

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
OF THE 23rd NAVAJO NATION COUNCIL --- FIRST YEAR, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF COMMERCIAL "AS-BUILT" RIGHT-OF-WAY TO NAVAJO TRIBAL UTILITY AUTHORITY (NTUA) TO CONSTRUCT, OPERATE AND MAINTAIN THE "JO D LAUNDROMAT POWELINE WITH FIBER OPTIC" LOCATED ON NAVAJO NATION TRUST LANDS WITHIN KAYENTA TOWNSHIP PROJECT VICINITY, NAVAJO COUNTY, ARIZONA

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 2 N.N.C. §501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, right-of-way, surface easement and bonding requirements on Navajo Nation Lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfer, renewals, and terminations; and
- B. The Navajo Tribal Utility Authority (NTUA), P.O. Box 170, Fort Defiance, Arizona 86504, has submitted a commercial "As-Built" Right-Of-Way (ROW) application to construct, operate and maintain a distribution power line and fiber optic system project on, over and across Navajo Nation Trust Lands within the Kayenta Township Project, Navajo County, Arizona, attached hereto and incorporate herein as Exhibit "A"; and
- C. The proposed commercial "As-Built" ROW system on Navajo Nation Trust Lands is 1,565.58 feet long, 30 feet wide consisting of 1.08 acres, more or less, locate in the north half (N ½) of Section 13, Township 38 North, Range 19 East, G&SRM, Navajo County, Arizona, attached hereto and incorporated herein as Exhibit A-1, A-2, A-3; and

- D. The Project Review Section with the Navajo Land Department has determined that there are no land user (i.e. grazing permittees) and obtained the consent of the Kayenta Township Business Site Leasing Committee pursuant to Resolution No. BSLC-AU-05-12 dated August 09, 2012 attached hereto as Exhibit "B"; and
- E. The environmental and archaeological studies have been completed and are attached hereto and incorporate herein by this reference.

Section Two. Approval:

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of a commercial "As-Built" Right-Of-Way to Navajo Tribal Utility Authority to construct, operate and maintain the "Jo D Laundromat Powerline and Fiber Optic" within Kayenta Township Project, Navajo County, Arizona. The location is more particularly described on the survey map attached hereto as Exhibit A-1, A-2 and A-3.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the ROW subject to, but not limited to, the following terms and conditions which include the payment of consideration in the amount of \$3,700.32 attached hereto and incorporated herein as Exhibit "C."
- C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purposes of this resolution.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Mexican Water Chapter House, Mexican Water, Navajo Nation (Utah), at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 0 abstain this 26th day of May, 2015.

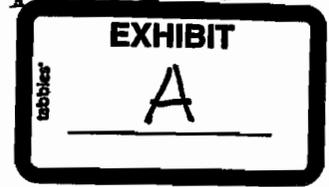


Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Walter Phelps
Vote: 5-0 (Chairman Not Voting)



EXHIBIT "A"



NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

May 16, 2014

W. Mike Halona, Department Manager III
Navajo Nation Land Department
Post Office Box 2249
Window Rock, Arizona 86515

Dear Mr. Halona:

RE: Right of Way Application

In accordance with Resolution No. RCD-104-10 of the Resources Committee of the Navajo Nation Council, the Navajo Tribal Utility Authority (NTUA), Fort Defiance, Arizona is filing an Application for As-Built Right of Way attached as Exhibit "B".

The right of way, is entitled As-Built 3 Phase Power Line Extension with Fiber Optic Cable, and Jo D Laundromat, Kayenta, Navajo County, Arizona, NTUA Project ID No. 161330030.

The Authority will comply with all Tribal and Federal regulations and requirements as stated in the Code of Federal Regulations, 25 CFR-Part 169.22(b) and the Act of February 5, 1948 (62 Stat. 17), subject to prior valid existing rights or adverse claims.

Attached, are the pertinent documents for your information and use. Your prompt review and approval of the request is appreciated. If you have any questions, you may contact Ms. Caroline M. Tom, via email at carolinet@ntua.com or telephone at (928) 729-6124.

Sincerely,

Paula Holyan, Manager
Electric System Planning Section

Attachments

- cc: Ethelind Johns, Senior Project Administrator/ESPS
Shannon Burnett, Project Administrator/ESPS
Caroline M. Tom, Right of Way Agent/ESPS

EXHIBIT "E"

EX
BSLC-
tabbles
EXHIBIT
B
RECEIVED

RESOLUTION OF THE
KAYENTA TOWNSHIP BUSINESS SITE LEASING COMMITTEE 2013 JAN -4 AM 10:59

Approving a Business Site Lease Agreement Between the Kayenta Township and Jo Donna Hall-Ward dba Ward, Inc. for the Jo D Laundromat

AND FILES & RE...
BUR INDIAN AFF...
ALBUQU N ME

WHEREAS:

1. The Kayenta Township Commission ("KTC") has the authority and responsibility to govern for the welfare of the Kayenta Township ("Township") and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township; and
2. Pursuant to Resolution KTCM-09-08 (Mar. 15, 2008), the KTC established the Business Site Leasing Committee ("Committee") to approve all business site leases and related documents for the Kayenta Township; and
3. The Township Staff has negotiated the terms and conditions of a Business Site Lease Agreement for Jo Donna Hall-Ward dba Ward, Inc. for the Jo D Laundromat, attached hereto as Exhibit "A," for a term of twenty five (25) years, with two options to renew the Agreement for another twenty five (25) years, and a lease rental fee of Five Hundred Sixty Seven Dollars (\$567.00) per month for 0.486 acres more or less of the land; which rental shall be adjusted by five percent (5%) at every five-year interval of the Lease term; and
4. Jo Donna Hall-Ward dba Ward, Inc. have requested a waiver of rental during the first thirty-six (36) months of the Lease Agreement because of the investment costs of redesigning and reconstructing the improvements on the former Junction Market business site for a laundromat; and
5. The Committee has reviewed the proposed Business Site Lease Agreement between the Kayenta Township and Jo Donna Hall-Ward dba Ward, Inc. for the Jo D Laundromat, attached hereto as Exhibit "A," and deems it to be in the best interest of the Township.

790
934
12

NOW THEREFORE BE IT RESOLVED THAT:

1. The Kayenta Township Business Site Lease Committee hereby approves the Business Site Lease Agreement between the Kayenta Township and Jo Donna Ward dba Ward, Inc. for the Jo D Laundromat on the terms and conditions set forth in the attached Exhibit "A."
2. The Kayenta Township Business Site Lease Committee hereby approves a development period of thirty six (36) months for Jo Donna Hall-Ward dba Ward, Inc. due to the investment costs for redesigning and reconstructing the business site for a laundromat, during which time period no rental will be due; rental payments shall begin on the first day of the thirty-seventh month of the Lease.

- 3. The Kayenta Township Business Site Lease Committee hereby authorizes the Town Manager to execute such Lease Agreement and any amendments thereto, on behalf of the Kayenta Township and Kayenta Township Business Site Leasing Committee.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Kayenta Township Business Site Leasing Committee at a duly called meeting at Kayenta, Navajo Nation (Arizona), at which a quorum was present, and that the same was passed by a vote of 3 in favor, 0 opposed and 0 abstained this 09th day of August, 2012.

Motion: Frank Donald Jr.

Second: Selena Begay

BUSINESS SITE LEASE COMMITTEE

By: 

 Andre Cordero, Chairperson

790 934 12

BA - SOUTHWEST RECEIVED

2013 JAN -4 AM 10:59

LAND FILES & RECORDS
 BUR INDIAN AFFAIRS
 ALBUQUERQUE, NM

EXHIBIT



NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS

**NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)
AS-BUILT 3 PHASE POWER LINE EXTENSION WITH FIBER OPTIC CABLE
PROJECT AND JØ D LAUNDROMAT AT KAYENTA, ARIZONA
NTUA PROJECT ID NO. 161330030**

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.
2. The consideration for the electrical power line in assessed at \$16,372.80 and the fiber optic line at \$3,700.32. The consideration shall be paid to the Navajo Nation within ten (10) days of approval of the right-of-way by the Navajo Nation.
3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing, operating and maintaining a 3 phase electrical distribution line and a fiber optic line. The Grantee may not develop, use or occupy the right-of-way for any other purpose, nor allow others to use or occupy the right-of-way for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

If the right-of-way is for a power line, then the maximum capacity of the power line shall be 14.4/24.9kV kilovolts (kV). Once constructed, the capacity of the power line, whether express^{ed} in terms of watts, volts, amperes, ohms or otherwise, shall not be increased without the prior written consent of the Navajo Nation. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - a. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - b. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and

- c. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq.. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of right-of-way by the Grantee.
12. The Grantee shall not assign, convey, transfer or sublet, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any term or condition of the grant or of applicable laws or regulations;

- b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period; and
 - c. The use of the land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.
 - d. An abandonment of the right-of-way.
14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
 15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon.
 16. The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
 17. By acceptance of the grant of right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
 18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
 19. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the right-of-way shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
 20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way; and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Navajo Nation reserves the right to grant rights-of-way within the right-of-way referenced herein for utilities, provided that such rights-of-ways do not unreasonably interfere with the Grantee's use of the right-of-way.
25. The Grantee shall construct the power line in accordance with "suggested practices for Raptor Protection on Power Lines: State of the Art in 2006."

**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.: Jo D Laundromat Three Phase Powerline Extension with Fiber Optic Cable, #161330030

DESCRIPTION: ROW application proposal for the operation and maintenance of one overhead three-phase power line with fiber optic cable. The total length of the power line would be 128.25 ft. w/ a 30-ft. wide ROW corridor.

LOCATION: S½ of Section 12 & N½ of Section 13, T38N, R19E, G&SRM, Kayenta, Navajo County, Arizona

REPRESENTATIVE: Navajo Tribal Utility Authority (NTUA)

ACTION AGENCY: Navajo Nation

B.R. REPORT TITLE / DATE / PREPARER: EOR001899

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 4.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

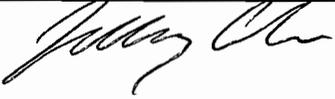
AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/25 OCT 2013; amended on 10 JUN 2014

COPIES TO: (add categories as necessary)

_____ _____

| | | |
|--|--|---------|
| <u>2 NTC § 164 Recommendation:</u> | Signature | Date |
| <input checked="" type="checkbox"/> Approval |  | 6/10/14 |
| <input type="checkbox"/> Conditional Approval (with memo) | | |
| <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 |

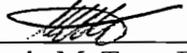
THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

MEMORANDUM

TO : Jeffrey Cole, Wildlife Manager
Department of Fish and Wildlife
DIVISION OF NATURAL RESOURCES

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

DATE : June 10, 2014

SUBJECT : **DELEGATION OF AUTHORITY**

I will be out of the office on June 10 and 11, 2014. I am hereby delegating you to act in the capacity of the Director, Department of Fish and Wildlife, effective 8:00 a.m. on Tuesday, June 10, 2014. This delegation shall end at 5:00 p.m. on Wednesday, June 11, 2014.

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:



Jeffrey Cole, Wildlife Manager
Department of Fish and Wildlife
DIVISION OF NATURAL RESOURCES

xc: Frederick H. White, Executive Director, DNR

**BIOLOGICAL ASSESSMENT
OF
± 3,606.43 ACRES OF
NAVAJO NATION TRUST LAND
FOR USE AND DEVELOPMENT BY
KAYENTA TOWNSHIP COMMISSION
IN
KAYENTA, NAVAJO COUNTY, ARIZONA**

1.0. INTRODUCTION

Pursuant to National Environmental Policy Act (NEPA), Bitsui Environmental Consultant is preparing an Environmental Assessment for a proposed use and development of ±3,606.43 acre tract of Navajo Nation trust land by Kayenta Township Commission in Kayenta, Navajo County, Arizona. A survey and an investigation of the project site has been undertaken in evaluating potential impacts to threatened and endangered species that may result from the Proposed Action.

On March 29, 1999, a threatened and endangered species listing has been received from the Navajo Nation Heritage Program to assist in the evaluation of the project site and determine or verify, if any, the occurrence or possible occurrence of threatened and endangered species.

2.0. LOCATION

The location of the area to which this report is addressed is situated within the Kayenta Chapter, Western Agency of the Navajo Nation. The existing growth center known as Kayenta, Arizona and sectors of adjacent land located in north central Arizona define the area for the assessment.

Reference map is U.S.G.S. 7.5-minute map consisting of Kayenta West Quadrangle Township 38N, Range 15 East and Kayenta East Quadrangle, Township 38N, Range 15 East in the Land Management District 8. The Kayenta corporate boundary survey lies within the area that is encompassed by 36°46'00" North Latitude to 36°40'00" North Latitude and 110°08'00" West Longitude to 110°20'00" West Longitude, surrounds the area known as Kayenta, Navajo County, Arizona.

The map entitled "Kayenta Township", defines the general vicinity and location of the land area to be assessed. The official survey plat of the Kayenta Township (1) which is filed with Navajo County Arizona and the Office of Navajo Land Administration, and which has been filed with the Bureau of Indian Affairs, as a requirement for the land withdrawal of the Kayenta Township, is incorporated by reference in this report.

It appears that, because of all the public and private sector developments, native vegetation was virtually eliminated from the project site and from the surrounding area by vehicle traffic and other human activities. Remnant vegetation found on the project site include russian thistle, and traces of snakeweed. Soils texture throughout the area is dominated by silt and sandy loam with sandstone outcrop in some areas. All portions of the project site have been disturbed repeatedly.

3.0. SPECIES

Pursuant to Endangered Species Act (USES), Migratory Bird Act (MBTA), Bald Eagle Act (BEA) and Navajo Endangered Species List (NESL), Natural Heritage Program of the Navajo Nation Fish & Wildlife Department provided a list of the following threatened and/or endangered species with potential to occur on or adjacent the proposed project area.

Species of concern with potential to occur on the 7.5.-minute quadrangles (Kayenta East, AZ and Kayenta West, AZ) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information.

- (a) *Buteo regalis* (ferruginous hawk); NESL group 3; MBTA
- (b) *Charadrius montanus* (mountain plover); NESL group 4; ESA Candidate; MBTA.
- (c) *Empidonax traillii extimus* (SW Willow Flycatcher); NESL group 2; ESA endangered, MBTA.
- (d) *Mustela nigripes* (black-footed ferret); NESL group 2; ESA endangered.

