

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0224-15

**DATE:** June 22, 2015

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND THE NAVAJO NATION COUNCIL; RESCINDING CJY-45-13, THE NAVAJO NATION COUNCIL RESOLUTION WHICH GRANTED FINAL APPROVAL TO THE ENERGY DEVELOPMENT AGREEMENT BETWEEN THE NAVAJO NATION AND NABEEHO POWER, L.L.C.

**PURPOSE:** The purpose of this proposed resolution is to rescind Navajo Nation Council Resolution CJY-45-13, the resolution which granted final approval to an Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C. The reason for this action is because the resolution was conditioned upon Nabeeho Power, L.L.C. having secured funding for this energy development project within 365 days after CJY-45-13 was certified. July 30, 2014, is 365 days after CJY-45-13 was certified. At that time Nabeeho Power, L.L.C. had not presented its financing plan to the Resources and Development Committee or to the Navajo Nation Council. It is the purpose of the resolution to rescind CJY-45-13 for failure to secure funding by 365 after CJY-45-13 was certified.

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.

5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: 5:10pm 7/1/15  
Posting End Date: 7/6/2015  
Eligible for Action: 7/7/2015

Resources & Development Committee

THENCE

Naa'bi'iyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23<sup>rd</sup> NAVAJO NATION COUNCIL – First Year, 2015

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0224-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND THE  
NAVAJO NATION COUNCIL; RESCINDING CJY-45-13, THE NAVAJO NATION  
COUNCIL RESOLUTION WHICH GRANTED FINAL APPROVAL TO THE  
ENERGY DEVELOPMENT AGREEMENT BETWEEN THE NAVAJO NATION AND  
NABEEHO POWER, L.L.C.

BE IT ENACTED:

SECTION ONE. Findings.

A. Pursuant to 2 N.N.C. § 500(C)(6), the Resources and Development Committee has oversight authority over matters including chapter activities, economic and community development, and public utilities for the purpose of overseeing regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resources, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward.

B. Pursuant to 2 N.N.C. § 501(C)(4)(a), the Resources and Development Committee is authorized to make recommendations to the Navajo Nation Council regarding energy development agreements.

- 1 C. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by  
2 the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee before it  
3 is heard by the Navajo Nation Council.
- 4 D. In July 2013 the Navajo Nation Council, on recommendation of the Naabik'iyáti and  
5 Resources and Development Committees, granted approval of an Energy  
6 Development Agreement between the Navajo Nation and Nabeeho' Power, LLC  
7 relative to the Shushbetoh Industrial Park with the condition that Nabeeho' Power  
8 acquire financing no later than 365 days after certification by the Navajo Nation  
9 President, such certification occurred on July 30, 2013, Resolution CJY-45-13  
10 attached as Exhibit A.
- 11 E. The Auditor General of the Navajo Nation recommended that the condition of the 365  
12 days to acquire all needed funding for the Energy Development Agreement be met by  
13 the applicable parties. This is stated on page 3 of a memorandum to Honorable  
14 Navajo Nation Council Delegate Edmund Yazzie dated May 01, 2015 and attached as  
15 Exhibit B.
- 16 F. Three hundred sixty-five days after the certification, which is approximately July 30,  
17 2014, no evidence of financing was presented to the Resources and Development  
18 Committee or the Navajo Nation Council.

19  
20 SECTION TWO. Approval

21  
22 The Navajo Nation Council hereby rescinds CJY-45-13, An Action Relating to  
23 Resources and Development; Naabik'iyáti' Committee: Granting Final approval to  
24 the Energy Development Agreement between the Navajo Nation and Naabeeho  
25 Power, L.L.C.  
26  
27  
28  
29  
30



CJY-45-13

**RESOLUTION OF THE  
NAVAJO NATION COUNCIL**

**22<sup>nd</sup> NAVAJO NATION COUNCIL - Third Year, 2013**

**AN ACTION**

**RELATING TO RESOURCES AND DEVELOPMENT; NAABIK'ÍYÁTI' COMMITTEE:  
GRANTING FINAL APPROVAL TO THE ENERGY DEVELOPMENT AGREEMENT  
BETWEEN THE NAVAJO NATION AND NABEEHO' POWER, L.L.C.**

**BE IT ENACTED:**

1. The Navajo Nation having received the proposed Energy development Agreement (Agreement) between the Navajo Nation and Nabeeho'; Power L.L.C. (Exhibit No. 1) and the accompanying Navajo Nation divisional and departmental assessments also in Exhibit No. 1; and

2. The Navajo Nation Council having received, pursuant to 2 N.N.C. §501(B)(4)(a), the Resources and Development Committee report regarding that Committee's review and recommendations regarding the attached Energy Development Agreement, (Exhibit No. 2); and

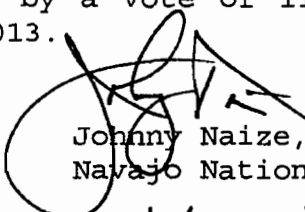
3. The Navajo Nation hereby approves the Energy Development Agreement between the Navajo Nation and Nabeeho' Power, L.L.C. as Exhibit No. 1; and

4. The President of the Navajo Nation is hereby authorized to execute this Agreement and all such document necessary to effect the intent of this legislation; and

5. The Navajo Nation Council hereby grants its approval contingent upon Lessee to acquire all needed financing completed no later than 365 days after certification of this resolution by the Navajo Nation President. In the event Lessee is not successful in obtaining needed financing to complete and implement project, said lease agreement will be reconsidered by applicable oversight.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 11 in favor and 5 opposed, this 19<sup>th</sup> day of July 2013.

  
Johnny Naize, Speaker  
Navajo Nation Council

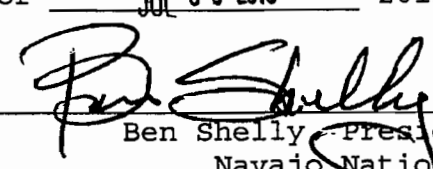
July 23, 13  
Date

Motion: Honorable George Apachito

Second: Honorable Russell Begay

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (10), on this \_\_\_\_\_ day of JUL 30 2013 2013.

  
Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2013, for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Ben Shelly, President  
Navajo Nation



**ENERGY**

**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE NAVAJO NATION**

**AND**

**NABEEHÓ POWER, L.L.C.**

This Energy Development Agreement (the "Agreement") is entered into this \_\_\_\_ day of August by and between the Navajo Nation ("Nation") and Nabeehó Power, L.L.C., a Navajo Limited Liability Company ("Nabeehó Power").

## WITNESSETH

**WHEREAS**, the Property has a potential solar index of 40 megawatts or better and contains transmission and distribution lines that are available for use in solar energy distribution and transmission.

**WHEREAS**, the Advisory Committee of the Navajo Nation pursuant to Resolution ACF-68-71 has withdrawn the land as an Industrial Park.

**WHEREAS**, the Project has undergone tests, surveys and investigations, including soil tests, environmental studies and engineering feasibility studies to determine feasibility of the Project and all environmental reviews have been completed.

**WHEREAS**, the parties desire to set forth their understandings and agreement with respect to the responsibilities each will undertake in the development of the Project, the manner in which the costs of development will be funded, and other matters with respect to the Project as set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereby agree as follows:

## ARTICLE 1

1.1 **Purpose of Agreement.** The primary purpose of this Agreement is to set forth the respective rights, duties, and responsibilities of each Party with respect to development of the potential development of a solar array with solar power system equipment and other infrastructure related to the capture, distribution and transmission of solar energy on the Property which consists of approximately 307.434 acres of land (the "Project").

## ARTICLE 2

2.1 **Key Terms for the Business Site Lease.** The parties will commence negotiations on a definitive Lease that will include the following key lease terms:

(a) *Development Period:* The Lease will have an initial thirty (36) month development period, which will commence upon the execution of the Lease.

(b) *Lease Rental:* Shall be determined by a certified appraisal in accordance with the Navajo Nation Business Leasing Regulations of 2005.

(c) *Lease Term:* The Lease will have an initial twenty five (25) year term, plus two (2) renewal periods up to (25) years each.

(d) *Improvements:* Nabeehó Power shall develop the Project for a value up to \$160,000,000.

(e) *Termination Clause:* The Lessee shall be granted all leasehold interest and rights to the Property subject to the execution of a Power Purchase Agreement with an off taker within sixty (60) months of the date this Lease is executed by the Navajo Nation President or an authorized designee. If no Power Purchase Agreement is submitted to the Nation, the Lease will become null and void.

(f) *Sovereign Immunity:* The Lease shall not waive the sovereign immunity of the Navajo Nation and shall be governed by the laws of the Navajo Nation.

**2.2. Business Site Lease:** The parties will negotiate in the Business Site Lease in good faith, which Business Site Lease will substantially incorporate the Key Lease Terms contained herein, but it is understood that the Key Lease Terms represent only the present proposal of Nabeehó Power to enter into the Lease with the Nation, and the Key Lease Terms and this Agreement do not set forth all of the material terms that Nabeehó Power anticipates would be included in the Lease. If the parties are unable to reach an agreement on the Lease, neither party shall have any further obligation to the other party and no party shall be entitled to bring any claim against the other party as a result of, arising out of or relating to the failure of the parties to agree upon or to enter into the Lease.

### ARTICLE 3

#### 3.1 General Responsibilities:

(a) Financing Nabeehó Power shall be fully responsible for seeking financing for the Project and the Navajo Nation is not expected or being requested to put forth any dollars for the contemplated project.

(b) Navajo Preference Nabeehó Power shall agree to comply with the Navajo Nation Preference in Employment Act and the Navajo Nation Business Opportunity Act.

(c) Compliance with Laws Nabeehó Power agrees to comply at all times with the applicable tribal, federal, and local governmental or regulatory requirements with respect to the Project, including the Navajo Nation Ethics and Government Law.

(d) Responsibility of Development Nabeehó Power shall be fully responsible for the overall development of the Project.

#### 3.2 Coordination of Development Activities.

(a) Nabeehó Power and the Nation agree to coordinate and cooperate in good faith on all matters for the development of the solar park.



## ARTICLE 4

**4.1 Development:** Upon the execution of the Lease, Nabeehó Power shall commence negotiations regarding the Project with public utility companies, including, but not limited to, Arizona Public Service Company, Navajo Tribal Utility Authority and Salt River Project.

**4.2 Funding:** aside from the existing environmental clearances and reviews, any further environmental studies that are needed Nabeehó Power is solely responsible for funding. In addition, Nabeehó Power is solely responsible to obtain and provide the necessary monetary support for any interconnection agreement. The design and engineering of the project shall be solely responsible for all aspect including the financing. All proper licenses, permits and other considerations for the project and who pays for it.

### **4.3 Project Information**

**4.3.1 Solar Park Site Development** has been planned and implemented with the beginning site control of 307.43 Acres completely shovel ready for 40 MW of photovoltaic energy with an additional acres (net) in several key areas within the Navajo Nation. These projects will have values to large PPA ready projects from the top renewable energy companies in the world. (See Renderings Below)

**4.3.2 Company Info and Approach** Nabeehó Power is a developing industry leader in the Consultation and Development of zero-pollution, renewable energy Ground Based Solar ("GBS") projects. The strategic approach is as follows:

1. The core product that Nabeehó Power will provide is an abundant supply of clean electricity and consulting, brokering, investing and managing of Renewable Energy.
2. Build upon existing, and develop new, critical relationships with local and regional utilities, government and social organizations.
3. Identify potential PV facility sites
4. Secure contracts with construction and maintenance providers
5. Facilitate Power Purchase Agreements

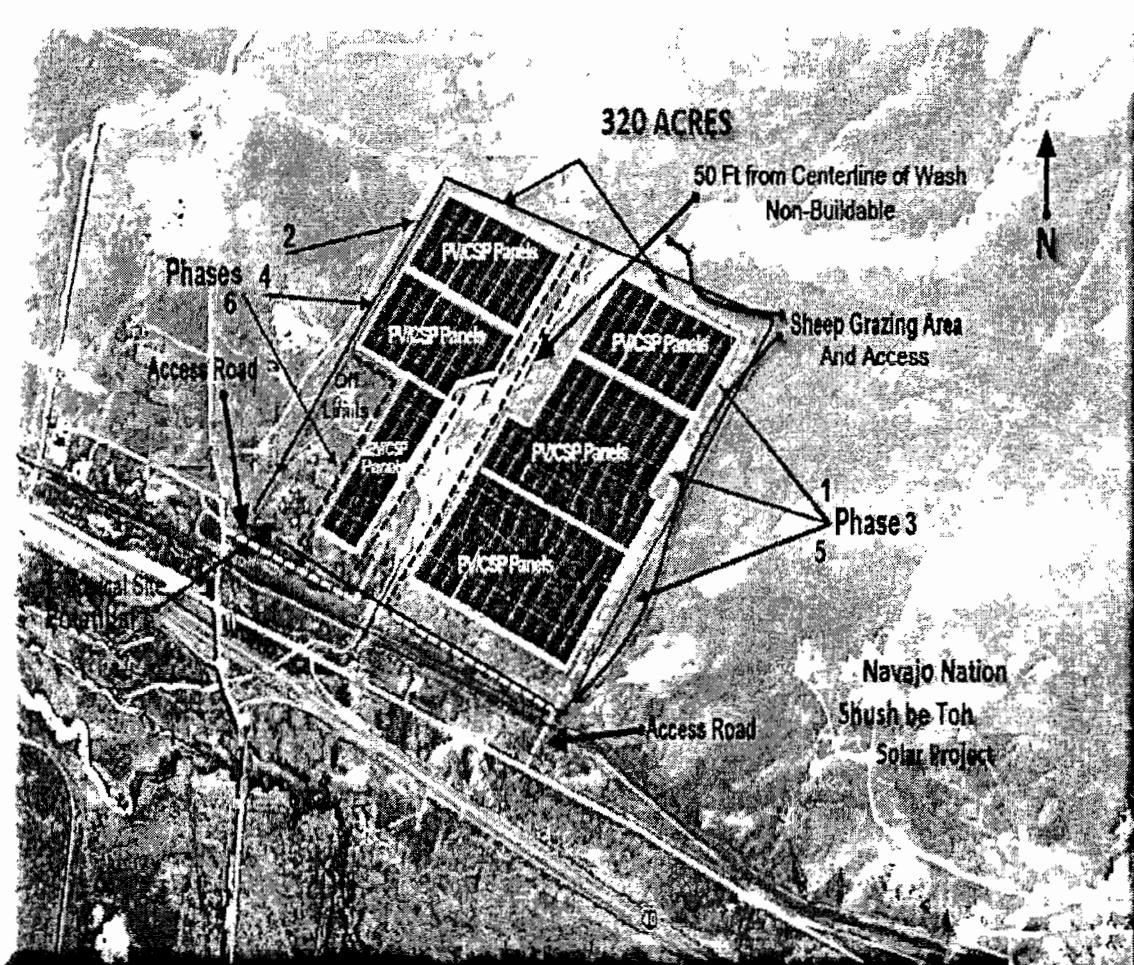
**4.3.3. Financing** The total site funding and budget is \$6,000,000.00 . The funding proceeds will be used as follows:

1. \$200,000 for marketing. This amount is earmarked for effectively marketing the products as described below in the Marketing Summary section of the Business Plan.
2. \$2,000,000.00 for Staffing and Labor. This portion of funding is intended for hiring employees to produce the products and assist marketing and sales efforts.
3. \$3,800,000.00 for Service Roads. Developing and Building Park Ground Solar Construction and equipment ahead of major finance and Grants.

The Business has Financial projections forecast a break-even point in less than 5 years after product introduction. Conservative estimates show at least a 20% return on the investment by the end of the financing period.

Once the site is fully developed then the total build out of the entire Solar Park will exceed \$160,000,000.00 and require the use of all Government Grants, Investment as well as interim and senior debt financing. The model for the entire project will be a cap rate return of approximately 4% per annum.

