

**RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016**

AN ACTION

**RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE NAVAJO NATION
LAND ACQUISITION RULES AND REGULATIONS**

BE IT ENACTED:

Section One. Authority

A. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500(C), exercises oversight authority over land.

B. The Resources and Development Committee of the Navajo Nation Council is empowered to approve land acquisition regulations pursuant to 16 N.N.C. § 3, CAU-44-16.

Section Two. Findings

A. The Navajo Nation Council passed Resolution Number CAU-44-16 which amended the Navajo Land Policy on Acquisition of Land, 16 N.N.C. §§ 1-10 and the Land Acquisition Trust Fund, 16 N.N.C. § 202 which was certified by the Speaker of the Navajo Nation Council on August 5, 2016 and signed into law by the President of the Navajo Nation on August 10, 2016.

B. The purposes for amending the Navajo Land Policy on Acquisition of Land include allowing the Navajo Nation to be competitive in the real estate industry and negotiating and acquiring property on a streamlined basis. CAU-44-16. The approval of the Navajo Nation Land Acquisition Rules and Procedures, Exhibit "A," will fulfill these purposes.

C. The Division of Natural Resources Navajo Land Department is proposing the Navajo Nation Land Acquisition Rules and Procedures, attached as Exhibit "A."

D. It is in the best interest of the Navajo Nation to approve the recommended Navajo Nation Land Acquisition Rules and Procedures, attached hereto as Exhibit "A."

Section Three. Approval

Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Land Acquisition 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 Department of Transportation, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained this 25th day of October, 2016.



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

**Motion: Honorable Walter Phelps
Second: Honorable Leonard Pete**

NAVAJO NATION LAND ACQUISITION RULES AND REGULATIONS

I. PURPOSE

The Navajo Nation Division of Natural Resources is authorized to acquire or dispose of real property for the Navajo Nation. These regulations shall establish the process for the acquisition and disposition of real property for the Navajo Nation, pursuant to 16 N.N.C. §§ 1 *et seq.*

II. NAVAJO NATION LAND ACQUISITION POLICY

All real property of the Navajo Nation shall be acquired or disposed of in the best interest of the Navajo Nation.

III. AUTHORIZATION

A. The Executive Director of the Division of Natural Resources (“Executive Director”) is authorized to sign all administrative documents, not including the purchase agreement, closing documents, or other transactional documents, which shall be signed by the President pursuant to 2 N.N.C. § 222(A), unless delegated signatory authority by the President.

B. The Executive Director shall have the authority to:

1. Strategize and evaluate properties for acquisition or disposition through coordination with appropriate Divisions, Chapters, and Enterprises;
2. Conduct a preliminary assessment of the property in terms of location, value to the Navajo Nation, title, and environmental issues;
3. Coordinate with interested Divisions or Chapters to complete the assessment of the property for acquisition or disposition;
4. Hire consultants, such as but not limited to, real estate brokers and agents to assist the Navajo Nation in the acquisition or disposition of real property; and
5. Negotiate the purchase price for the subject property.
6. Authorize the Navajo Land Department to conduct additional administrative duties that are not already identified herein.

IV. APPROVAL PROCESS

A. Pursuant to 16 N.N.C. § 4, the Executive Director shall:

1. Approve price, acreage, and location for the acquisition or disposition of real property;

2. Be limited to the total expenditures of \$5,000,000 for each calendar year (January 1st to December 31st);
 3. Issue a memorandum for approval or disapproval of such acquisition or disposition of real property; and
 4. Have the discretion to seek Resources and Development Committee (“RDC”) approval when the purchase is in his or her authority.
- B. Pursuant to 16 N.N.C. § 4, the RDC, after a recommendation by the Budget and Finance Committee (“BNF”), shall:
1. Approve price, acreage, and location for the acquisition or disposition of real property;
 2. Be limited to the total expenditures of \$20,000,000 per calendar year (January 1st to December 31st); and
 3. Issue a resolution for approval or disapproval of such acquisition or disposition of real property.
- C. Pursuant to 16 N.N.C. § 4, the Naa'bik'iyati' Committee (“Naa'bik'iyati' ”), shall:
1. Approve price, acreage and location for the acquisition or disposition of real property exceeding the total expenditure of \$20,000,000 per calendar year (January 1st to December 31st); and
 2. Issue a resolution for approval or disapproval of such acquisition or disposition of real property.
- D. Expedited Acquisitions
1. An acquisition shall be expedited only in those unique circumstances where the property must be acquired through immediate approval, due to the nature of the property or the circumstances of the sale.
 - a. The Executive Director is solely authorized to determine when an expedited process is necessary for an acquisition.
 - b. An acquisition may be deemed expedited in circumstances where the immediate acquisition of land is beneficial to the Nation, such as a desirable property in a competitive market, a foreclosure where the Nation can exercise the right of first refusal, or other situations which would necessitate immediate acquisition due to the nature of the property or the circumstances of the sale.
 - c. The Executive Director shall have the authority to authorize the deposit of earnest money and the opening of escrow prior to the execution of a purchase agreement only for expedited acquisitions, and shall exercise such authority only when necessary.
 2. Upon determination of the need for an expedited process for an acquisition between \$5,000,000 and \$20,000,000 per calendar year, the Executive Director shall provide notification of such determination to the Chairs of BNF and RDC.