Listed below is the projected effects, if any, of the proposed action as identified by category of species of concern, including avian and mammals:

3.1. Vegetative: None

3.2. Aquatic: None

3.1. Avian

Three avian species were identified as threatened and endangered. The proposed site, offers nothing of value for any of the species. Existing vegetation around on or near the project site are not adequate for such an avian and the limited vegetative cover provides little or no food resources for the species. The project site is located in an area of much human activity which severely limits its attraction for any wildlife species.

3.2. Mammals

One of the species of mammal is identified by the species listing. The Black-footed Ferret resides in prairie-dog colonies which provide both his food source and shelter. There are no prairie-dog colonies on or near the project site, therefore, there will be no impacts to this endangered specie.

4.0. CONCLUSIONS

The development of infrastructures, facilities and related improvements on the proposed tract of Navajo Nation trust land by Kayenta Township Commission in Kayenta, Navajo County, Arizona will have direct impacts on an approximately ±3,606.43 acres of disturbed site located in Kayenta Community. Off-site impacts are expected to be nonexistent.

No federally listed threatened or endangered species will be impacted by the development and no non-listed species of concern will be impacted.

The information contained in this report is true and correct to the best of my knowledge.

3-99


Howard Bitsui, Environmental Specialist
BITSUI ENVIRONMENTAL CONSULTANT

Rec'd 8/18/87
2/1/87

CULTURAL RESOURCES COMPLIANCE FORM
 DOI BUREAU OF INDIAN AFFAIRS
 NAVAJO AREA OFFICE
 P.O. BOX M
 WINDOW ROCK, ARIZONA 86515

| | | |
|-------------|--------------------------|-----------------------------------|
| ROUTING: | COPIES TO | NAO PROJECT NO. <u>NTM-87-163</u> |
| <u>None</u> | S.H.P.O | OTHER PROJECT NO.: |
| <u>X</u> | NAVAJO NATION HISTORIC | <u>NNCRMP-87-140</u> |
| | PRESERVATION OFFICE | |
| <u>X</u> | NAVAJO NATION ARCHEOLOGY | |
| | DEPARTMENT | ENVIRONMENTAL DATA: |
| <u>WNA</u> | AGENCY | See Report |
| | | |
| | | |

PROJECT TITLE: An Archaeological Survey of Portion of Kayenta Pilot Project Area, Kayenta, Arizona, Phase I

LAND STATUS: Navajo Tribal Trust
 FORM PREPARED BY: Kathleen E. Gratz
 PROJECT ARCHEOLOGISTS: Loretta Werito and Maxine Yazzie

SPONSOR: Mr. Jerry Knowles, Kayenta Pilot Project, P.O. Box 1088, Kayenta, Arizona 86033

DATE INSPECTED: June 15-17, 1987
 DATE OF REPORT: July 17, 1987
 TOTAL ACREAGE INSPECTED: 562 Acres
 METHOD OF INVESTIGATION: Parallel transects spaced

PROJECT LOCATION (LEGAL AND UTM): See report, Navajo County, Arizona

PROJECT DESCRIPTION: Development vacant land into community housing commercial buildings and educational facilities

NO. OF CULTURAL RESOURCES FOUND: 5 sites and 6 isolated occurrences

LIST OF ELIGIBLE PROPERTIES: AZ-J-22-13

FEDERAL ANTIQUITIES PERMIT NO.: None

NAVAJO TRIBAL ANTIQUITIES PERMIT NO.: Navajo Tribal Code

EFFECT/CONDITIONS OF COMPLIANCE: No effect/avoid AZ-J-22-13 during all construction activities

Notification to
Proceed Approved:
Conditions

Yes No
Yes No

Kathleen E. Gratz
Kathleen E. Gratz
Area Archeologist

Yes No

ACTING

Area Director

8/1/88
Date
[Signature]
8/2/88
Date

Concurred:

Yes No

AZ-570
FOR:
S.H.P.O. Officer
MAY 31 1988
Date

FINDING OF NO SIGNIFICANT IMPACT
ENVIRONMENTAL ASSESSMENT DOCUMENT, EA 99-066

Location: Kayenta East and Kayenta West, Arizona USGS
Quadrangle Map 7.5' Series

Legal Description: Township 38N, Range 15E

Longitude and Latitude (Lat & Long):

North 36°46'00" latitude and 110°08'00" longitude

The proposed action addresses the Kayenta Township Commission Development and Use of Navajo Nation Indian Trust Lands at 3,611.47 acres. The project is sponsored by Kayenta Township Commission of Kayenta, Arizona.

The project environmental assessment (EA) was reviewed in the Navajo Area Office, Branch of Environmental Services. Based on the proposed action information contained in the environmental assessment, and the mitigation measures specified in the document, it is determined that the proposed project will not have a significant impact on the natural and human environment. Therefore, in accordance with the National Environmental Policy Act, Section 102 (2) (C), an environmental impact statement will not be required.

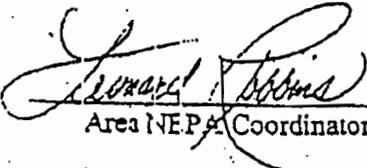
The following references, incorporated in the project environmental assessment document, serve as the basis for this decision:

1. Agency and public involvement was solicited, and environmental issues related to the development of the township project were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.
2. The EA disclosed the environmental consequences of the proposed action and four potentially viable alternatives including the "no action" alternative.
3. In compliance with the Endangered Species Act, a threatened and endangered species (T&E) list was acquired by the project sponsor from the Navajo Nation Natural Heritage Program. A field survey was performed and the biological evaluation is addressed in Appendix 9.4. The proposed action will have no effect on listed species or other important wildlife resources.
4. Potential impacts to flood plain and wetlands by the proposed project have been evaluated in accordance with Executive Orders 11988 and 11990 respectively. The described action will have no effect on wetlands, riparian areas, flood plains, or other sensitive areas.
5. In compliance with the National Historic Preservation Act of 1966, Section 106 and 36 CFR 800.9 (b) consultation, an archeological field inventory was performed for the project. A Cultural Resource Compliance Form, NTM-87-193 and a cultural resource letter of February 2, 1999 was issued by the Navajo Historic Preservation Department as shown in Appendix 9.5. No cultural or historic properties were located. Traditional Cultural Properties (TCP) surveys have also been conducted.

Should any previously cultural resources including but not limited to, archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices (TCP) be discovered, all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (520) 871-7132.

6. In accordance with the Resources Conservation and Recovery Act, Subtitle C, hazardous substances is addressed in Section 5.4.
7. In accordance with the Resource Conservation and Recovery Act, Subtitle D, non-hazardous solid waste is addressed in Section 5.6.
8. Ambient air quality is addressed in Section 4.2 a.5.1 respectively in the EA. The project sponsor will comply with the air pollution control practices for minimizing emissions as specified in 40 CFR 60, New Source Standards of Performance.
9. Impacts to the public health and safety are addressed and mitigated through implementation of safety measures described in Section 3.8 b.
10. The project sponsors shall craft a seed mixture and method of reclamation for the project.
11. Cumulative and secondary effects on soil, erosion, cultural resources, wildlife resources (species and habitat) were considered and found acceptable with the proposed mitigation.
12. Impacts and mitigation to minority and low-income populations in accordance to the President's Executive Order on Environmental Justice has been evaluated, as well as the impacts and mitigation to Indian trust resources.

The proposed action would improve the economic and social condition of the affected Indian community. The development of the Kayenta Township Commission of Trust Lands project will serve the community of Kayenta and surrounding area. The project is supported by Kayenta Chapter resolution in Appendix 9.9.


Area NEPA Coordinator

07-21-99

Date

ENVIRONMENTAL ASSESSMENT

**OF
± 3,606.43 ACRES OF
NAVAJO NATION TRUST LAND
FOR USE AND DEVELOPMENT BY
KAYENTA TOWNSHIP COMMISSION
IN
KAYENTA, NAVAJO COUNTY, ARIZONA**

PREPARED FOR:

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APRIL 01, 1999

ENVIRONMENTAL ASSESSMENT

OF

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FOR USE AND DEVELOPMENT BY
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IN

KAYENTA, NAVAJO COUNTY, ARIZONA

INTRODUCTION

This Environmental Assessment (EA) has been prepared in accordance with Sections 101 and 102 of the National Environmental Policy Act (NEPA) of 1969, as amended. An environmental assessment is an instrument required by federal law and regulations to determine if the potential impacts of a Proposed Action are of such significance as to require the preparation of an Environmental Impact Statement (EIS).

This EA also complies with the Navajo Nation Council Resolution RCF-014-91 "Threatened and/or Endangered Species list for the Navajo Nation (NESL)" which is monitored and enforced by the Navajo Nation Fish & Wildlife Department and Archaeological and Cultural Resources monitored and enforced by the Navajo Nation Historic Preservation Department.

Kayenta Township Commission (KTC), elected representatives of Kayenta Township Pilot Project has been authorized by the Navajo Nation Council to withdraw, use, develop, lease and provide infrastructure and facility developments of ±3,606.43 acres (1,460.0 ha.) of Navajo Nation trust land in Kayenta, Navajo County, Arizona. As part of its mandate, KTC proposes to facilitate construction of infrastructure, establish zones and ordinances, lease and accommodate variety of developments consisting of housing, commercial, private businesses, solid waste management, recreation, streets and drainage improvements and various retail and service establishments to serve the township residents, area market and regional patrons. The Proposed Action will consist of site preparations, constructions, improvements, installation of equipment, buildings, related facilities, streets, drainage, on-site and off-site improvements. The development will also include spaces for recreational activities, related functions, and auxiliary service provisions.

The Environmental Assessment describes project alternatives and characterizes the existing environment in terms of physical resources, biotic resources, including threatened and/or endangered species, socioeconomic factors, archaeological resources, and cultural resources of the project area. Mitigation procedures are recommended concerning any impacts as a result of the Proposed Action.

Supporting documents are attached to amend and justify the Proposed Action.

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1.0. PROPOSED ACTION

1.1. Project Description

The Navajo Nation Council, through adoption of resolution NTC-CN-86-85, delegated authority, jurisdiction, and responsibilities to Kayenta Township Commission, to plan, develop, administer and manage $\pm 3,606.43$ acres (1,460.0 ha.) of Navajo Nation trust land consisting of the town of Kayenta, plus adjacent lands in Kayenta, Navajo County, Arizona.

The project encompasses plans for a township commission that had ordinance-making powers, adopt a comprehensive land use plan, incorporate the central part of the chapter as a town, addresses the problems of land destabilization, leasing, lack of mechanisms and resources to plan, zone, develop, and oversee land allocations, and seek solutions to attract, support, and nurture economic development. Some of the proposed projects are:

1.1.a. Business Site Lease

A lease process that reduces the time required to obtain a lease is in place. The KTC adopted Chapter 9, KTC Lease Ordinance, section I and II in October 1998. Another leasing process for homesites, section 3, is now in draft form.

1.1.b. Transfer Station

A transfer has been in operation for several months. The cost to operate this station is still under study. Preliminary steps to close the long-time trash dump is in process. The closure must comply with federal, state, and Navajo regulations and is being done by the Bureau of Indian Affairs.

1.1.c. Housing Development

A major part of the township's Northwest Quadrant Master Plan are subdivisions for about 240 lots. On these lots, 20 Public rentals units will be built by Navajo Housing Authority. The remainder of the lots may be built by private housing developers.

1.1.d. Public Safety Complex

KTC is in the process of developing a proposal for a 200-bed adult and 48-bed juvenile detention facility. Funding for this facility would be obtained through private financing, with operation on a for-profit basis.

1.1.e. Administration Complex

Land has been set aside by KTC and major infrastructure planning is nearly complete. Preliminary study for potential tenants and their square footage requirements and projections are also under way. Interested private financiers for construction of the complex have been located.

1.1.f. Post Office Building

The construction plans for a new 8,600 square foot post office is now 90% complete. Construction will begin in the year 1999.

1.1.g. Women's Shelter

Construction plans are still in process. Funding has been obtained, and construction could begin before the end of 1999.

1.1.h. Commercial/Business Development

Commercial lots are being zoned and subdivided. Infrastructure planning is progressing. Various commercials (business) developments will be entertained by KTC, including: convenience stores, gas, motels, restaurants/cafe, fast-food outlet, hydroponics greenhouse, automotive parts, Laundromats, RV parks, and various retails and service goods.

1.1.i. Industrial Development Complex

Zone ordinance will be established for the sole purpose of accommodating industrial developments within the Kayenta Township. Manufactories specializing in various productions and services will be solicited and located in the area.

The Kayenta Township Commission proposes to plan, develop and manage the projects in accordance with the health and safety rules and regulations of Environmental Protection Agencies (Federal and Tribal) and U.S. Public Health Services. Navajo Nation Underground Storage Tank Act will be complied with in the construction, installation and operation of underground storage tanks, UST system and dispensing of petroleum products. Construction of buildings, on-site and off-site improvements will be accomplished in conformance with the applicable building and fire codes. Health and safety regulations will be followed in the storage, handling and preparation of food items. Inspections will be initiated by a qualified inspectors of applicable agencies and departments. Contracts will be let for infrastructure development and construction of buildings, underground cables and system, equipment and other improvements.

1.2. Purpose and Need

The Navajo Tribal Council (CN-86-85, incorporated herein by reference), and its various committees, in response to local requests, approved the Kayenta Township Pilot Project in November of 1985. The Navajo Tribe wished to pilot the localization of planning, development, and governance to assure that the future physical, aesthetic, cultural, and social aspects of Kayenta would reflect the needs and wishes of local residents. It also wished to assure that growth centers within the Navajo Nation develop in such a way as to provide the capacity and context necessary to support and attract economic development, jobs and other elements necessary for a decent standard of living and quality of life for future generations of Navajos. The withdrawal of a tract of land as a

townsite is an essential keystone to such local planning, zoning, development, and governance.

1.3. Location

The location of the area to which this report is addressed is situated within the Kayenta Chapter, Western Agency of the Navajo Nation. The existing growth center known as Kayenta, Arizona and sectors of adjacent land located in north central Arizona define the area for the assessment.

1.4. Vicinity/Location Map

Reference map is U.S.G.S. 7.5-minute map consisting of Kayenta West Quadrangle Township 38N, Range 15 East and Kayenta East Quadrangle, Township 38N, Range 15 East in the Land Management District 8. The Kayenta corporate boundary survey lies within the area that is encompassed by 36°46'00" North Latitude to 36°40'00" North Latitude and 110°08'00" West Longitude to 110°20'00" West Longitude, surrounds the area known as Kayenta, Navajo County, Arizona.