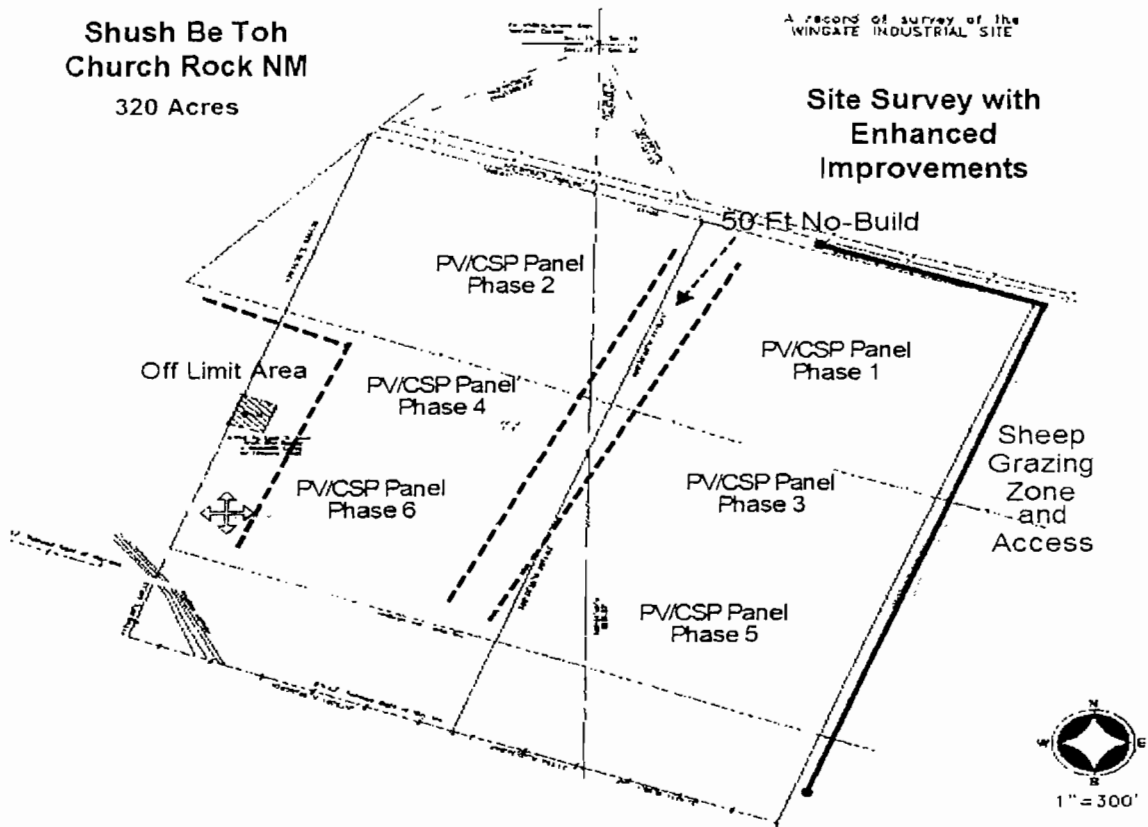
#### EXHIBITS:

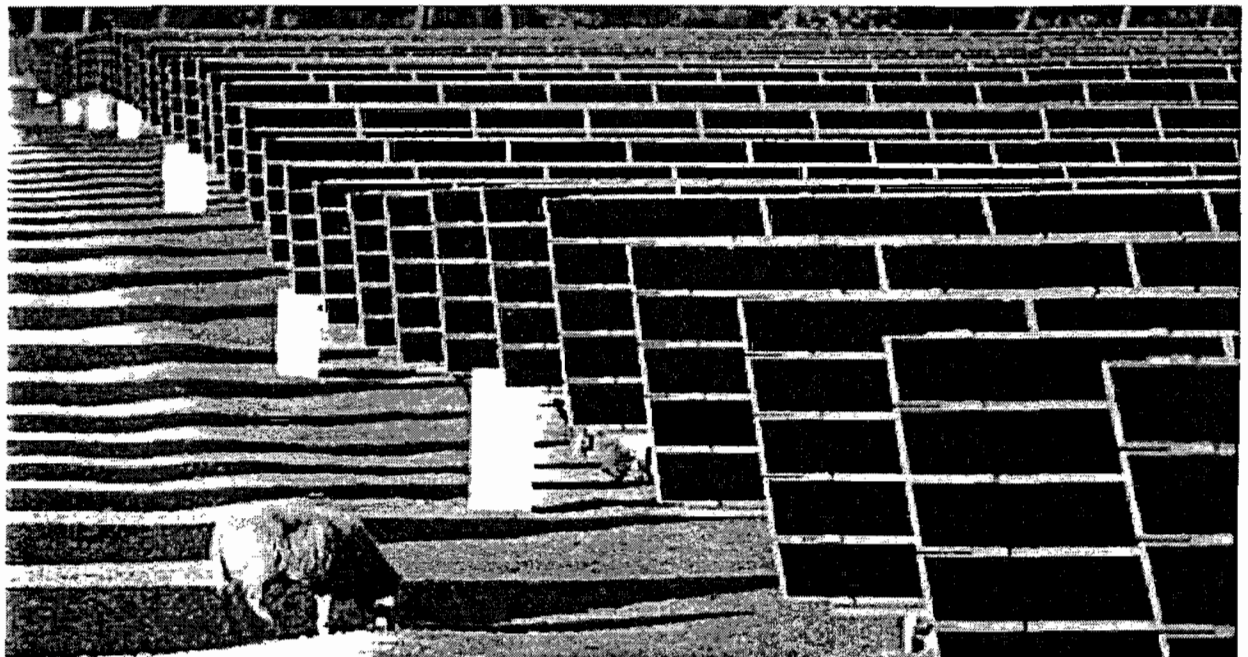


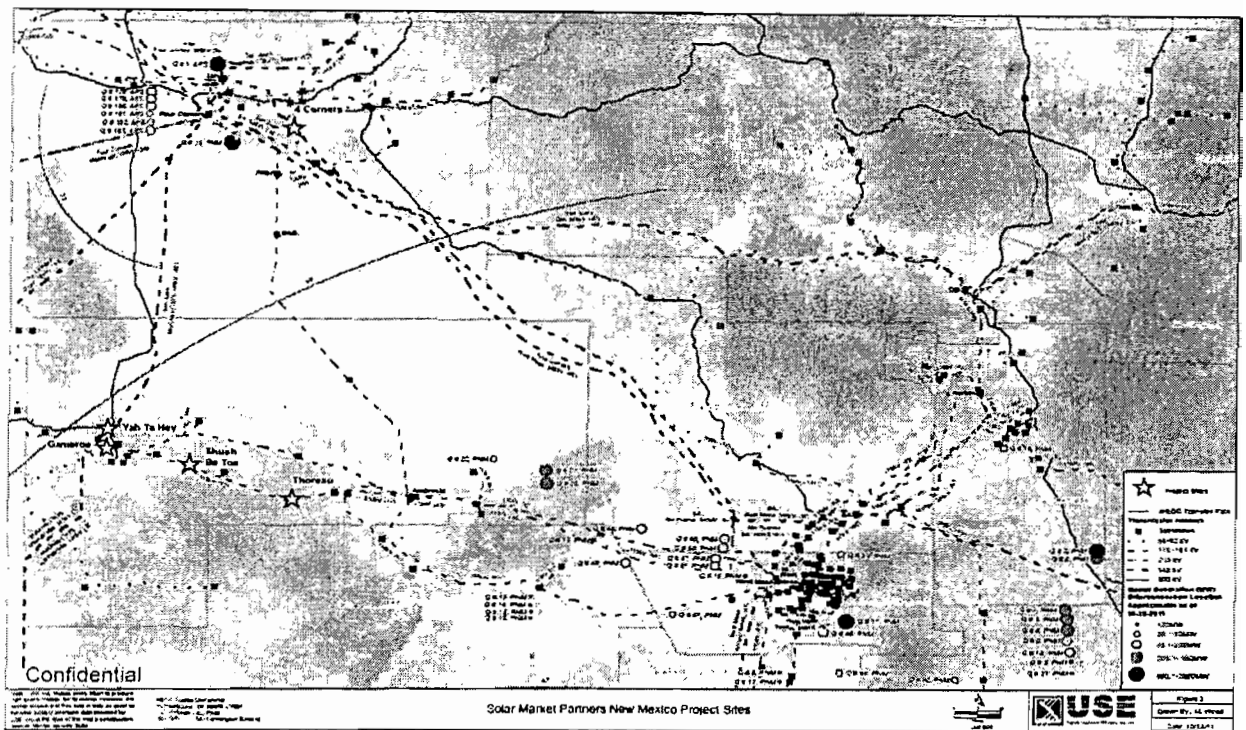
**Shush Be Toh  
Church Rock NM**  
320 Acres

A record of survey of the  
WINGATE INDUSTRIAL SITE

**Site Survey with  
Enhanced  
Improvements**







| Entitlement                                   | Status     | Est. Completion Date |
|-----------------------------------------------|------------|----------------------|
| Conceptual Site plan                          | Completed  |                      |
| Estimate of site MW capacity                  | Completed  |                      |
| 25+ year site control                         | In process | August 2012          |
| Environmental Studies and Clearance           | Completed  |                      |
| Archeological Studies and Clearance           | Completed  |                      |
| Rare Species Studies and Clearance            | Completed  |                      |
| Religious and Spiritual Studies and Clearance | Completed  |                      |
| Full and recently staked Boundary Survey      | Completed  |                      |
| Accurate Legal Description                    | Completed  |                      |
| Soil studies and Tests                        | Completed  |                      |
| Water Shed and Storm Water Requirements       | Completed  |                      |
| Zoning Approvals                              | Completed  |                      |
| Right of Way Description                      | Completed  |                      |

|                                           |                       |
|-------------------------------------------|-----------------------|
| Road and Traffic Approvals                | Completed             |
| Landscaping Approvals                     | Completed             |
| Wetlands Approvals                        | Completed             |
| Identification of Easements               | Completed             |
| Regulatory Approvals                      | Completed             |
| All Required Governmental Approvals       | In/Works              |
| Political Support                         | Yes                   |
| Local and Community Support and Approvals | Petition              |
| Mitigation Requirements                   | Completed             |
| Mineral Rights Report                     | Completed             |
| Security assessment                       | Completed             |
| Local Utility Report                      | Completed             |
| Temporary and Permanent Use Permit        | In Place              |
| Building Permits/Permissions              | Completed             |
| Full Due Diligence Package                | Completed minus lease |
| Full Entitlement Package                  | Completed             |

## ARTICLE 5

**5.1 Warranties.** The Nation and Nabeehó Power represents, warrants and covenants (i) it has the authority to enter into and perform its obligations under this Energy Development Agreement and (ii) the persons executing this has full power and authority to do so. Nabeehó Power warrants there is no litigation pending or, to the best of its knowledge, threatened to which would have a material adverse effect on the financial condition, prospects, or business and its obligations to perform under this Agreement.

**5.2 Binding Agreement:** The parties hereby specifically acknowledge and agree that this Agreement shall be binding upon the parties.

**5.3 Entire Agreement:** This Agreement represents the entire agreement of the Parties relating to the subject matter hereof, and incorporated and supersedes all other prior agreements, arrangements and understandings between the Parties with respect hereto.

**5.4 Term:** This Agreement shall become effective on the date signed by the President of the Navajo Nation or his authorized representative and shall continue in effect until the expiration, termination, or reauthorization.

**5.5 Amendments.** This Agreement shall not be modified or amended except by written agreement between Nabeehó Power and the Navajo Nation.

**5.6 Indemnification.** Nabeehó Power agrees to hold harmless and indemnify the Nation against any and all losses, liability or other causes of action of any type whatsoever arising under this Agreement or any of the agreements mentioned herein.

**5.7 Disputes and Governing Law.** Any dispute arising out of or relating to this contract shall be resolved through negotiation and the laws of the Navajo Nation shall apply.

**5.8 No Waiver of Sovereign Immunity.** Nothing herein shall be considered as a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be duly executed as of the Effective Date.

**THE NAVAJO NATION**

**NABEEHÓ POWER:**

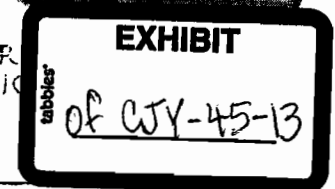
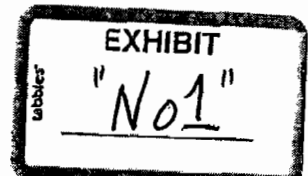
\_\_\_\_\_  
**President Ben Shelly**

\_\_\_\_\_  
**Amber Schillinger**

THE NAVAJO NATION



BEN SHELLY PR  
REX LEE JIM VIC



ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF ENVIRONMENTAL REVIEW

PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/871-7996

Website: www.navajonationepa.org

M E M O R A N D U M

TO: Garyald Benally, Environmental Reviewer  
Real Estate Program  
Rural Business Development Office  
Division of Economic Development

FROM:

Rita Whitehorse-Larsen, Senior Environmental Specialist  
Office of Environmental Review

THROUGH:

Stephen B. Etsitty, Executive Director  
Navajo Nation Environmental Protection Agency

DATE: January 13, 2012

SUBJECT: Proposed Shush Be Toh 1 LLC AC Solar Park Project

The Navajo Nation Environmental Protection Agency Office of Environmental Review (NNEPA OER) received the second environmental assessment report on December 29, 2011. This proposed site at 320 acres was previously approved and designated as Shush Be To industrial Park. NNEPA reviewed and recommends *conditional approval* pursuant to Title 4, NNC Chapter 9, Navajo Nation Environmental Policy Act, Subchapter 1, §904. NNEPA has been involved with this proposed project since the first review in November 2010. NNEPA at the time of the first review recommended in attaining the Iyanbito's Chapter approval since the Grazing Land Officer approached the NNEPA staff during the initial field site visit and asked questions. The proposed site is located in close proximity of established homesteads therefore a revisit to the Iyanbito Chapter was recommended. After the November 2010 review, NNEPA Water Quality recommended attaining 401, 404 and 402 permits, before commencing construction activities, and a memorandum dated March 1, 2011 from Mr. Garyald Benally, Navajo Nation Real Estate Department, Division of Economic Development, also recommended that water quality permits should be acquired before commencing construction activities.

J.R. Analla EA Services. An Environmental Investigation Report Shush Be Toh 1 LLC AC Solar Park Project  
Navajo Power Inc. December 2011.



As of December 2011, based on field site visits, an earthen bridge was created to cross the unknown wash by the business proponent, Design Data Solutions and/or Navajo Power LLC. NNEPA Water Quality is investigating and may initiate an enforcement action.

In the meantime, NNEPA recommends *conditional approval and halting all surface land disturbance and construction activities and complying with the following recommendations* for the proposed Shush Be Toh AC Solar Park Project.

1. *Navajo Nation Clean Water Act:*

- a. §401 Certification: A copy of the memorandum will be provided to Ms. LeeAnn Silversmith, 401 Water Quality Specialist. She can be contacted at 928/871-7700 or via email [leeanna.martinez09@yahoo.com](mailto:leeanna.martinez09@yahoo.com).
- b. §402 NPDES Individual: If there will be any source of water to be released into any close proximity of known washes, streams, creeks, rivers, etc., a 402 NPDES permit will be required.
- c. §402 NPDES General (Storm Water): The proposed business lease is at ±320-acres and is greater than the 1 acre, a copy of the Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) must be filed with USEPA Region 9 and a copy to be sent to NNEPA Water Quality to Mr. Patrick Antonio, Program Manager. He can be reached at 928/871-7185. A copy of the SWPPP and NOI must be kept within the premise for future inspections and visits from the NNEPA Water Quality Staff.
- d. §404 Dredge & Fill: If any soil material will be taken from or any work will be in any known washes, streams, creeks, rivers, etc., a 404 permit will be required before commencing any construction activities. Mrs. LeeAnn Silversmith is the contact for the 404 permitting on behalf of the US Army Corp of Engineers.