- a. The Chair of BNF shall immediately convene a special meeting within seven (7) working days to determine if a recommendation to RDC is appropriate for the acquisition.
 - b. The Chair of RDC shall convene a special meeting no more than three (3) days after BNF has met.
- 3. Upon determination of the need for an expedited process for an acquisition exceeding \$20,000,000 per calendar year, the Executive Director shall provide notification of such determination to the Chair of RDC and the Speaker of the Navajo Nation Council.
 - a. Legislation shall go directly to Naa'bik'iyati' for consideration.
 - b. The Speaker shall convene a special meeting of Naa'bik'iyati' within seven (7) working days to approve or disapprove the acquisition.

V. REAL PROPERTY PURCHASE REQUIREMENTS

- A. The land must be desired for acquisition or disposition by the Navajo Nation.
 - 1. Land must conform to the Major Purposes requirements set forth in 16 N.N.C. §2; or
 - 2. Other lands that will benefit the Navajo Nation.
- B. The Navajo Nation must purchase land with insurable title.
 - 1. The Navajo Nation should purchase fee simple title to real property that is insurable.
 - 2. All steps should be taken to obtain clear and marketable title that is free of questions of fact, free of questions of law, free of any clouds on title, not subject to any liens, and vested in the seller of the property, except in special circumstances that are deemed to benefit the Navajo Nation.
- C. The purchase price for the land must be fair and reasonable.
 - 1. The purchase price may be determined by a certified real estate appraisal; or
 - 2. Other standards of valuation used to determine a fair and reasonable price.

VI. GENERAL PROCEDURE FOR PURCHASE OF REAL PROPERTY

- A. This is the general procedure to be used for the purchase of fee land. It is understood that other process are used for purchase of allotment land, foreclosed lands, and other lands being acquired under special circumstances.
- B. Identification of Real Property
 - 1. The Navajo Land Department, with the Executive Director's authority or directive, shall maintain a listing of real property available for sale and acquisition.

2. Real property, with or without improvements, shall be identified by certified legal survey.
3. All improvements, including but not limited to, buildings, furniture, equipment, fixtures, and good will of a business shall be included in the identification of the property, if applicable.

C. Preliminary Inspection

1. The Navajo Land Department shall conduct an on-site inspection of the property to identify the land, any title issues, inventory, readily identifiable environmental concerns, or any other issue that may exist.
2. The Navajo Land Department shall review preliminary title documents, if available, for identification of any liens, encumbrances, or title issues.

D. Purchase Approval

1. Upon completion of the preliminary inspection, the Navajo Land Department shall:
 - a. Prepare a recommendation to the appropriate approving authority; and
 - b. Verify that funds are available for the purchase.
2. The approving authority shall take action to approve or disapprove the Navajo Land Department's recommendation.
 - a. The Executive Director will approve or disapprove acquisitions through memorandum.
 - b. RDC will act through the resolution process set forth in Title II of the Navajo Nation Code.
 - c. Naa'bik'iyati' will act through the resolution process set forth in Title II of the Navajo Nation Code.

E. Purchase Agreement and Opening Escrow

1. After it is determined that real property is suitable for purchase by the Navajo Nation, the Executive Director may issue a letter of intent or begin negotiating a purchase agreement.
2. All purchases of real property shall be completed through the opening and closing of a real estate purchase escrow account established with a reputable Title Insurance Company, managed by the company's designated escrow agent, except in special circumstances that are deemed to benefit the Navajo Nation.
3. The purchase agreement shall require that the opening of escrow occurs when the purchase agreement is fully executed, and the earnest money, which is part of the purchase price, is deposited with the escrow agent.
 - a. The Executive Director will have the authority to authorize the deposit of earnest money with the escrow agent for all purchases.
 - b. Navajo Land Department shall coordinate with the Office of the Controller to transfer funds for escrow and earnest money.

4. Title insurance policy may be purchased for the property being acquired.
 5. The purchase agreement shall include a due diligence period to complete inspections, review any issues, and address any other concerns of the Navajo Nation as buyer.
- F. Due Diligence Investigations
1. During the due diligence period, the Navajo Land Department may hire contractors through the contracted agent, or obtain the assistance of Navajo Nation Departments or Programs, to assist the Department in determining if the property is suitable for purchase.
 2. The due diligence investigations shall include building or improvement inspections and appraisals.
 3. To the extent possible, the due diligence investigations should include environmental audits, Phase I environmental site assessment, surveys, and engineering inspections.
- G. Closing of Escrow
1. The Navajo Land Department shall conduct a final inspection of the premises to ensure that no changes have been made to the property.
 2. The Division pursuing the acquisition shall ensure all conditions contained in the purchase agreement are fulfilled.
 3. The deed must be recorded by the escrow agent with the Navajo Nation and the recording official designated by law, which may include the pertinent County of the State wherein the property is located, such as the County Recorder's Office.
- H. Post-Closing of Escrow
1. The Executive Director shall notify appropriate divisions of the acquisition to insure all transfers are handled correctly, which includes identifying the subject property as a Navajo Nation property or transferring of any lease and/or water rights.

VII. LAND ACQUISITION TRUST FUND

- A. The Land Acquisition Trust Fund shall be used to compensate land users for the exercise of eminent domain by the Navajo Nation pursuant to 16 N.N.C. §§ 1401-1403.
- B. Property taxes for all taxable Navajo Nation properties shall be paid yearly through the Land Acquisition Trust Fund.
- C. Funds within the Land Acquisition Trust fund budget that are unspent at the end of each fiscal year shall be carried over and budgeted into the following fiscal year.

VIII. AMENDMENTS

This Land Acquisition Rules and Regulations may be amended by the Resources and Development Committee of the Navajo Nation Council.