The map entitled "Kayenta Township", defines the general vicinity and location of the land area to be assessed. The official survey plat of the Kayenta Township (1) which is filed with Navajo County Arizona and the Office of Navajo Land Administration, and which has been filed with the Bureau of Indian Affairs, as a requirement for the land withdrawal of the Kayenta Township, is incorporated by reference in this report.

2.0. ALTERNATIVES

2.1. Reasonable Alternatives

In addition to the proposed project of withdrawing 3606.43 acres (1,460.0 ha.) to establish a Kayenta Township, alternatives have been defined and discussed at various times by local and central governmental officials. The interdisciplinary team deliberations and the public meeting proceedings, combined with historical records of local and tribal alternative concepts to controlled development, were analyzed to provide the three alternatives cited and discussed below.

Alternatives of the Proposed Action were considered that could provide safe, adequate, decent services for Kayenta community. Alternatives considered are: a) to grant approval for the Proposed Action; b) relocate the proposed project to other locations; c) No Action which will deny the Proposed Action.

2.1.a. Alternative One - Preferred Alternative

This alternative has: 1) the withdrawal of 3606.43 acres (ACN-181-186) Kayenta Township site as an experimental Navajo Tribal Council pilot project (NTC-86-85) to establish zoned land use planning, localized leasing, localized revenue generation and deployment and local governance; 2) the Township Commission has been elected, authorized, and empowered to facilitate planning and development of township; 3) the availability of an existing development tracts for development and leasing; and 4) right-of-way clearances, survey, cultural and resource clearances have been achieved.

2.1.b. Alternative Two - Relocate the Proposed Action to another location.

This alternative was the first to be eliminated, because developing a township site at another location would be impossible considering the magnitude of planning and approval process. The current town has already been approved by the community and the Navajo Nation to achieve township status. The selection of this town was based on years of study and planning to qualify the town with township status and have since met all of the necessary criteria established to provide for the Proposed Action.

2.1.c. Alternative Three - No Action.

Although the No Action alternative will present no further environmental impacts, but the desire of the community to improve the living standards will not be met. Taking no action would result in a continuation of processes effecting the emergence of growth centers characterized by unconnected and unplanned development of individual projects and land withdrawal. The community would stand to begin another process towards improving the overall social and economic conditions of the town and will stand to delay potential development and services for the community.

2.2. Alternatives Beyond BIA Authority

There are no alternatives beyond BIA action. The Proposed Action is located on Navajo Nation trust land and thus is under the Bureau of Indian Affairs trust responsibility.

3.0. DESCRIPTION OF THE AFFECTED ENVIRONMENT

3.1. Land Resources

3.1.a. Topography

The topography of the greater Kayenta area includes an array of land features, the beauty of which not only distinguished it within the State of Arizona and the southwestern part of the United States, but draws worldwide visitors as an international attraction. The beautiful panoramic rock formations surrounding Kayenta begins on its northeast perimeter with Comb Ridge, an exposure of red Navajo sandstone which extends eastward thirty miles. Behind Comb Ridge, Agathla Peak (El Capitan), which stands as a prominent volcanic outcropping, rises to a height of 373.4 m (1,225 feet). Other red sandstone promontories rise behind Comb Ridge. The northern configuration of rock formations, complemented by Black Mesa to the south, provides Kayenta with a unique and scenic setting for a community.

It lies on the south side of Laguna Creek near the mouth of a narrow canyon which separates the Black Mesa to the south from the Skeleton Mesa to the west. In general, the terrain slopes gently downward toward the north and northeast into the San Juan and Chinle Valleys. Between the river and Kayenta lie the isolated mesas and rock spires of beautiful Monument Valley. These impressive 1,000-foot "monuments" rise like lonely sentinels from the flat desert floor.

The highest point near Kayenta is found on Navajo Mountain, at an elevation of 3,174.8 m (10,416 feet), 59.5 km (37 miles) to the northwest. This compact isolated peak rises more than a mile above Rainbow Bridge National Monument and the broad Colorado River, a short distance further to the northwest. Navajo National Monument, one of the most interesting features of the Navajo Indian Reservation, which covers about 24.1 km (15 miles) west of Kayenta. This Monument contains many prehistoric Indian ruins, ancient caves, and cliff-dwellings. Except on the high mesas to the west and south, which are partially forested with pinyon and juniper, the sparse vegetation in the area consist mainly of brush and plains grass.

3.1.b. Soil

The Kayenta area has a wide variety of soil types. Listed below is a summary of soil types by percentage:

| | |
|-----------------------------|-----|
| Tewa sandy clay loam | 25% |
| Rock outcrop - Torriothents | 21% |
| Sheppard - Monue complex | 18% |
| Monue, fine sand | 08% |
| Kydestea - Zyme - Tonalea | 07% |
| Mido - Begay complex | 04% |
| Gotha Silty clay loam | 10% |

3.1.c. Geologic Setting and Mineral Resources

Kayenta is situated on an unconformity of Jurassic and Triassic aged rock beds. The Navajo Sandstone is grayish-orange-pink even-grained highly crossbedded sandstone. These general characteristics indicate blow sand deposition during the Upper Triassic and Jurassic eras.

The major portion of Kayenta community overlies the Carmel Formation of the Middle and Upper Jurassic eras. This formation is characterized by red sandstone and siltstone.

Directly north of Kayenta, north of the Navajo Sandstone and Carmel Formation, lie beds of the Kayenta Formation that dip twenty degrees south. These soils are characterized to have sandy faces, and pale-red crossbedded sandstone from wind deposition.

Coal is mined on the Black Mesa Mountain range to the south and no other mineral deposits have been recorded on or near the project area.

3.2. Water Resources

3.2.a. Surface Water

There are no permanent rivers, standing water or streams throughout the project area. The surface is ephemeral, existing mostly in large washes, such as the valley wash during periods of run-off and flooding. The project area drains north and westward via minor drainage into existing wash to the northwest from the center of the area (nearest perpendicular distance). Valley wash is an ephemeral stream and represents the nearest, naturally occurring surface water (after rainfall) in the area.

3.2.b. Groundwater

The current ground water system in Kayenta consists of seven deep wells that serve four water storage tank facilities for a total of about 2.5 million gallons. The total daily usage is about 430,000 gallons. A total usable storage of about 1.0 million gallons (less a fire flow reserve of 1.5 million) provides slightly less than a two day requirement of over 1.1 million in the prior years.

3.2.c. Wilderness, Floodplain and Wetland:

There are no wetlands in the area as defined in Executive Order 11990, Protection of Wetlands. No wilderness has been declared or designated on or near the project area. The Federal Emergency Management Agency (FEMA) has indicated that the Navajo Nation was not studied or mapped, therefore cannot determine if the proposed project area is in a special flood hazard area. However, the study of the hydrology was undertaken to identify and conceptually dispose of stormwater which may hinder activities necessary for

the safe and efficient operation of the facilities. The project area does not intersect any main water courses. The existing wash flows downstream to the west. The proposed project area location is estimated to be above the 100-year flow depths based on bottom elevation of peak flows.

3.3. Air Resources

3.3.a. Air Quality

Regional air quality is generally good. However, air quality is degraded from automobile emissions along U.S. Highways 160 and 163. Hydrocarbon fumes from the gasoline pumps and other fueling stations would at times cause noticeable degradation. Fryer exhaust from the local vendors, cafe, restaurant and fast food outlets are usually a smell lingering in the area during working hours.

An Air Monitoring station on the Navajo Nation indicates that most concentration recorded were below the threshold of detection of the monitoring instruments and all levels were at or below the applicable federal ambient air quality. Total suspended particulate are high during the month of May, June and July when dust storms are most prevalent. These high particulate values were probably caused by windblown dusts.

During the seasonal changes in Kayenta, the area has several emissions factors contributing inversions and haze in the valleys. The contributing sources being the wood and coal burning, the coal mining operations in the Black Mesa, Navajo Generating Station in Page, slash burning, fugitive dust emission from vehicular travel on unpaved roadways and some open burning.

3.3.b. Visibility

Navajo Nation Air Monitoring Station also conducts visibility monitoring. Processed data collections, including capture percentage by seasons, are as follows:

| | | | |
|--------|-----|--------|-----|
| Winter | 90% | Summer | 87% |
| Spring | 87% | Fall | 98% |

Preliminary data analysis and a standard visual range analysis summary is presented in the following tables:

Table I

Preliminary SVR* Analysis Statistics by Season
(SVR in Kilometers)

| <u>Statistic</u> | <u>Winter</u> | <u>Spring</u> | <u>Summer</u> | <u>Fall</u> |
|--------------------------|---------------|---------------|---------------|-------------|
| Minimum SVR | 65 | 65 | 73 | 65 |
| Maximum SVR | 391 | 364 | 340 | 313 |
| Arithmetic Mean | 226 | 165 | 148 | 135 |
| Geometric Mean | 206 | 156 | 142 | 126 |
| Cumulative Frequency | | | | |
| Analysis: | | | | |
| 10% | 115 | 104 | 99 | 75 |
| 50% | 211 | 157 | 144 | 124 |
| 90% | 386 | 235 | 209 | 207 |
| * SVR = | | | | |
| Surface Visibility Range | | | | |

Cumulative frequency values can be interpreted as 10% of the time the visual range was less or equal to the 10% value; 50% of the time the visual range was less than or equal to the 50% value (median SVR); 90% of the time the visual range was less than or equal to the 90% value.

Visibility and TSP (Total Suspended Particulate) are affected by blowing dust and sand during the spring months. Minor sources of air pollution arise from wood and coal burning.

3.3.c. Climatology

Kayenta is located at an elevation of 1,725.2 m (5,660 feet) and has a dry climate, receiving less than 20.3 cm (8 inches) of precipitation during an average year. Much of this falls during the warm summer months when afternoon thunderstorms form occasionally over the strongly heated desert mesas. These local storms, which obtain most of their moisture from the Gulf of Mexico, are usually accompanied by brief, heavy rain showers, often preceded by strong gusty winds and blowing sand.

Kayenta normally receives little precipitation in the fall, winter, and spring. Only occasionally does a storm release enough moisture to more than dampen the parched surface. Most of the winter and early spring storms that affect Kayenta are dry, advancing from the north or northwest. About seventy percent of the winter precipitation at Kayenta falls as snow. Although amounts are usually small and melt after a few days, accumulations of a depth of more than two feet have been known to occur during the colder and wetter winters.

Kayenta has a mild summer climate with an average daily temperatures from the middle of June until the end of August are in the low or middle seventies,

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varying from the middle fifties near sunrise to the high eighties or low nineties in the afternoon. Readings above 100 degrees are rare, occurring on the average on only a few days in every other summer, usually between the middle of June and the middle of July. Summer nights are cool, with the temperature in low forties near daybreak.

Kayenta has a cold midwinter climate, early morning minimum temperature normally in the high teens or low twenties. Readings below zero degrees are recorded in about two out of every three winters. Fortunately, the air warms up rapidly during the day, so that by the early afternoon the temperature is practically always above freezing.

3.4. Biotic Resources

3.4.a. Wildlife

Much of the wildlife observed in the area include species that inhabit habitat subject to disturbance and human occupation. Kangaroo rat (*Dipodomys ordii*) are common throughout the area; pock mice (*Perognathus spp.*) also appear to be common. Likely deer mice (*Peromyscus spp.*) are also represented. Evidence of larger mammals include sign of blacktailed jackrabbit (*Lepus californicus*) and coyote (*Canis latrans*).

)

The most conspicuous bird species found in the area was the common raven (*Corvus corax*). Ravens were sighted just about everywhere one can look, especially around the trash bins, dumpsters and parking lots. Other bird species reported or sighted in the general area include golden eagle (*Aquila chrysaetos*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), mourning dove (*Zenaida macroura*) and horned lark (*Eremophila alpestris*).

No amphibians or reptiles were seen in the are although local residents reported seeing rattlesnakes (probably western rattlesnake, (*Crotalus viridis*) and gopher snakes (*Pituophis melanoleucus*).

The area of the proposed project site is in close proximity to human activities and does not provide any habit to support numerous animals; therefore, there are probably little to no animals on the area, it would be expected to include mostly small birds, rodents and uncontrollable domestic dogs.

3.4.a.(1) Threatened and Endangered Species - .

On March 29, 1999, the Navajo Natural Heritage Program of the Navajo Nation Fish and Wildlife Department provided a list of the threatened and endangered species known to occur on or near the project area.

)

Pursuant to Endangered Species Act (USES), Migratory Bird Act (MBTA), Bald Eagle Act (BEA) and Navajo Endangered Species List (NESL), Natural Heritage Program of the Navajo Nation Fish & Wildlife Department provided a

list of the following threatened and/or endangered species with potential to occur on or adjacent the proposed project area.

Species of concern with potential to occur on the 7.5.-minute quadrangles (Kayenta East, AZ and Kayenta West, AZ) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information.

- (a) *Buteo regalis* (ferruginous hawk); NESL group 3; MBTA
- (b) *Charadrius montanus* (mountain plover); NESL group 4; ESA candidate; MBTA.
- (c) *Empidonax traillii extimus* (SW Willow Flycatcher); NESL group 2; ESA endangered, MBTA.
- (d) *Mustela nigripes* (black-footed ferret); NESL group 2; ESA endangered.

On-site investigation of the proposed project area was conducted and evaluated the impacts to threatened and/or endangered species that may result from the Proposed Action. It was determined and stated in the report that "No federally listed threatened and/or endangered species will be impacted by the development and no non-listed species of concern will be impacted".

3.4.b. Vegetation

Vegetation within the Kayenta area consists of grama grass, wheat grass, greasewood and shrubs. Other species evident in this area includes four-winged saltbush (*Atriplex canescens*), inkweed (*Sueda ruffrutescens*), Russian thistle (*Salsola kali*), broom snakeweed (*Gutierrezia sarothae*), three-leafed snakeweed (*G. microcephala*) sunflower (*Heliotropium eurassaicum*), four-o'clock (*Mirabilis multiflora*), little ragweed (*Ambrosia artemisifolia*), alkali sacaton (*Sporophous airoides*), kochia (*Kochia americana*), felty senecio (*Senecio longilohus*), rabbitbrush (*Chrisoalthamnus naureosis*), and yucca (*Yucca angustissima*).

