

RCS-42-08

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NAVAJO FISH AND WILDLIFE

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL - Second Year, 2008

AN ACTION

RELATING TO RESOURCES; APPROVING THE NAVAJO NATION GOLDEN
AND BALD EAGLE NEST PROTECTION REGULATIONS

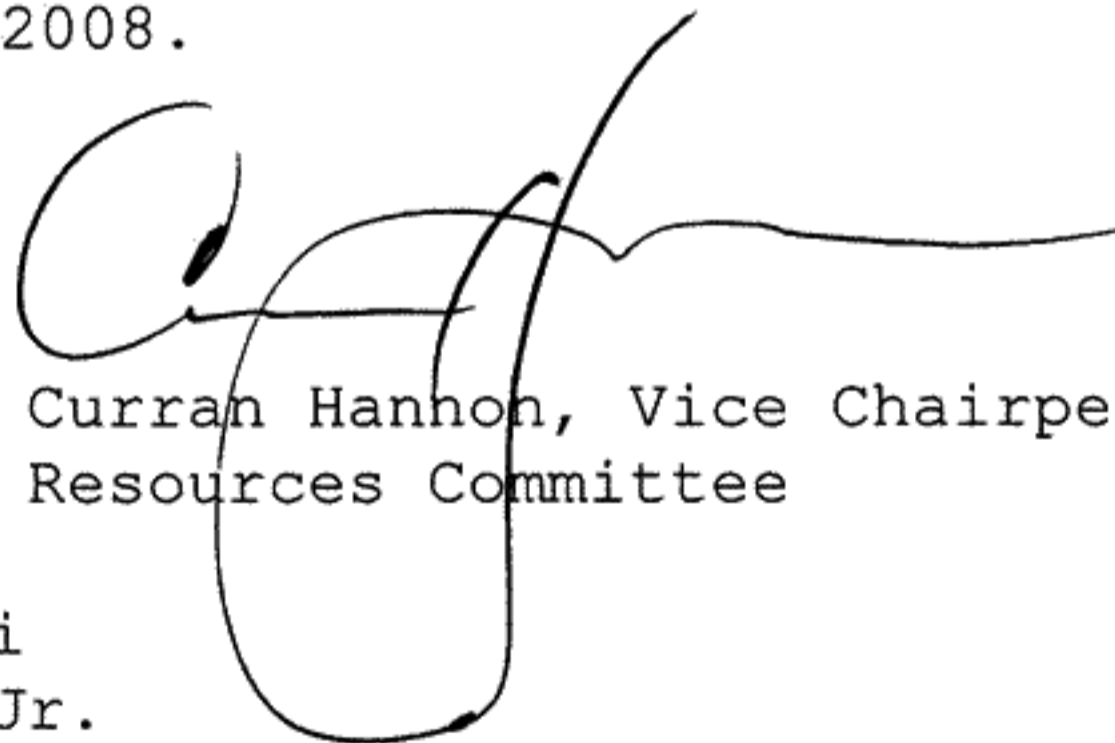
BE IT ENACTED:

1. The Navajo Nation hereby approves the Navajo Nation Golden and Bald Eagle Nest Protection Regulations, attached hereto as Exhibit "A".

2. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 10th day of September, 2008.

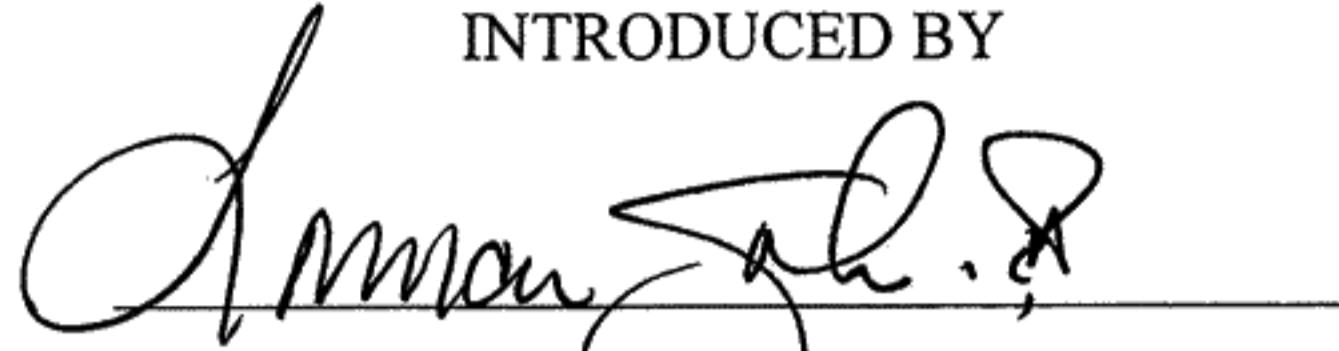


Curran Hannon, Vice Chairperson
Resources Committee

Motion: Harriett K. Becenti
Second: Phillip Harrison, Jr.

