



## **OFFICE OF THE AUDITOR GENERAL**

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### **The Navajo Nation**

### **A Performance Audit of the Navajo Nation Business Site Lease Process**

**Report No. 23-17  
June 2023**


**Performed by:  
TAP International, Inc.**





## M-E-M-O-R-A-N-D-U-M

**TO** : Tony Skrelunas, Division Director  
**DIVISION OF ECONOMIC DEVELOPMENT**

**FROM** :   
Helen Brown, CFE, Principal Auditor  
Delegated Auditor General  
**OFFICE OF THE AUDITOR GENERAL**

**DATE** : June 30, 2023

**SUBJECT** : Performance Audit of the Navajo Nation Business Site Lease Process

The Office of the Auditor General herewith transmits Audit Report No. 23-17, a Performance Audit of the Navajo Nation Business Site Lease (BSL) Process. The performance audit was conducted, in conjunction with TAP International, Inc., to determine the efficiency and effectiveness of the Division of Economic Development (DED) in meeting its program objectives and performance measures for carrying out the Business Site Lease process for the Navajo Nation. The audit focused on the time period between October 1, 2020 and September 30, 2022.

The auditors reported three (3) main findings:

1. Opportunities exist to improve the business site lease process.
2. Multiple factors contribute to delays in pre-lease application processing.
3. Process improvement requires development of sound frameworks.

Detailed explanation of the findings can be found in the body of this report.

For the three findings, the auditors offered 14 recommendations to DED and other relevant Navajo Nation departments because the BSL process extends across multiple departments and one change in one part of the process can impact another component implemented in another department. The auditors recommended the development of a BSL interagency advisory group to discuss the implementation strategies of the audit recommendations.

If you have any questions about this report, please contact our office at extension 6303. Thank you for your assistance in completing this audit.

xc: Dr. Buu Nygren, President  
Patrick Sandoval, Chief of Staff  
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June 30, 2023

Auditor General Delegate Helen Brown  
Office of the Auditor General  
Navajo Nation

Dear Ms. Brown,

TAP International, Inc. is pleased to present our final report describing the results of our performance audit of the Business Site Lease (BSL) process within the Navajo Nation. This report describes our audit findings and 14 recommendations for improvement of BSL processes for consideration by the various entities involved in the process.

Sincerely,

*TAP International*

TAP International

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**Audit Highlights**

## AUDIT HIGHLIGHTS

### Why This Audit is Important

The 2005 Business Leasing Regulations require the site leasing process to serve the best interest of the Navajo Nation) and attain the highest economic income development while preserving and enhancing the value of Trust land as well as increasing employment and jobs. Within the Navajo Nation, the Business Site Lease (BSL) process extends across multiple entities that include the Division of Economic Development (DED), Navajo Nation Department of Justice (DOJ), the Office of the Controller (OOC), and local regional business offices (RBDOs). Clearly defined, coordinated, and timely completion of activities by the entities participating in the business site lease process becomes critical to goal accomplishment, revenue enhancement, and effective service delivery.

### How This Audit Was Conducted

Contracted by the Office of the Auditor General, TAP International implemented a mixed-methods performance audit to: (1) determine to what extent there are opportunities to enhance the management of the business site lease process, and (2) assess barriers or bottlenecks to the business site lease process that prevent the DED and the Small Business Development Department (SBDD) from accomplishing its strategic goals and objectives. These methods included interviews across departments and entities with business site lease roles and responsibilities, documentation review, and analysis of randomly selected site lease agreements.

### What this Audit Found

This audit identified many opportunities for improvements to the BSL process. For example, at least nine different layers of review are needed to approve lease requirements for a process that is virtually all manually driven. These and other areas have contributed to significant delays in completing various process components from weeks to years as well as a significant accumulation of delinquent payments. Three primary factors – the BSL process design, staff capabilities, and absence of automation -- contribute to the delays and other inefficiencies. These factors further stem from the absence of sound management frameworks that include an asset management framework and a performance management framework which are common structural components to ensure effective implementation, oversight and monitoring of the business site lease process.

## What this Audit Concludes

The Navajo Nation owns an extensive lease portfolio of Trust Land which it leases to Navajo and Non-Navajo business owners for the purposes of economic development to benefit its people. However, DED is not yet positioned to leverage the site leasing process to align with the 2005 Business Lease Regulations and accomplish maximum economic development. Given the importance of retail and commercial land assets (excluding mineral and gas sites) for the dual purpose of generating revenues for the Navajo Nation by creating jobs and promoting tourism to the communities within its five regions, it is important for the DED to establish appropriate internal controls to ensure proper stewardship and safeguarding of Navajo assets. Examples of these controls include developing an Asset Management Plan framework, updating the 2009 Lease Management Plan, developing departmental policies and procedures, implementing greater management oversight, ensuring sufficient staff and resource capacities, and developing and tracking accurate and complete BSL inventory data. Data collection and analysis of key metrics will assist in the performance measurement and evaluation of the business site leasing process to accomplish the new President's agenda to improve economic development for the Navajo Nation.

## What this Audit Recommends

We describe 14 recommendations for the Directors of the relevant departments and agencies. Because the business site lease process extends across multiple departments and one change in one part of the process can impact another component implemented in another department, we strongly encourage the development of a business site lease interagency advisory group to discuss implementation strategies for each of the recommendations below.

To implement planned changes to the business site lease process by the DED, the:

1. The DOJ should complete its review of amendments to the Business Site Lease Management Plan with DED personnel by October 1, 2023, and DED should submit the amended plan to the Resources and Development Committee (RDC) by October 30, 2023 for approval after the final review and subsequent work session.

To reduce the time required to process business site lease agreements, the:

2. The Regional Business Development Offices should scan all files and enable file sharing, assigning appropriate review and edit access rights for departments that perform review and approvals. These files should be accessible to the Real Estate Department staff with appropriate access levels, i.e., read-only.

3. DED should consider establishing a position for an Appraiser and until it can be filled, implement a professional services agreement to allow for readily available access to appraisers when needed.
4. Establish service level agreements between the various entities with roles and responsibilities in the business site lease process clearly defined among them with expected timelines for the completion of work, permissible alternative activities to be implemented by DED in the event that timelines lapse, and reporting to the Office of the President on when these lapses occur.
5. Eliminate the clearance needed by the Navajo Office of Tax Commission and delegate authority to the OOC to provide clearance.