Most of the proposed project area is mostly barren with vegetation species occurring at the site consisting of traces of Russian thistle (*Salsola kali*).

3.4.b.(1) Threatened and Endangered Species

Navajo Natural Heritage Program cited no threatened and endangered plant species. The project area was examined and have determined that the proposed project area does not possess the necessary qualities to meet habitat requirements of threatened and endangered plan species on or adjacent to the proposed project area.

3.5. Cultural Resources

3.5.a. Historical

No recording of historical values of significance were encountered during the research and investigation of project area.

3.5.b. Archaeological Resources

An archaeological survey investigation was conducted by Navajo Nation Cultural Resource Management Program (now the Navajo Nation Archaeology Department) and the Navajo Nation Historic Preservation issued a determination that there are no known historic properties on near the proposed undertaking. Navajo Nation Cultural Resource Management Program report is entitled "An Archaeological Survey of Portions of Kayenta Pilot Project Area, Kayenta, Arizona".

During the summer of 1987, the Navajo Nation Archaeological Department completed an archaeological survey of the entire 3606.43 acres of Kayenta Township area. The survey was carried out and its reported on three separate phases - I, II, and III. Two phases of this survey were subsequently submitted and approved by the Bureau of Indian Affairs Archaeology Department - Phase I NAO PROJECT NO. NTM-87-163, (NNCRMP- 87-140); Phase III NAO PROJECT NO. NTM-87-236, (NNCRMP-87-1g8); Phase I has been completed and approved by the Bureau of Indian Affairs Archaeology Department. Finally clearance has been granted by Navajo Nation Historic Preservation Department. All three reports Phase I, II, and III are incorporated by reference into this report. The following archaeological sites were identified for avoidance during all construction: Phase I Map-AZ-J-22-13; Phase II Map-AZ-J-22-24, AZ-J-22-26, AZ-J-22-29, AZ-J-22-17, AZ-J-22-18; and Phase III Map-AZ-J-22-31, AZ-J-22-32, AZ-J-22-33, AZ-J-22-34, AZ-J-23-9, AZ-J-23-10, AZ-J-23-11, AZ-J-23-12, AZ-J-23-13, and AZ-J-23-14.

3.5.c. Traditional Cultural Properties

A cultural resource survey was conducted of the proposed project area and no significant cultural resource properties relating to traditional significance were encountered.

3.6. Socioeconomic Conditions

3.6.a. Employment and Income

Personal incomes are generated through employment with Federal, Tribal agencies, energy development and private businesses. Others resort to farming, arts and crafts, and off-reservation labor. Limited retail and service businesses serve the area, as more people rely on the bordertown businesses to do the bulk

of their shopping. However, the gradual growth of public and private sector development are noticeable.

The following table illustrates a comparative analysis of labor force, employment and income statistics of the Kayenta community (trade area):

Table II

Labor Force Data - 1993

| | |
|------------------------|--------|
| Total labor force | 1,627 |
| Employed | 1,375 |
| Unemployed | 252 |
| Percent Unemployed (%) | 15.49% |

Table III

Household Income Distribution - 1997 Estimate

| | |
|------------------|-----|
| 0 to 5,000 | 176 |
| 5,000 to 9,999 | 98 |
| 10,000 to 14,999 | 102 |
| 15,000 to 24,999 | 194 |
| 25,000 to 34,999 | 150 |
| 35,000 to 49,999 | 197 |
| 50,000 to 74,999 | 169 |
| 75,000 + | 30 |

3.6.b. Demographics and Trends

The population for the Kayenta Community, based on the 1997 Estimate from Division of Community Development is about 5,437 (4,902 Navajos and 535 Non-Navajos). The population for the Navajo County which Kayenta Chapter is located in is about 80,675 and the population for the entire Navajo Nation is about 161,405. A majority of the Kayenta Chapter population is probably attributed to the population of the town.

The following table illustrates an analysis of population and demographic information of the Kayenta, Navajo County, Arizona based on the 1990 census information:

Table IV

Distribution of Age

| <u>Age</u> | <u>Navajo</u> | <u>Non-Navajos</u> |
|------------|---------------|--------------------|
| 0-04 | 722 | 45 |
| 05-09 | 690 | 41 |
| 10-13 | 524 | 22 |
| 14-17 | 466 | 27 |
| 18-20 | 234 | 7 |
| 21-29 | 626 | 47 |
| 30-39 | 738 | 136 |
| 40-49 | 465 | 107 |
| 50-64 | 298 | 91 |
| 65-79 | 114 | 11 |
| 80+ | <u>25</u> | <u>1</u> |
| Total: | 4,902 | 535 |

The permanent population within this market area is approximately 5,437 residents, experiencing a growth rate of approximately 2.5%. By year 2000, the permanent population should reach about 6,790 residents based on current growth rates. This market area population has a total income of approximately \$113 million, and a per capita income of about \$7,053. The average family income is approximately \$21,321, whereas the average income for all households within the market area is about \$21,500.

The following characteristics also apply to the market area population, more commonly referred to as "Other Population Characteristics":

| <u>Characteristics</u> | <u>1997 Estimate</u> |
|------------------------|----------------------|
| Population | 5,437 |
| Household | 1,343 |
| Families | 1,129 |
| Average Family Size | 4.49 |
| Average Age | 26.0 |
| Median Age | 22.0 |
| Race Distribution: | |
| Non-Indians | 535 |
| Native American | 4,902 |

These socioeconomic characteristics indicate that the market area population is very young. Approximately 46.6% of this population is 17 years old or younger, only about 2.2% of the population is over 65 years old. Also, the median and average age of this market area population is significantly lower than those of

both Arizona and the United States. In addition, income for this population continues to lag both Arizona and the national average. The growth rates for the various income categories are, however, at a comparable level with that of both Arizona and the United States.

3.6.c. Life-styles and Cultural Values

The life-styles and cultural values of the Navajo people are deeply rooted as people consider the land, water, and related environment sacred. Navajo people are very accustomed to traditional way of life, including their appreciation for the modernization of the environment.

3.6.d. Community Infrastructure

(1) **Public Utilities:** Electricity, gas, water and sewer is maintained by Navajo Tribal Utility Authority and serves homes, public and private institutions and small businesses in the area and most of neighboring communities.

(2) **Transportation:** Private vehicle is by far the biggest mode of transportation, as more and more people in the community own more than one vehicle per family. Navajo Nation Transit Bus System serves the area and provides daily transportation services to various communities, bordertowns and other destinations. Monument Valley Air Service provides commuter service by air to various cities and states. Special ambulatory air transport is available to the PHS Indian Health Service in the area.

(3) **Communications:** Telephone and cable services are provided by *Citizen Telecom's* Navajo Communications Company. AM and FM radio stations are received from Window Rock, Page, Flagstaff, Farmington, Cortez and other cities. Newspapers consist of: Farmington Daily Times, Gallup Independent, Navajo Times, Arizona Republic and Flagstaff Navajo-Hopi Observer.

(4) **Housing:** Navajo Housing Authority's public housing is located about .8 km (.5 mile) northeast of the junctions of highway 160 and 163. NHA provides public housing to low income people of the area. Other institutions providing housing for their employees consists of: Bureau of Indian Affairs, Public School District, Coal Mine Companies, and others. Private homes and homesite leases are scattered throughout the community and virtually surround the community. Most of the private homes on the outskirts of the township are served by unimproved roads.

(5) Community Facilities:

(a) Kayenta has five schools with a total enrollment of over 2,800. It also has the branch of Northland Pioneer College of Holbrook with an enrollment of about 300 students;

(b) Kayenta Health Clinic operated by the UPS-Indian Health Service serve the community;

(c) the existing U.S. Post Office is located about .8 km (.5 mile) north of the highway 160 and 163 junctions. A new Postal Service is projected for construction on proposed Kayenta Northwest Quadrant;

(d) Navajo Police Department, detention and Kayenta Judicial District Court are also located within the vicinity;

(e) Kayenta Community Fire Department is located on the south side and adjoins the Kayenta Northwest Quadrant;

(f) government services (federal, tribe and state) consist of: community chapter house, senior citizens, social services, education, natural resources and other services are all located within the township area; and

(g) Churches of various denominations are located within the community.

(6) **Commercial Facilities** consist of: two motels with a total of about 300 rooms; six restaurants/cafe; five gas stations; seven convenience stores; one trading post, two video store. Tee'iin'deeh Shopping Center offers grocery, variety, clothing, auto parts; fastfoods; and other small shops.

3.7. Resources/Land Use Patterns

3.7.a. Hunting, Fishing, Gathering

There are no game and hunting on or near the project area. The area is zoned for commercial, public and private developments.

3.7.b. Timber Harvesting

No timber harvesting occur on or near the project area.

3.7.c. Agriculture

There is no current grazing activity on or near the project area, as the area is zoned or designated for social and economic users. However some uncontrolled livestock herding does occasionally occur through the area.

Sheep, cattle, horse and dry farming is considered a viable source of income for many people in the area for centuries. Farm areas are located on the outskirts of the community as does the livestock grazing.

3.7.d. Mining

Peabody Coal and Black Mesa Pipeline companies owns and operates two mines, Kayenta Mine and Black Mesa Mine, as well as other logistic supports on Black Mesa mountains which is located southwest of Kayenta community.

3.7.e. Outdoor Recreation

The opportunity to enjoy outdoor recreation are varied. Residents and tourists alike comprise a steady stream of visitors patronizing the Monument Valley, many historic and scenic area, lakes, and other recreation areas scattered over the northern Arizona and southern Utah.

3.7.f. Transportation Use Networks

Transportation network consist of the major U.S. Highway 160 which runs east and west, connecting New Mexico and Arizona with the west and the four corners region to the east. U.S. Highway 163, on the other hand dissects Kayenta community and is considered the gateway to Monument Valley and many scenic areas of the northern region. The two major highways are maintained by Arizona State Highway Department.

3.7.g. Land Use Plans

The Navajo Nation Council passed resolution CN-86-85 which approved a five year experimental township project known as the Kayenta Township Pilot Project (KTPP) and the withdrawal of 5.5 square miles of land for a township government. Within a year, the Kayenta Chapter Comprehensive Land Use Plan was adopted by the chapter on June 18, 1986.

The plan carved-out boundary lines for the proposed township, explored the possibility of a local sales tax as a means for generating revenue, and established a list of community priorities

Currently, the KTC is responsible for implementing the Chapter policies and regulations and authorized to act upon all land use proposals within the Kayenta township area.

3.7.h. Solid and Hazardous Waste Site

No solid and hazardous waste site exist on or near the project area. The Kayenta Township Commission operates and maintains an EPA-certified solid waste transfer station and contracts the collection and disposal of solid waste to a sanitary contractor, who hauls the refuse out of the community for proper disposal at an EPA approved landfills.

3.8. Other Values

3.8.a. Sound and Noise

Ambient noise near the proposed site is caused primarily by traveling automobiles on the nearby roads (e.g., U.S. Highway 163 and 160). The following table presents some typical values of day-night sound levels (decibels) associated with various land uses. Noises levels were not measured at the

proposed site. However, considering the population and development pattern in the vicinity of the proposed site, the noise levels are probably in the range of 45 to 55 decibels on the A-weighted sound measurement scale (dBA).

The following table is a U.S. Environmental Protection Agency description of environmental sound. It is the average of daytime and nighttime A-weighted energy -equivalent sound levels with nighttime sound given a penalty of 10 decibels (dBA).

Table VI

| <u>Land Use</u> | <u>Population Density People per sq. mile)</u> | <u>Decibels</u> |
|----------------------------|--|-----------------|
| Rural, undeveloped | 20 | 35 |
| Rural, partially developed | 60 | 40 |
| Quiet suburban | 200 | 45 |
| Normal suburban | 600 | 50 |
| Urban | 2000 | 55 |
| Noisy urban | 6000 | 60 |
| Very noisy urban | 20,000 | 65 |

3.8.c. Public Health and Safety

The Proposed Action will be established in close consultation with the health organizations. Safety concerns has been addressed with the Public Safety and Community Fire Department in so far as the traffic control and safety within the project areas. Safe ingress and egress has been developed to offset any unforeseen events contributing to unsafe activities in the area, taking into consideration the volume and control of the traffic.

4.0. ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION

Kayenta Township Commission, elected representatives of Kayenta Township Pilot Project has been authorized by the Navajo Nation Council to withdraw, use, develop, lease and provide infrastructure and facility developments of $\pm 3,606.43$ acres (1,460.0 ha.) of Navajo Nation trust land in Kayenta, Navajo County, Arizona. As part of its mandate, KTC proposes to facilitate construction of infrastructure, establish zone, lease and accommodate variety of developments consisting of housing, commercial, private businesses, solid waste management, recreation, streets and drainage improvements and various retail and service establishments to serve the township residents, area market and regional patrons. The Proposed Action will consist of site preparations, constructions, improvements, installation of equipment, buildings, related facilities, streets, drainage, on-site and off-site improvements. The development will also include spaces for recreational activities, related functions, and auxiliary service provisions.

The Proposed Action is intended to serve the residents, individuals, organizations and businesses in and surrounding communities of Kayenta, Navajo County (Navajo Nation), Arizona. The service area would most likely encompass Kayenta community as majority of the people in the area utilize the services provided by Kayenta Township.

4.1. Physical Impacts

The Proposed Action will not affect the topography or geology of the project area. The total land requirement for this project is $\pm 3,606.43$ acres (1,460.0 ha.) and proposed construction of infrastructures, buildings, streets, curb/gutters, parking, traffic circulation, egress, ingress and related developments. Temporary erosion, scarring of land surface in areas excavated or disturbance will occur in order to carry out the construction and related activities. Impacts to the physical environment resulting from these projects would be limited to the project area and occur primarily during construction.

Vegetation and rubbish will be completely stripped and wasted from proposed project site and replaced with infrastructures, structural facilities and related improvement. Earth filling and/or cutting operations will be initiated for all controlled earth-work.

4.1.a. Air Quality

No adverse air quality impact is anticipated as a result of the Proposed Action. Construction activities may raise short-term ambient dust and gaseous air as a result of construction activity and by vehicle emissions from equipment and worker's automobiles. However, it is recommended that steps be taken to minimize the amount of particulate matter (dust) generated, including incidental emissions caused by strong winds and tracking of dirt off-site by machinery and trucks.