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 21st NAVAJO NATION COUNCIL -- Second Year, 2008

3 INTRODUCED BY

4 
5

6 (Primary Sponsor)

7 TRACKING NO. 0550-08

8 AN ACTION

9 RELATING TO RESOURCES; APPROVING THE NAVAJO NATION GOLDEN
10 AND BALD EAGLE NEST PROTECTION REGULATIONS

11
12 BE IT ENACTED:

- 13
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LEGISLATIVE SUMMARY SHEET

Tracking No. 0550-08

DATE: August 29, 2008

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO RESOURCES; APPROVING THE NAVAJO NATION GOLDEN AND BALD EAGLE NEST PROTECTION REGULATIONS

PURPOSE: The purpose of the resolution is to approve the Navajo Nation Golden and Bald Eagle Nest Protection Regulations.

This written summary is provided in accord with Navajo Nation Council Rules of Order, Rule 11(A), or Standing Committee Rules of Order, Rule 12, on the resolution as drafted by the Office of Legislative Counsel. This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.



NAVAJO NATION:
GOLDEN AND BALD EAGLE NEST PROTECTION
REGULATIONS

I. POLICY

1. It is the policy of the Navajo Nation to provide protection for Golden Eagles and Bald Eagles (hereafter, 'Eagles'), and their nests, on The Navajo Nation by regulating human activities associated with land use, land development, and other activities within close proximity of all known Eagle nests.
2. These Regulations are designed to: 1) establish circular buffers around all Eagle nests on the Navajo Nation; 2) protect nesting Eagles, their eggs and young, from human activities within those buffers during the breeding season; and 3) designate the types of permanent structures that may be constructed within those buffers.

II. PURPOSE

The purpose of these regulations is to promote the conservation of breeding Eagles on the Navajo Nation by protecting their nests from human activities that may cause temporary or permanent disturbance. To help accomplish this, it is necessary to:

1. limit human-caused disturbances to nesting Eagles during the breeding season;
2. minimize impacts to known Breeding Areas, especially in terms of placement of permanent structures within designated buffers around Eagle nests;
3. avoid or minimize impacts to foraging habitats around Breeding Areas; giving specific consideration to prey diversity and densities;
4. minimize impacts over broad areas of the Eagles' range on the Navajo Nation; and
5. mitigate for unavoidable losses of nesting sites or habitat quality.

III. PRINCIPLE TENETS

1. Eagles are traditionally important to the Navajo People and are an important part of naturally-functioning ecosystems of The Navajo Nation.

2. It is the responsibility of the Department of Fish and Wildlife (DFW) to manage, conserve, and protect raptors on Navajo Lands. Both the Golden Eagle and Bald Eagle are native breeding species of the Navajo Nation that are considered 'endangered' under Navajo Nation Code (Chapter 17 § 507a). Both species are also protected from unlawful take under Navajo Nation Code Chapter 17 § 505, and are federally protected from take under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c).
3. Human land-use practices may have a variety of types of impacts to nesting Eagles and their habitats, including: 1) direct, indirect, and cumulative impacts to nesting success and adult survival; and 2) direct, indirect, and cumulative impacts to nesting and foraging habitat and prey densities.
4. Protection of occupied and unoccupied nests is important because:
 - i) not all adult Eagle pairs breed every year;
 - ii) not all Breeding Areas are used for breeding each year;
 - iii) any intact nest within a Breeding Area may be used in a given year;
 - iv) Breeding Areas may be reoccupied, and nests may be rebuilt and used, even if left unattended for a number of years.

IV. DEFINITIONS

A. ACTIVITIES TYPES

'ACTIVITIES' are human presence and actions, along with associated vehicles and machinery, usually for performing specific tasks or projects; this is associated with land-use (e.g. home-site use, domestic livestock grazing, forestry practices, mining, transportation, recreation, and residential/industrial zoning) and land-development (e.g. water, sewer and electrical utilities construction; home-site and chapter developments) and other activities (e.g. unregulated recreation and biological/archeological/land/right-of-way surveys).