2. *Navajo Nation Air Pollution Prevention and Control Act:*

- a. The business is located within an area designated as Class II which is unclassified for the National Ambient Air Quality Standards (NAAQS)~ attainment of the NAAQA;
- b. Visibility is good to excellent;
- c. Dust must be controlled by approved water permit through the Navajo Division of Natural Resources, Department of Water Resources, Water Code. The contact is Mr. Jack Utter, 928/729-4003.

3. *Navajo Nation Safe Drinking Water Act:*

- a. The NNEPA - Public Water Systems Supervisor Program (PWSSP) recommends all proposed drinking water projects (extensions, upgrades, new wells, new public water systems, etc.) must also comply with the design review and construction permit of the PWSSP pursuant the Navajo Nation Primary Drinking Water Regulations.
- b. The new business owner/operator and water utility company are subject to submit the proposed domestic waste water and public drinking water lines to Mr. Delfred Gene, Civil Engineer, NNEPA PWSSP, he can be contacted at 928/871-7758 or visit the website at [www.navajopublicwater.org](http://www.navajopublicwater.org).

4. *Navajo Nation's Solid Waste Act:*

- a. Do not allow public to take construction waste, cumulatively NNEPA gets complaints and reports on illegal trash dumpings on rural areas and in the waters of the US and Navajo Nation.
- b. NNEPA recommends proper disposal of related waste in appropriate containers and not released into the property will lessen impacts to the public and environment.
- c. Any encounter and/or discovery of illegal waste dumping sites (which were highly visible during the initial field site visit) will be business proponent's and the contractor's responsibility to clean the area before commencing construction activities.

**5. Navajo Nation Comprehensive, Environmental Response, Compensation and Liability Act:**

- a. For your information, pursuant the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act approved by the Navajo Nation Council, CF-07-08, February 26, 2008, the NN CERCLA includes petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas)) unlike the US CERCLA or the Superfund Law and mandates petroleum owner, operator and guarantor to report petroleum release  $\geq 25$  gallons at the site and/or during transport immediately to the Navajo Nation Department of Emergency Management within the Navajo Nation Division of Public Safety.

**6. Navajo Nation Underground Storage Tank (UST) Act:**

- a. No underground storage tanks are expected to be installed at the proposed site.
- b. Any aboveground storage tanks (AST) greater than 100 gallons must meet the design and installation specifications as described in the NNUST Act.
- c. Mr. Warren Roan, UST Specialist, is the contact for UST/AST issues. He can be reached at 928/871-7995.

**7. Federal Insecticide Fungicide and Rodenticide Act (FIFRA)/NN Pesticide Act:**

- a. Contact the NNEPA Pesticide Program at 928/871-7815/7810 before applying any pesticides and herbicides to control noxious and invasive plant species to ensure the product is in compliance and appropriately applied by a certified and licensed applicator.
- b. Pesticide staff will also may need to be onsite to monitor during pesticide/herbicide application.
- c. Any type of pesticide to be sold through the convenience store will be inspected periodically to ensure the owner is in compliance in distributing, selling accordingly to the FIFRA law and regulation.

**8. Others To Contact Within Navajo Nation:**

- a. Howard Draper, Navajo Nation Project Review Office to ensure proper protocol is followed to designate the proposed area for commercial/economic development.
- b. New Mexico Department of Transportation, Bureau of Indian Affairs-Division of Transportation and Navajo Department of Transportation to ensure a safe egress/ingress access road.
- c. Jack Utter, Division of Natural Resources, Department of Water Resources, Water Code Program for water usage permit.

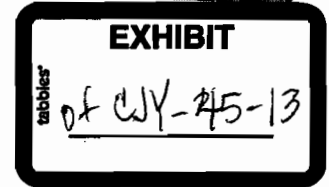
A few questions here regarding the proposed action: Has there been any issue with the sunlight reflecting off the solar panels? What is the probability of the sunlight reflection from the solar panels affect the public transportation system since the proposed action site is located just off the Interstate 40? If there are any questions, you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: Albert Damon, Executive Director, Division of Economic Development  
Community Service Coordinator, Iyanbito Chapter, PO Box 498, Fort Wingate, New Mexico, 87316  
Howard Draper, NN Division of Natural Resources, Land Department, Project Review Office  
Jack Utter, NN Division of Natural Resources, Department of Water Resources, Water Code  
Program  
NMDOT via USPS  
BLA Division of Transportation via USPS.  
NDOT via internal Navajo Nation mail.  
NNEPA Water Quality - Patrick Antonio; Lee Ann Martinez; Air Quality; PWSSP;  
RCRP; Superfund; UST; Pesticide; Radon; Administration chrono file

# THE NAVAJO NATION



BEN SHELLY  
REX LEE JIM



## MEMORANDUM

TO : David Mikesic, Zoologist  
Department of Fish and Wildlife  
DIVISION OF NATURAL RESOURCES

FROM : Gloria M. Tom  
Gloria M. Tom, Department Manager II  
Department of Fish and Wildlife  
DIVISION OF NATURAL RESOURCES

DATE : December 12, 2011

SUBJECT: DELEGATION OF AUTHORITY

I will be on travel and I am hereby delegating you to act in the capacity of the Director, Department of Fish and Wildlife, effective 8:00 a.m. on Monday, December 12, 2011. This delegation shall end at 5:00 p.m. on Friday, December 16, 2011.

Your authority will cover the review and signing off of all routine documents pertaining to the Department of Fish and Wildlife, except for issues that you feel should have the attention of the Director.

## ACKNOWLEDGEMENT:

David Mikesic  
David Mikesic, Zoologist  
Department of Fish and Wildlife  
DIVISION OF NATURAL RESOURCES

NNDFW Review No. 11JRAE06

BIOLOGICAL RESOURCES COMPLIANCE FORM  
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE  
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: Shush Be Toh Solar Park (SBTSP) Business Site Lease of 326.59± acres

DESCRIPTION: The SBTSP is a solar photovoltaic project that will convert solar energy into electric energy to serve the Navajo Nation. Electricity will be transmitted via existing high-power tension lines.

LOCATION: Sections 21 & 22, T15N, R16W, NMPM, Iyanbito Chapter, McKinley County, New Mexico

REPRESENTATIVE: Jim R. Analla, J.R. Analla EA Services

ACTION AGENCY: Navajo Power, Inc./Navajo Nation Division of Economic Development

B.R. REPORT TITLE / DATE / PREPARER: EAS-1105/DEC 2011/J.R. Analla EA Services

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3. [1] Proposed business site lease of 326.59± acres is within a Raptor Sensitive Area (RSA); [2] ATCU (single bird) observed on DEC 2011 survey. The bird was flushed from an abandoned prairie dog hole.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] *Aquila chrysaetos* (Golden Eagle), G2, BGEPA, MBTA; [2] *Falco peregrinus* (Peregrine Falcon), G4, MBTA; [3] *Athene cunicularia* (Burrowing Owl), G4, MBTA; [4] *Charadrius montanus* (Mountain Plover), G4, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: [1] Direct impacts on available foraging for the Golden Eagle; [2] The reduction in available prey may decrease raptor foraging success resulting in nest failure; [3] FAPE nest found in 2011 and fledged 3 young. Nest is located > 0.8 km from the project site boundary.

AVOIDANCE / MITIGATION MEASURES: [1] The NNDFW concurs with mitigation measures outlined in Section IV.D; [2] The NNDFW highly recommends that grading and construction activities are initiated during the non-breeding season for Migratory Birds and may extend into the breeding season if needed as MBTA-protected birds will typically not establish a nest site within an active construction zone; or complete all construction activities during the non-breeding season for Migratory Birds. If this seasonal avoidance recommendation is followed, the project will not result in the "take" of birds protected under the MBTA.

CONDITIONS OF COMPLIANCE\*: [1] All grading and construction activities should be timed to avoid the Migratory Bird breeding season of 1 MAR-15 AUG. In the event that grading and construction activities cannot avoid

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Page 1 of 2

NNDFW-B.R.C.F.: FORM REVISED 12 NOV 2009

the breeding season, surveys must precede those activities. If an active nest is discovered within 50 m (165 ft) of the project area, a nest take permit must be obtained from the U.S. Fish and Wildlife Service for the removal of the nest, eggs, and/or nestlings to be raised artificially in a federally permitted migratory bird rehabilitation facility. The nest, eggs, and/or nestlings must be removed by a federally permitted migratory bird rehabilitator; (2) The project site is within a Raptor Sensitive Area (RSA). All proposed power lines must be constructed with a raptor-safe power pole design per Raptor Electrocutation Prevention Regulations (REPR).

FORM PREPARED BY / DATE: Pamela A. Kyselka/12 DEC 2011

COPIES TO: (add categories as necessary)

☒ BIR

|                                                                           |                      |          |
|---------------------------------------------------------------------------|----------------------|----------|
| 2 NTC § 164 Recommendation:                                               | Signature            | Date     |
| <input type="checkbox"/> Approval                                         | <i>Gloria M. Tom</i> | 12/12/11 |
| <input checked="" type="checkbox"/> Conditional Approval (with memo) for: |                      |          |
| <input type="checkbox"/> Disapproval (with memo)                          |                      |          |
| <input type="checkbox"/> Categorical Exclusion (with request letter)      |                      |          |
| <input type="checkbox"/> None (with memo)                                 |                      |          |

Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife

\*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date



**PRESIDENT  
BEN SHELLY  
VICE PRESIDENT  
REX LEE JIM**

NAVAJO FISH AND WILDLIFE P.O. BOX 1480 WINDOW ROCK, AZ 86515

12 December 2011

11JRAE06

Jim R. Analla  
J.R. Analla EA Services  
Post Office Box 1034  
Gallup, New Mexico 87305

Mr. Analla,

The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the proposed Shush Be Toh 1 LLC AC Solar Park Project located in the Iyanbito Chapter, approximately 12 miles east of Gallup, New Mexico. The purpose of this letter is to inform you that we are granting the proposed project a Conditional Approval. The project is approved with the following conditions:

[1] All grading and construction activities should be timed to avoid the Migratory Bird breeding season of 1 MAR-15 AUG. In the event that grading and construction activities cannot avoid the breeding season, surveys must precede those activities. If an active nest is discovered within 50 m (165 ft) of the project area, a nest take permit must be obtained from the U.S. Fish and Wildlife Service for the removal of the nest, eggs, and/or nestlings to be raised artificially in a federally permitted migratory bird rehabilitation facility. The nest, eggs, and/or nestlings must be removed by a federally permitted migratory bird rehabilitator.

[2] The project site is within a Raptor Sensitive Area (RSA). All proposed power lines must be constructed with a raptor-safe power pole design per Raptor Electrocution Prevention Regulations (REPR).

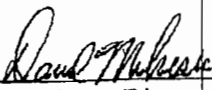
Please contact me at 928-871-7065 with any questions that you have concerning the review of this project.

Sincerely,

  
Pamela A. Kyselka, Wildlife Biologist  
Navajo Nation Department of Fish and Wildlife

VW condit  
12/12/11 PAK

CONCURRENCE

  
Gloria Tom, Director  
Navajo Nation Department of Fish and Wildlife

cc: CONS-100-11  
BIA

**A Cultural Resources Inventory  
Of  
Two Tracts in the Shush Be Toh Industrial Park  
For the  
Project Development Department  
In  
Iyanbito, McKinley County, New Mexico  
(NNAD-07-079)  
July 10, 2007**



**A Cultural Resources Inventory of Two Tracts in the  
Shush Be Toh Industrial Park for the Project  
Development Department in Iyanbito Chapter,  
McKinley County, New Mexico**

**NNAD 07-079**

**Prepared by  
Julia M. Chavez**

**Submitted by  
Robert M. Begay, M.A., Department Manager  
Navajo Nation Archaeology Department  
P.O. Box 689  
Window Rock, Arizona 86515**

**Tribal Permit No. NTC**

**Submitted to  
Alan S. Downer, Ph.D., Department Manager  
Navajo Nation Historic Preservation Department  
P.O. Box 689  
Window Rock, Arizona 86515**

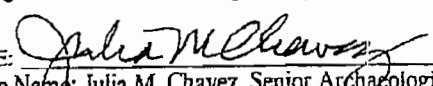
**Prepared for  
Sharlene Begay-Platero, Industrial Development Representative  
Project Development Department  
P.O. Box 663  
Window Rock, Arizona 86515**

**Submitted July 10, 2007**

### Abstract

The following report is submitted to the Navajo Nation Historic Preservation Department for review as part of the archaeological compliance process. The report, entitled *A Cultural Resources Inventory of Two Tracts in the Shush Be Toh Industrial Park for the Project Development Department, in Iyanbito, McKinley County, New Mexico* (NNAD 07-079), details the results of the project undertaken at the request of the Navajo Nation Division of Economic Development, Project Development Department. The proposed project includes two tracts of land that will be developed into business site locations. Types of ground disturbance expected to result from construction of buildings, roads, and utilities will involve blading, trenching, and backfilling with heavy equipment. Surface and subsurface disturbance will be both intensive and extensive. The project area is located adjacent to and north of the Atchison Topeka and Santa Fe Railroad right-of-way corridor in Iyanbito Chapter, east of Gallup, McKinley County, New Mexico. The legal description for the project area is Township 15 North, Range 16 West, NMPM. The project area can be found on the Church Rock, N. Mex., 1963 (Photorevised 1979), 7.5 minute series USGS map. The total number of acres for this block survey project is approximately 326 acres (132 ha). In all, 1 archaeological site, 19 isolated occurrences (IOs), and 1 in-use area (IUA) were identified during the course of the survey. NM-Q-29-165 is the only identified resource recommended as eligible for nomination to the National Register of Historic Places. The site is thought to be Register eligible under criterion d. Provided that the stipulations for the avoidance of effects at the site are adhered to as detailed in the report, a determination of no historic properties affected is recommended for the proposed undertaking.

