing road, or using a shovel to create crowns and culverts within an already disturbed area, triggers the full panoply of the NEPA process; and
- Funding levels for the Navajo transportation system are so low that it is only possible to construct 16 miles of new pavement per year even though 9,000 miles of roads need help because they are crumbling, cracked, muddy, slick, steep, rocky, potholed, flooded, and often impassable.



Parents are forced to drop their children at the Sanostee Chapter House because the buses are unable to navigate the muddy roads. *Photograph by Don J Usner/Searchlight New Mexico. Courtesy of The Guardian*

Opportunity Costs

The Navajo Nation has designated 17 economic opportunity zones to foster diversified sustainable economies in our local communities and region but the federal policies that hold Navajo roads hostage repel investment. The threshold question interested investors always pose is about our infrastructure. Can we provide access to paved roads? Their business risk formulas cannot tolerate the risks we live with every day.

Federal policies that have stymied development on the Navajo Nation are not only chasing away non-Navajos but are chasing away our own children who move off Dinétah in search of opportunities that are not available here. We need economic development to fully manifest our own self-determination and to enable our next generations to achieve self-reliance and self-sufficiency right here at home. We estimate that our border town of Gallup, New Mexico raises about \$2 billion of revenue and 90% of those revenues comes from Diné who must travel off reservation to access most goods and services - everything from camper shells to cancer treatment. The Navajo Nation needs to be able to keep those revenues here on Dinétah.

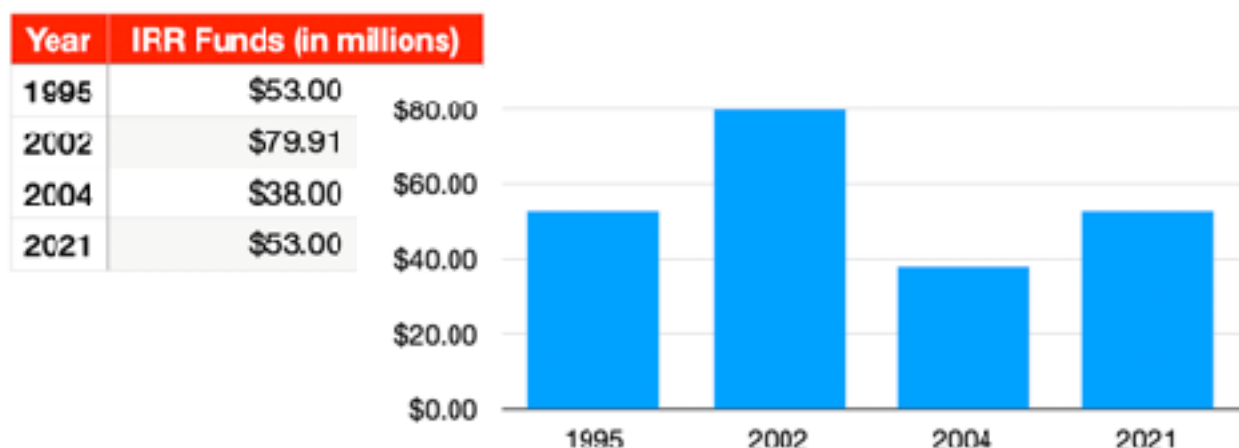
To do that, to attack persistent poverty on the Navajo Nation, to achieve well being and reduce dependency within our own borders, we need the federal government to help not hinder our efforts to improve our transportation system, especially in the wake of the closures of coal-fire plants that, though problematic, provide well-paying jobs. So far, 2,200 Diné have already lost their jobs due to the shuttering of the fossil fuel industry on and around the Navajo Nation and we anticipate the closure of five more coal fire plants in the next few years.

Tourism is a big component of the Navajo Nation Comprehensive Economic Development Plan and the growth of that industry here on Dinétah will require us to be able to make the road improvements necessary to build out a tourism corridor that we call the Navajo Grand Circle. Too many tourism operators currently launch trips from Las Vegas, Nevada that orbit the Navajo Nation but do not actually land here. They move people around the Navajo Nation but do not actually bring them so miss out on the opportunity of them spending their money at our shops, restaurants, hotels or sites of interest. The Navajo Grand Circle will require roads that can provide safe passage for tourists from point to point: from Las Vegas to Page to Monument Valley to Shiprock to Crown Point to Hopi to Tuba City to the Grand Canyon then back to Las Vegas.