To enhance financial management and oversight of the lease agreements, the

6. DED should consider adopting an Asset Management Framework which:
  - a) Explicitly states short and long-term goals for the use of Navajo Nation assets.
  - b) Provides an accounting of lease agreements and their financial performance; and
  - c) Increases transparency and provides the Navajo Nation Community, stakeholders, and decision-makers with accurate information about the DED's stewardship of its lease agreements.
  - d) Includes inventory management and collecting quality data related to BSLs relevant to financial and strategic economic development objectives.
  - e) Adds a requirement for a periodic or annual public presentation at the Navajo Nation Executive Branch.
7. In the absence of a Manager position for the Real Estate Department, the delegated Department Manager should document involvement in the review and approval of the following:
  - a) Completeness and accuracy of source data of all leases
  - b) Changes to leases/modifications
  - c) Lease terminations
8. Staff from the Real Estate Department, RBDOs, and other DED staff should be cross trained to increase collaboration and communication as well as improve understanding of the entire lease management and the administration life cycle. Along those lines, we suggest a Contract Compliance Officer (CCO) position embedded at the RBDO's location, either permanently or as a roving position, to give Real Estate Department staff a life-cycle view of the lease management process, or the Real Estate Department Contract Compliance Officer position could be elevated to a Lease Portfolio Manager to encompass the current duties the incumbent is performing.
9. The DED should add to the available non-negotiable pricing strategies and terms and conditions by including the percentage of gross sales receipt, and price per square foot of buildings leased, including a security deposit to be paid as security against delinquent rental payments.

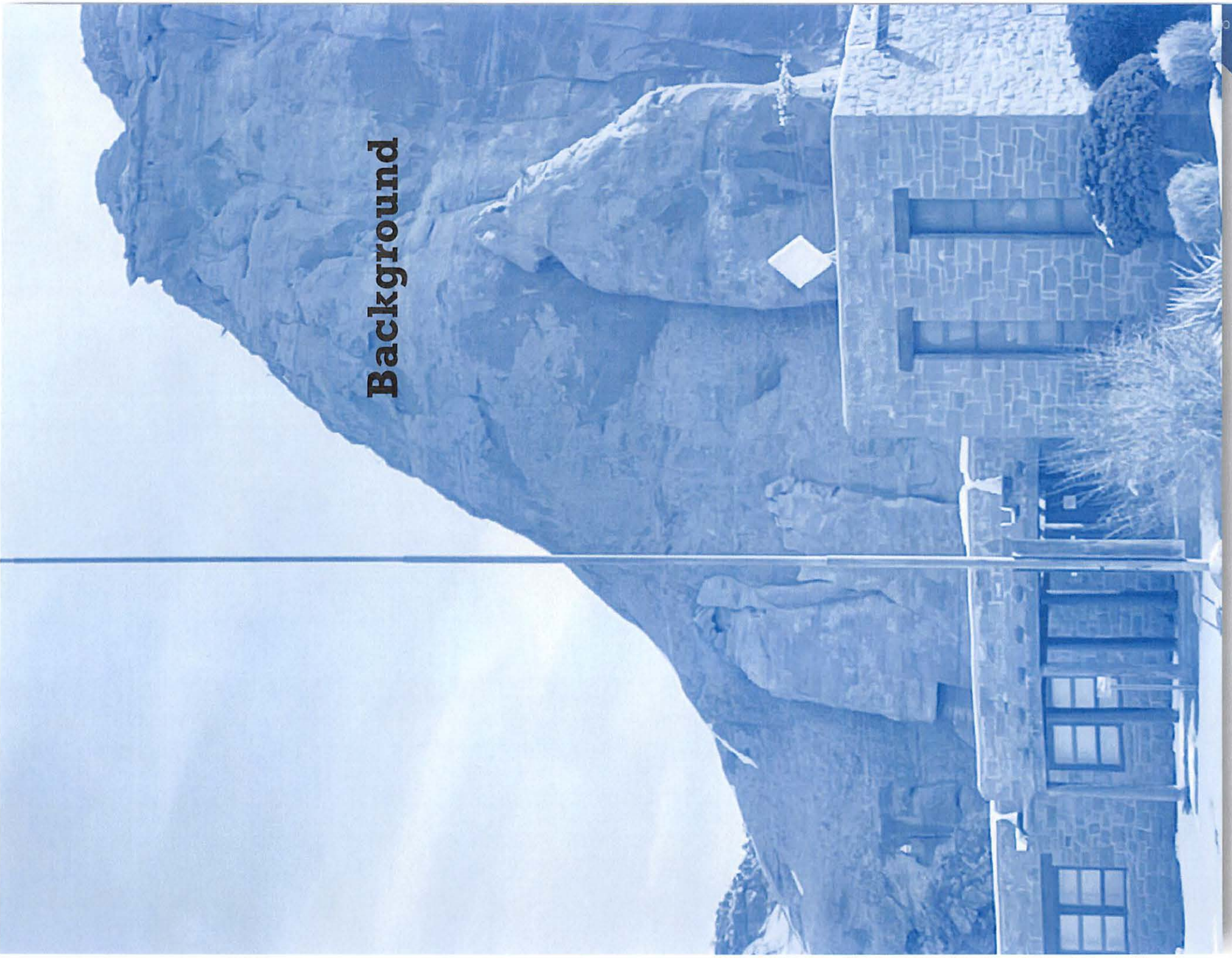


10. The DED and the OOC should clearly define roles and responsibilities for debt collection and develop documented procedures about information sharing and standard templates and other correspondence to the delinquent lessee. An option to consider is to have the OOC office assume responsibility based on the quality of record keeping by the OOC staff responsible for processing lease agreement payments.
11. The DED should establish additional terms and conditions to its business site lease agreements to include the preferential hiring of Navajos for retail businesses that would require at least five or more employees, and if the lessee defaults at least once on its lease agreement, the lessee will be prohibited from entering into another lease for a period of 12 months.

To increase transparency and promote stewardship of Navajo Nation business site investments and resources:

12. The Real Estate Department should collect accurate and thorough inventory data that includes but is not limited to unique property identifiers, addresses, acres or square footage, and asset categories of existing business site facilities. To maintain accurate and complete data, Real Estate Department management should perform periodic inventories and investigate any discrepancies.
13. DED management, along with Real Estate Department staff, should determine key performance metrics aligned with strategic objectives related to Economic Development growth that can be traced to the BSL program.
14. DED/Real Estate Department should set up a dashboard, or consider an MS Excel database to manage, collect, and report on both compliance and performance metrics related to job creation, workforce development, small business development, and infrastructure development.

# Background



## BACKGROUND

### What is a lease agreement?

A lease agreement is a legal document outlining the rental terms for the use of land, structure, equipment, or activity between the property owner (Navajo Nation) and the renter, also known as the lessee.

### Why is an effective business site lease process important?

The Navajo Nation is home to over 165,000 residents and welcomes thousands of visitors each year. Under its jurisdiction on the reservation consisting of over 17 million acres of Trust Lands, or approximately 27,000 square miles, Navajo Nation entrepreneurs and established business owners alike can apply to withdraw Trust Land to develop and/or lease existing facilities for their businesses. A Regional Business District Office from one of five established agencies (Chinle, Fort Defiance, Shiprock, Eastern, or Western) assists entrepreneurs and business owners with leasing the land or an existing facility for their business.

BSLs create public benefits for the Navajo people through job creation, increased access to goods and services to community members, and can promote economic growth. Navajo Nation also benefits from the added revenue received through rent collection, which supports Navajo Nation programs and services delivered to its communities.

The U.S. Department of the Interior Bureau of Indian Affairs (BIA) previously directed and oversaw multiple aspects of the Navajo Nation's real estate operations, including the BSL process. Pursuant to 2 N.N.C. § 724, the Division of Economic Development now oversees the business site lease process. The BSL process includes day-to-day operations, lease negotiations, tenant relations, rent collection, and property management.