4.1.b. Water Quality

The proposed project area would not affect the quality of water, groundwater, aquifer or impoundment. No diversion, controlling, modifying, dumping, polluting, dredging or filling will occur. Drainage and runoffs from the results of rain and melting snow to surrounding areas will occur, however, adequate drainage provisions will mitigate the flow of runoff so that impacts, if any, would be minimal.

4.2. Biological Impacts

The overall impact of the proposed development would remove vegetation, shrubs and weeds. Primary impacts will take place as a result of site preparation. Soils will be overturned and displaced causing vegetation within the project area to be irretrievably lost and replaced with the development.

What was once a densely populated area with a diversity of wildlife on or near the proposed project area was reduced because of the continuing developments in the area and what wildlife habitats existed have been degraded by the development practices.

4.3. Threatened and/or Endangered Species Impacts

On-site and off-site investigation was conducted and report (see attached Biological Assessment Reports) that the threatened and/or endangered species known to occur on or adjacent to the project area will not be impacted by the proposed action. There have been no sightings of threatened and endangered species reported or have occurred in or around the project area. The foregoing statement is the result of our biological assessment of the proposed project area and evaluation of the impacts to threatened and endangered species that may result from the proposed action. It has been determined and stated in the report that no federally listed threatened or endangered species will be impacted by the proposed developments.

4.4. Socioeconomic Conditions

It is anticipated that socioeconomic impacts resulting from the project will be minimal and the area residents may experience community growth activity impacts. Development of the project will create an improved retail and service facilities with improved infrastructures, including jobs for the community. It appears logical to assume that the modernization of the infrastructures, facilities and related improvements will be a welcome addition to the community. The project will cause no long-term change in land use as the project area has been designated for developmental purpose. Direct benefits will be derived by the people, businesses and organizations whom will be afforded new and improved services to be provided for the community.

The construction of the infrastructure, facilities and related improvements would cause short-term impact resulting solely from and limited exclusively during the construction period. Construction impacts are distinct in that they are temporary in nature and their degree of adversity steadily decreases as work concludes.

4.4.a. Social Impacts

The principal social impacts to be considered in the EA are those associated with relocation, division or other community disruption which may be caused by the Proposed Action. The land to be used for the development would not require the relocation of any residences, business or organization. There would be no division of established community as a result of the Proposed Action.

The following grazing permittees have consented to the use of the Kayenta Township for withdrawal and for purposes defined with the Kayenta Comprehensive Land Use Plan: Marion Schenally - Permit # 8-813, Dorothy Singer - Permit # 8-968, Phil Singer, Sr. - Permit # 8-958, Lorraine Sullivan - Permit # 8-373 and Herbert White - Permit # 8-713.

4.4.b. Induced Socioeconomic Impacts

The Proposed Action will not alter the population growth of Kayenta, Navajo County and the Navajo Nation. The community is capable of supporting the improved service demands associated with the development of the Proposed Action. No major inducement or secondary socioeconomic impacts are anticipated from the Proposed Action. The major socioeconomic impact that would result from the proposed improvement would be the availability of better, modern and improved infrastructures and facilities in the community and services associated with the developments.

4.4.c. Compatible Land Use

A Land Use Plan is required to ensure that land uses in the vicinity of the project area would be compatible with the overall plans. Land use plans are essential to meet future proposed development as well as to minimize the potential for future incompatible uses of land. The land in the vicinity of the project area is currently withdrawn for development of private and public sectors. Residential, parks, commercial and business development properties are also zoned within the project area.

4.4.d. Surface Transportation and Ground Access

Access, egress and ingress provisions will be required from the main highways for some of the developments. Proper permits will be sought from Arizona Department of Transportation for access roads from the major highways into the proposed development areas. All future access roads will be provided to serve the public and private sector developments.

The Proposed Action would not impede upon the normal traffic flow of the Arizona Highway system and right-of-way encroachment are normally performed by Arizona State Highway Department in providing a safe and proper ingress and egress from the major highways. The traffic pattern may not alter

the surface transportation patterns in the vicinity of the proposed project access area, and will not alter the entire traffic pattern of the community.

4.4.e. Noise

Some noise disturbance will occur during operation of the proposed action as a result of traffic going in and out of the development areas. Increased noise disturbance will occur during construction activity which may be more audible, but will be for only a short time period.

Automobile traffic noise will occur on the project sites during service hours, particularly during the business days. At times, the parking areas would be full. Automobile traffic noise on highways 163 and 160 are not expected to increase which would cause any significant impact upon the existing transportation noise in the area.

4.5. Solid Waste Disposal and Hazardous Waste:

Solid waste will be generated by the Proposed Action during the construction and business operations. The waste/refuse materials should be collected and placed in trash bin and/or dumpsters at transfer station(s) for pickup by contractors and disposed of at EPA certified sanitary landfills. The sponsor, in coordination with the Navajo Nation and the BIA, would ensure that no landfills would be established on or near the project area and no open burning about the area.

No hazardous materials and/or waste are anticipated due to the Proposed Action; however, should hazardous materials waste be generated by the project execution, the materials must be regulated by Environmental Protection Agency (EPA) and Resource Conservation and Recovery Act (RCRA) 40 CFR 260-299 or more specifically 40 CFR 262 Standards Applicable to Generators of Hazardous Waste.

4.6 Construction Impacts

Construction operations would cause specific impacts resulting solely from the limited construction period. Construction impacts are distinct in that they are temporary in nature and their degree of adversity steadily decreases as work concludes. The following construction impacts would be expected from the proposed construction of the infrastructures, facilities and related improvements:

- a. A slight increase in particulate and gaseous air pollution levels as a result of dust generated by construction activity and by vehicle emissions from equipment and worker's automobiles.
- b. Increases in solid and sanitary wastes from workers at the area.
- c. Traffic volume would increase in the vicinity of the project area due to worker activities.
- d. Increased noise levels during the operation of heavy equipment.

- e. Temporary erosion, scarring of land surfaces and losses of vegetation in areas excavated or otherwise disturbed to carry out future developments.

The construction contract specifications would require strict control of solid waste materials generated during construction. A control plan for waste collection and disposal would be implemented upon commencement of construction to preclude or minimize debris from being scattered outside the boundaries.

4.7. Historic, Archaeological and Cultural Resource Impacts

Historic, Architectural, Archaeological, and Cultural Resources are not anticipated to be impacted from the proposed action. An archaeological investigation was conducted by Navajo Nation Cultural Resource Management Program (now the Navajo Nation Archaeology Department) on the proposed project area by the NNAD Staff Archaeologist. Navajo Nation Historic Preservation Department granted the final clearance on February 02, 1995 and recommended that projects be authorized to proceed within the area originally surveyed.

5.0. MITIGATION MEASURES

5.1. Physical Measures

No disturbance will be done to physical environment other than cleanup during and after the construction of infrastructures, facilities and related improvements. Erosion control structures should be installed where applicable in accordance with applicable standards. Disturbed soils may or may not be reseeded as deemed necessary in accordance with the requirements of the developers and Lessor.

5.1.a. Air Quality

No mitigating measures is necessary for the control of the vehicle emissions to be generated on the project site. The short-term ambient dust and gaseous air should be controlled by limiting the renovation project and vehicles within the boundaries of the project site.

5.1.b. Water Quality

The ground and above ground water will not be affected therefore no mitigation measure is necessary. However, care should be exercised to avoid the disposal of petroleum products used by heavy equipment like: gas, fluids, oil and grease onto the ground.

5.2. Biological Measures

Most of the project areas has been cleared of existing vegetation and no mitigating measures are necessary. Effects on local wildlife through habitat displacement are not considered sufficient in scope to warrant special management or enhancement of other natural resources to compensate for this loss. Whatever wildlife existed have migrated to undisturbed areas for refuge and/or habitat.

5.3. Threatened and/or Endangered Species

No mitigation measures is necessary for the protection of Threatened and/or Endangered Species, because none exist on or near the proposed project area.

5.4. Socioeconomic Measures

Effects on adjoining residents currently using the area for access to various social and economic pursuits, who would be inconvenienced during the development period, would be mitigated by observing and respecting the boundaries and privacy of nearby institutions, businesses and other developments.

To mitigate any future disputes and/or conflicts with the local land users, the Kayenta Township Commission has been authorized by the community people, chapter and the Navajo Nation Council to plan, develop, lease, operate and manage the township properties.

To mitigate any adverse effects on the socioeconomic of the area, the infrastructures, facility and related improvements shall be constructed in accordance with the specifications and National Fire and Safety Codes governing the safe construction of federal and private facilities. The facilities shall be operated in accordance with the rules and regulations of applicable agencies, departments of the Navajo Nation, federal mandates, and state of Arizona.

5.4.a. Social

Mitigating measures should be required of the prospective Lessee to: (1) respect and observe other property boundaries and all activities should be confined to the project property boundaries; (2) infringement on other properties should be avoided at all times, this includes confining all vehicle and pedestrian traffic within the project boundaries; (3) fence or wall barrier should be constructed to enclose some project properties; (4) any and all refuse and other waste should not be left outside the facilities; and 5) observe the local rules, regulations, laws and ordinances.

5.4.b. Induced Socioeconomic

The proposed project area is considered a development property wherein the necessary land withdrawal process, clearances, and etc. are obtained from all concerned agencies and departments for the establishment of Kayenta Township.

5.4.c. Compatible Land Use

To ensure the future compatibility of land uses in the vicinity of the proposed project sites, it is recommended that land use compatibility guidelines be made a part of the Kayenta Township Pilot Project. The guidelines could be in the form of an area development plan to assist in the protection of the interests of the residential community and the Kayenta Chapter.

5.4.d. Surface Transportation and Ground Access

All ground transportation should be confined to the existing roadways, traffic circulation area and parking.

5.4.e. Noise Abatement and Control

To minimize and control the impact of noise created during the construction and operational periods, all vehicles and pedestrian traffic should be restricted within the project boundaries. All vehicular traffic should be confined to existing roadways, parking and to respect and observe other property boundaries.

5.4.f. Solid Waste

All solid waste/refuse shall be properly disposed of in EPA-approved trash bins or dumpsters to be collected by sanitation contractor and disposed of at EPA-

certified sanitary landfill. All chemicals, fluids, spills, gas spills and other waste materials during construction and operation period should be cleaned up and removed from the project site and disposed of in EPA certified disposal facility.

5.5. Construction Measures

Construction measures to mitigate temporary impacts for the proposed infrastructure, facilities and related development would include the following:

- a. Construction techniques would be implemented to control potential runoff from the construction site.
- b. Minimize land disturbance and unnecessary vehicular and machinery activities..
- c. Use dust suppressants on traveled paths to minimize dust.
- d. Cover trucks when hauling dirt or transferring materials.
- e. Stabilize the surface of dirt piles if not removed immediately.
- f. Use windbreaks to prevent any accidental dust pollution.
- g. Limit vehicular paths and stabilize these temporary roads.
- h. Grade to prevent soil from washing onto paved areas.
- i. Revegetate, if need to, any disturbed land not used.
- j. Remove unused material, debris, etc.
- k. Remove dirt piles and landscape to an adequate condition.

5.6. Other Mitigation Measures:

The Proposed Action will be required to identify any and all types and classification of chemicals to be used during operation and maintenance of facilities. According to the Protection of Environment 40 CFR Parts 260 to 299, Part 262--Standards Applicable to Generators of Hazardous Waste, chemicals and solvents used in the facility may not be considered acutely hazardous waste and it is possible that no more than 100 kilograms would be available on premises. Waste of chemical is insignificant at this time, because the chemical will consist of cleaning solvents and it will be cleaned up after each use. No mitigating measure is necessary other than to make sure that such solvent and other commercial chemical products are safeguarded and stored in the proper places and to safeguard against spills and contamination with other matters.

5.7. Historic, Archaeological and Cultural Resources

The historic, archaeological and cultural resource inventory conducted for this area did not locate any resources. Mitigating measures are not necessary. 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 location 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.

6.0. CONCLUSIONS REGARDING SIGNIFICANCE

No known or anticipated conflicts exist between the Proposed Action and the objectives of the Kayenta Chapter Government, Kayenta Township Project, the Navajo Nation, Federal, regional and/or local land use plans, policies or controls for the project area. There is no anticipated inconsistency with any approved Federal, tribal or chapter plan and laws.

The Proposed Action has not been opposed by any Federal, Navajo Nation government, Kayenta Chapter, Kayenta Township and land users in the past, nor is such opposition present now. There is no known organized or concerted effort by public or private entities to oppose the Proposed Action.

The undertaking has been evaluated with respect to how development at this site will affect the environment. The quality of the human environment will be improved by construction of infrastructures, facilities and related improvements. Furthermore, the withdrawal of land for development conforms with the Kayenta Township Planning Project, the Kayenta Chapter and the Navajo Nation Council has adopted. Hence, the development of the proposed facility will enhance the growth of the township for Kayenta Community.

We conclude that any and all adverse impacts can be minimized if the construction of infrastructures, facilities and related improvements conforms with the applicable standards of construction and installation practices and proper monitoring applications are followed. Construction shall be initiated in conformance with all applicable rules and regulations governing public and private sector facilities, including provisions for the handicapped. The Arizona Department of Transportation rules, regulations and specifications concerning the establishment and operation of traffic control are explicit to warrant adherence.

7.0. CONSULTATION AND COORDINATION

7.1. Consultants/Personnel

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Bitsui Research & Development

Patrick Molloy, Environmental Scientist
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7.2. Consultation and Coordination

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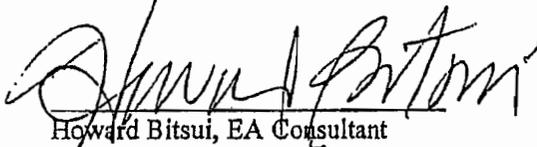
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- An Archaeological Survey of Portions of Kayenta Pilot Project Area, Kayenta, Arizona, Phase II BIA-NAO Project No NTM-87-193, NNCRMP-87-156 Prepared by Loretta Werito Submitted by Anthony L. Klesert, Ph D , Sept. 8, 1987
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8.0. DOCUMENT PREPARER'S SIGNATURE

I hereby certify that, to the best of my knowledge and based on the best information available, the contents of this document are true and accurate.



Howard Bitsui, EA Consultant
Bitsui Research & Development
P.O. Box 2250
Window Rock, Arizona 86515

4-1-99
Date

9.0. APPENDICES/SUPPORTING DOCUMENTS

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9.1.