These are roads that have carried precious cargo, commerce and correspondence. They are even the roads that once carried the uranium that the United States said was needed to protect all of our freedoms. But today these roads need to carry the dreams of the Navajo Nation and for that we need federal policies that support the emergence of a Navajo road transportation system built for the 21st century.

Funding Formula

In 2002, before passage of the federal highway bill known as SAFETEA-LU, the Navajo Nation received \$79.91 million in Indian Reservation Road funds. Two years later, after passage of SAFETEA-LU, the Navajo Nation lost 52.45% of its tribal transportation funding, receiving only \$38 million. Since then, our annual transportation funding increased incrementally but has plateaued at \$53 million for the past decade. Today we receive the same amount of funding we received in 1995, the only difference being that back then our share represented more than 27.7% of the national annual tribal transportation fund while our portion today represents just 10.6%.



The funding formula that SAFETEA-LU ushered in and subsequent federal highway bills have reaffirmed is an inequitable tool forged by political might that:

1. Subsidizes state and county roads that are not located on tribal trust land, thereby using limited tribal transportation funds for non-tribal transportation roads that already receive highway trust fund apportionments from other sources and have their own local property tax revenues to pay for roads; and
2. Populates the National Tribal Transportation Facility Inventory with proposed road miles for non-roads, i.e. canoe routes across open ocean, walking paths through the woods and dog sled trails.

Despite the resultant funding decreases to the Navajo Nation that are profound and patently unjust, the Navajo DOT has developed a [Long Range Transportation Plan \(LRTP\)](#) to make every effort to implements these seven goals:

- maintaining the current transportation system;
- enhancing existing partnerships with pertinent agencies;
- maximizing the effectiveness of transportation investments;
- enhancing safety;
- creating and strengthening connections;
- providing transportation options;
- and providing economic growth.

The LRTP has identified a total of \$1.4 billion in funding needs to address the current pavement deficiencies of the Navajo Nation. The Plan also identifies an additional \$6.5 billion for upgrades to the current roadway system, which includes earth, gravel, and paved roads.

There are 179 bridges, or *na'ni'á*, that also present a transportation challenge to the Navajo Nation. We need \$30 million to repair or reconstruct 10 of our most structurally deficient *na'ni'á*, some of which comprise components of major school bus routes. Unfortunately, MAP-21 eliminated the stand alone national tribal bridge program that once provided \$14 million per year. Today 574 tribes must now compete for annual bridge grants that are little more than skinny slices from the crumb pie that is the 4% tribal bridge set aside from annual TTP funds.

It is a recipe for disaster. The BIA told Congress in 2015, “{t}he requirement of the Secretaries of Transportation and Interior to perform safety inspections on all 930 tribally-owned bridges has not been adequately funded. The number of bridges which are deficient or functionally obsolete and are eligible for replacement or rehabilitation for BIA bridges alone in the 2013 National Bridge Inventory is approximately 178 of 930 (or 19.1% of the total). The estimated cost of replacing and rehabilitating these bridges is \$53.2 million. The estimated cost of inspecting the tribally-owned bridges along with the BIA is \$3.0 million every other year.”¹⁹

Navajo Nation has received just \$5.1 million for bridge maintenance and construction in the past three years. We face a total transportation need of \$7.9 billion. At the current rate of spending, it will take 116 years to meet the Navajo Nation’s transportation needs.

Funding Flexibility

The BIA Road Maintenance Program is funded by the Department of Interior through annual Tribal Priority Allocations (TPA). The premise of TPA is that the funds are dedicated to activities pursuant to the priorities that tribes identify. NRO receives about \$7 million annually to maintain roads on the Navajo Nation. Unfortunately, BIA is reluctant to expend these funds on Navajo tribal roads but instead primarily uses these funds on BIA roads.

This prohibition is not based in law but is instead an expression of agency discretion. Unfortunately, the effect of the NRO’s position undermines the very purpose of TPA, which is to invest in *tribal* priorities, not *agency* priorities. The inflexibility of NRO’s position also makes it impossible to respond on the ground in real time to the most pressing maintenance needs if those needs happen to be on tribal roads.

¹⁹ <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ocla/MBlackStatementSCIA-TribalTransportationSCIA-4-22-15%28FINAL%29.pdf>

TRANSPORTATION PRIORITIES

Resolve Conflicts of Law to protect Navajo people, environment and cultural resources.