### Business Site Lease Process Extends Across Multiple Departments

Five Navajo Nation Departments and the five Regional Business Development Department Offices administer and support the business site process. The RBDOs conduct pre-lease application activities by working with the community to market available lands and to work with potential lessees throughout the application process. Once the pre-lease process begins, lease administration responsibilities are split among two departments: the Division of Economic Development, with interim approval of the lease by the BSL committee administered by DED, followed by the Department of Justice granting the final approval of each BSL. The DED is responsible for sending copies of the final executed agreement to the OOC and RBDOs. The Real Estate Department then conducts day-to-day lease management and administration duties, including compliance and financial monitoring. The OOC sends invoices, where applicable, and accepts remittances of rent by the lessees. **Figure 1** provides a high-level overview of the duties and each department's role.

**Figure 1: BSL Responsibilities are Divided Among DED and Navajo Nation Government**

Division of Economic Development		Tribal Government/Executive Branch	
Small Business Development Department - Regional Business Development Departments (RBDOs)	Real Estate Department	Office of the Controller (OOC)	Navajo Nation Executive Branch
<ul style="list-style-type: none"> <li>• Works with Small Businesses to navigate the BSL application process.</li> <li>• Assists with application, permits, clearances and other requirements.</li> <li>• Submits Lease Application for Approval within DED and Executive Branch.</li> </ul>	<ul style="list-style-type: none"> <li>• Lease Administration and Management Activities                             <ul style="list-style-type: none"> <li>○ Lease File Management</li> <li>○ Compliance monitoring activities</li> <li>○ Inspections</li> <li>○ Reconciliation of rental accounts</li> </ul> </li> <li>• Lessee Correspondence</li> <li>• Inventory database development and data entry</li> </ul>	<ul style="list-style-type: none"> <li>• Invoices Business Owner Lease Payment</li> <li>• Collects Lease Payments</li> <li>• Prepares reports for the Real Estate Department to reconcile Lessee accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Conducts Legal Review (DOJ)</li> <li>• Makes final approval decisions (Office of the President/Vice President)</li> </ul>

Source: TAP analysis of interviews with DED staff, DED’s organizational chart and documents provided by DED staff.

### The Importance of Implementing Effective Internal Controls to Manage a Portfolio of Business Site Leases

Every business process requires internal controls. Internal controls, as described by the Committee of Sponsoring Organizations (COSO) *Internal Control – Integrated Framework*, provide reasonable assurance that the objectives of an organization will be achieved. Internal controls include the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. An organization’s internal control system focuses on:

- The efficiency and effectiveness of operations, including establishing operational and financial performance goals, and safeguarding assets;
- The entity’s compliance with applicable laws, regulations, and industry standards; and
- The reliability, timeliness, and transparency of internal and external financial and nonfinancial reporting.

Management is responsible for designing and implementing an effective internal control system. According to COSO, management sets the “tone at the top,” the entity’s control objectives, implements controls, and evaluates the internal control system. Guidance from COSO emphasizes that when an entity develops an effective control system, it is better able to adapt to evolving demands, risks, and priorities.

### Purpose of the Performance Audit

Concerned about the time required to complete the business site lease audit and whether due diligence is provided for lease termination, the Office of the Auditor General elected to conduct a performance audit and contracted with TAP International to complete the work.

## OBJECTIVES, SCOPE, AND METHODOLOGY

### Objectives

Our audit objectives were to:

1. Determine to what extent there are opportunities to enhance the management of the business site lease process.
2. Assess barriers or bottlenecks to the business site lease process that prevents the Division of Economic Development and the Small Business Development Department from accomplishing its strategic goals and objectives.

### Scope

The scope of this audit covered the Navajo Nation’s business site lease process and related operations performed by the Division of Economic Development covering Fiscal Year 2021-2022. Our scope of services excluded oil and gas leases.

### Methodology

To determine to what extent there are opportunities to enhance the management of the business site lease process, we performed the following tasks:

- Conducted a risk assessment to identify the threats facing the business site lease process and to identify the controls or procedures the DED has in place to prevent, eliminate, or minimize those threats. The risk assessment allowed us to focus our review and analysis on areas most vulnerable to unmitigated risks.

- Performed a business process review by examining business site lease documents, the 2005 Leasing Management Plan, and interviewed the Small Business Development Department Manager, six staff from five Regional Business Development Department Offices, and two staff from the Real Estate Department.
- Reviewed overarching governance documents and DED management procedures and processes to determine whether they aligned with best practices for lease management internal controls, as organized by the five essential components of a comprehensive framework of internal control: 1) Control Environment; 2) Risk Assessment; 3) Control Activities; 4) Information and Communication; and 5) Monitoring. These components are consistent with the internal control framework provided by the Government Accountability Office (GAO) Standards for Internal Control in the Federal Government, also known as the Green Book. The GAO based the Green Book on a model of internal control created by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>1</sup> We then performed a gap analysis to compare Navajo Nation's current practices to this internal control framework. Additionally, we reviewed the Urban Institute Center on International Development and Governance's publication, Guidebook on Real Property Asset Management for Local Governments.
- We assessed a random sample of five business site leases for financial compliance with the provisions of the lessee contract.
- Examined debt collection of revenues.

To assess barriers or bottlenecks to the business site lease process that prevent the Division of Economic Development and the Small Business Development Department from accomplishing its strategic goals and objectives, we:

- Assessed DED's staff capacity and organizational structure, reviewed job descriptions detailing roles and responsibilities of staff involved in the BSL operations;
- Interviewed both RBDO and Real Estate Department management and staff.
- Assessed staffing capacity to handle the current and future workload considering the level of data collection and monitoring activities required.
- Collected and analyzed two strategic plans; the 2018 Navajo Nation Economic Development Strategy and the 2022 the Hozhó Diné Bi Nahat'á Strategic Plan Prepared for the Navajo Nation Office of the President and Vice President.
- Met with BSL committee members and DED executive staff to discuss strategic plans and supporting data important to showing the achievement of economic growth.
- Reviewed real estate industry guidance and audit reports to identify asset management frameworks and practices for comparison against the DED's current operations.

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<sup>1</sup> The Green Book may also be adopted by state, local and non-federal entities, and non-profit organizations.

We remained attentive to indications of fraud, waste, and abuse as required by generally accepted governing auditing standards.

### Limitations and other Audit Disclosures

- This audit experienced time delays due to challenges in scheduling the availability of Navajo Nation staff to participate in this audit.
- DED does not aggregate lease agreement information for analysis and maintains all manually prepared folders to archive the agreements that we were not provided access to, and DED reported insufficient resources to compile the information that we requested for the audit. We limited our audit activities to other alternative and available data to the extent possible to address our audit objectives. Based on a sampled review of five business site leases and OOC reports on BSL revenue collected, we did highlight potential revenue, and estimated revenue that could be collected in the next five years assuming that current leaseholders comply with their terms and conditions. Despite requests for electronic access to the lease files, we could not confirm or assess the status of lease terminations that were allegedly made without due process or investigate the causes behind them.
- We note that while the scope of our audit focused on business site leases only, the active management of inventory could extend to Navajo Nation shopping centers and industrial site assets and facilities.