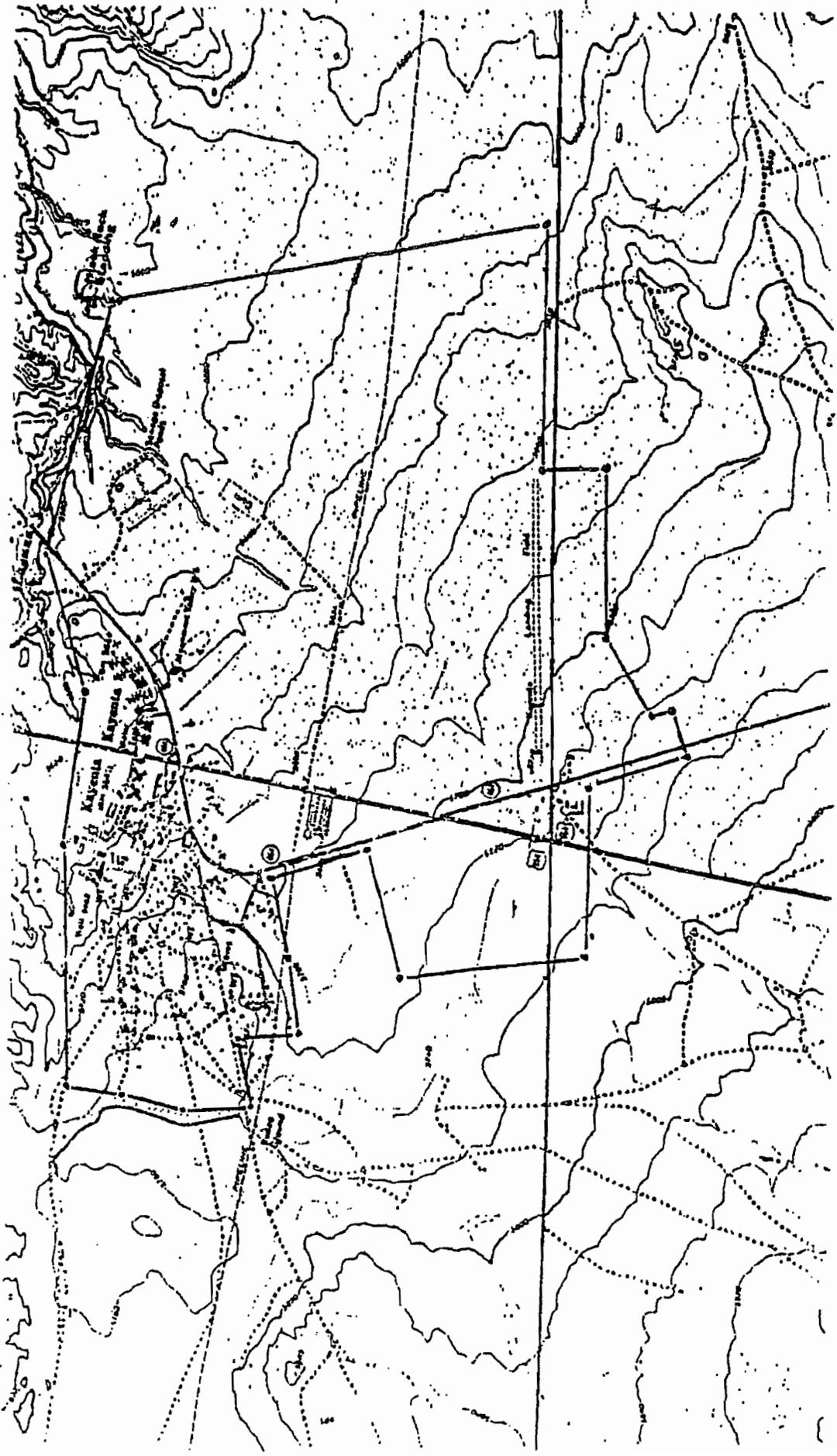
LOCATION AND VICINITY MAPS



9.2.

SURVEY PLAT AND TRACT DESCRIPTION

EXHIBIT A



9.3.

**LISTING AND DESCRIPTION
OF THREATENED AND ENDANGERED SPECIES
KNOWN TO OCCUR ON OR ADJACENT TO THE
PROJECT SITE**



THE NAVAJO NATION

KELSEY A. BEGAYE
President

TAYLOR MCKENZIE, M.D.
Vice President

29 March 1999

Howard Bitsui, Consultant
Bitsui Environmental Consultant
P.O. Box 2250
Window Rock, AZ 86515

SUBJECT: ±3,606.43 ACRES OF KAYENTA TOWNSHIP, ARIZONA

The following information on species of concern¹ is provided in response to your 26 March 1999 request concerning the subject project, which consists of about ±3,606.43 acres, in the vicinity of Kayenta, Navajo County, Arizona.

At this time, the NFWD has no record of species of concern occurring on the project area.

Species of concern with potential to occur on the 7.5-minute quadrangles (Kayenta East, AZ and Kayenta West, AZ) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristic and species range information.

Species of concern with potential to occur on the 7.5-minute quadrangles (Kayenta East, AZ) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information.

Animal species:

1. Buteo regalis (Ferruginous Hawk); NESL group 3; MBTA.
2. Charadrius montanus (Mountain Plover); NESL group 4; ESA candidate; MBTA.
3. Empidonax traillii extimus (Southwestern Willow Flycatcher); NESL group 2; ESA endangered; MBTA.
4. Mustela nigripes (black-footed ferret); NESL group 2; ESA endangered.

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

¹"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), federal Migratory Bird Treaty Act (MBTA), and federal Eagle Protection Act (EPA). Information is not provided on state status. No legal protection is afforded species with only ESA candidate or NESL group 4 status. NESL group 4 species are only included in this response on an irregular basis. Please be aware of these lower-priority species during surveys and inform the Navajo Fish and Wildlife Department (NFWD) of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management, contributes to ensuring that they will not be uplisted in the future. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.

Biological surveys should be conducted during the appropriate season. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (520) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (David Milkesic) for animals at 871-7638, and Botanist (Daniela Roth) for plants at 871-7639.

The information in this report was identified by the NFWD's biologists and computerized database, and is based on current data. 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.

An invoice for this information is forthcoming from the Navajo Division of Finance.

If you have any questions I may be reached at (520) 871-7603.



Brent Nelson, Data Manager
Natural Heritage Program
Navajo Fish and Wildlife Department

xc: file/chrono

9.5.

**ARCHAEOLOGICAL CLEARANCE LETTER BY
NAVAJO NATION HISTORIC PRESERVATION
DEPARTMENT**



**THE
NAVAJO
NATION**

P.O. BOX 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-4941

PETERSON ZAH
PRESIDENT

February 2 1995

MARSHALL PLUMMER
VICE PRESIDENT

Howard Bitsui
Bitsui Research & Development
P.O. Box 2250
Window Rock, Arizona 86515

RE: Request for "Archaeological Clearance" Within the Kayenta Township, Arizona (NTM-87-193).

Dear Mr. Bitsui:

The Cultural Resource Compliance Section (CRCS) of the Navajo Nation Historic Preservation Department (NNHPD) has received your request for assistance regarding an "archaeological clearance" within in the Kayenta Township. The Township was previously surveyed by the Navajo Nation Cultural Resource Management Program (now the Navajo Nation Archaeology Department) in a report entitled, An Archaeological Survey of Portions of Kayenta Pilot Project Area, Kayenta, Arizona, Phase II (see enclosed maps). We have reviewed the appropriate documentation and we find that there are no known historic properties near your proposed undertaking. Accordingly, we recommend that the project be authorized to proceed within the area originally surveyed. Should 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 be discovered, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified at (602) 871-7132.

If you have any questions regarding this matter, please call Rolf J. Nabahe, Peter T. Noyes, or me at (602) 871-7132.

Sincerely,

Handwritten signature of Alan S. Downer in black ink.

Alan S. Downer, Director
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, Arizona 86515

CONCURRENCE

JING Area Director

Handwritten signature of JING in black ink.
Date

2/10/95

9.6.

**LEGAL OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION CONCERNING THE
AUTHORITY OF THE KAYENTA TOWNSHIP
COMMISSION TO APPROVE AND ENTER INTO
LEASES OF NAVAJO TRUST LANDS WITHIN
THE WITHDRAWN AREA DESIGNATED AS THE
TOWNSHIP SITE**



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MONS VAZIK
ATTORNEY GENERAL

AG-01-99

OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION

January 7, 1999

Authority of the Kayenta Township Commission to Approve
and Enter into Leases of Navajo Trust Lands within the
Withdrawn Area Designated on the Township Site

QUESTION PRESENTED:

Does the Kayenta Township Commission have authority to approve and enter into leases of Navajo Trust Lands within the Kayenta Township Site?

SHORT ANSWER:

The Kayenta Township Commission has been delegated governmental authority to negotiate and approve leases on lands within the Kayenta Township Site without further review and/or approval by the Navajo Nation, including the Navajo Nation Council and the President of the Navajo Nation.

FACTS:

INTRODUCTION

In 1985, the Navajo Nation created the Kayenta Township Pilot Project ("Township") and in 1986, approximately 3606.43 acres were withdrawn for the township. Since its creation, the Navajo Nation Council has made changes to further define the Township's underlying concept of local governance.

On December 16, 1998, the Kayenta Township Commission requested an opinion from this office on their authority to lease property on the lands withdrawn for the Project site. This Opinion of the Attorney General is issued in response to the Commission's request.

ANALYSIS

The Township and its authority is a creation of the Navajo Nation Council, at the request of the Kayenta Chapter. See Resolution of the Kayenta Chapter dated June 10, 1985, and Resolution CN-96-85 dated November 5, 1985, codified at 2 N.N.C. § 4081 et seq. The 1986 withdrawal of lands for the townsite was duly authorized by the Advisory Committee, at the request of the Kayenta Chapter, thus establishing the territorial boundaries of the Township. See Resolution of the Kayenta Chapter dated June 18, 1986, and ACN-181-86 dated November 13, 1986.

1996 amendments to the Township Plan of Operation established the governing body as an elected commission rather than an appointed planning committee and amended the Kayenta Township Commission ("Commission") Plan of Operation, giving authority, inter alia, to "fully administer" the Project with "jurisdiction over all planning and control of that area" withdrawn for the Project. The Commission's authority was defined as prevailing "over all other authority contingent upon its consistency and compliance with existing policies and regulatory statutes of the Federal Government and the Navajo Nation."

The Commission is held responsible "for implementing and enforcing adherence to all the specifications, mandates, ordinances and laws" of the Commission. Section IV(B)(4), Project Plan of Operation. The Commission has the authority "to be recognized and accepted as the official representative agent for the Navajo Nation as issues arise in relation to carrying out the [Commission] Plan of Operation and specifics of the Kayenta Infrastructure Development as it relates to the Kayenta Township area." Section IV(C)(3), Project Plan of Operation. These provisions clearly demonstrate Navajo Nation Council intent that the Commission will act as a governing body with "original jurisdiction over the withdrawal of land within the Kayenta Township area and the governance of such land by zoning and any other laws...." Section II(D)(2), Project Plan of Operation.

LOCAL GOVERNANCE ACT

On April 20, 1998, the Navajo Nation Council enacted the Local Governance Act ("LGA"), authorizing chapters to assume governance at the local level consistent with Navajo Nation law. Resolution CAP-34-98. All prior inconsistent law was superseded by and/or amended to comply with the LGA, which is codified at 2 N.N.C. § 4001, et seq.

Township authority is not inconsistent with and is not

¹ Section III, Jurisdiction, Plan of Operation, as amended by Navajo Nation Council Resolution CN-76-96.

affected by the authority of the Kayenta Chapter, even with passage of the LGA. While the LGA grants extensive powers to the chapters, including the amendment of prior inconsistent law, Township authority was delegated by recommendation of the Kayenta Chapter and authorization of the Navajo Nation Council. Consequently, it is clear that for activities within the withdrawn area, both the Kayenta Chapter and the Navajo Nation Council have authorized the Kayenta Township to have extensive and primary authority. This conclusion is buttressed by the legislative history concerning the passage of the original Township Pilot Project:

The emergence of the township entity and its assumption of certain functions and decision-making roles cannot be seen as being a substitute, (for), nor in opposition to, those powers and responsibilities held by the Chapter and the Navajo Nation.... Local creativity, inventiveness, and energy must be unleashed as a cooperative and coordinated venture and partnership among Kayenta Chapter, the Navajo Nation and a newly created Township. [CN-96-85, Exhibit "C" pp. 5-6]

While the Kayenta Chapter has general authority over activities within Chapter boundaries, the Council, by creating the Township project and withdrawing an area within Chapter boundaries for the exercise of Township authority, has effectively given the Township primary authority within the Township's reserved area for the life of the Township project.

This is not to suggest that the Chapter and Township do not need to work together. Rather, as noted above, the Township and Chapter's authorities are complementary. Working together on projects of mutual interest strengthens and enhances both the Chapter and the Township, providing a model for municipalities and chapters. If, on the other hand, the Chapter and the Township project cannot work in a cooperative and coordinated manner, then a message is sent to the Navajo Nation Council and the Chapter membership that the project "experiment" is demonstrating that a chapter and a smaller government such as township or municipality might not be able to co-exist in the Navajo system of government. I would strongly urge the Chapter and the Townsite to show the Navajo public that this experiment in local governance can work.

CONCLUSION:

It is within the Township's authority to approve and execute the proposed post office lease agreement. Of course, such execution must comply with all applicable Navajo Nation and Federal laws. Thus, for example, the Township cannot on its own authority waive the sovereign immunity of the Navajo Nation. Further, the lease agreement after execution by the Township requires review and

execution by the Secretary of the Department of the Interior, with a copy of the executed lease to be filed with the Land Administration Department in the Division of Natural Resources. The Department of the Interior, Bureau of Indian Affairs, may rely on this Opinion in consideration of the authority of the Township to execute the proposed post office lease and other similar agreements.


Herb Yassie, Attorney General
Office of the Attorney General

9.7.