ARCHAEOLOGICAL INVENTORY REPORT DOCUMENTATION PAGE (HPD JAN/91)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       |                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------|
| 1. HPD REPORT NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 2. (FOR HPD USE ONLY) | 3. RECIPIENTS ACCESSION NO.                                             |
| 4. TITLE OF REPORT:<br>A Cultural Resources Inventory of Two Tracts in the Shush Be Toh Industrial Park for the Project Development Department in Iyanbito, McKinley County, New Mexico<br><br>AUTHOR(S): Julia M. Chavez                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                       | 5. FIELDWORK DATES<br>May 31-June 7, 2007                               |
| 7. CONSULTANT NAME AND ADDRESS:<br>Gen'l Charge: Robert M. Begay, M.A.<br>Org. Name: Navajo Nation Archaeology Department<br>Org. Address: P. O. Box 689<br>Window Rock, Arizona 86515<br>Phone: (928) 871-6540                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       | 6. REPORT DATE<br>June 29, 2007                                         |
| 10. SPONSOR NAME AND ADDRESS:<br>Ind. Responsible: Sharlene Begay-Platero<br>Org. Name: Project Development Department<br>Org. Address: P.O. Box 663<br>Window Rock, AZ 86515<br>Phone: (505) 863-6400                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                       | 8. Permit No.<br>NTC                                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       | 9. Consultant Report No.<br>NNAD 07-079                                 |
| 13. LOCATION (MAP ATTACHED):<br>a. Chapters: Iyanbito<br>b. Agency: Eastern<br>c. County: McKinley<br>d. State: New Mexico<br>e. Land Status: Tribal Trust<br>f. UTM Center: See report<br>g. Area: T15N, R16W (unplatted sections): NMPM<br>h. 7.5' Map Name(s): Church Rock, N.Mex., 1963 (Photorevised 1979)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       | 11. SPONSOR PROJECT NO.<br>N/A                                          |
| 14. REPORT /X/ OR SUMMARY (REPORT ATTACHED) //<br>a. Description of Undertaking: The Project Development Department is proposing to develop business site lots within the Shush Be Toh Industrial Park. The area of potential effect equals approximately 326 acres (132 ha). Ground disturbance, both surface and subsurface, will be extensive.<br>b. Existing Data Review: A check of Navajo Nation Historic Preservation Department and NMCRIS archival records indicated that four archaeological projects have been conducted within a 500-foot (152-m) radius of the project area. The records revealed two previously recorded sites, NM-Q-29-81 and LA 2962, located within or near the project area.<br>c. Area Environmental & Cultural Setting: The project is located in Iyanbito Chapter. The nearest drainage is an unnamed tributary of South Fork Rio Puerco River, located within the project area. The elevation of the area ranges from 6700 feet (2043 m) to 6800 feet (2073 m). Vegetation includes saltbush, rabbitbrush, snakeweed, Russian thistle, prickly pear cactus, and various annuals. The cultural setting is rural and includes scattered homes, two-track roads, a portion of the Atchison Topeka and Santa Fe railroad right-of-way, and Interstate 40.<br>d. Field Methods: The archaeological survey was conducted by four NNAD archaeologists and a TCP interview with a local resident was conducted by Julia Chavez. A Class III pedestrian survey was conducted by walking parallel transects spaced 15 m (50 ft) apart extending across the proposed Tracts 1 and 2. The total area surveyed equals approximately 326 acres (132 ha). |                       | 12. AREA OF EFFECT: 326 acres/132 ha<br>AREA SURVEYED: 326 acres/132 ha |
| 15. CULTURAL RESOURCE FINDINGS:<br>One archaeological site, 19 isolated occurrences (IO), and 1 in-use area (IUA) were encountered during project NNAD 07-079. Site NM-Q-29-165 is an Anasazi specialized activity area—artifact concentration and sandstone scatter and a 1970s trash scatter. The site is a Register-eligible property. The IUA is a 1997-present homestead. The IOs and IUA do not meet all of the criteria necessary to be considered Register eligible, and thus they appear not to represent Register-eligible properties.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                       |                                                                         |
| 16. MANAGEMENT SUMMARY (RECOMMENDATIONS): Provided that the stipulations for the avoidance of effects at site NM-Q-29-165 are adhered to as detailed in the report, a determination of no historic properties affected is recommended for the proposed undertaking.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                       |                                                                         |
| 17. CERTIFICATION: SIGNATURE: _____<br>General Charge Name: Robert M. Begay, Department Manager                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       | DATE: _____                                                             |
| SIGNATURE: <br>Direct Charge Name: Julia M. Chavez, Senior Archaeologist                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                       | DATE: July 10, 2007                                                     |

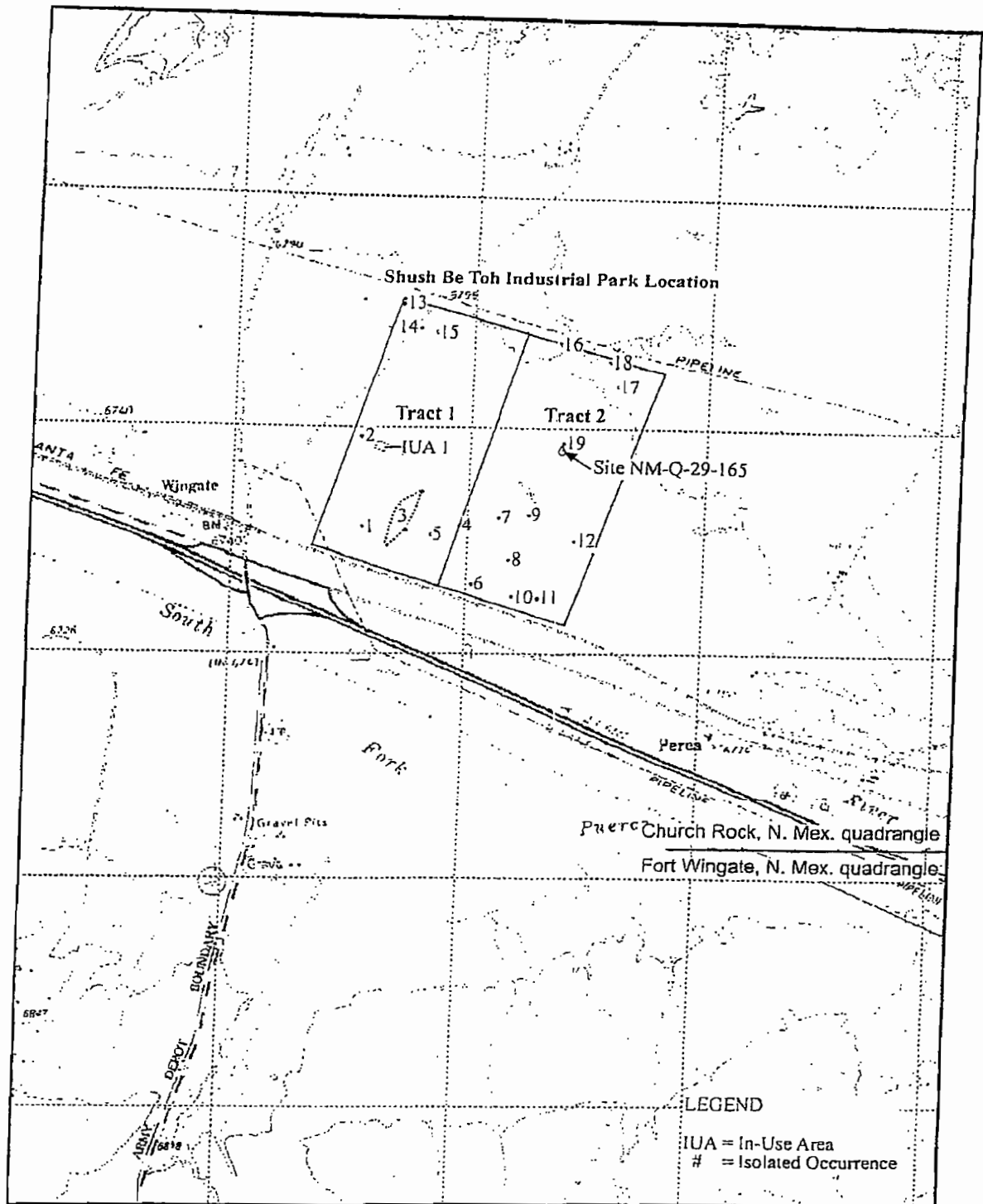


Figure 2. Vicinity map showing the location of the project area and identified cultural resources. Church Rock, N. Mex., 1963 (Photorevised 1979) and Fort Wingate, N. Mex., 1995; 7.5' series USGS maps; T.15N, R.16W, NMPM (NNAD 07-079).

**Cultural Resources Compliance Form**  
**NNHPD NO. HPD-07-642**

CULTURAL RESOURCES COMPLIANCE FORM  
HISTORIC PRESERVATION DEPARTMENT  
PO BOX 4950  
WINDOW ROCK, ARIZONA 86515

ROUTING: COPIES TO  
NM SHPO  
XX REAL PROPERTY MGT/330  
NNAD

NNHPD NO. HPD-07-642  
OTHER PROJECT NO.  
NNAD 07-079

PROJECT TITLE: A Cultural Resources Inventory of Two Tracts in the Shush Be Toh Industrial Park for the Project Development Department in Iyanbito, McKinley County, New Mexico

LEAD AGENCY: BIA/NR

SPONSOR: Sharlene Begay-Platero, Project Development Department, PO Box 663, Window Rock, AZ 86515

PROJECT DESCRIPTION: The proposed undertaking will involve the development of two tracts of land into business/industrial sites within the Shush Be Toh Industrial Park. Tract 1 measures 161.92-acres, Tract 2 measures 164.67-acres. The area of effect is approximately 326-acres. Ground disturbance will be intensive and extensive with the use of heavy equipment.

LAND STATUS: Tribal Trust

CHAPTER: Iyanbito

LOCATION: Unplatted & Projected T15N, R16W; Church Rock Quadrangle, McKinley County, New Mexico  
NMPM

PROJECT ARCHAEOLOGIST: Julia M. Chavez  
NAVAJO ANTIQUITIES PERMIT NO.: NTC

DATE INSPECTED: May 31, 2007 to June 07, 2007

DATE OF REPORT: June 29, 2007

TOTAL ACREAGE INSPECTED: 326.0 ac

METHOD OF INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND: (1) Site NM-Q-29-165 (Component 1), (19) Isolated Occurrences (IO), (1) In-Use Area (IUA)  
LIST OF ELIGIBLE PROPERTIES: (1) Site NM-Q-29-165 (Component 1)  
LIST OF NON-ELIGIBLE PROPERTIES: Site NM-Q-29-165 (Component 2), (19) IO, (1) IUA  
LIST OF ARCHAEOLOGICAL RESOURCES: (1) Site NM-Q-29-165 (Component 1)

EFFECT/CONDITIONS OF COMPLIANCE: No historic properties will be affected with the following conditions:

Site NM-Q-29-165 (Component 1):

1. Site boundary will be flagged & temporarily fenced by a qualified archaeologist prior to ground disturbing activities.

2. Site will be avoided by all construction activities by a minimum of 50-ft from site boundary.

Or

1. If site cannot be avoided, a nature an extent testing plan & if necessary a data recovery plan will be implemented in consultation with the Navajo Nation Historic Preservation Department. The plan must be consistent with the Navajo Nation Policies & Procedures, and be approved by NNHPD.

In the event of a discovery [ "discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7148.

FORM PREPARED BY: TAMARA BILLIE

FINALIZED: July 26, 2007

Notification to

Proceed Recommended:

Yes XX No     

Conditions:

Yes XX No     

Alan S. Downer  
Alan S. Downer, Navajo Nation  
Historic Preservation Officer

7-30-07  
Date

Navajo Region Approval: Yes X No     

Acting Regional Director

8/21/07  
Date



Correspondence  
Shush Be Toh Solar PV Project Site  
Church Rock, McKinley County, NM  
Navajo Nation Natural Heritage Program  
Department of Fish and Wildlife  
07 July 2011

NN Biological Resource Land Clearance Policies and Procedures

THE NAVAJO NATION

ADMINISTRATIVE  
DIVISION

07 July 2011

File#11JRAE06

Jim R. Analla  
J.R. Analla EA Services  
P.O. Box 1034  
Gallup, NM 87305

SUBJECT: SHUSH BE TOH SOLAR PV PROJECT SITE  
LEGAL DESCRIPTION SECTIONS 21 & 22; T15N, R16W, NMPM  
CHURCH ROCK, MCKINLEY COUNTY, NM

Mr. Analla:

The following information on species of concern<sup>1</sup> is provided in response to your 20 June 2011 request concerning the subject project, which consists of the Shush Be Toh 1 LLC 20 MW Solar PV Project consisting of developing a solar park facility to convert natural sunlight into pure electricity to be distributed for use on the Navajo Nation & surrounding area. The legal description of the project site is Sections 21 & 22; T15N, R16W, NMPM, Church Rock, McKinley County, NM.

Species of concern known to occur on or near the project site(s) include:

1. Aquila chrysaetos (Golden Eagle); NESL group 3; MBTA; EPA.

Known to occur within three miles of the project site:

1. Mustela nigripes (Black-footed Ferrer); NESL group 2; ESA endangered.

Species of concern with potential to occur on the 7.5-minute *Church Rock, NM* quadrangle(s) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

1. Buteo regalis (Ferruginous Hawk); NESL group 3; MBTA.
2. Charadrius montanus (Mountain Plover); NESL group 4; ESA proposed threatened; MBTA.
3. Empidonax traillii eximius (Southwestern Willow Flycatcher); NESL group 2; ESA endangered; MBTA.
4. Falco peregrinus (Peregrine Falcon); NESL group 4; MBTA.

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<sup>1</sup>"Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWF of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.



5. Mustela nigripes (Black-footed Ferret); NESL group 2; ESA endangered.
6. Strix occidentalis lucida (Mexican Spotted Owl); NESL group 3; ESA threatened; MBTA.
7. Vulpes macrotis (Kit Fox); NESL group 4.
8. Erigeron acomanus (Acoma Fleabane); NESL group 3.
9. Erigeron rhizomatus (Rhizome Fleabane); NESL group 2; ESA threatened.
10. Erigeron sivistskii (Sivistskii's Fleabane); NESL group 4.
11. Lesquerella navajoensis (Navajo Bladderpod); NESL group 4.
12. Puccinellia parishii (Parish's Alkali Grass); NESL group 4.

### AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exist that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.<sup>4</sup> Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (Chad Smith) for animals at 871-7070 and Botanist (Andrea Hazelton) for plants at (928) 523-3221. Questions regarding biological evaluations should be directed to Pamela Kyselka (Acting Environmental Reviewer) at 871-7065.

Potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.

The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

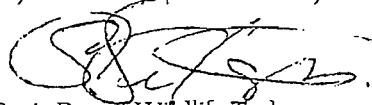
For a list of sensitive species on the Navajo Nation in addition to the species listed on the Navajo Endangered Species List (NESL) please refer to our website at [www.nndfw.org](http://www.nndfw.org).

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<sup>4</sup> Available free of charge on our website at <http://nnhp.navajofishandwildlife.org/>

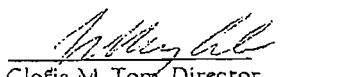
An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.



Sonja Detsoi, Wildlife Tech.  
Natural Heritage Program  
Department of Fish and Wildlife

CONCURRENCE

  
Gloria M. Tom, Director  
Department of Fish & Wildlife  
Division of Natural Resources

xc: file/chrono

## Biological Resource Land Clearance Policies and Procedures

### INTRODUCTION

The Resources Committee of the Navajo Nation Council is the legislative oversight of the Division of Natural Resources that includes the Navajo Nation Department of Fish & Wildlife (NNDFW). It has the responsibility and authority to adopt policies, procedures and regulations that protect the biological resources of the Navajo Nation. The Resources Committee, by Resolution No. RCMA-34-03 dated March 13, 2003, approved the Biological Resource Land Clearance (BRLC) Policies and Procedures prepared by the NNDFW to assist the Navajo Nation government and chapters ensure compliance with federal and Navajo laws which protect fish, wildlife species, both plants and animals, and their habitat, resulting in expedited land use approvals.

The NNDFW is established, "to conserve, protect, enhance and restore the Navajo Nation's fish, wildlife, plants and their habitat, through aggressive management programs for the spiritual, cultural and material benefit of present and future generations of the Navajo Nation". After years of research and study, the NNDFW has identified and mapped wildlife habitat and sensitive areas that cover the entire Navajo Nation. The maps are attached, hereto, as attachment "A", and are incorporated herein by reference. The BRLC Policies and Procedures identify wildlife/habitat sensitive areas that will assist the Navajo Nation government and chapters expedite the land clearance process for land withdrawals, rights-of-ways, leases, subleases, assignments, land use permits and other similar land uses.

The BRLC Policies and Procedures will help direct development to areas where impacts to wildlife and/or their habitat will be less significant. This should increase certainty in planning and implementation of projects, while ensuring the perpetuation of wildlife resources for present and future generations. The entire Navajo Nation has been divided into six types of wildlife areas. These areas provide the framework for planning specific development projects, but site-specific planning to address wildlife resources will still be necessary, in most cases. This BRLC Policies and Procedures explain what restrictions apply in each area and describes the process for the planning and approval of projects with respect to wildlife resources.

The following is a brief summary of six (6) wildlife areas identified in attachment "A":

1. Highly Sensitive Area – recommended little or no development.
2. Moderately Sensitive Area – moderate restrictions on development.
3. Low Sensitive Area – least restrictions on development.
4. Community Development – areas in and around towns, and with only a few exceptions, there are no biological resources that need to be taken into consideration in planning. However, this is not meant to keep chapters from taking the initiative to develop areas such as parks or nature trails to enhance the quality of life for those communities.
5. Biological Preserve – area is off limits to development except development that is compatible with the purpose of this area.
6. Recreational – area is off limits to development except development that is compatible with the purpose of this area.