'BRIEF ACTIVITIES' are those that occur for up to one (1) hour per day and involve only personnel, and passenger or maintenance vehicles.

Examples include: soil surveys, biological surveys, infrequent maintenance of structures.

‘LIGHT ACTIVITIES’ are those that occur for up to one (1) day in the same general area (i.e. within 1,000 ft of the previous day’s action), and involve up to five (5) vehicles (including up to three (3) construction-type vehicles or equipment), and up to ten (10) personnel. Examples include: construction of residential utilities (power, water, sewer), fence building.

‘HEAVY ACTIVITIES’ are those that exceed at least one of the criteria for Light Activities, or include permanent structures that involve human activity of up to one (1) visit per week. Examples include: road construction, oil and gas well construction.

‘LOUD ACTIVITIES’ are those that exceed the normal base-level of construction noise, either for brief or extended periods. Examples include: blasting, jackhammer, rock crusher.

B. STRUCTURES

‘PERMANENT STRUCTURES’ are above-ground facilities that persist for more than two (2) years in the same location.

‘DAILY-USE’ involves human activity that occurs more than three (3) days a week. Examples include: home sites, sheep camps, subdivisions, coal mines, new roads, some road improvements, gas plants, large-scale farming, borrow pits.

‘INFREQUENT-USE’ involves human activity that occurs three (3) or less days a week. Examples include: maintenance of oil and gas wells or utilities.

C. BIOLOGICAL

‘EAGLE(S)’ is an individual belonging to either species recognized as Golden Eagle (*Aquila chrysaetos*) or Bald Eagle (*Haliaeetus leucocephalus*).

‘NEST(S)’ is a stick structure verified to, or likely to, have been built by Golden Eagles or Bald Eagles, based on observation of its occupants, nest size, or characteristics of composition and placement on the substrate.

‘BREEDING SEASON’ (or ‘NESTING SEASON’) includes the dates beginning on January 15th and ending on July 15th of any given year (January 15-July 15); this season begins with the

breeding behaviors of pair-bonding and nest-building, includes egg-laying, nestling and fledgling periods, and concludes one month into the post-fledgling period.

‘POTENTIAL HABITAT’ is an area on the landscape that represent suitable nesting habitat for Golden Eagles (includes steep cliffs with sheltered ledges, potholes, or small caves for nest placement, that are typically ≥ 30 m in height, and adjacent to Eagle foraging range of desert grasslands or desertscrub) or Bald Eagles (primarily includes forested areas with stands of mature or old-growth forest, and adjacent to lakes or rivers that provide suitable forage of waterfowl and fish; rarely cliff faces near large water bodies are used for nesting).

‘BREEDING AREA’ is an area of land containing one or more Eagle nests within the range of one mated pair of Eagles (often synonymous with ‘Territory’).

‘OCCUPIED BREEDING AREA’ consists of nests which are repaired, tended, or used for nesting, in the current year by a pair of Eagles, as determined by any of the following indicators: a) recent repairs (fresh sticks or lining), fresh mute, or feathers visible at or near the nest, b) an adult and a bird in immature plumage were observed at or near the nest, if courtship behavior occurred; c) two adults Eagles perched on or nest the nest; d) an adult sitting low in the nest, presumably incubating; e) eggs, nestlings, or recently-fledged Eagles.

‘ACTIVE NEST’ is the single nest within an Occupied Breeding Area that is used, in the current year, by the resident Eagles for egg-laying and raising of young. For this Policy, all nests within an Occupied Breeding Area are considered as ‘Active Nests’ during pair-bonding and prior to egg-laying. After a nest is selected and eggs are laid, then only the nest containing eggs is considered an ‘Active Nest.’ An Active Nest retains this status throughout the Breeding Season, unless it is determined to have become a Failed Nest by a qualified DFW biologist, or DFW-permitted consultant. For this Policy, nests without eggs or incubating adults by April 1 in the current year may not be considered as “Active.” And no nest may be considered as ‘Active’ during the non-breeding season of July 16th to January 14th.

‘FAILED NEST’ is an Active Nest in which the eggs do not hatch, or nestling Eagles die prior to successfully leaving (fledgling) the nest.