**LEGAL OPINION OF THE LEGISLATIVE
COUNSEL OF THE NAVAJO NATION COUNCIL
SUPPORTING LEGAL OPINION OF THE
ATTORNEY GENERAL OF THE NAVAJO NATION**

02/19/1999 15:14

78461

KAYENTA

PAGE 02

received
02/17/99 LA

The Legislative Branch
The Navajo Nation

Edward T. Begay
Speaker of the
Navajo Nation Council

February 1, 1999

Hon. Ben Johnson, President
Kayenta Chapter
Post Office Box 1088
Kayenta, AZ 86033

RE: Township; Opinion of the Attorney General dated 01/07/99

Dear President Johnson:

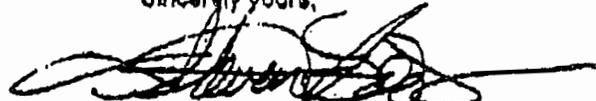
I have read your letter of January 21, 1999, in which you raise concerns regarding an Opinion of the Attorney General dated January 7, 1999. In that Opinion, the Attorney General concluded, among other things, that the Kayenta Township possesses authority to conclude a lease for a post office facility within the Township's boundaries. You ask me for a legal opinion which concludes that the Township does not possess such authority.

I regret that I cannot supply the opinion you request. I have thoroughly reviewed the Attorney General Opinion and agree with its analysis and legal conclusions. The Township and Chapter have a relationship like that of a city and county government, such as Gallup and McKinley County. The County has no authority within the city limits and the City exercises no powers outside those limits within the County. The relationship between the Township and Kayenta Chapter is essentially the same and it is therefore correct to conclude that the Chapter exercises no authority within the Township.

I also agree that both governments should strive to work together. It does not serve the interests of the Kayenta residents if the two governments are in a state of confrontation with one another. I respectfully suggest that you discuss conclusion of an MOA on land use between the Township and the Chapter that is beneficial to both governments.

Please call me if you have additional questions.

Sincerely yours,



Steven Eoss, Legislative Counsel

9.8.

**THE RESPONSIBILITY, AUTHORITY, AND
JURISDICTION OF THE KAYENTA TOWNSHIP
COMMISSION**

**THE RESPONSIBILITY, AUTHORITY AND JURISDICTION
OF
THE KAYENTA TOWNSHIP COMMISSION**

The Navajo Nation Council established the Kayenta Township Commission (KTC) as the governing body of the Kayenta Township site. This authority is provided in the Navajo Nation Council Resolutions CJA-3-96 and CN-76-96.

The Commission Jurisdiction:

- a) the Kayenta Township Pilot Project shall be fully administered by the Kayenta Township Commission (KTC);
- b) the KTC shall have jurisdiction over all planning and control of that area authorized and designated by the Navajo Nation Council in November 1985 Resolution CN-86-85 and the official survey plat filed with Navajo County and submitted to the Bureau of Indian Affairs (incorporated by reference herein) hereinafter referred to as the township area;
- c) the authority of the KTC shall prevail over all other authority contingent upon its consistency and compliance with existing policies and regulatory statutes of the federal government and the Navajo Nation; and
- d) the authority of the KTC shall be to formulate development plans and projects and monitor their implementation for the following areas: (1) Solid Waste (2) Airport (3) Recreation (4) Drainage (5) Fire Protection (6) Streets (7) Management and Enforcement.

Commission Responsibilities:

- a) the KTC shall be responsible for gathering information for Kayenta regarding solid waste, drainage, airport, fire protection, streets, recreation and planning and zoning ordinances and their enforcement, and any such information from agencies that bear upon the development of the Kayenta township;
- b) the KTC will meet at least once a month to consider plans, review developments and to adjudicate individual requests, complaints and specific actions relevant to the implementation of the Kayenta Tribal Pilot Tax Project and any accompanying codes and zoning laws;
- c) the KTC shall develop a Kayenta Infrastructure Development Plan by September 1994 and update said plan in 1995 and 1996 and update said plan in 1997 and 1998;
- d) the KTC shall be responsible for implementing and enforcing adherence to all the specifications, mandates, ordinances and laws of the KTC and shall notify all relevant agencies and members of township ordinances; and

e) the KTC shall implement the Chapter policies and regulations and shall act upon all land use proposals within the Kayenta township area.

Commission Authorities:

a) the KTC shall have authority to request information from agencies within and outside the Navajo Nation government which have direct bearing upon the execution of duties and responsibilities;

b) the KTC shall have the authority to initiate and carry out actions and against and individual who violate any elements and requirement of the Kayenta Infrastructure Development Plan;

c) the KTC shall have the authority to be recognized and accepted as the official representative agent for the Navajo Nation as issues arise in relation to carrying out the KTPTP Plan of Operation and specifics of the Kayenta Infrastructure Development as it relates to the Kayenta township area; and .

d) the KTC shall have the authority to request direct technical assistance from the Navajo Nation and the right to seek and accept technical assistance from outside agencies.

9.9.

RESOLUTIONS AND CODIFICATION

9.9.a.

Resolution of the Advisory Committee of the Navajo Tribal Council (ACN-181-86 Approving the Withdrawal of 306.43 Acres of Navajo Trust Lands for the Establishment of the Kayenta Township Site.

9.9.b.

Resolution of the Navajo Tribal Council (CN-86-85) Approving the Overall Concept of the Local Land Use Planning Authority and Local Governing Capacity in the Community of Kayenta, Officially Designating the Plan as the "Kayenta Township Pilot Project", and Approval of the Plan of Operation for the Kayenta Township Pilot Project.

9.9.c.

Navajo Nation Code-Title 2 of Navajo Nation Government, Subchapter 9, § 4081 through 4085

ACN-181-86

Class "B" Resolution
Area Approval Required.

RESOLUTION OF THE
ADVISORY COMMITTEE OF THE
NAVAJO TRIBAL COUNCIL

Approving the Withdrawal of 3606.43 Acres of
Navajo Trust Lands for the Establishment of the
Kayenta Township Site

WHEREAS:

1. Resolution CJA-1-81, authorized the Advisory Committee of the Navajo Tribal Council to review all matters relating to the disposition and uses of Navajo Tribal Trust Lands; and
2. By Resolution CN-86-85, the Navajo Tribal Council approved the Kayenta Township Pilot Project with a Plan of Operation for its Planning Board and the overall concept of local land planning authority and local governing capacity in the community of Kayenta; and
3. By Resolution dated June 18, 1986, the Kayenta Chapter approved and requested further approval of the withdrawal of a certain land tract for the Kayenta Township Pilot Project as a Kayenta Township Site; said resolution is attached hereto as Exhibit "A"; and
4. All holders of grazing permits within the Kayenta Township land tract have given permission to the withdrawal of said lands to be used as the Kayenta Township site; the consents of permit holders are attached hereto and marked Exhibit "B", pages 1 through 5; and
5. The withdrawal of this tract of land does not affect the validity nor the effectiveness of currently existing homesite and business site leases and prior withdrawals of lands within the township.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Advisory Committee of the Navajo Tribal Council hereby approves the withdrawal of 3606.43 acres, more or less, of Navajo Tribal Trust Lands for use by the Kayenta Township Project and its Kayenta Planning Board or its successor, as a township site for the purpose of developing the Kayenta Township Pilot Project, as stipulated in Navajo Tribal Council Resolution CN-86-85, said lands being more particularly described on the attached survey plat entitled Kayenta Township Pilot Project, marked Exhibit "C" and made a part hereof.

2. The Advisory Committee of the Navajo Tribal Council further directs that said lands shall remain withdrawn for so long as it is used for the purposes authorized.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 10 in favor and 0 opposed, this 13th day of November, 1986.



Vice Chairman
Navajo Tribal Council

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Approving the Overall Concept of the Local Land Use
Planning Authority and Local Governing Capacity in the
Community of Kayenta, Officially Designating the Plan as the
"Kayenta Township Pilot Project", and Approval of the Plan
of Operation for the Kayenta Township Pilot Project

WHEREAS:

1. The Navajo Tribal Council is the governing body of the Navajo Nation; and
2. By Resolution CJA-1-81, the Navajo Tribal Council authorized the Advisory Committee of the Navajo Tribal Council to create the overall Economic Development Plan of the Navajo Nation and any attended economic development priority list and to deal in the assignment or lease of Navajo land; and
3. Per Navajo Tribal Council Resolution CJA-1-81, the Advisory Committee of the Navajo Tribal Council has the authority to create a Navajo Nation entity by adoption of its Plan of Operation; and
4. The Kayenta Chapter has undertaken an effort to develop a Land Use Plan for the Kayenta Community with the goal of developing an improved local governmental system which would meet the policies, expectations and hopes of the local residents and the Navajo Nation's policy of decentralizing the Government. The Kayenta Chapter has delegated the Kayenta Planning Board (KPB) to spearhead this effort (Exhibit "A"); and
5. The Chairman of the Navajo Tribal Council has declared his support of this effort as it is in keeping with the administration's policy for decentralization of the Navajo Government and the Chairman has declared this effort as an official Tribal Pilot Project (Exhibit "B"); and
6. The Kayenta Planning Board, with the assistance of the Division of Economic Development, has prepared a concept paper which provides a general description of the envisioned local land use planning and community government recommended for the Kayenta Community and the Kayenta Township Pilot Project (Exhibit "C"); and
7. The Economic and Community Development Committee of the Navajo Tribal Council by Resolution ECDCAU-01-85, recommended support of the Kayenta Township Pilot Project concept paper (Exhibit "D"), and

recommended approval of the Plan of Operation for the Kayenta Township Pilot Project (Exhibit "E"); and

8. There is a need to establish the Kayenta Township Pilot Project by adopting its Plan of Operation (Exhibit "F"), so it and the Kayenta Planning Board can officially act on behalf of the Kayenta Chapter and the Navajo Nation; and

9. The Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, recommended to the Navajo Tribal Council approval of the overall concept of a local land use planning authority and local governing capacity in the Community of Kayenta, and officially designating the Plan as the "Kayenta Township Pilot Project" and approved the Plan of Operation for the Kayenta Township Pilot Project (Exhibit "C"); and

10. Per directive of the Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, a five-year Plan of Action for the Kayenta Township Pilot Project has been developed by the Kayenta Planning Board detailing the development of the Kayenta Township concept during the five-year experimental period from 1985-1990 (Exhibit "H"); and

11. Per directive of the Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, a map of the proposed land to be withdrawn has been prepared by the Kayenta Planning Board (Exhibit "I"), detailing the proposed jurisdiction of the Kayenta Planning Board under the Plan of Operation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby approves the concept of local government development, as contained in Exhibit "A" for the Community of Kayenta.

2. The Navajo Tribal Council hereby approves the overall concept of the local land use planning authority and local governing capacity in the Community of Kayenta, Navajo Nation (Arizona), as described in the Kayenta Township Pilot Project concept paper (Exhibit "C").

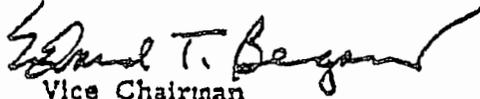
3. The Navajo Tribal Council hereby approves the attached Plan of Operation for the Kayenta Township Pilot Project (Exhibit "F"), governing the Kayenta Township Pilot Project during the five-year experimental period (Fiscal Years 1986-1990), specifically providing the Kayenta Planning Board jurisdiction over the proposed withdrawn area map (Exhibit "I"), according to the Plan of Operation (Exhibit "F"), contingent upon its consistency and compliance with existing policies and regulatory status of the Navajo Nation and the Federal Government.

4. The Navajo Tribal Council hereby supports the Memorandum of Understanding (Exhibit "J"), between the Kayenta Planning Board and Division of Economic Development and further directs the Kayenta Planning Board and the Division of Economic Development to coordinate their efforts, as authorized by the Project Plan of Operation and embodied in the concept paper (Exhibit "C"), with all other appropriate Tribal Divisions and departments.

5. The Navajo Tribal Council further provides for the consideration to fund the Kayenta Township Pilot Project during the five-year experimental period, as requested by the Kayenta Planning Board, consistent with project performance.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 61 in favor and 0 opposed, this 5th day of November, 1985.


Vice Chairman
Navajo Tribal Council

... Division of Community Development as subsection (C)
deleted pursuant to GSCO-60-91; substituted therefore is "Division of Community
Development."

Subchapter 7. [Reserved]

HISTORY

§4061-4068, the Chapter Manager's Program was repealed and was replaced
with the Community Services Program by CTY-61-91, July 19, 1991. See 2 NNC
Article 5, §990.

Subchapter 9. Kayenta Township Pilot Project

§ 4081. Establishment

There is established the Kayenta Township Pilot Project (KTPP) to
be administrated by the Kayenta Planning Board.

HISTORY

CN-86-85, November 5, 1985.

§ 4082. Purposes; goals

A. The Navajo Nation recognizes that the Chapters of the Navajo Nation represent the foundation of the Navajo Nation government. Certain growth centers located within various chapters in the Navajo Nation are experiencing the first stages of rapid and accelerated development. The strong desire and capacity of the Navajo People to determine their own destiny and attain local self-sufficiency now require that the local chapters plan, execute and evaluate the development of growth centers within their boundaries in partnership with the Navajo government.

B. The Kayenta Chapter has undertaken an effort to develop a Land Use Plan with the goal of gaining local self-government through planning, executing and evaluating an improved system of local government. The Navajo Nation fully supports this effort and will further assist the chapter in developing a local governmental system which could be adopted and implemented by the Navajo Nation.

C. The establishment of the KTPP is to provide the Navajo Nation and the local Kayenta Chapter with the means:

1. To review and recommend change and reforms to the Navajo Nation government which would further the policy of decentralization;
2. To plan, implement and control the use of land within the Kayenta growth center so as to reflect the needs and desires of the people of Kayenta and to insure that the policies of the people and their future expectations and hopes for the future will be followed and realized;
3. To enable the Kayenta Chapter to appoint members of their own community to act and speak for them; and
4. To prevent the development of Chapter lands without coordination, comprehensive planning, and long-range input and understanding on the part of the people of Kayenta Chapter.

D. The KTPP shall carry out a pilot plan and feasibility study to assess the practicality and means whereby the Navajo Nation and the Kayenta Chapter may attain the following goals:

1. Initial input concerning the most effective use of land within the Kayenta township area;
2. Original jurisdiction over the jurisdiction over the withdrawal of land within the Kayenta township area and the governance of the use of such land by zoning and any other laws approved by the Chapter, including but not limited to the initial processing of business and homesite leasing;
3. Adequate financial resources (taxes, royalties, etc.) which will support the management and the development of the infrastructure needed for a township operations; and

4. A local township council type government which will govern all domains of activity growth as permitted by federal and Navajo law.