### Factors Related to Auditor Independence

The U.S. Government Accountability Office, whose standards TAP International is statutorily obligated to follow, requires assessing factors impairing Auditor independence. The Auditor did not encounter interference by DED or other agencies other than delays in scheduling meetings and challenges in collecting requested information which can occur in other audits.

### Assessment of the Reliability of Data

The U.S. Government Accountability Office standards require assessing the sufficiency and appropriateness of computer-processed information to support our findings, conclusions, and recommendations. In performing this audit, TAP International did not rely on database information to draw conclusions related to our audit objectives.

### Assessment of Internal Control

Generally accepted government auditing standards require an assessment of internal controls if internal controls are applicable to the audit objectives. Internal controls are processes, procedures, and other tools management can use to help an entity achieve its objectives and comply with applicable laws and regulations. The objectives for this audit are applicable to internal controls which were evaluated and assessed throughout this report.

## Audit Statement

Our work was conducted between October 1, 2022, and February 24, 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Client Response

TAP International met with DED and RBDO staff to discuss the draft report. Comments were incorporated as applicable. The DED also submitted a formal response to the performance audit report that described agreement with the audit findings (see page 33).



# Audit Results



## AUDIT RESULTS

### OPPORTUNITIES EXIST TO IMPROVE THE BUSINESS SITE LEASE PROCESS

#### Section Highlights

The BSL process, as implemented, does not fully align with the 2009 Business Site Lease Management Plan, which has led to its inconsistent implementation. Although the DED has implemented a long-time effort to update the Management Plan, Plan updates have not been reviewed or approved at the time of our review or include controls for ensuring the timely sharing of information among the departments that share responsibility for implementing and/or overseeing the lease agreement activities. This section describes other needed process improvements, such as developing a lease portfolio and centralizing financial management monitoring which could prevent the significant level of delinquent rent payments.

#### Administrative Guidance over BSL Management Can Benefit from Updating

The Business Site Lease Management Plan, approved in 2009, provides the Division of Economic Development with policy, direction, and guidance in its management of business site leases and other related business activities and documents. The BSL Management Plan is composed of two plans: the Navajo Administrative Plan and Navajo Management Plan.

As a follow-up to the 2009 law, in 2013, the Navajo Nation enacted the General Leasing Act of 2013 with the purpose to:

- Implement the authority of the DED to issue leases and permits pursuant to the Navajo Leasing Act, as amended, and to establish streamlined procedures for environmental review, approval, management, and enforcement of leases;
- Develop a governance framework for future regulations that cover specific areas of leasing referenced in Section 5:2305, as required by the Navajo Leasing Act, and which are consistent with these General Leasing Regulations. The General Leasing Regulations must be in place prior to any leases or permits being approved under the authority of the Navajo Leasing Act;
- Promote self-determination, encourage self-sufficiency, and improve the efficiency of the leasing of Navajo Nation Trust Lands; and
- Identify and implement processes to protect and preserve Navajo Nation Trust Land, including provisions for asset accounting, modern leasing practices, and accurate record-keeping title recording.

While the update to the General Leasing Act in 2013 was made to streamline procedures, the Navajo Nation Executive Branch/Council has not yet updated the accompanying Business Site Lease Management Plan (Plan) since 2009. The administrative guidance outlined in the Plan is outdated and does not reflect the current process followed by the

DED for environmental reviews, approvals, and enforcement. Without having plans that match the process implemented, inconsistency in process administration can result, as evidenced by our review of five business site leases. We noted non-uniform payment procedures, which are generally standard among other leasing organizations. Some lessees were allowed to pay rent annually while others paid monthly, and some lessees needed to submit tax returns while others were not although each were retail businesses. In addition, without updating the Management Plan and corresponding policies and procedures, DED loses opportunities to “right fit” each type of lease agreement. Different types of lease agreements, such as retail, redevelopment, telecommunication, and franchise, should be prepared based on the nature of the lease. In our review of five business site leases, each had the same Standard BSL Agreement although not all of the leases were retail in nature. For instance, one should have a franchise agreement so that Navajo Nation can potentially share in the profit of the business.

DED staff reported the department has been in the process of updating the Management Plan for about 10 years because of the time required to work through the potential changes, including working with the DOJ to streamline certain sections of the 2009 administrative and management plans. Although staff reported the proposed changes are ready for submission to the Resources and Development Committee (RDC) for review and further amendment, if necessary. After the final review, the Management Plan will be placed on the RDC agenda for approval, but a date has not been established to accomplish a Final Management Plan.

Finally, the Management Plan describes that a business site lease can be initiated by the appropriate RBDO, which can receive the letter of intent, provide technical services, negotiate terms, and any other services as deemed appropriate and required under the Plan. **See Figure 2.** Section 4.1 of the Management Plan requires the notification of the Real Estate Department for archeological clearance. Under the review process, the lease is reviewed by the appropriate DED Department Manager, the DED Division Director, Division of Finance, and the Department of Justice.

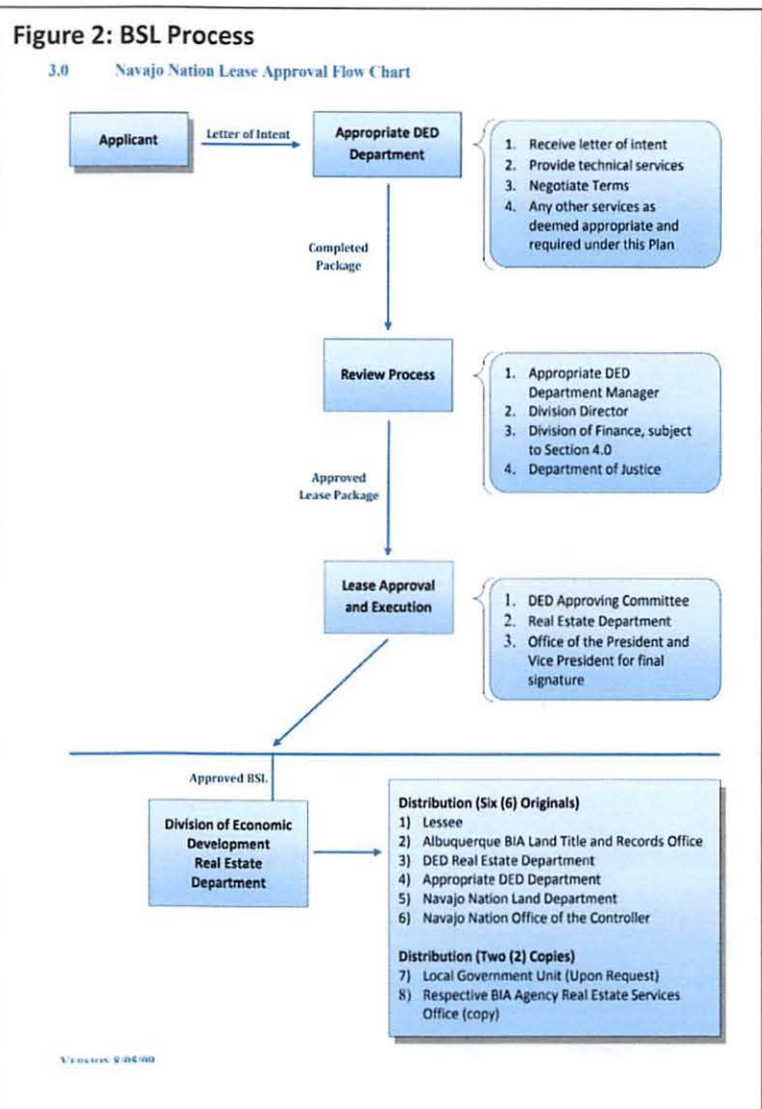
The split between pre-lease and post-lease activities highlights an inherent conflict in the Business Site Lease Management Plan between the RBDOs and Real Estate Department. The first part of the plan, the Administrative Plan, outlines a limited role for the Real Estate Department in processing business site leases, documenting a decentralized structure for initiating business site leases. The Plan establishes that an appropriate department can initiate a real estate lease, but that the Real Estate Department approves the lease to form after it has gone through several levels of review. On the contrary, the Operations Plan, contained within the Plan, documents a centralized role for the Real Estate Department in managing business site leases. Among the staff we interviewed, each had a different understanding of the other’s roles in business site leases. For instance, one person expected that the Real Estate Department staff should focus on monitoring, whereas Real Estate Department staff explained that Real Estate Department should become more actively