Civil rights legislation, the Individuals with Disabilities Education Act (PL 108-446) and the Americans with Disabilities Act (PL 110-35), require that federal, state and local governments provide equal access to education and provide the infrastructure needed to support the delivery of those educational services. Unfortunately, the manner in which NRO implements NEPA and the historic preservation statutes on the Navajo Nation violates the civil rights of Navajo people, especially students. According to the Government Accountability Office, Navajo students miss up to 12 days of school per year due to weather induced road closures.²⁰ BIA's insistence that performing any activities beyond blading triggers the full panoply of the federal regulatory regime is a barrier to Dine' people being able to access education, health care, public safety, and commerce and is violative of federal laws intended to protect their rights to those services. Additionally, BIA's narrow interpretation of environmental and cultural protection statutes endangers the very environment and archaeological resources those federal laws are intended to protect.

We need a categorical exclusion that applies to all roads within the Navajo Nation, regardless of whose inventory they are on or which source of funding is being used to pay for road construction or maintenance activities.



Gunner spent three hours a day trying to get to his 6th grade class at Black Mesa School, which was once closed for two months when its school bus route washed out. *Photo courtesy of Bloomberg City Lab.*

²⁰ <https://www.gao.gov/assets/690/684809.pdf>

Harmonize Agency Guidance with Law to make Navajo roads safe.

BIA's definition of maintenance, especially for dirt roads, is not anchored in law, policy or professional engineering standards. It is merely a questionable interpretation of guidance that results in the continual degradation of roads on the Navajo Nation. "82 Indian Affairs Manual, BIA Transportation Facilities Maintenance Handbook for BIA Road Maintenance Program" 82 IAM does not define "maintenance" or "improvement" in its long list of definitions. The manual does not even provide a list of permissible dirt road maintenance activities. Instead, 82 IAM merely suggests a schedule:

"Depending on fund availability, it is recommended that BIA public improved and unimproved roads should be maintained a minimum of 2 times per year, one maintenance cycle per 6 months. School bus routes should be given priority over other earth roads. Depending on fund availability, school bus routes should be maintained a minimum of 4 times per year, one maintenance cycle each quarter. Snow plowing is considered emergency maintenance required to keep the roads passable." P. 8

This interpretation of maintenance means that routine road maintenance that happens routinely everywhere else cannot happen here, which is why our roads are persistently impassable and unsafe. An appendix to 82 IAM provides instructions for blading and notes:

"Grading the road with a motor-grader is the primary type of maintenance for dirt roads... In dry weather, traffic compacts the surface of dirt roads which often results in a hard surface crust. Dry grading a road when it has this hard surface crust is not effective... If the operator smoothes the road without breaking the crust, any work he does will be ruined almost immediately by the wind or traffic. The work is only cosmetic; it may satisfy the public but is not productive beyond providing good public relations." P. 268

It is important to note that a "primary" type of maintenance is not an "exclusive" type of maintenance. Blading may be a "primary" type of dirt road maintenance simply due to lack of available funds. 82 IAM BIA cites neither reasoned policy nor legal authority to prohibit the use of BIA road maintenance funds to crown or gravel dirt roads. Further, 23 USC101(a)(13) defines road maintenance: "The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway."

The Appendix to Subpart G of 25 CFR Part 170 provides a List of Eligible Maintenance Activities Under the Tribal Transportation Program. It characterizes the kinds of activities tribes may spend up to 25% of their own TTP funds on. This 27 point list is an example of the flexible range of options needed to properly maintain tribal roads for the safety of the traveling public.



A road grader tries to pull out a school bus stuck in the mud on Navajo Route 5010 in the Sanostee Chapter in New Mexico. *Photo courtesy of New Mexico Political Report.*

We need the U.S. Department of Transportation and Interior, as well as Congress, to come to an agreement about the definition of road maintenance and apply it uniformly, regardless of the location of the road or the source its funding.

Provide flexibility to the Tribal Priority Allocations (TPA) that BIA uses for road maintenance so that TPA funds may also be used to fund tribal roads.