Preparation of a Biological Evaluation (BE) is required for development in any area, except in Area 3 and 4 for individual homesites and related utilities. The BE:

- Is documentation of impacts that a proposed project may have on biological resources.
- Must consider direct, indirect, short-term, long-term and cumulative impacts and impacts from actions that are dependent on, or are clearly related to the proposed development.
- Must have Department concurrence that the evaluation of impacts to wildlife resources is accurate.
- Contains accurate information about the location of the development, including but not limited to a legal description, distance to landmark, and a map (7.5' USGS topographic quadrangle).

For information about the contents of a BE, contact NNDFW. Additionally, the Department possesses additional information on wildlife, including biology, distribution, occurrence records, avoidance measures, management recommendations and wildlife law. Project sponsors, including chapter officials, or those working on behalf of a chapter on land-use planning, are encouraged to contact the Department for this information.

Federal laws for environmental planning and protection apply to all areas when the Federal government is involved in funding, carrying out, or authorizing, in whole or in part, proposed development. These laws include the National Environmental Policy Act, Endangered Species Act, Eagle Protection Act and Migratory Bird Treaty Act. The wildlife areas identified herein do not supersede or replace Federal law, but can be an important tool in addressing the requirements of these laws. Federal actions that may affect federally listed species will require consultation with the U.S. Fish and Wildlife Service.

The following is a more detailed description of the six (6) wildlife areas, identified in attachment "A", which provides an explanation of the applicable restrictions on development, and describes the process for the planning and approval of projects

Biological Resource Land Clearance Policies and Procedures  
with respect to wildlife resources.

#### AREA 1: HIGHLY SENSITIVE WILDLIFE RESOURCES

This area contains the best habitat for endangered and rare plant, animal and game species, and the highest concentration of these species on the Navajo Nation. The purpose of this area is to protect these valuable and sensitive biological resources to the maximum extent practical.

The general rule for this area is no development. Restricted development is allowable only if the following criteria are met. All development requires the preparation of a BE. An acceptable BE must fully consider alternatives to the proposed development, and provide a compelling reason to develop in this area.

##### Criteria for Allowable Development:

- A. Residential/business development is allowed within Area 1 if it is:
  - 1. Not within or close enough to the habitat to cause significant impacts
  - 2. Located on the perimeter of the area
    - a) If not on the perimeter, there must be no reasonable alternatives
  - 3. Located within 1/8 mile of similar development
- B. Other types of development are allowed in Area 1 if:
  - 1. It is not within or close enough to habitat to cause significant impacts
  - 2. There are no reasonable alternatives outside the area

##### Process for planning and approval of development:

- A. Project Sponsor requests information on rare and endangered species, specific to the proposed development, from the Navajo Natural Heritage Program
- B. Project Sponsor meets with the Department to explore alternatives for development
- C. Project Sponsor, or their consultant, prepares a BE for the proposed development
- D. Department reviews the BE to determine if impacts to wildlife resources are accurately assessed, impacts that can not be avoided are reasonably mitigated, and that no other reasonable alternatives exist
- E. Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
- F. The Department letter must be part of any project approval application package

#### 2. AREA 2: MODERATELY SENSITIVE WILDLIFE RESOURCES

This area has a high concentration of rare, endangered, sensitive and game species occurrences or has a high potential for these species to occur throughout the landscape. The purpose of this area is to minimize impacts on these species and their habitats within Area 2, and to ensure the habitats in Area 1 do not become fragmented.

The rule for this area is that all development be placed to avoid species and their habitat. Avoidance needs to include an adequate buffer to address long-term and cumulative impacts. The buffer distance will depend on the species and the situation, and may be up to one mile. All development requires the preparation of a BE.

##### Criteria for allowable development:

- A. Must not be within or close enough to habitat to cause significant impacts

##### Process for planning and approval of development:

- A. Project Sponsor requests information on rare and endangered species, specific to the proposed development, from the Navajo Natural Heritage Program
- B. Project Sponsor, or their consultant, prepares a BE for the proposed development
- C. Department reviews the BE to determine if impacts to wildlife resources are accurately assessed, impacts that can not be avoided are reasonably mitigated, and that no other reasonable alternatives exist
- D. Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
- E. The Department letter must be part of any project approval application package

#### 3. AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

- This area has a low, fragmented concentration of species of concern. Species in this area may be locally abundant on

### Biological Resource Land Clearance Policies and Procedures

'islands' of habitat, but islands are relatively small, limited in number and well spaced across the landscape.

Small-scale development to serve the private needs of individuals, such as homesites and service lines for utilities, can proceed without the development of a BE. However, documentation of the development shall be submitted to the NNDFW for its files.

All other development requires preparation of a BE. Any proposed development in this area does not preclude the need to meet the requirements of Federal law, as applicable.

#### Process for planning and approval of development:

##### A. For individual homesites and related utilities

1. Submit homesite documentation to NNDFW, including:
  - a) Location plotted on a 7.5" USGS topographic quadrangle map or reasonable facsimile
  - b) Brief description of project, including acreage

##### B. For all other development

1. Project Sponsor requests information on rare and endangered species, specific to the proposed development, from the Navajo Natural Heritage Program
2. Project Sponsor, or their consultant, prepares a BE for the proposed development
3. Department reviews the BE to determine if impacts to wildlife resources are accurately assessed, impacts that cannot be avoided are reasonably mitigated, and that no other reasonable alternatives exist
4. Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
5. The Department letter must be part of any project approval application package

#### **4. AREA 4: COMMUNITY DEVELOPMENT**

The Department has determined that areas around certain communities do not support the habitat for species of concern and therefore development can proceed without further biological evaluation. This applies to all development except that which may have significant impacts outside the community. An example of this is industrial development that may impact air or water quality. For certain communities, there are exceptions where one or two species have the potential to occur. For these exceptions, the biological evaluation need only address that one or two species, and be submitted to the Department for approval.

Small-scale development to serve the private needs of individuals, such as homesites and service lines for utilities, can proceed without the development of a BE. However, documentation of the development shall be submitted to the NNDFW for its files.

#### Process for planning and approval of development:

##### A. For individual homesites and related utilities

1. Submit homesite documentation to Department, including:
  - a) Location plotted on a 7.5" USGS topographic quadrangle map or reasonable facsimile
  - b) Brief description of project, including acreage

##### B. For all other development

1. Project Sponsor requests information on rare and endangered species, specific to the proposed development, from the Navajo Natural Heritage Program
2. For responses that do not list any wildlife resources the process is complete
3. For responses that list wildlife resources
  - a) Project Sponsor, or their consultant, prepares a BE for the proposed development
  - b) Department reviews the BE to determine if impacts to wildlife resources are accurately assessed, impacts that cannot be avoided are reasonably mitigated, and that no other reasonable alternatives exist
  - c) Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
  - d) The Department letter must be part of any project approval application package

#### **5. AREA 5: BIOLOGICAL PRESERVE**

These areas contain excellent, or potentially excellent, wildlife habitat and are recommended by the Department for protection from most human-related activities, and in some cases are recommended for enhancement. Only a few of these areas have been developed, to date. Future areas will be identified for each chapter on a case-by-case basis. A variety of

#### Biological Resource Land Clearance Policies and Procedures

protection and enhancement techniques are available, and the Department is interested in working with the chapter and land-user to protect/enhance these habitats by providing technical assistance, and possibly materials and labor. The Department is interested in receiving proposals from chapters and land-users for these types of areas. Ultimately, the Department maintains the authority for designating and managing biological preserves. However, the Department may delegate certain management responsibilities to the local level, under Department oversight. Any development within this area must be compatible with the purpose of the management plan for the area.

##### Process for planning and approval of development:

- A. Project Sponsor requests information from the Department on the purpose of the area, and the management plan, if available
- B. Project Sponsor meets with the Department to explore alternatives for development
- C. Project Sponsor, or their consultant, prepares a BE for the proposed development
- D. Department reviews the BE to determine if the proposed project is compatible with the purpose of the area, impacts to wildlife resources are accurately assessed, impacts that cannot be avoided are reasonably mitigated, and that no other reasonable alternatives exist
- E. Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
- F. The Department letter must be part of any project approval application package

#### **6. AREA 6: RECREATIONAL**

These areas are used for recreation that involves wildlife, or have potential for development for this purpose. Recreation can involve consumptive and/or non-consumptive uses of wildlife resources, and is often a part of a broader outdoor experience. Examples include fishing lakes, camping and picnic areas and hiking trails. Several areas have been identified as Recreation Areas. Future areas will be identified for each chapter on a case-by-case basis. A variety of management techniques are available, and the Department is interested in working with the chapter and land-user to develop and/or manage these areas. The Department is also interested in receiving proposals from chapters and land-users for these types of areas. Ultimately, the Department maintains the authority for designating and managing recreational areas that involve wildlife. However, the Department may delegate certain management responsibilities to the local level, under Department oversight. The Department encourages chapters to plan development in this area compatible with purpose, for example nature trails, interpretive displays and picnic areas.

##### Process for planning and approval of development:

- A. Project Sponsor requests information from the Department on the purpose of the area, and the management plan, if available
- B. Project Sponsor meets with the Department to explore alternatives for development
- C. Project Sponsor, or their consultant, prepares a BE for the proposed development
- D. Department reviews the BE to determine if the proposed project is compatible with the purpose of the area, impacts to wildlife resources are accurately assessed, impacts that can not be avoided are reasonably mitigated, and that no other reasonable alternatives exist
- E. Department issues a letter, to the Project Sponsor, either concurring or not concurring with the BE based on the review
- F. The Department letter must be part of any project approval application package

**Biological Resources Compliance Form NNDF & WL  
Review No. 11JRAE06**

**ENVIRONMENTAL SUMMARY**  
Shush Be Toh Solar Park

DATE: January 18, 2012

Requesting Party: Sharlene Begay-Platero

Reviewed by: Garyald Benally

Summary of Compliance Determinations (if non-NEPA environmental review process)

1. Historic Preservation

2. Fish and Wildlife

3. Navajo Environmental Protection Agency

Summary of Compliance with Environmental Laws:

Supporting documentation for the following determinations are found in *An Environmental Investigation Report for the Shush Be Toh Solar Park – EAS-1105, December 2011* attached to this Environmental Summary. The 326.59-acre± tract is located in Iyanbito Chapter 12 miles east of Gallup, New Mexico.

1. National Historic Preservation:

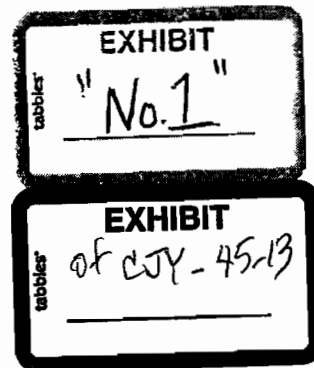
In compliance with National Historic Preservation Act of 1988, as amended, Section 106 consultation and 26 CFR 800.9 (b). The Navajo Nation Archaeology Department (NNAD) conducted an archaeological inventory and cultural resource survey for the Shush Be Toh Industrial Park (SBTIP). Approximately 326-acres were inventoried. The inventory was the subject of the final report *A Cultural Resources Inventory of Two Tracts in the Shush Be Toh Industrial Park for the Project Development Department in Iyanbito, McKinley County, New Mexico (NNAD-07-079)*. A Cultural Resource Compliance Form (HPD-07-642) was issued for this undertaking. *An Environmental Investigation Report for the Shush Be Toh Industrial Park – EAS-1105, August 2011: Section III. Description of the Affected Environment, E. Cultural Resources, Historic Preservation (36 CFR Part 800)*. **Site NM-Q-29-165 needs to be flagged and monitored by a qualified archaeologist prior to ground disturbing activities\*.**

2. Floodplain Management:

The Navajo Nation has not been included in the National Flood Insurance Program (NFIP) and there are no floodplain maps published which identify Special Flood Hazard Areas (SFHA) on the Navajo Nation. The proposed SBTSP site is well above any 100-year flood plains. The SBTSP site is not subject to flooding. *An Environmental Investigation Report for the Shush Be Toh Solar Park: Section III. Description of the Affected Environment, B. Water Resources, a. Floodplain Management (Executive Order 11988)*.

3. Wetlands Protection:

Potential impacts to wetlands by the proposed undertaking have been evaluated in accordance with Executive Order 11990. None of the jurisdictional wetlands characteristics as defined by the U. S. Fish and Wildlife Service and the U. S. Army Corps of Engineers are present at the OEC tract. The soils at the SBTSP are not hydric soils as defined in *AD-4176734, Corps of Engineers Wetlands Delineation Manual, Jan 87 (An Environmental Investigation Report for the Shush Be Toh Solar Park and Centralized Range Residue Recycling Facility (CR3F): Section IV. Environmental Consequences of the Proposed Action and Mitigation Measures, B. Water Resources, c. Wetland Protection (Executive Order 11990)*.





4. Endangered Species Act:

The Navajo Nation Natural Heritage Program (NNNHP), Navajo Fish and Wildlife Department (NFWD) were consulted regarding the effect of the development and use of the CR3F tract on federally listed threatened or endangered species; or any tribally listed species or other species of concern. It has been determined that, with conditions specified, the development and use of the SBTSP is not expected to affect any federally listed threatened or endangered species; or any tribally listed species or other species of concern. An Environmental Investigation Report for the Shush Be Toh Solar Park and Centralized Range Residue Recycling Facility (CR3F): Section III. Description of the Affected Environment, D. Biotic Resources).

5. Air Quality

Ambient air quality may be regarded as good to excellent, that is, near pristine. Primary pollution in the project area is primarily wind blown dust from loose topsoil common during times of high winds and dust from vehicular traffic along unimproved roads in the area. The SBTSP site is not in a nonattainment area, an area that exceeds EPA air quality standards for pollutants (An Environmental Investigation Report for the Shush Be Toh Solar Park: Section III. Description of the Affected Environment, C. Air Resources).

6. Sole Source Aquifer:

There are no designated sole source aquifers within the Navajo Nation. (An Environmental Investigation Report for the Shush Be Toh Solar Park and: Section III. Description of the Affected Environment, B. Water Resources, 2. Ground Water, a. Sole Source Aquifers [40 CFR 149].

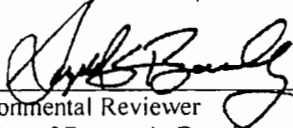
7. Abandoned Mine Lands:

There are no abandoned mines on the SBTSP site; and no Abandoned Mine Lands (AML) project funding involved in the CR3F undertaking.

8. Navajo Nations Solid Waste Act:

A contract with the local solid waste management contractor will be acquired to dispose of solid waste generated by the development and operations of SBTSP. Petroleum product and solvent wastes generated by SBTSP construction equipment will be collected and disposed of in conformance with applicable federal and Navajo Nation laws and regulations. (An Environmental Investigation Report for the Shush Be Toh Solar Park: Section III. Description of the Affected Environment, G. Resource and Land Use Patterns, 3. Solid Waste a. Solid Waste b. Hazardous Waste.