involved in initiating leases. Real Estate Department staff were not involved or familiar with activities in the pre-lease process. As a result, it can take up to two years to finalize a lease agreement in some cases.

### Portfolio Management System Needs Development

Internal control guidance requires that entities build, maintain, and actively manage a thorough and accurate inventory of its leases. The DED or Real Estate Department staff does not have readily available information on the number of leasing sites available and the number of lease agreements in place by their type of lease without manual collection of this data. Based on data available to us, we could

only provide estimates of the business site lease inventory based on the number of lease agreements with rents collected, which ranges from 10 to 22 given that in FY 2020-21, the OOC received rent from 10 business site leases, but in February 2023, the OOC had outstanding receivables on 22 of these types of leases. However, DED staff reported between 101 and 106 business site leases in its inventory, but we could not verify this count based on the financial data that we reviewed.<sup>2</sup> Without an accurate and complete inventory of business site leases, the Navajo Nation does not have relevant information for decision-making and cannot provide clear information to its citizens on its stewardship of public funds and investments, or a list of available sites to prospective lessees, which can result in missed revenue and employment opportunities.



<sup>2</sup> OOC FY 2020-21, OOC collected payments from 56 total lease agreements that included mineral and telecommunication leases.

To capture accurate lessee applicant data at the beginning of the process, a database needs to be developed, audited, and monitored. The database would contain information about available leases to determine the percentage of available lands leased and not leased, including the lease agreement number, duration of the lease, price terms, square footage or square acreage, and other lease terms and conditions. To perform this activity would require an MS Excel database that contains pertinent information about each lease. The database should be updated to reflect any change in a property's status. An accurate and thorough database of leases, including related terms facilitates continual and iterative internal and external communication about the lease but allows for economic analysis of projected revenue and analysis of market activity. An updated database is critical to economic development, a stated goal of the newly elected Navajo Nation President, and a goal of the 2005 Business Leasing Regulations.

To prevent manual errors and to maintain accurate and complete data on the BSL lease portfolio, we determined there is also a need for an information management system or an Excel dashboard that could generate compliance reports, checks, and calendar alerts. This would serve as a data repository for lease files and documentation, as well as data collection for both compliance and key economic development metrics.

#### **Documentation of Lease Monitoring Activities is Needed**

It is the management's responsibility to establish monitoring activities to assess compliance with established policies and procedures. This represents the process of ongoing and periodic evaluations to ascertain whether the components of internal control are present and functioning.

Although monitoring activities occur by DED and by the Real Estate Department, the completion of these activities is minimally documented. On a monthly basis, the Contract Compliance Office (CCO) will conduct an "internal audit," reviewing assigned regions' lease files for compliance. While the business data entry for key lease compliance data is collected and monitored by the CCO, it may not be regularly subject to independent review or verification at this time due to the Department Manager vacancy. While documentation was not made available to verify if this occurs, the CCO reported that they collect data and enter it into a spreadsheet to monitor the following:

- Rental payments via reports provided by the OOC
- Development period of Part I Lease stipulations
- Rental adjustments
- Annual updated Commercial General Liability and Fire & Casualty Insurance
- Review the purpose of the lease and match it to activity on the lease premises (Inspections)
- Security Deposit per the Part I stipulations

### **Financial Compliance Monitoring Needs Centralization**

Financial monitoring is shared by the OOC, which handles all invoicing and receipt of monthly rental fees, and Real Estate Department, which is responsible for collections. On a monthly basis, lease financial monitoring is performed by the Real Estate Department reviewing Accounts Receivable reports provided by the OOC to identify the lease payment status. Additionally, the Contract Compliance Officer meets with OOC staff and reconciles accounts on a regular basis. While these reconciliations are conducted to identify outstanding accounts, there is some disagreement over the debt collection function related to delinquent lease payments, and whether the OOC or DED must take responsibility for the collections process. We found the 2009 Management Plan (Section 10.0 Collections) states that leases that are in arrears or otherwise not in compliance are forwarded to the Real Estate Department for collection efforts. Nevertheless, the current collection activity performed by the Real Estate Department has resulted in \$7.9M of aging receivables of 90 days or more, suggesting a significant backlog of rental payment delinquencies.<sup>3</sup> DED staff explained this revenue will never be collected because some former lessees are deceased, moved out of Navajo Nation, or went out of business, creating a significant risk of revenue loss to Navajo Nation programs and services to the community. Additionally, staff explained that lessees are behind in rental payments due to the pandemic policies which caused the closure of many businesses, explaining there may be a legislative solution to write off uncollectible delinquencies by issuing an executive order.

When lessees incur a substantial level of outstanding payments owed to Navajo Nation, Real Estate Department staff have worked with the lessees to negotiate a settlement. Of the five business site leases that we examined, four had their delinquent debt forgiven although the amounts were unknown and not included in the documentation. When DED allows debt forgiveness each time, it can lead to a growing trend by lessees to accumulate delinquent rental payments and then request forgiveness. We determined that about half, or 45 percent of 22 business site lease agreements had accumulated debt. DED management reported having similar concerns and explained that the BSL process needed to adopt new leasing practices implemented by other organizations.

### **Additional Types of Lease Agreements Are Needed and Added Pricing Options**

Creating a thorough and effective lease agreement is very important because it protects Navajo Nation and the lessee throughout the duration of the lease. While the Navajo Nation has different types of properties, such as commercial property, retail properties, and industrial sites, a common lease agreement in use by DED is the Standard BSL. The purpose of this agreement is to facilitate economic development and growth through retail businesses although DED staff reported that the standard BSL agreement has been improperly used for other types of activities, such as for the land occupied by a religious organization for church services.