While the BIA encourages flexible use of road construction funds for even non-BIA and non-tribal roads, characterizing tribal road fund subsidies for state and county roads as leveraging resources for regional economic benefit, the BIA takes a very different approach to expenditures of TPA for road maintenance. The BIA refuses to expend such funds for road maintenance on anything but BIA roads, regardless of tribal priorities or road safety exigencies. The position of the agency essentially erases the opportunity for tribes to prioritize the use of Tribal Priority Allocations.

We need Congress and the Secretary of Interior to direct the BIA to allow TPA funds to be used to maintain tribal roads upon a tribe's request.



Road on Utah side of Navajo Nation near McCracken Mesa.
Photo courtesy of Kate Groetzinger/KUER.

Ensure agency practice is consistent with policy to make the Navajo road system equitable.

Navajo students sometimes spend more time stuck on a school bus than in a classroom not only because of the BIA's punishing application of federal environmental and archaeological laws, and the agency's circuitous definition of road maintenance, but also because of Secretary oversight that deprives the Navajo Nation of accessing its own gravel to make Navajo dirt roads safe and accessible in all weather. A recent project in our Indian Wells Chapter took three years just to get approval for a gravel pit. We actually ended out having to purchase a gravel pit just to make the project possible. Our inability to access our own borrow sites creates one of the greatest costs to Navajo road projects because gravel must be hauled from off-reservation, despite its availability here. There are at least two precedents of Secretarial approval of gravel mining on Navajo trust land: 1) to build a casino parking lot, and 2) to build an alternative emergency route when U.S. 89 was closed due to a land slide. The logic in both instances was that the Navajo Nation should be able to access its own gravel for its own purposes.

We need this policy spelled out by both the U.S. Department of Transportation and Interior Department and implemented consistently.



In January 2020 the Navajo Nation purchased 1,250 acres of land near Indian Wells, Arizona for a fully-operational sand and rock pit needed to produce gravel for Navajo road projects.
Photo courtesy of the Navajo Office of President and Vice President.

Protect the integrity of tribal road funds so that they do not subsidize non-tribal roads.

Navajo students, patients, employees and emergency responders who cannot get to where they are going because they get stranded on washed out or otherwise inaccessible roads are the victims of a cynical tribal road funding formula muscled through Congress by entities that have no tribal roads. BIA Secretaries have lauded the fact that tribes are continuing to invest in transportation projects that are the responsibility of other government authorities, characterizing what is stealing from American Indians as leveraging regional economic development (please see BIA Assistant Secretary Michael Black's testimony at the 2014 Senate Committee on Indian Affairs hearing). In 2014, when the total Tribal Transportation Program (TTP) funds for 566 tribes was just \$450 million, BIA approved \$270 million in TTP to be invested in non-BIA and non-tribal transportation projects



Oklahoma tribes contribute millions of dollars every year to state and county roads like this one in Bartlesville, OK. *Photo courtesy of Stephen Pingry for Tulsa World.*

Agency rules that allow tribes without roads to include, without data, proposed ghost roads merely to game the system to increase their formula funded share has real life and death consequences for the Navajo Nation and other large land-based tribes. Today our public health nurses are struggling to reach COVID-19 patients in communities with higher coronavirus rates than other parts of the United States where infrastructure does not factor into the fight against the coronavirus. But this is a struggle to which the tribal formula fund and its proponents have turned a blind eye for a long time.



View through the windshield a Tuba City Regional Health Care (TCRHCC) public health nurse journeying to see a patient in the Western Agency of the Navajo Nation. *Photo courtesy of TCRHCC.*

In 2017, school bus driver Marilyn Benally, who has driven a school bus in the shadow of Monument Valley for 21 years shared with Indian Country Today that, “When it’s dry, the roads turn into washboards or sand traps. When there’s snow or rain, it’s muddy. Roads aren’t passable.” The unwritten rules of her job are, “If the bus gets stuck in snow, ice, sand, mud or standing water, don’t spin the tires. Set the brake, call for help and keep the engine running. And never, under any circumstances, allow students to get off the bus and push.” By way of example,

she and her colleagues recounted a typical event when a school bus slid off the road after sunset at about 7:30 p.m. and slid off the embankment only to then be hit by an oncoming car. As the driver waited for help to arrive, she sent the remaining students home by foot. Maintenance crews arrived 90 minutes later, but eventually called off the rescue until the following morning.²¹

We need the U.S. Department of Transportation to 1) redefine, for the purpose of the National Tribal Transportation Facility Inventory (NTTFI), the definition of “roads” to access routes for vehicular ground surface traffic (explicitly excluding walking paths, dog mush routes and canoe trails; 2) require all proposed roads included within NTTFI to be supported by data, both going forward and retroactively; and 3) Prohibit Tribal Transportation Program funds from being invested in non-BIA or non-tribal road projects.