V. GOLDEN & BALD EAGLE NEST PROTECTION REQUIREMENTS

1. In order to protect all nesting Golden Eagles and Bald Eagles on the Nation from February 1st to July 15th, the following types of activities will not be allowed:
 - a. BRIEF ACTIVITIES within 600 m (0.375 mi) of an Active Nest.
 - b. LIGHT ACTIVITIES within 800 m (0.50 mi) of an Active Nest.
 - c. HEAVY ACTIVITIES within 1.0 km (0.625 mi) of an Active Nest.
 - d. LOUD ACTIVITIES within 1.2 km (0.75 mi) of an Active Nest.

2. In order to protect all Eagle nests from human disturbances associated with PERMANENT STRUCTURES on a year-round basis:
 - a. No INFREQUENT-USE PERMANENT STRUCTURES will be allowed within 800 m (0.50 mi) of an Eagle Nest.
 - b. No DAILY-USE PERMANENT STRUCTURES will be allowed within 1.0 km (0.625 mi) of an Eagle Nest.

3. In addition to the above buffers, these additional measures will be required during project planning, to further minimize impacts, if activity is proposed near known Eagle Breeding Areas or Potential Habitat.
 - a. Place new constructions and human disturbances near previously-disturbed areas whenever possible.
 - b. Limit the size of construction to smallest area needed to meet project needs.
 - c. Reclaim disturbed areas and roads post-construction.
 - d. Consider alternative construction sites and/or methods.

4. Mitigate for unavoidable losses of Active Nests, Occupied Breeding Areas or Potential Habitat, and for potential disturbances to nesting Eagles with measures approved by the DFW. For example, monitoring of nesting success for up to five (5) years at the affected nest(s) is a standard recommendation for Activities that may impact nesting Eagles.

5. At the discretion of a qualified biologist, and approval of the DFW Director, these regulations may be revised or altered as new information becomes available; and deviations (esp. in distances and dates) will be allowed on a case-by-case basis and for warranted circumstances.
6. For emergency situations that involve threats to human life or safety, all Activities associated with the emergency will take precedence over all aspects of this Policy until the situation is resolved.
7. All Eagle nests present and future will be protected under this Policy following verification and documentation by a qualified DFW biologist.
8. Old and dilapidated Eagle nests may be excluded from these regulations by a qualified biologist of the DFW if the nest appears to no longer represent a current, or future, suitable breeding location. Only nests known, or suspected, to be unused for at least ten (10) years, composed of unconsolidated sticks with no vertical cohesiveness may be considered for deletion. A DFW biologist will consider the condition of nest(s), nesting substrate, and foraging habitat, and the future of that area as Potential Habitat, while making any determination to withdraw a nest from this Policy.
9. The DFW considers, and treats, all nest locations as "confidential." Nest locations may only be divulged to qualified entities for appropriate reasons, as determined by a qualified biologist and Director of the DFW. Without written approval by the DFW Director, nest location data may not be: 1) used by outside entities except for the intended and approved purpose; 2) copied or forwarded to other agencies, contractors, or other organizations; or 3) published in any documents made available to the public. The biologist and Director of the DFW will consider release of nest data only for the purposes that facilitate nest protection, proper land-use planning, valid scientific study, or other purposes consistent with proper conservation of Eagles.

OFFICE OF THE PRESIDENT
THE NAVAJO NATION
Signature Approval Sheet

DNR - 12037

FROM: DIVISION OF NATURAL RESOURCES - Department of Fish and Wildlife
Gloria M. Tom

Ext. 6451



DOCUMENT:

Date: 2 June 2008

Approval of the Navajo Nation Golden and Bald Eagle Nest Protection Policy.

	SURNAME	DATED
1. DFW:	<i>[Signature]</i>	3 July 2008
2. DNR:	<i>[Signature]</i>	7/3/08
3. DOJ:	<i>[Signature]</i>	7/28/08
4. P/VP:	<i>[Signature]</i>	7/30/08

Date Signed: _____ No. of Signatures _____ Disposition: 8 2008 Initial _____

P/VP (Original)

ORIGINATING DEPARTMENT

DNR FILES


JUL 3 2008



September 4, 2008

MEMORANDUM

TO : Hon. George Arthur, *Chairperson*
Resources Committee

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Resources Committee of the Navajo Nation Council:

Legislation No. 0550-08

An Action:
Relating to Resources; Approving the Navajo Nation Golden and Bald Eagle Nest Protection Regulations.

As the Committee assigned to consider the legislation, Legislation No. 0550-08 must be placed on the Resources Committee's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0550-08

xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. Norman John, *Council Delegate (Prime Sponsor)*
File