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<sup>3</sup> About 85 percent of the aging receivables from business site lease agreements are aged over 90 days.

The Standard BSL agreement establishes a set of elements to be included in each lease regardless of its type. During the lease negotiation process, the language and terms of the agreement could change until signed by both parties, at which point the lease agreement becomes a legally binding document. Basic elements contained in the Standard BSL include:

- Land Description: The geographic location and size of the parcel to be leased.
- Purpose of use of the land: Describes the allowed use (s) of the property.
- Lease term: The date the lease commences and ends.
- Rental rates: The pricing terms.
- Construction, Maintenance, Repair, and Alteration: To be performed in accordance with current laws and regulations.
- Bonds: The types of rental, performance, and construction bonds needed if any.
- Insurances: Describes the types of insurance coverage needed for the lease and the amount of the coverage.
- Sub Leases: Prohibits or allows subletting without the approval of the lessor.
- Applicable Terms and Conditions: Listing of other special terms and conditions that may apply such as the use of underground storage tanks.
- Notices and Demands: The office is to receive all notices and demands
- Improvements: Describes any allowed improvements to the property, if any.

Across these elements, there are opportunities for DED to re-examine its current practices, as shown in **Figure 3** below. For example, the goal of payment terms is to maximize the cash flow of the lessor. In this case, DED should strive for monthly rental payments versus allowing some lessees to provide annual rental payments. In another area, DED does not utilize other pricing terms that could benefit the Navajo Nation, such as applying a commission percentage based on gross receipts. Instead, all lessees are subject to a standard flat rate monthly fee, which can vary by the year of the agreement. Finally, the lessee got into a dispute with DED on another lease agreement when DED staff discovered the lessee was engaging in fuel sales that were not allowed under the original terms of the agreement. Rather than paying a commission on future fuel sales during the term of the agreement, the lessee and DED agreed to a one-time payment of about \$1.3M provided the lessee will not be subject to future rental sales on fuels. The lease agreement file did not include a revenue analysis to determine whether Navajo Nation gained or lost potential revenue. DED staff explained that when negotiating pricing terms, staff consider whether the lease agreement will bring a needed service to the community versus the potential to maximize revenue.

**Figure 3: Other Lease Agreement Terms and Conditions Options**

<b>Lease Agreement Content Area</b>	<b>Potential Improvement</b>
<b>Land Description</b>	Include the square footage of any structure to be leased.
<b>Purpose of use of the land</b>	Prohibit new uses of the lease without renegotiation.
<b>Lease term</b>	Consider expanding to 30 years for some types of retail businesses.
<b>Rental rates</b>	Add the option to apply a percentage of retail sales as rental versus a flat base rent.  Eliminate forgiving all of the base rent as a condition for land and structural improvements.*
<b>Construction, Maintenance, Repair, and Alteration</b>	Require the submission of receipts to verify work performed.
<b>Bonds</b>	None.
<b>Insurances</b>	None.
<b>Sub Leases</b>	Prohibit subleasing unless approved and potential renegotiation by the DED.
<b>Applicable Terms and Condition</b>	Consider adding terms to require preferential hiring of Navajos, such as the preferential hiring requirements followed by Navajo Nation Departments.
<b>Notices and Demands</b>	Consider adding DED versus the Office of the President/Vice President only as the recipient of notices and demands.
<b>Improvement</b>	None.

\* Some lease agreements have lease credit terms, meaning that in lieu of submitting rental payments, the lessee will make improvements to land and structure until the value of the rental payments over a specified amount of time is met. In our review of this type of lease agreement, the file did not contain information that showed the receipts or other expenses paid for by the lessee that would trigger forgiveness of the rental payments owed. As a result, Navajo Nation has likely lost potential lease revenue. With better compliance monitoring, the risk of additional revenue loss can be lowered.



## MULTIPLE FACTORS CONTRIBUTE TO DELAYS IN PRE-LEASE APPLICATION PROCESSING

### Section Highlights

DED does not track the turnaround time for completing lease agreements or track the length of delays that routinely occur; however, we identified bottlenecks in the process from weeks to 9 years depending on the segment of the process.

Three key factors influence the time required to complete the process. These factors include:

- The inefficient design of the business site lease process,
- Absence of staff level expertise, and
- Absence of technology use.

These delays have adversely affected Navajo Nation's cash flow and have led DED to implement workarounds to the business site lease agreement process. Presently, DED does not enter into service-level agreements with other agencies, which could prevent many of the delays that occur. Service level agreements define expectations and timelines for the completion of activities between multiple entities and can help speed the process.

### Business Site Lease Process Design Slows the Leasing Process

#### Executive Review Process (164 Review Process)

Presently, there is currently a 9-step executive review process to execute a lease as follows:

1. Program Manager Review
2. Department Manager Review
3. Division Director Review
4. OOC/Accounts Receivable Section Review
5. Department of Justice Review
6. DED BSL Committee – Approval Process Review
7. Real Estate Department – 5-day compliance review
8. Navajo Nation President – execution of Lease transactions
9. Real Estate Department – Recording/Distribution

With these excessive and multiple layers of review and approval, the BSL Process is over-formalized because of the multiple layers of review and approval. Over-formalization of business processes can lead to less effective review and approval because the tendency is for an assigned reviewer to sign the document only without a detailed review of the documents, assuming that other reviewers will complete the task. The interim Executive Director explained that prior problems within Navajo Nation governance had likely led to the adding of more layers of review and approval than what may be needed. Staff explained that authority could be delegated to the Division Director for the execution of leasing transactions and reduce the number of reviews from nine to five. RBDO staff explained that the SBDD department is currently working with the DOJ in amending the BSL plan to reflect these streamlining efforts. In other public agencies outside of Navajo Nation, lease

agreements require at least three signatures – from the responsible department, or DED; from the legal department, or DOJ; and from the top executive of the organization representative, or the Office of the President/Vice President.

#### Five Multi-Agency Procurement Clearances Required

Currently, the business site lease process requires DED staff to receive five procurement clearances from the five different Tribal departments involved in the BSL process. RBDO staff reported that having this many departments has created a barrier because of the lengthy turnaround time that occurs. DED must obtain the five clearances within 30 days of which they have experienced limited success because completion of the clearance process can take two to three months. DED staff explained that up to three months could lapse when waiting for the Navajo Office of Tax Commission to approve the lease because the Commission meets on a quarterly basis. RBDO staff explained that a single clearance from OOC Accounts Receivable would suffice.

#### Multiple Legal Reviews

For each potential lease agreement, one of the final steps in the process is the completion of a legal review of the terms and conditions of the lease. The process is designed so that an initial DOJ legal review is performed prior to Committee approval and again in the Executive Branch, where the President’s attorney conducts the second legal review. Although a necessary step, this second legal review and final approval by Navajo Nation was reported to be a significant bottleneck, requiring multiple weeks to complete.