I certify that the Environmental Review Process and the Compliance Determination Process in good faith has been complied with:\*\*



DATE: January 18, 2012

Environmental Reviewer  
Division of Economic Development

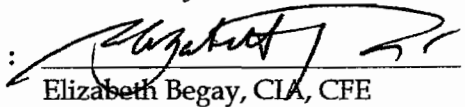
**\*Cultural Resource Compliance Form-Navajo Nation Historic Preservation Department: HPD-07-642.**

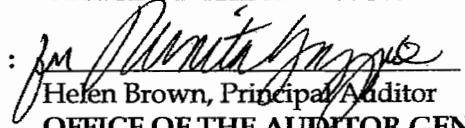
**\*\*In reference to the Navajo Nation Environmental Protection Agency (NNEPA) memo dated January 13, 2012, please adhere to NNEPA's recommended 8 mitigation measures stated in the written correspondent regarding the proposed Shush Be Toh 1 LLC AC Solar Park Project.**



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

**TO** : Hon. Edmund Yazzie, Council Delegate  
**23<sup>rd</sup> NAVAJO NATION COUNCIL**

**THRU** :   
Elizabeth Begay, CIA, CFE  
Auditor General  
**OFFICE OF THE AUDITOR GENERAL**

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

**DATE** : May 01, 2015

**SUBJECT** : Audit Request of Nabeeho Power, LLC and Shush Bi Toh Industrial Park

This memorandum is written in response to your request to audit Nabeeho Power, L.L.C. and the Shush Bi Toh Industrial Park. The Office of the Auditor General has reviewed various documents concerning the proposed solar park development and based on our review, we decline your request for a financial audit of Nabeeho Power, L.L.C. and Shush Bi Toh Industrial Park for the following reasons:

**I. Nabeeho Power, L.L.C.**

According to records obtained from the Navajo Nation Division of Economic Development (DED), Nabeeho Power, L.L.C. is a private company that was incorporated as a domestic limited liability company in May 2011 in accordance with the Navajo Nation Business Opportunity Act. The Navajo Nation Office of the Auditor General has no jurisdiction to audit the finances of Nabeeho Power, L.L.C. According to 12 N.N.C. Section 2 (A)(1), the Office of the Auditor General is limited to conducting financial audits and reviews of chapters, related Navajo Nation entities and contractors to the Navajo Nation.

**II. Shush Bi Toh Industrial Park**

The Shush Bi Toh Industrial Park was established in 1971 via resolution no. ACF-68-71 for economic development purposes to create employment and business opportunities. The industrial park comprises of approximately 307 acres located in Iyanbito, New Mexico. The Shush Bi Toh Industrial Park is one of several industrial parks that are managed by DED.

In December 2012, DED's Business Site Lease Approving Committee approved a 25-year business site lease (per resolution no. DEDA-48-2012) for Nabeeho Power, L.L.C. to develop a solar park on the Shush Bi Toh Industrial Park. This solar park is intended to capture, distribute and transmit solar energy.

The approval of the business site lease was completed in accordance with the established DED process. Accordingly, the business site lease negotiated between DED and Nabeeho Power, L.L.C. was reviewed and surmised via the 164 SAS review process which included a review by the Navajo Nation Department of Justice. To adhere to 2 N.N.C. Section 501 (4)(a), the Department of Justice insisted on an Energy Development Agreement which would require approval by the Navajo Nation Council. On July 19, 2013, the Navajo Nation Council approved, per resolution no. CJY-45-13, the Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C.

Overall, both the business site lease and the Energy Development Agreement were reviewed by the Department of Justice to ensure the terms of these agreements were in compliance with applicable laws and regulations. Approval by the Business Site Lease Approving Committee as well as the Navajo Nation Council also provides assurance that the agreements were executed in accordance with established Navajo Nation policies, procedures, laws and regulations.

### III. Other information

Our review of records also revealed the following:

- A. The Navajo Nation Department of Justice conducted research and a due diligence on Nabeeho Power L.L.C. and deemed the company in compliance with the Navajo Business and Procurement Act.
- B. The Navajo Nation has not invested any funds into the solar park development. Per the Energy Development Agreement, Nabeeho Power, L.L.C. shall be fully responsible for seeking financing for the project and the Navajo Nation is not expected or being requested to put forth any dollars for the contemplated project. As such, the Navajo Nation would not be considered a stockholder in this company.

### IV. Issues/Recommendations

Although the business site lease and Energy Development Agreement for Nabeeho Power, L.L.C., were completed with appropriate legal review to ensure Navajo Nation compliance, we raise the following issues and offer applicable recommendations:

A. Timeline stipulation in Navajo Nation Council resolution no. CJY-45-13

In the Council resolution, there was a stipulation that states:

*"The Navajo Nation Council hereby grants its approval contingent upon Lessee (Nabeeho Power, L.L.C.) to acquire all needed financing completed no later than 365 days after certification of this resolution by the Navajo Nation President. In the event Lessee is not successful in obtaining needed financing to complete and implement project, said lease agreement will be reconsidered by applicable oversight."*

The resolution was certified by the Navajo Nation President on July 30, 2013. Therefore, the 365 days (or one year) was approximately July 30, 2014. According to Shammie Begay, the current legislative advisor for the Resource and Development Committee, the Committee has not received an update from DED and/or Nabeeho Power, L.L.C. on whether this stipulation has been complied with. To date, approximately 19 months have elapsed since the Council resolution was certified. Ms. Begay indicated that there has been a request from the company to be placed on one of their meeting agendas but that hasn't happened yet.

According to the Energy Development Agreement, the total value to develop the solar project is up to \$160 million. Considering the Council resolution states "all needed financing....to complete and implement project...", the assumption is that Nabeeho Power, L.L.C. had one year to secure financing of approximately \$160 million.

Since the solar energy development is a business venture for Nabeeho Power, L.L.C., certain information of their business affairs is considered proprietary information and cannot be disclosed publicly. Considering this, the amount of financing secured to date for the project by Nabeeho Power, L.L.C. is unknown at this time. However, since the financing was a specific condition imposed on Nabeeho Power, L.L.C., it would be imperative of DED and the company to provide an update on its financing. Otherwise, it could be concluded that Nabeeho Power, L.L.C. is not in compliant with Navajo Nation Council resolution CJY-45-13.

**Recommendation:** The Navajo Nation Department of Justice should ensure the conditions imposed by the Navajo Nation Council via its resolution are being met by the applicable parties.

B. Regulating solar energy development on the Navajo Nation

The Energy Development Agreement did not clearly specify who or how the solar energy development that is to occur on the Shush Bi Toh Industrial Park will be

regulated. This is likely due to the absence of established Navajo Nation solar regulations and/or guidelines.

We conducted an Internet search on solar energy development and found that local governments such as townships, counties, and cities are finding it necessary to establish solar regulations or guidelines to not only promote the use of renewable energy systems but to also establish standards for the placement, operation and maintenance of such systems. Such regulations facilitate a cooperative agreement between solar energy companies and property owners who will likely be affected by the solar systems.

The regulations/guidelines found via our limited Internet search covered issues such as the following:

- Standard distance from roadways and property lines
- Limits on the size of the solar farming equipment (i.e., panel sizes range from small, medium and large)
- Dimensions and maintenance of trees and shrubs to hide solar farms
- Responsibilities of property owners when solar farms are shut down
- Requirement for security systems
- Limited land clearing
- Operation and maintenance plan
- Providing a surety bond to cover the cost of removing equipment and remediating the landscape
- Requirement for property owners that are generating electricity for the site to enter into interconnection agreements with local utility companies that operate the electrical grid.

These issues were not specifically addressed in the Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C. The need for regulations and/or guidelines is becoming more important as solar energy companies such as Nabeeho Power, L.L.C. seek open areas comprising of idle land or land that is no longer viable for other uses such as agriculture to build solar farms. The Navajo Nation is abundant with such land and would be considered ideal for solar farms.

According to the Energy Development Agreement, the solar park development by Nabeeho Power, L.L.C. will begin with the 307 acres of the Shush Bi Toh Industrial Park with "additional acres (net) in several key areas within the Navajo Nation." This language implies additional solar farms that may be proposed by Nabeeho Power, L.L.C. across the Navajo Nation. In light of such plans, it would be in the Navajo Nation's best interest to develop appropriate solar energy development regulations to

ensure all companies (current and future) conduct solar energy business while respecting the needs of the Navajo Nation.

**Recommendation:** The Navajo Nation Department of Justice should clarify the regulatory authority over solar energy development on the Navajo Nation with the development of applicable regulations and/or guidelines.

C. DED action plan to facilitate cooperation between all parties

The solar park development by Nabeeho Power, L.L.C. has proceeded with controversy and opposition by community members within Iyanbito Chapter. According to records, both sides have expressed their conflicts thru various means and there has been no resolution to date.

This lack of coordination and cooperation is contrary to a specific stipulation in the Energy Development Agreement which states:

*"Nabeeho Power and the Nation agree to coordinate and cooperate in good faith on all matters for the development of the solar park."*

Records show various attempts were made by the consultant to Nabeeho Power, L.L.C. to coordinate meetings between the company and Iyanbito Chapter to address concerns, answer questions and reach a cooperative arrangement. However, some of these efforts have resulted in physical assaults and court filings. There is a concern that rather than resolving differences, the discord between both parties has intensified. This will likely have an adverse affect on the proposed business venture for the Shush Bi Toh Industrial Park.

Although DED is the designated business developer for the Nabeeho Power, L.L.C. solar park, we did not find any DED action plan to address the controversy and opposition between the company and Iyanbito Chapter. Since DED, as a Navajo Nation division, and Iyanbito Chapter, as a Navajo Nation Chapter, are part of the Navajo Nation, their actions could be found contrary to the stipulation and thus question whether the Nation is complying with the Energy Development Agreement.

**Recommendation:** To comply with the Energy Development Agreement, DED should develop an action plan on how to best resolve the issues between Nabeeho Power, L.L.C. and Iyanbito Chapter community. The oversight committee should concur the action plan.

D. Submission of Annual Reports by Nabeeho Power, L.L.C.

As a private company established under Navajo Nation laws, Nabeeho Power, L.L.C. is required to submit annual reports to the Navajo Nation Business Regulatory Department. Although DED claimed that the company was current with its annual reporting, the Business Regulatory Department provided only a report for 2011. Ms. Eunice Begaye, Program & Project Specialist with the Business Regulatory Department confirmed that annual reports for subsequent years have not been submitted by Nabeeho Power, L.L.C. which is likely due to the current inactivity with the solar park development. Nonetheless, if Navajo Nation law requires Nabeeho Power, L.L.C. to submit annual reports, these reports should be filed with Business Regulatory Department in a timely manner.

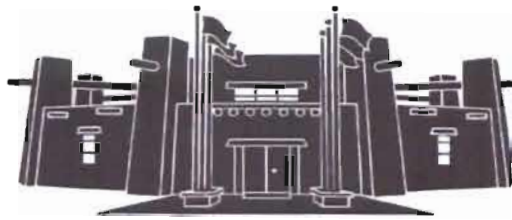
**Recommendation:** DED should inform Nabeeho Power, L.L.C. of annual reports that have not been submitted, and monitor their reporting activities to ensure compliance with Navajo Nation laws.

V. Conclusion

By all indications, the business site lease and Energy Development Agreement between Nabeeho Power, L.L.C. and the Navajo Nation were executed in accordance with established policies, procedures, laws and regulations. Such assurance was provided with the review and approval by the Business Site Lease Approving Committee, Department of Justice, and the Navajo Nation Council.

Nevertheless, our limited review raised several issues regarding Nabeeho Power, L.L.C. adherence to conditions imposed by the Council. Accordingly, we offered recommendations to address these issues. Should you have further questions, please contact our office at (928) 871-6303. Thank you.

xc: Sharlene Begay-Platero, Industrial Development Specialist  
Anthony Perry, Director  
**PROJECT DEVELOPMENT DEPARTMENT/DED**  
Karis Begaye, Attorney  
**DEPARTMENT OF JUSTICE**  
Arbin Mitchell, Chief of Staff  
**OFFICE OF THE SPEAKER**  
Chapter Officials (3)  
**IYANBITO CHAPTER**  
Chrono



## MEMORANDUM

TO: Honorable Edmund Yazzie  
Churchrock, Iyanbito, Mariano Lake, Pinedale, Smith Lake, Thoreau Chapters

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: June 22, 2015

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND THE NAVAJO NATION COUNCIL; RESCINDING CJY-45-13, THE NAVAJO NATION COUNCIL RESOLUTION WHICH GRANTED FINAL APPROVAL TO THE ENERGY DEVELOPMENT AGREEMENT BETWEEN THE NAVAJO NATION AND NABEEHO POWER, L.L.C.

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0224-15\_

SPONSOR: Edmund Yazzie

**TITLE: An Action Relating To Resources And Development, NAABIK'IYATTI',  
And The Navajo Nation Council; Rescinding CJY-45-13, The Navajo Nation  
Council Resolution Which Granted Final Approval To The Energy Development  
Agreement Between The Navajo Nation And Nabeeho Power, L.L.C.**

***Date posted: July 1, 2015 at 5:10PM***

Digital comments may be e-mailed [to comments@navajo-nsn.gov](mailto:to comments@navajo-nsn.gov)

Written comments may be mailed to:

**Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586**

**Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.**

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0224-15

**SPONSOR:** Honorable Edmund Yazzie

**TITLE:** An Action Relating To Resources And Development, Naabik'iyati', And The Navajo Nation Council; Rescinding Cjy-45-13, The Navajo Nation Council Resolution Which Granted Final Approval To The Energy Development Agreement Between The Navajo Nation And Nabeeho Power, L.L.C.

**Posted:** July 1, 2015 at 5:10 PM

**5 DAY Comment Period Ended:** July 6, 2015

**Digital Comments received:**

|                                  |                                                                                                                                                                                                                         |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Comments Supporting</b>       | <i>None</i>                                                                                                                                                                                                             |
| <b>Comments Opposing<br/>(2)</b> | <ol style="list-style-type: none"> <li>1. Amber Schillinger; Owner &amp; Chairperson, Nabeeho Power &amp; Navajo Universal.</li> <li>2. Sharlene Begay-Platero; Navajo Nation Project Development Department</li> </ol> |
| <b>Inclusive Comments</b>        | <i>None</i>                                                                                                                                                                                                             |

1-711

\_\_\_\_\_  
Executive Director  
Office of Legislative Services

7/7/2015 . 9:22 AM

\_\_\_\_\_  
Date/Time

## Comment on 0224-15

Amber Schillinger <ambernavaajopower@gmail.com>

Mon 7/6/2015 4:32 PM

To: comments <comments@navajo-nsn.gov>,

Cc: Sharlene Begay Platero <srbp@navajoadvantage.com>; Rudnick, William A. <william.rudnick@dlapiper.com>; Gabriel <gabefreeland@yahoo.com>;

1 attachment

Scan\_Doc0003.pdf;

please see attached

# NAVAJO POWER

## POWERING THE PEOPLE

July 6, 2015

Honorable Speaker Lorenzo Bates  
Navajo Nation Council  
Honorable Alton Shepherd, Chairperson  
Resources and Development Committee – The Navajo Nation Council  
P.O. Box 3390  
Window Rock, Arizona 86515

**RE: Comments for Legislation #: 0224-15**

Dear Speaker Bates and Chairperson Shepherd:

I would like to submit this letter as my comments to Legislation #: 0224-15 sponsored by Mr. Edmund Yazzie. It is with great disappointment that Mr. Yazzie continues to harass and intimidate me regarding my small business and development of the Shush Bi Toh Industrial Park – Solar Project. Therefore, I respectfully request the members of the Resources and Development Committee, the members of the Naa bik' iyati' and members of the Navajo Nation Council to vote down and/or not address proposed legislation #: 0224-15.

I make this request for the disapproval of legislation 0224-15 rescinding Navajo Nation Council resolution CJY-45-13 and request for the continued support of the Resources and Development Committee, the Naa bik' iyati Committee and the Navajo Nation Council because of the following reasons:

1. The Auditor General declined a request by Mr. Edmund Yazzie to audit Nabeehó Power because Nabeehó Power is a private company incorporated to do business on the Navajo Nation and the Office of the Auditor General has no jurisdiction.
2. The Shush Bi Toh Industrial Park was established in 1971 for economic development for the purpose of creating employment and business opportunities. The Division of Economic Development solicited for proposed tenants for the Shush Bi Toh Industrial Park.
3. The Business Site Lease and the Energy Development Agreement approved by the Navajo Nation with Nabeehó Power was secured in accordance with all Navajo Nation laws and regulations. These approvals were negotiated, finalized and executed in good faith.
4. The Navajo Nation through the Division of Economic Development has the financials of Nabeehó Power and the Shush Bi Toh – Solar Project. This information includes the financing of the proposed 55MW solar farm on the Shush Bi Toh Industrial Park.