²¹ <https://indiancountrytoday.com/uncategorized/navajo-nation-bus-routes-dangerous>

Recognize that tribal bridges and roads presents different exigencies of circumstance that require complimentary, not competitive, funding sources.

MAP-21 eliminated the stand alone tribal bridge program that TEA-21 authorized as part of an overall effort to eliminate and consolidate small programs but little if any thought was given to how would impact 574 tribes who otherwise have no dedicated source of funding to rehabilitate or construct bridges on federal trust land. The bridge set asides are a cruel alternative that pit road projects against bridge projects and tribe against tribe. The current situation is as financially unsustainable as many of our bridges are structurally unstable.

We need the U.S. Department of Transportation and Dept. of Interior to prioritize the reauthorization of a stand alone tribal bridge program that is funded at a level that takes the safety of federal facilities and federal trustees seriously.



Bridge 617 in Crystal, New Mexico is part of a primary school bus route. Since the bridge has been closed school busses and other traffic have created an ad hoc route around the bridge.

Photo courtesy of NDOT.

Promote tribal sovereignty by retroceding Secretarial approval over tribes who have demonstrated their own capacity for federal regulatory compliance.

The federal trust responsibility is intended to protect the resources, life-ways and culture of trustees on federal Indian trust lands and the Indian Self-Determination and Education Assistance Act recognizes the inherent right of tribes to govern themselves. Taken together, these fundamental tenets of federal Indian law argue for tribal autonomy, when possible, to administer their own regulatory regimes that meet the federal floor so that they might find their own ceiling. This is the same autonomy allowed states and territories without Secretarial oversight.

For too long, Secretarial oversight has been construed to mean Secretarial interference of tribal authority, which is merely a carryover from colonialism that does not recognize the competency of tribes to take care of themselves and their environment. It results in duplicative tangles of red tape that drive up project costs and protract their schedules.

As mentioned earlier, NDOT is currently required to complete two environmental documents to address the federal action of funding the project (required by FHWA) and the federal action of granting a right-of-way (required by BIA). NRO will not accept the FHWA CatEx document because it is not considered to be in a BIA format. However, the FHWA CatEx is an acceptable document to complete the NEPA process. Such bureaucratic paternalism is hindering, not protecting, resources, life-ways and culture of trustees on federal Indian trust lands and undermining Congress' decades long efforts to promote tribal self-determination.

We need the Secretary of Transportation and Secretary of Interior to retrocede their authority over tribal roads in cases where tribal governments, like the Navajo Nation, have already assumed treatment as a state from U.S. EPA.

CONCLUSION

Roads are the key to everything.

To attract the businesses and create the jobs and build the homes we need to keep Diné families here on Dinétah, which is fundamental to keeping our very culture alive, we need the federal government to move beyond colonial policies that make nation building on tribal lands a game of mother-may-I. We need fair and commonsense policies that honor our treaties and inherent sovereignty. We need federal partnerships whose terms are commensurate with a government to government relationship.

From the time of emergence, our *Diyin Dine'* entrusted us with preserving the pristine quality of the environment on our sacred lands. This meant that we were entrusted with maintaining harmony and balance with all living beings, as well as the environment we dwell in. It is through this balance that, we, as Dine' people, have our own sense of wholeness and can promote a state of harmony.

We are the children of Mother Earth, a Nation independent within the four sacred mountains. Each of us is anchored by kinship, traditional teachings and the natural laws. We understand and embrace the task of protecting our Dine' land, water and air within our sacred mountains, to ensure that all living beings live in balance, harmony and *Hozhoogo nasha* are careful and walk in beauty.

It is the mission of NDOT to provide a safe, efficient transportation system that supports economic opportunity and livable communities throughout the Navajo Nation and we need our federal partners to support, not supplant, our decision making authority so that NDOT, NNEP, DED and all our Divisions can do what we know needs to be done for our own people on our own land. We look forward to working with this Administration and Congress to truly move tribal transportation policy forward for the 21st century.