We noted that RBDO and the Real Estate Department have developed some workarounds to lease approval delays. While pending the issuance of a new business site lease, the Real Estate Department can issue Revocable Use Permits, Conditional Use Permits, or Emergency Operating Agreements (EOA) until such a time a new lease is approved. Based on data provided to us, there were eight active EOAs, one active Conditional Use Permit, and four Revocable Use Permits in place during FY 2021-2022.

#### **Absence of In-House Technical Expertise Leads to Other Delays**

Lease agreements, especially those related to land or buildings, require technical information on the precise geographic location involved in the lease, the size of the parcel or building to be leased, and the determination of the market rental rate. Other information may require, among other things, an appraisal or site environmental assessment. DED does not have internal staff, such as a Site Surveyor or Certified Appraiser with the necessary expertise to perform these duties. In its absence, DED outsources the work, which adds to the time to process a lease agreement because of having to implement a separate procurement process. When these professionals are hired, staff often return the work to the contractor because of other errors or discrepancies found in their reports.

#### **Absence of Technology Use**

Best practices suggest that, at a minimum, the use of electronic file sharing enables concurrent reviews and electronic signatures for greater process efficiency. Although we recognize that many Navajo Nation departments and programs depend on manual

processing, the manual nature of the BSL processing significantly adds to the length of time for its completion because the lease application is in hard copy. The hard copy lease agreement is then routed to all of the entities involved in the process, a time-consuming task. Of the five business site leases that we reviewed, one of them did not reach the OOC's office until nine years later because no one person had sent them a physical copy of the lease agreement. Although the lessee agreed to ultimately pay the amount due without interest expense, the OOC could not collect rent during this timeframe, affecting cash flow.

#### **Absence of Service Level Agreements**

A service level agreement is a document between the service provider (i.e. other Navajo Nation departments) and the recipient of services (i.e. DED) specifying clear roles and responsibilities, timeframes for completion, and agreed-upon activities to implement alternative processes should other departments perform process steps untimely. Although DED does not utilize service level agreements as a managerial tool, its implementation could mitigate the delays currently occurring in the BSL process. Without changes to the current BSL process, it is reasonable to expect that additional Real Estate Department staff may be needed to assume the workload<sup>4</sup> generated by new leases.

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<sup>4</sup> There is no benchmark or formula that we determined could be applied to set an appropriate BSL manager workload due to variations in BSL complexity, business type, and level of staff experience. Currently, one Contract Compliance Office manages all leases.

## PROCESS IMPROVEMENT REQUIRES DEVELOPMENT OF SOUND FRAMEWORKS

### Section Highlights

Although opportunities are present to improve the business site lease process, including preventing delays and other inefficiencies that occur, continuous process improvement needs sound asset management and performance frameworks to ensure successful change. The suggested frameworks based on best practices would (1) ensure the development of key business site lease processing components that address the current gaps in tools, and components, and (2) provide the capability to monitor progress and success of the business site lease process.

### An Asset Management Framework Can Facilitate Efficiency and Effectiveness of the Business

Industry guidance provides government entities with frameworks that promote the effective oversight of assets.<sup>5</sup> As shown in **Figure 4**, the core components of the frameworks include: developing an asset management plan, managing inventory, and using quality data.

An Asset Management Plan (AMP) is a tool that can assist Navajo Nation in 1) articulating a strategic vision; 2) managing day-to-day activities; 3) facilitating a collaborative approach for information sharing and decision-making; 4) monitoring, evaluating, and improving performance; and 5) providing stewardship of BSL assets. Among all six areas of a recommended asset management framework, these components either need enhancement or have not been developed in the business site lease process, as described in **Figure 4**.

**Figure 4: AMP Framework and Comparison to DED’s BSL Operations**

Core Component	Description	Comparison to DED BSL
Establishing Formal Policies and Procedures	<ul style="list-style-type: none"> <li>Clearly defined governance that includes a strategic Asset Management Plan (AMP).</li> <li>The AMP ties to the organization’s mission and objectives, defines asset management scope, and defines the roles and responsibilities of staff.</li> </ul>	<ul style="list-style-type: none"> <li>The Lease Management Plan is outdated.</li> <li>No written policies and procedures are in place for RBDO processes or Real Estate Department BSL administration or management.</li> <li>Desk procedures are non-existent for all functions related to BSLs.</li> </ul>

<sup>5</sup> This includes publications from the Urban Institute Center on International Development and Governance (Urban Institute), the GAO, and other publications. The Urban Institute, in its discussion of controls, suggests that capital assets, such as the businesses that have been developed through the investment of Navajo people through the BSL process, represent a significant investment of resources, and as such, inventory data should be tracked and monitored.

Core Component	Description	Comparison to DED BSL
<b>Maximizing Value of the Asset Portfolio</b>	<ul style="list-style-type: none"> <li>• Development of an asset management policy to identify the value of assets to achieve mission and objectives.</li> <li>• Investment in assets that derive the greatest value.</li> </ul>	<ul style="list-style-type: none"> <li>• No asset portfolio exists. The inventory of BSL is not complete and its database does not include key site data, or unique property identifiers, such as square footage, and asset rental value. Also, there are no policies and procedures that standardize data entry.</li> <li>• DED's Real Estate Department uses an MS Excel spreadsheet to capture the identification of BSL leases, but the accuracy and completeness of the data are unknown.</li> </ul>
<b>Maintaining Leadership Support</b>	<ul style="list-style-type: none"> <li>• Organizational leadership clearly articulates support for asset management and provides necessary resources for success.</li> </ul>	<ul style="list-style-type: none"> <li>• The strategic plan ties the BSL to overall economic development but is absent from information on asset management.</li> </ul>
<b>Using Quality Data</b>	<ul style="list-style-type: none"> <li>• Collection, analysis, and verification of the accuracy of asset data, including inventory and data on each asset's condition, age, maintenance cost, and criticality to the organization.</li> </ul>	<ul style="list-style-type: none"> <li>• DED does not perform the activities for business site leasing.</li> </ul>
<b>Promoting a Collaborative Culture</b>	<ul style="list-style-type: none"> <li>• Promotion of a culture of information sharing and organization-wide decision-making regarding the use of assets.</li> </ul>	<ul style="list-style-type: none"> <li>• RBDOs and the Real Estate Department operate like silos, and no shared database exists. Key information, such as the lessee's contact information sometimes does not carry over to the Real Estate file after the lease is approved, leaving the Real Estate Department CCO searching for contact information frequently.</li> <li>• Use of an automated system would require one initial data entry point at the ease application stage and RBDOs</li> </ul>

Core Component	Description	Comparison to DED BSL
		and the Real Estate Department would be able to view data based on defined user rights.
Evaluating and Improving Asset Management Practices	<ul style="list-style-type: none"> <li>Evaluation of the performance of the organization's asset management and implementation of necessary improvements.</li> </ul>	<ul style="list-style-type: none"> <li>No performance data is collected, reported, or evaluated to make improvements in the system.</li> <li>Automated portfolio management system would serve as a data repository and produce performance reports to assist DED in determining levels of achievement of strategic objectives.</li> </ul>

**Management Vacancies Impact BSL Oversight, including Ensuring Due Process**

The Real Estate Department needs to ensure that leases in its portfolio and related transactions are managed effectively with proper oversight to reduce financial risks to the Navajo Nation. The Urban Institute advises governments with leasing operations to improve leasing procedures and contracts, increase the rent collection rate, and track revenue and expenditures associated with each asset. These activities can help entities improve the performance of their asset portfolio, and duly serve as monitoring activities. Additionally, revenues and expenditures associated with each asset should be tracked to the level of detail required by management. Finally, the Urban Institute suggests that capital assets, as they represent a large financial investment, should be tracked as inventory, and monitored, requiring attention to the accuracy of inventory data collected.