# NAVAJO POWER

## POWERING THE PEOPLE

5. The Resources and Development Committee has received an update from Nabeehó Power and the proposed Shush Bi Toh in May 2015. This update to the committee was done in accordance with the stipulation of the Navajo Nation Council resolution CJY-45-13.
6. The Former and Current Iyanbito Chapter officials and Mr. Edmund Yazzie have personal and family interest on the Shush Bi Toh Industrial Park which violates Navajo laws and regulations. These officials and Mr. Yazzie have 1) Abused their Position and have Conflicts of Interests, 2) Battery and Aggravated Battery have occurred on the property by these Officials. Through misrepresentation of the facts, preferential treatment to individuals, compromising complete independence and impartiality of actions, adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation, these elected officials from Iyanbito have seriously jeopardized and distorted the facts of a potential economic development project and a tenant for the Shush Bi Toh Industrial Park.

The proposed Shush Bi Toh Industrial Park Solar Project (SBT Solar Project) by Nabeehó Power in Iyanbito, New Mexico is the first of its kind on the Navajo Nation by a small Navajo business woman. Yet, this project and my small business have not been free from criticism, ridicule and sabotage by Iyanbito Chapter Officials and Mr. Edmund Yazzie who don't support and care about this project including the opportunities it may create for families. I remain steadfast and even more determined to achieve my goals of operating a successful business on the Navajo Nation. Through my success, I hope to create opportunities for employment for individuals and revenue for the Navajo Nation through lease payments. I appreciate the level of support and encouragement my company has received in acquiring an approved business site lease and an energy development agreement for the SBT Solar Project. I am extremely thankful for the support and assistance in achieving a milestone on the Navajo Nation through small business development and the use of renewable technology. I want to express my heartfelt appreciate to Mrs. Sharlene Begay-Platero, Mr. Charles Damon, the Project Development Department, the Division of Economic Development and the members of the DED Approving Committee, the Resources and Development Committee and the Navajo Nation Council for an opportunity to demonstrate that economic development is achievable on the Navajo Nation.

However, I am inclined to inform you and others officials of the ordeals which I have had to endure in achieving the goals and objectives for Nabeehó Power. I have provided a summary of hardship issues for Nabeehó Power to the Division of Economic Development for their review and our discussions. As a Navajo woman owned company, I have worked tirelessly to develop plans for Nabeehó Power. I have been able to share an outline and strategy for a 55MW Solar Array on the Industrial Park with the Project Development Department. This outline includes the financials for Nabeehó Power and the proposed solar array which is confidential and proprietary. In addition, I provided an update to the Resources and Development Committee so they may also understand the progress and financial material provided to the Navajo Nation. In the time since an executed business site lease and an Energy Development Agreement, Nabeehó Power has finalized its financial projections and secured financing for the development of Shush Bi Toh Solar Project. Because of executed Non-Disclosure Agreement and Confidential Agreement including proprietary information, I am placed in a difficult situation with the Navajo Nation and my clients in what I may share with the Navajo Nation



# NAVAJO POWER

## POWERING THE PEOPLE

unless a Non-Disclosure Agreement and Confidential Agreement is executed with the Navajo Nation. However, I am fully prepared to share information which outlines and summarizes my strategy for success of the SBT Solar Project.

In closing, I respectfully request the RDC and the Navajo Nation for your continued support, encouragement and endorsement of the Shush Bi Toh Industrial park solar project and my endeavors for Nabeehó Power. Through energy development projects, Nabeehó Power and the Division of Economic Development have the ability to demonstrate opportunities for expansion on the Navajo Nation. This business opportunity continues to allow Nabeehó Power and the Navajo Nation to strengthen their partnership and friendship on the proposed solar project. I also continue to take the position of not asking the Navajo Nation for any financial assistance or support. Because of this position, I take great pride and honor in securing non-Navajo Nation investment money. For my small business. I spent precious time and resources on this project and in my company endeavors so failure is not an option and success is within reach.

I look forward to our continued working relationship and ensure continue success of the economic growth on the Navajo Nation. I would like to thank you for your time in this matter. If you have any additional questions, please contact me at (505) 879-4551 or email Mr. Gabriel Freeland at [gabefreeland@yahoo.com](mailto:gabefreeland@yahoo.com).

Best Regards,



**Amber Schillinger, Owner & Chairwoman**  
**Nabeehó Power & Navajo Universal**

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0224-15\_

SPONSOR: Edmund Yazzie

**TITLE: An Action Relating To Resources And Development, NAABIK'IYATI',  
And The Navajo Nation Council; Rescinding CJY-45-13, The Navajo Nation  
Council Resolution Which Granted Final Approval To The Energy Development  
Agreement Between The Navajo Nation And Nabecho Power, L.L.C.**

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## LEGISLATIVE SUMMARY SHEET

Tracking No. 0224-15

**DATE:** June 22, 2015

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND THE NAVAJO NATION COUNCIL; RESCINDING CJY-45-13, THE NAVAJO NATION COUNCIL RESOLUTION WHICH GRANTED FINAL APPROVAL TO THE ENERGY DEVELOPMENT AGREEMENT BETWEEN THE NAVAJO NATION AND NABEEHO POWER, L.L.C.

**PURPOSE:** The purpose of this proposed resolution is to rescind Navajo Nation Council Resolution CJY-45-13, the resolution which granted final approval to an Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C. The reason for this action is because the resolution was conditioned upon Nabeeho Power, L.L.C. having secured funding for this energy development project within 365 days after CJY-45-13 was certified. July 30, 2014, is 365 days after CJY-45-13 was certified. At that time Nabeeho Power, L.L.C. had not presented its financing plan to the Resources and Development Committee or to the Navajo Nation Council. It is the purpose of the resolution to rescind CJY-45-13 for failure to secure funding by 365 after CJY-45-13 was certified.

**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.**



5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Data: 7/6/2015  
Posting End Date: 7/7/2015  
Eligible for Action: 7/7/2015

Resources & Development Committee

THENCE

Naa'bik'iyáti' Committee

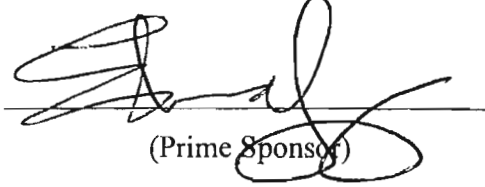
THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23<sup>rd</sup> NAVAJO NATION COUNCIL – First Year, 2015

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0224-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND THE  
NAVAJO NATION COUNCIL; RESCINDING CJY-45-13, THE NAVAJO NATION  
COUNCIL RESOLUTION WHICH GRANTED FINAL APPROVAL TO THE  
ENERGY DEVELOPMENT AGREEMENT BETWEEN THE NAVAJO NATION AND  
NABEEHO POWER, L.L.C.

BE IT ENACTED:

SECTION ONE. Findings.

A. Pursuant to 2 N.N.C. § 500(C)(6), the Resources and Development Committee has oversight authority over matters including chapter activities, economic and community development, and public utilities for the purpose of overseeing regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resources, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward.

B. Pursuant to 2 N.N.C. § 501(C)(4)(a), the Resources and Development Committee is authorized to make recommendations to the Navajo Nation Council regarding energy development agreements.

- 1 C. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by  
2 the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee before it  
3 is heard by the Navajo Nation Council.
- 4 D. In July 2013 the Navajo Nation Council, on recommendation of the Naabik'iyáti and  
5 Resources and Development Committees, granted approval of an Energy  
6 Development Agreement between the Navajo Nation and Nabeeho' Power, LLC  
7 relative to the Shushbetoh Industrial Park with the condition that Nabeeho' Power  
8 acquire financing no later than 365 days after certification by the Navajo Nation  
9 President, such certification occurred on July 30, 2013, Resolution CJY-45-13  
10 attached as Exhibit A.
- 11 E. The Auditor General of the Navajo Nation recommended that the condition of the 365  
12 days to acquire all needed funding for the Energy Development Agreement be met by  
13 the applicable parties. This is stated on page 3 of a memorandum to Honorable  
14 Navajo Nation Council Delegate Edmund Yazzie dated May 01, 2015 and attached as  
15 Exhibit B.
- 16 F. Three hundred sixty-five days after the certification, which is approximately July 30,  
17 2014, no evidence of financing was presented to the Resources and Development  
18 Committee or the Navajo Nation Council.

19  
20 SECTION TWO. Approval

21  
22 The Navajo Nation Council hereby rescinds CJY-45-13, An Action Relating to  
23 Resources and Development; Naabik'iyáti' Committee: Granting Final approval to  
24 the Energy Development Agreement between the Navajo Nation and Naabeeho  
25 Power, L.L.C.  
26  
27  
28  
29  
30

0224-15

Sharlene Begay-Platero <srbp@navajoadvantage.com>

Mon 7/6/2015 5:00 PM

To: comments <comments@navajo-nsn.gov> ,

Cc: Anthony Perry <tperrynded12@gmail.com> ;

4 attachments

Legislation 0334-14 Recinding Shush Bi Toh Industrial Park.pdf; Scanned-NNC Res CJY-45-13 & EDA Signed.pdf; PDF\_1yanbito CLUP Support Resolution\_March 29, 2007.pdf; DOC321.PDF;

Council Delegates: These are my very brief factual comments;

1. This is another attempt by Mr. Yazzie to stop economic development in this Navajo community. He has brought to the NNC's attention to rescinding the land withdrawal of this industrial park in 2014 by the Advisory Committee. This was his second attempt. The first time was a tie vote where the Chair of RDC broke the tie and did not vote to rescinding the land withdrawal. The second time, the legislation lack a motion to approve the resolution. See attachment.
2. When the Energy Development Agreement (EDA) was presented to the NNC, the Council was briefed that the prevailing document for this EDA was the Business Site Lease. When the amendment of the 365 days was advocated by Council Delegate Bates, he was told that in the Business Site Lease the Lessee has a three-year development period by the Agents present. I was one of those agents. But the amendment still was accepted by the then Speaker Naize and voted on. Thus, the conflicting language.
3. Mr. Yazzie is taking the Auditor General's memorandum to him out of context. The truth of the matter is that Mr. Yazzie wanted to see the financials of this Private business and what to see if the Project Development Department was not following the NN Policies and Procedures for business site leasing with this client. Please see attachments.
4. This legislation indicates to the Lessee that the NN is following the language in the EDA which states: ***3.2 Coordination of Development Activities.***  
(a) *Nabeehó Power and the Nation agree to coordinate and cooperate in good faith on all matters for the development of the solar park.* This legislation is not a message of working in good faith with the Lessee who will provide jobs and revenues to the Navajo Nation. See attached EDA scanned.

5. Why does Mr. Yazzie want to stop this project which will bring the following to the Navajo Nation and this Navajo community: Rent approximately **\$3,600,000.00** (avg. \$12k per month for 25 years) (+2 – 25 years extensions); PIT Tax is 3% of land value of is **\$850,000.00** over 25 years; BAT is 60% of 5% of the construction value over the next two years is approximately **\$4,000,000.00**; Navajo employment payroll over the next 2 years is estimated to be approximately **\$12,000,000.00** and Hundreds of highly trained Navajo Solar Park: workers, technicians, electricians and operators. To work on the ever growing solar facilities this project will lead to additional workers. (*Source: Powerpoint Presentation to the NNC in July 2013.*)
6. Lastly, back in 2007 the Iyanbito GLUP was in favor of development and demonstrated their support for development in their community to the Project Development Department for the industrial Park. (The Department met with the CLUP to inform them about the grant received for industrial park archeological clearances to be conducted.) See attached resolution. So Mr. Yazzie is contradicting what the community along with many Navajo communities what....economic development.

***Sharlene Begay-Platero***

The Navajo Nation - Project Development Department

P. O. Box 663

Window Rock, Arizona 86515

505-905-6414 VOICE

505-905-6401 FAX

email: [srbp@navajoadvantage.com](mailto:srbp@navajoadvantage.com)

[www.navajoadvantage.com](http://www.navajoadvantage.com)



P.O. Box 498  
Ft. Wingate, NM 87316  
Phone: (505) 488-5650  
Fax: (505) 488-6115

Karl Katenay, President

Wilbur Murphy, Secretary

Wayne Arviso, Member

March 29, 2007

Sharlene Begay- Platero  
Eastern Regional Business Development  
P.O. Box 250  
Churchrock, NM 87311

Dear Sharlene:

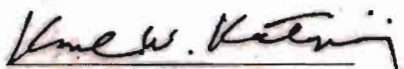
Iyanbito-Community Land Use Planning Committee (CLUPC) is forwarding this certified letter to your office to proceed and commence the surveying of 320-acres withdrawn land also known as Shush-Be-Toh Industrial Park unitizing the \$6,000.00 you secured and mentioned to me and Wilbur Murphy when we stopped by on 11-21-06. If you recall, we discussed the map for the 320-acres and you claimed you had a copy. Louise managed to get a hold of the same map and now we have a copy.

Regarding the 320-acres and developing it economically, the Chapter has received positive feedback from the local residents. In fact, they are very enthusiastic about it, especially the young people whom are majority unemployed.

Iyanbito CLUPC are very supportive and humbly entreats you to continue to support and assist Iyanbito community in their endeavors of brightening about, creating, and upgrading the standard of living not only for Iyanbito residents, but also the surrounding communities in general.

### CERTIFICATION

WE ARE HEARBY CETIFYING THAT THE FOREGOING LATTER was duly considered and moved for adoption by Wayne Arviso, second by Wilbur Murphy and approved by a vote of 3 votes in favor, 00, opposing 00, abstention during a regular Iyanbito Community Land Use Planning Committee on March 29, 2007 at Iyanbito Chapter, New Mexico.

  
KARL W. KATENAY, PRESIDENT

  
WILBUR MURPHY, SECRETARY

  
WAYNE ARVISO, MEMBER

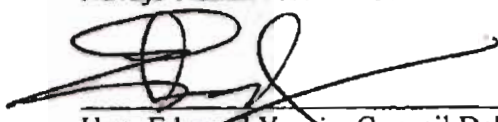




## MEMORANDUM

March 3, 2015

TO : Elizabeth Begay, Program Supervisor  
Navajo Nation Auditor General Department

FROM :   
Hon. Edmund Yazzie, Council Delegate  
23<sup>rd</sup> Navajo Nation Council

SUBJECT : REQUESTING FOR IMMEDIATE AUDIT

Let this memo serve as a directive for your program to conduct an audit of the financial/project status of Nabeeho L.L.C. and the Shush Bi Toh Industrial Park.

The attached Legislation passed by the Iyanbito Chapter makes it clear the reason for this audit request. It is also the wish of the chapter members and community.

I am kindly requesting your immediate attention to this matter. I look forward to your response to say that this audit will take place soon.

If you should have any questions you may contact or leave me a message at (928) 871-6380.  
Thank you for your time.