The Real Estate Department is operating without multiple key positions: a Department Manager, a second Contract Compliance Officer (CCO), an Appraiser, and Geo Information System Technician. With a lack of documented processes and absence of three of six budgeted positions, BSL administration and management in the Real Estate Department is currently performed by a single CCO. The duties of the CCO include routinely monitoring all leases, permits, and agreements per their terms and conditions. They also conduct onsite inspections for monitoring of activities on the business site lease and work closely with OOC, DOJ, lessee(s), and RBDO staff.

Analysis of the documentation provided to us, there are six transactions that are completed by the CCO which require multiple reviews and approvals, as shown in **Figure 5 on the next page.**

**Figure 5: Transactions Performed by the Contract Compliance Officer and Approvals Required**

Transaction Processed		Dept Manager (Vacant)	Division Director	Office of President/Vice President Signature	BSL Approval Committee
Business Site Lease	Review and Approval Required	✓		✓	✓
Emergency Operating, Agreement/Revocable Use Permit, Conditional Use Permit		✓	✓	✓	✓
Lease Modification		✓		✓	✓
Transfer of Assignment		✓		✓	✓
Collateral of Assignment		✓		✓	✓
Terminations		✓		✓	✓

When a non-compliance issue is cited, notice in writing needs to be written to the lessee. The due process begins with a first letter that allows for a certain number of days to cure, a second notice with only a few days to cure, and a final notice on the action the Real Estate Department will take. The number of days to cure is left to the discretion of the Compliance Officer, with regard to the level of communication with the lessee(s). While the Department Manager is required to review and approve termination, based on discussions with Real Estate Department staff, and with the lack of a Manager in place, it is possible that unilateral terminations can occur.

Due to a lack of access, we were unable to review terminated lease files to assess allegations of terminations without due process. We discussed one terminated lease where the CCO sent multiple letters to the lessee about non-compliance issues, but the lessee did not respond, and the agreement was subsequently terminated. In this instance, it is unknown whether the lessee actually received the notices because per the Management Plan, it is up to the lessee to contact the Real Estate Department with updated contact information.

**Performance Measurement Can Support Progress Monitoring and Success of the Business Site Lease Process**

Performance measurement best practices describe that a performance measurement system is only as good as the outcomes it tracks. Each economic development program

needs to develop a specific list of outcomes that are important to the program. Though no performance measurement objectives are stated, Navajo Nation and DED do have strategic objectives related to economic development that apply to the BSL process. These include:

Executive Level Objectives:

- Promote and support Navajo-owned small businesses to create jobs and keep money in the local communities and decrease dollar leakage into the surrounding border towns.
- Update the streamlining process, incentives, financing, and policies to establish and maintain Navajo-owned small businesses.
- Provide educational training and technical assistance in starting and maintaining small local businesses on the Navajo Nation.

DED Objectives<sup>6</sup>:

- Optimize Organization
- Reorganize Division
- Update Plan of Operation
- Review the efficiency of each office
- Collaborative procurement efforts with OOC on monthly reviews of Business Lease payments.

While these strategic objectives are clearly stated, the data collection, analysis, and presentation of data that would support evaluation and performance measurement of these objectives was not made available to us nor could we verify that data to measure them was collected. Other key metrics such as employment data or job creation numbers, number of small businesses, and workforce development are not collected, tracked, or reported. Without consistent collection and reporting mechanisms, data to demonstrate the economic impact of the BSL program cannot be generated, and the achievement of strategic objectives cannot be determined. Thus, the Executive Branch will be unable to evaluate the performance of its programs as they relate to their economic objectives.

As the Navajo Nation upgrades its performance measurement capabilities, the Navajo Nation may want to consider updating its economic strategy as it relates to BSL and vacant properties. An economic development strategy toolkit that was developed for Indigenous communities that may be applicable in the Navajo Nation<sup>7</sup>. This toolkit was developed to help these communities gain an understanding of the fundamentals of developing economic development strategies and provides some best practices to consider and incorporate into their operations and governance. One of the key elements of the toolkit addresses the importance of measuring economic results and analyzing trends over time, providing DED

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<sup>6</sup> Tap International noted the Real Estate Department implemented steps to increase process efficiency by updating the Plan of Operation and working collaboratively with the OOC on monthly reviews of the Business Lease payments.

<sup>7</sup> British Columbia Assembly of First Nations Indigenous Sustainability Roadmap Book One, 2019.



with the capability to make adjustments as needed. Specifically, measuring economic results provides the following benefits:

- Provides a “snapshot” of how a community is doing economically; when comparing between time periods (recommended every six months), the measure provides indicators of change - both positive and negative;
- Identifies where gaps may be in the economic sector of a community, (i.e. which assets are being underutilized);
- Further identifies the sectors that are contributing the most to the community’s economic activity, and well-being;
- Highlight what sectors might demand the introduction of training programs, certification, or entrepreneurial training and mentoring;
- Allow the community decision-makers to compare the results against any strategic planning previously carried out, or, alternatively, provide a basis for future strategic planning focus; and
- Help deliver “best land-use and asset allocation planning” by identifying what economic activity is best utilizing the community’s assets.

With performance monitoring, the DED would know the value of its business site leases. Recognizing the need for this information, DED has hired an economist with a key responsibility to conduct economic impact analysis. We were unable to comprehensively analyze the economic impact of DED’s business site leasing activities because of the absence of information collected on the universe of lease agreements and their related rental information. However, based on OOC reports on BSL revenue collected, the results show in FY 2020-21, lease revenue payments totaled \$233,000 across 10 agreements whose lessees submitted payments.<sup>8</sup> Without any change in rental payments or absence of delinquent payments, within the next five years, another \$1M can be collected.

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<sup>8</sup> DED could not provide information on its universe of business site lease agreements.

# Client Response





**The Navajo Nation** **DR. BUU NYGREN** *PRESIDENT*  
Yideeskáadi Nitsáhákees **RICHELLE MONTOYA** *VICE PRESIDENT*

June 30, 2023

Helen Brown, CFE  
Principal Auditor/Delegated Auditor General  
Office of the Auditor General  
**NAVAJO NATION**



Madam Auditor General,

I have reviewed the audit report and agree with your thorough findings of the review of this past fiscal year. The lease process needs serious improvement, and your report and recommendations will serve as a guide for our business site lease revision task force which I am forming.

Thanks again for this very good audit.

Respectfully,



Mr. Tony Skreluna, Division Director  
Navajo Nation Division of Economic Development

cc. Emerson Horace, III, CFO/Deputy Director