Attachment  
File



**RESOLUTION  
OF THE  
IYANBITO CHAPTER  
THE NAVAJO NATION**

**No. ICH 67-12/14-004**



**Requesting an Audit of the Financial/Project Status  
of Nabeeho L.L.C. and the Shush Be Toh Industrial Park**

**WHEREAS:**

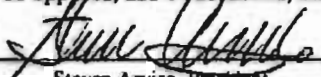
1. Pursuant to Navajo Tribal Council Resolution W-30-55, and reaffirmed by Resolution CMY-23-79, the Council certifies and authorizes the Iyanbito Chapter as a Navajo Chapter; and
2. Pursuant to 26 N.N.C., Section 1, (B)(1)(2) and Section 103, the Iyanbito Chapter is recognized as a local government entity and delegated certain authorities and responsibilities with respect to local matters consistent with Navajo Nation laws; and
3. Pursuant to CJY-45-13, the Navajo Nation Council granted approval to Nabeeho L.L.C., contingent upon the acquiring all needed financing no later than 365 days after the certification of the said resolution and in the event they are not successful in obtaining the needed financing the lease agreement will be reconsidered by the applicable oversight; and
4. CJY-45-13 was certified on July 30, 2013; and:
5. The Navajo Nation Division of Economic Development Project Development Department manages the Shush Be Toh Industrial Park located in Iyanbito, New Mexico; and
6. The Iyanbito Chapter by certified resolutions ICH67 11/12-008 and ICH67 01/13-008 has been consistent in opposing the Navajo Nation's association with Nabeeho L.L.C. (aka Design Data Solutions, Inc., Navajo Power L.L.C.) in the development of a solar power system at Shush Be Toh Industrial Park for significant reasons including business ethics, financial stability; legal entanglement potential, inconsistency, environmental concerns, verbal promises and assurances, and disrespect; and
7. A financial audit is conducted by an independent CPA to examine a company's financial records and reporting activities for accuracy and full representation of financial activities and claims; and
8. A project status audit entails a detailed inspection of the management of the project, its methodology, its techniques, its procedures, its documents, its budgets, its expenses and level of completion - evaluates the total project processes and outcome.

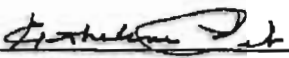
**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Iyanbito Chapter hereby requests an audit of the financial/project status of Nabeeho L.L.C. and the Shush Bi Toh Industrial Park.
2. Further, the Iyanbito Chapter directs the representing Navajo Nation Council Delegate to do all things necessary to initiate and/or carry out such appropriate action.

**CERTIFICATION**

We hereby certify the foregoing resolution was duly considered by the Iyanbito Chapter at a duly called Regular Chapter meeting at Iyanbito, Navajo Nation New Mexico, at which a quorum was present and that the same was passed by a vote of 25 in favor, 00 opposed, and 04 abstained, this 19<sup>th</sup> day of December, 2014.

  
Steven Arviso, President

  
Ethelene Peterson, Vice-President

  
W. Wanda Arviso, Secretary/Treasurer

**MOTION TO APPROVE:**

Moved by: Albert Shirley  
Seconded: Betty Tom

0224-15

Sharlene Begay-Platero <[srbp@navajoadvantage.com](mailto:srbp@navajoadvantage.com)>

Mon 7/6/2015 5:06 PM

To: comments <[comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)>,

1 attachment

Audit Request.PDF;

Additional attachment.

Vote no to this legislation. If there is a yes vote for this legislation, the NN will be showing the business community that the NN does not work in good faith for economic development and job creation when a business site lease is approved and executed.

***Sharlene Begay-Platero***

The Navajo Nation - Project Development Department

P. O. Box 663

Window Rock, Arizona 86515

505-905-6414 VOICE

505-905-6401 FAX

email: [srbp@navajoadvantage.com](mailto:srbp@navajoadvantage.com)

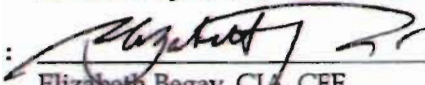
[www.navajoadvantage.com](http://www.navajoadvantage.com)

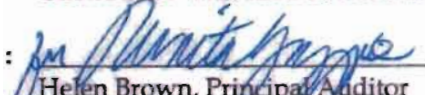




## M-E-M-O-R-A-N-D-U-M

**TO** : Hon. Edmund Yazzie, Council Delegate  
23<sup>rd</sup> NAVAJO NATION COUNCIL

**THRU** :   
Elizabeth Begay, CIA, CFE  
Auditor General  
OFFICE OF THE AUDITOR GENERAL

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

**DATE** : May 01, 2015

**SUBJECT** : Audit Request of Nabeeho Power, LLC and Shush Bi Toh Industrial Park

This memorandum is written in response to your request to audit Nabeeho Power, L.L.C. and the Shush Bi Toh Industrial Park. The Office of the Auditor General has reviewed various documents concerning the proposed solar park development and based on our review, we decline your request for a financial audit of Nabeeho Power, L.L.C. and Shush Bi Toh Industrial Park for the following reasons:

I. Nabeeho Power, L.L.C.

According to records obtained from the Navajo Nation Division of Economic Development (DED), Nabeeho Power, L.L.C. is a private company that was incorporated as a domestic limited liability company in May 2011 in accordance with the Navajo Nation Business Opportunity Act. The Navajo Nation Office of the Auditor General has no jurisdiction to audit the finances of Nabeeho Power, L.L.C. According to 12 N.N.C. Section 2 (A)(1), the Office of the Auditor General is limited to conducting financial audits and reviews of chapters, related Navajo Nation entities and contractors to the Navajo Nation.

II. Shush Bi Toh Industrial Park

The Shush Bi Toh Industrial Park was established in 1971 via resolution no. ACF-68-71 for economic development purposes to create employment and business opportunities. The industrial park comprises of approximately 307 acres located in Iyanbito, New Mexico. The Shush Bi Toh Industrial Park is one of several industrial parks that are managed by DED.

In December 2012, DED's Business Site Lease Approving Committee approved a 25-year business site lease (per resolution no. DEDA-48-2012) for Nabeeho Power, L.L.C. to develop a solar park on the Shush Bi Toh Industrial Park. This solar park is intended to capture, distribute and transmit solar energy.

The approval of the business site lease was completed in accordance with the established DED process. Accordingly, the business site lease negotiated between DED and Nabeeho Power, L.L.C. was reviewed and surmised via the 164 SAS review process which included a review by the Navajo Nation Department of Justice. To adhere to 2 N.N.C. Section 501 (4)(a), the Department of Justice insisted on an Energy Development Agreement which would require approval by the Navajo Nation Council. On July 19, 2013, the Navajo Nation Council approved, per resolution no. CJY-45-13, the Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C.

Overall, both the business site lease and the Energy Development Agreement were reviewed by the Department of Justice to ensure the terms of these agreements were in compliance with applicable laws and regulations. Approval by the Business Site Lease Approving Committee as well as the Navajo Nation Council also provides assurance that the agreements were executed in accordance with established Navajo Nation policies, procedures, laws and regulations.

### III. Other information

Our review of records also revealed the following:

- A. The Navajo Nation Department of Justice conducted research and a due diligence on Nabeeho Power L.L.C. and deemed the company in compliance with the Navajo Business and Procurement Act.
- B. The Navajo Nation has not invested any funds into the solar park development. Per the Energy Development Agreement, Nabeeho Power, L.L.C. shall be fully responsible for seeking financing for the project and the Navajo Nation is not expected or being requested to put forth any dollars for the contemplated project. As such, the Navajo Nation would not be considered a stockholder in this company.

### IV. Issues/Recommendations

Although the business site lease and Energy Development Agreement for Nabeeho Power, L.L.C., were completed with appropriate legal review to ensure Navajo Nation compliance, we raise the following issues and offer applicable recommendations:



A. Timeline stipulation in Navajo Nation Council resolution no. CJY-45-13

In the Council resolution, there was a stipulation that states:

*"The Navajo Nation Council hereby grants its approval contingent upon Lessee (Nabeeho Power, L.L.C.) to acquire all needed financing completed no later than 365 days after certification of this resolution by the Navajo Nation President. In the event Lessee is not successful in obtaining needed financing to complete and implement project, said lease agreement will be reconsidered by applicable oversight."*

The resolution was certified by the Navajo Nation President on July 30, 2013. Therefore, the 365 days (or one year) was approximately July 30, 2014. According to Shammie Begay, the current legislative advisor for the Resource and Development Committee, the Committee has not received an update from DED and/or Nabeeho Power, L.L.C. on whether this stipulation has been complied with. To date, approximately 19 months have elapsed since the Council resolution was certified. Ms. Begay indicated that there has been a request from the company to be placed on one of their meeting agendas but that hasn't happened yet.

According to the Energy Development Agreement, the total value to develop the solar project is up to \$160 million. Considering the Council resolution states "all needed financing....to complete and implement project...", the assumption is that Nabeeho Power, L.L.C. had one year to secure financing of approximately \$160 million.

Since the solar energy development is a business venture for Nabeeho Power, L.L.C., certain information of their business affairs is considered proprietary information and cannot be disclosed publicly. Considering this, the amount of financing secured to date for the project by Nabeeho Power, L.L.C. is unknown at this time. However, since the financing was a specific condition imposed on Nabeeho Power, L.L.C., it would be imperative of DED and the company to provide an update on its financing. Otherwise, it could be concluded that Nabeeho Power, L.L.C. is not in compliant with Navajo Nation Council resolution CJY-45-13.

**Recommendation:** The Navajo Nation Department of Justice should ensure the conditions imposed by the Navajo Nation Council via its resolution are being met by the applicable parties.

B. Regulating solar energy development on the Navajo Nation

The Energy Development Agreement did not clearly specify who or how the solar energy development that is to occur on the Shush Bi Toh Industrial Park will be

regulated. This is likely due to the absence of established Navajo Nation solar regulations and/or guidelines.

We conducted an Internet search on solar energy development and found that local governments such as townships, counties, and cities are finding it necessary to establish solar regulations or guidelines to not only promote the use of renewable energy systems but to also establish standards for the placement, operation and maintenance of such systems. Such regulations facilitate a cooperative agreement between solar energy companies and property owners who will likely be affected by the solar systems.

The regulations/guidelines found via our limited Internet search covered issues such as the following:

- Standard distance from roadways and property lines
- Limits on the size of the solar farming equipment (i.e., panel sizes range from small, medium and large)
- Dimensions and maintenance of trees and shrubs to hide solar farms
- Responsibilities of property owners when solar farms are shut down
- Requirement for security systems
- Limited land clearing
- Operation and maintenance plan
- Providing a surety bond to cover the cost of removing equipment and remediating the landscape
- Requirement for property owners that are generating electricity for the site to enter into interconnection agreements with local utility companies that operate the electrical grid.

These issues were not specifically addressed in the Energy Development Agreement between the Navajo Nation and Nabeeho Power, L.L.C. The need for regulations and/or guidelines is becoming more important as solar energy companies such as Nabeeho Power, L.L.C. seek open areas comprising of idle land or land that is no longer viable for other uses such as agriculture to build solar farms. The Navajo Nation is abundant with such land and would be considered ideal for solar farms.

According to the Energy Development Agreement, the solar park development by Nabeeho Power, L.L.C. will begin with the 307 acres of the Shush Bi Toh Industrial Park with "additional acres (net) in several key areas within the Navajo Nation." This language implies additional solar farms that may be proposed by Nabeeho Power, L.L.C. across the Navajo Nation. In light of such plans, it would be in the Navajo Nation's best interest to develop appropriate solar energy development regulations to



ensure all companies (current and future) conduct solar energy business while respecting the needs of the Navajo Nation.

**Recommendation:** The Navajo Nation Department of Justice should clarify the regulatory authority over solar energy development on the Navajo Nation with the development of applicable regulations and/or guidelines.

C. DED action plan to facilitate cooperation between all parties

The solar park development by Nabeeho Power, L.L.C. has proceeded with controversy and opposition by community members within Iyanbito Chapter. According to records, both sides have expressed their conflicts thru various means and there has been no resolution to date.

This lack of coordination and cooperation is contrary to a specific stipulation in the Energy Development Agreement which states:

*"Nabeeho Power and the Nation agree to coordinate and cooperate in good faith on all matters for the development of the solar park."*

Records show various attempts were made by the consultant to Nabeeho Power, L.L.C. to coordinate meetings between the company and Iyanbito Chapter to address concerns, answer questions and reach a cooperative arrangement. However, some of these efforts have resulted in physical assaults and court filings. There is a concern that rather than resolving differences, the discord between both parties has intensified. This will likely have an adverse affect on the proposed business venture for the Shush Bi Toh Industrial Park.

Although DED is the designated business developer for the Nabeeho Power, L.L.C. solar park, we did not find any DED action plan to address the controversy and opposition between the company and Iyanbito Chapter. Since DED, as a Navajo Nation division, and Iyanbito Chapter, as a Navajo Nation Chapter, are part of the Navajo Nation, their actions could be found contrary to the stipulation and thus question whether the Nation is complying with the Energy Development Agreement.

**Recommendation:** To comply with the Energy Development Agreement, DED should develop an action plan on how to best resolve the issues between Nabeeho Power, L.L.C. and Iyanbito Chapter community. The oversight committee should concur the action plan.

D. Submission of Annual Reports by Nabeeho Power, L.L.C.

As a private company established under Navajo Nation laws, Nabeeho Power, L.L.C. is required to submit annual reports to the Navajo Nation Business Regulatory Department. Although DED claimed that the company was current with its annual reporting, the Business Regulatory Department provided only a report for 2011. Ms. Eunice Begaye, Program & Project Specialist with the Business Regulatory Department confirmed that annual reports for subsequent years have not been submitted by Nabeeho Power, L.L.C. which is likely due to the current inactivity with the solar park development. Nonetheless, if Navajo Nation law requires Nabeeho Power, L.L.C. to submit annual reports, these reports should be filed with Business Regulatory Department in a timely manner.

**Recommendation:** DED should inform Nabeeho Power, L.L.C. of annual reports that have not been submitted, and monitor their reporting activities to ensure compliance with Navajo Nation laws.

V. Conclusion

By all indications, the business site lease and Energy Development Agreement between Nabeeho Power, L.L.C. and the Navajo Nation were executed in accordance with established policies, procedures, laws and regulations. Such assurance was provided with the review and approval by the Business Site Lease Approving Committee, Department of Justice, and the Navajo Nation Council.

Nevertheless, our limited review raised several issues regarding Nabeeho Power, L.L.C. adherence to conditions imposed by the Council. Accordingly, we offered recommendations to address these issues. Should you have further questions, please contact our office at (928) 871-6303. Thank you.

xc: Sharlene Begay-Platero, Industrial Development Specialist  
✓ Anthony Perry, Director  
PROJECT DEVELOPMENT DEPARTMENT/DED  
Karis Begaye, Attorney  
DEPARTMENT OF JUSTICE  
Arbin Mitchell, Chief of Staff  
OFFICE OF THE SPEAKER  
Chapter Officials (3)  
IYANBITO CHAPTER  
Chrono

## 0224-15; Correction on Comment #3

Sharlene Begay-Platero <[srbp@navajoadvantage.com](mailto:srbp@navajoadvantage.com)>

Mon 7/6/2015 5:24 PM

To: comments <[comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)> ,

3. This legislation indicates to the Lessee that the NN is NOT following the language in the EDA which states: **3.2 Coordination of Development Activities.**  
*(a) Nabeehó Power and the Nation agree to coordinate and cooperate in good faith on all matters for the development of the solar park.* This legislation is not a message of working in good faith with the Lessee who will provide jobs and revenues to the Navajo Nation. See attached EDA scanned.

***Sharlene Begay-Platero***

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**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

**Legislation # 0224-15:** Relating to Resources and Development; Naabik'Iyati' And The Navajo Nation Council; Rescinding CJY-45-13, The Navajo Nation Council Resolution Which Granted Final Approval to the Energy Development Agreement Between the Navajo Nation and Nabeeho Power, L.L.C. *Sponsor: Edmund Yazzie*

Has had it under consideration and reports that the sponsor of the legislation was not available thereby deleted the matter off its agenda with a directive a work session be scheduled with Nabeeho Power, LLC prior to considering the proposed legislation.

and thereafter approved by Resources and Development Committee.

Respectfully submitted,



Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Date: August 4, 2015

Motion to Delete Matter Off the Agenda: Honorable Leonard Tsosie

Second: Honorable Leonard Pete

Vote: 4-0-1 (Chair Not Voting)