HISTORY

CN-86-85, November 5, 1985.

§ 4083. Jurisdiction

A. The KTPP shall be fully administered by the Kayenta Planning Board (KPB).

B. The KPB shall have jurisdiction over all planning and control of that area authorized and designated by the Kayenta Chapter Resolution dated June 10, 1985, hereinafter referred to as the township area.

C. The authority of the KPB shall prevail over all other authority contingent upon its consistency and compliance with existing policies and regulatory statutes of the federal government and the Navajo Nation.

HISTORY

CN-86-85, November 5, 1985.

Note. Reference to "Attachment A" in subsection (B) deleted for purposes of statutory form.

§ 4084. Duties, authorities and responsibilities of Kayenta Planning Board

A. Duties of the Kayenta Planning Board (KPB) are as follows:

1. The KPB shall have the duty to provide and to inform the Chapter residents of any proposed major policy and regulatory principles that would impact the land use of the Kayenta township.

2. The KPB, for each five-year phase of planning beginning in 1985, shall provide to the Chapter and the Navajo Nation an updated Kayenta Land Use Plan representing a current compilation of data and a reflection of future goals and growth expectations. Said plan shall be acceptable according to the modern acumen of land use planning.

3. The KPB shall provide quarterly reports of the actions and activities of the KPB to the Chapter officials at a duly called public meeting; said reports shall also be submitted to the Navajo Nation Council.

B. Responsibilities of the Kayenta Planning Board (KPB) are as follows:

1. The KPB shall be responsible for gathering information for the Kayenta Chapter regarding employment, construction, education, business, transportation, health, and any such information from agencies that bear upon the development of the Kayenta township.

2. The KPB will meet at least once a month to consider plans, review developments and to adjudicate individual requests, complaints and specific actions relevant to the implementation of the Kayenta Land Use Plan and any accompanying and zoning laws.

3. The KPB shall develop a Kayenta Land Use Plan by September 1985 and update said plan in 1990 and 1995.

4. The KPB shall be responsible for implementing and enforcing adherence to all the specifications, mandates, ordinances and laws of the KPB and shall notify all relevant agencies and members of township ordinances.

5. The KPB shall implement the Chapter policies and regulations and shall act upon all land use proposals within the Kayenta township area.

C. Authority of the Kayenta Planning Board (KPB) is as follows:

1. The KPB shall have the authority to request on behalf of the Chapter information from agencies within and outside the Navajo Nation government which have direct bearing upon the execution of duties and responsibilities.

2. The KPB shall have the authority to initiate and carry out actions against an individual who violates any element and requirement of the Kayenta Land Use Plan.

3. The KPB shall have the authority to be recognized and accepted as the official representative agent for the Kayenta Chapter and the Navajo Nation as issues arise in relation to carrying out the KTRP Plan of Operation and specifics of the Kayenta Land Use Plan as it relates to the Kayenta township area.

4. The KPB shall have the authority to request direct technical assistance from the Navajo Nation and the right to seek and accept technical assistance from outside agencies.

D. The KPB shall be organized according to and be governed by duly approved bylaws that may be amended from time to time as deemed necessary by KPB.

HISTORY

CN-86-85, November 5, 1985.

Note. Reference to current bylaws of the KPB, was omitted for purposes of statutory form. Paragraph D slightly reworded.

At subsection (A)(3), The "Advisory Committee" was deleted. Pursuant to CD-68-89, the Advisory Committee was abolished. The powers of the former Advisory Committee with reference to the KTRP were not specifically redelegated to any one standing committee.

§ 4085. Code of Ethics

Officers and members of the Kayenta Planning Board (KPB) shall maintain a high standard of conduct in all dealings. This standard of

CN-86-85

Class "B" Resolution
Area Approval Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Approving the Overall Concept of the Local Land Use
Planning Authority and Local Governing Capacity in the
Community of Kayenta, Officially Designating the Plan as the
"Kayenta Township Pilot Project", and Approval of the Plan
of Operation for the Kayenta Township Pilot Project

WHEREAS:

1. The Navajo Tribal Council is the governing body of the Navajo Nation; and
2. By Resolution CJA-1-81, the Navajo Tribal Council authorized the Advisory Committee of the Navajo Tribal Council to create the overall Economic Development Plan of the Navajo Nation and any attended economic development priority list and to deal in the assignment or lease of Navajo land; and
3. Per Navajo Tribal Council Resolution CJA-1-81, the Advisory Committee of the Navajo Tribal Council has the authority to create a Navajo Nation entity by adoption of its Plan of Operation; and
4. The Kayenta Chapter has undertaken an effort to develop a Land Use Plan for the Kayenta Community with the goal of developing an improved local governmental system which would meet the policies, expectations and hopes of the local residents and the Navajo Nation's policy of decentralizing the Government. The Kayenta Chapter has delegated the Kayenta Planning Board (KPB) to spearhead this effort (Exhibit "A"); and
5. The Chairman of the Navajo Tribal Council has declared his support of this effort as it is in keeping with the administration's policy for decentralization of the Navajo Government and the Chairman has declared this effort as an official Tribal Pilot Project (Exhibit "B"); and
6. The Kayenta Planning Board, with the assistance of the Division of Economic Development, has prepared a concept paper which provides a general description of the envisioned local land use planning and community government recommended for the Kayenta Community and the Kayenta Township Pilot Project (Exhibit "C"); and
7. The Economic and Community Development Committee of the Navajo Tribal Council by Resolution ECDCAU-01-85, recommended support of the Kayenta Township Pilot Project concept paper (Exhibit "D"), and

recommended approval of the Plan of Operation for the Kayenta Township Pilot Project (Exhibit "E"); and

8. There is a need to establish the Kayenta Township Pilot Project by adopting its Plan of Operation (Exhibit "F"), so it and the Kayenta Planning Board can officially act on behalf of the Kayenta Chapter and the Navajo Nation; and

9. The Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, recommended to the Navajo Tribal Council approval of the overall concept of a local land use planning authority and local governing capacity in the community of Kayenta, and officially designating the Plan as the "Kayenta Township Pilot Project" and approved the Plan of Operation for the Kayenta Township Pilot Project (Exhibit "G"); and

10. Per directive of the Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, a five-year Plan of Action for the Kayenta Township Pilot Project has been developed by the Kayenta Planning Board detailing the development of the Kayenta Township concept during the five-year experimental period from 1985-1990 (Exhibit "H"); and

11. Per directive of the Advisory Committee of the Navajo Tribal Council by Resolution ACO-186-85, a map of the proposed land to be withdrawn has been prepared by the Kayenta Planning Board (Exhibit "I"), detailing the proposed jurisdiction of the Kayenta Planning Board under the Plan of Operation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby approves the concept of local government development, as contained in Exhibit "A" for the Community of Kayenta.

2. The Navajo Tribal Council hereby approves the overall concept of the local land use planning authority and local governing capacity in the Community of Kayenta, Navajo Nation (Arizona), as described in the Kayenta Township Pilot Project concept paper (Exhibit "C").

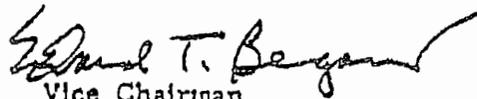
3. The Navajo Tribal Council hereby approves the attached Plan of Operation for the Kayenta Township Pilot Project (Exhibit "F"), governing the Kayenta Township Pilot Project during the five-year experimental period (Fiscal Years 1986-1990), specifically providing the Kayenta Planning Board jurisdiction over the proposed withdrawn area map (Exhibit "I"), according to the Plan of Operation (Exhibit "F"), contingent upon its consistency and compliance with existing policies and regulatory status of the Navajo Nation and the Federal Government.

4. The Navajo Tribal Council hereby supports the Memorandum of Understanding (Exhibit "J"), between the Kayenta Planning Board and Division of Economic Development and further directs the Kayenta Planning Board and the Division of Economic Development to coordinate their efforts, as authorized by the Project Plan of Operation and embodied in the concept paper (Exhibit "C"), with all other appropriate Tribal Divisions and departments.

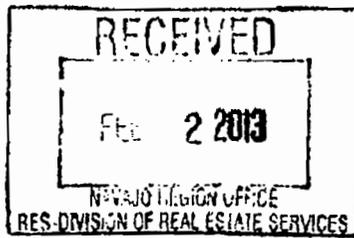
5. The Navajo Tribal Council further provides for the consideration to fund the Kayenta Township Pilot Project during the five-year experimental period, as requested by the Kayenta Planning Board, consistent with project performance.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 61 in favor and 0 opposed, this 5th day of November, 1985.



Vice Chairman
Navajo Tribal Council



SW-SOUTHWEST REG...
RECORDED
NNTC-12-0062

Lease No. _____
Lease Fee: \$15000 JAN -4 AM 10: 58

**PART I
KAYENTA TOWNSHIP
ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)**

LAND TITLES & RECORDS
FOR INDIAN AFFAIRS
ALBUQUERQUE, N.MEX.

Standard Business Site Lease

THIS LEASE, in sextuplicate, is made and entered into this 09th day of August, 2012, by and between the KAYENTA TOWNSHIP on behalf of THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 1490, Kayenta, Arizona 86033, and Jo Donna Hall-Ward dba Ward, Inc., hereinafter called the "Lessee," whose address is P.O. Box 1550, Kayenta, Arizona 86033, hereinafter collectively called the "Parties," in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Leasing Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and Kayenta Township Business Site Leasing Regulations, and any amendments thereto, hereinafter called the "Tribal Regulations," relative to business leases on restricted lands, which by this reference is made a part hereto.

A. LAND DESCRIPTION.

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor, hereby leases to the Lessee the following described premises, hereinafter referred to as the "Leased Premises":

A tract of land located in the Southwest Quarter (SW1/4) of Section 12 and in the Northwest Quarter (NW1/4) of Section 13, both located in Township 38 North, Range 19 East, Gila and Salt River Meridian, Navajo County, Arizona situate in the Kayenta area and being more particularly described as follows:

Commencing at the Point of Beginning a point on the northerly Right of Way line of U.S. Hiway #163 which bears South 88°28'01" West, a distance of 940.29 feet from the North Quarter (1/4) of said Section 13;

thence South 79°08'34" West, a distance of 204.84 feet;

thence North 27°05'36" West, a distance of 106.81 feet;

thence North 78°46'03" East to said westerly Right of Way line of U.S. Hiway #163 a distance of 204.44 feet;

thence South 27°05'55" East along said westerly Right of Way line of U.S. Hiway #163 a distance of 180.21 feet to the Point of Beginning

Containing 0.486 Acres, more or less and being subject to any restrictions, reservations and easements of record.

The above described tract of land contains 0.486 acres more or less for the premises to be occupied by a laundromat referred to as Jo D Laundromat.

Said property is shown on the attached survey plat marked as Exhibit "A" which by reference is made a part hereof.

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- All of the above land is located within the Kayenta Township of the Navajo Nation, County of Navajo, State of Arizona, subject to any prior, valid, existing rights-of-way and easements. There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

B. PURPOSE, UNLAWFUL USES.

- Lessee shall develop, use and operate the Leased Premises for the following purpose only: laundromat.
- The Leased Premises shall not be used by Lessee, Sublessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.
- Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

C. TERM.

- The term of this Lease shall be twenty five (25) years, beginning on the date this Lease is executed by the Navajo Nation President or designee.
- Lessee may exercise options to renew as follows: the first option to renew for an additional term of twenty five (25) years, and a second option to renew for an additional term of twenty five (25) years. Both options may be granted, provided the Lessee is not in default of the Lease. Lessee shall give written notice of its intent to renew this Lease to Lessor or successor at least one (1) year prior to the expiration date of this Lease. Renewal of this Lease is subject to the written approval of Lessor and to applicable provisions of Navajo Nation and Kayenta Township laws and the Tribal Regulations, including all amendments and successors thereto.

D. RENTAL.

- The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money to Lessor, for the use and benefit of Lessor, the following rental.

| <u>Years</u> | <u>Rental Fee</u> | <u>Adjustment</u> | <u>Annual Rental</u> | <u>Monthly Rental</u> |
|--------------|-------------------|-------------------|----------------------|-----------------------|
| 1 - 3 | \$ 0.00 | \$.00 | \$ 0.00 | \$ 0.00 |
| 4 - 5 | 6,804.00 | 0.00 | 6,804.00 | 567.00 |
| 6 - 10 | 6,804.00 | 340.20 | 7,144.20 | 595.35 |
| 11 - 15 | 7,144.20 | 357.21 | 7,501.41 | 625.12 |
| 16 - 20 | 7,501.41 | 375.07 | 7,876.48 | 656.37 |
| 21 - 25 | 7,876.48 | 393.82 | 8,270.30 | 689.19 |

- Lessee must make monthly rental payments in advance. Any monthly payments based on the percentage rental rate of gross receipts shall be paid no later than the tenth (10th) day after the end of the month for which rental is due. All rentals shall be deposited with Lessor. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any rental or percentage rental, if applicable. If there is any overpayment, the overpayment shall be credited toward future rents.
- Rental shall be paid on the 1st day of each month. If rental is unpaid ten (10) days after the due date, the Lessee shall be subject to a late charge. Should the Lessee fail to pay rent within thirty (30) days after the due date, the Lessee shall be subject to a late charge of 10% of the monthly amount due. If the Lessee does not pay the full amount within sixty (60) days, the Lessee shall be subject to an additional late charge of 10% of the monthly amount due. If the Lessee does not

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pay the full amount within ninety (90) days, the Lessee shall be subject to an additional late charge of 10% of the amount due, and the Lease shall be subject to termination. All late charges shall be prorated for each day the rent is not paid and until paid in full.

4. Since this business will be a new business and involve substantial investment, Lessee will be provided a development period of three years from the Effective Date of this Lease to construct and begin operations of such business, during which three year period, Lessee will not have to pay rent to Lessor. Rent shall be adjusted by five percent (5%) every five years on the anniversary date of the lease.
5. In the event of an assignment, amendment or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the Leased Premises, the rent and other terms of this Lease shall be subject to renegotiation. In addition, if the Lessee exercises any option to renew, Lessor reserves the right to renegotiate the rent, to account for any change in economic conditions, and other terms of the Lease.
6. The Lessor reserves the right to inspect the books and records of Lessee and any Sublessee or Assignee to verify the accuracy of the rentals paid.

E. IMPROVEMENTS.

1. Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct a laundromat at a cost of and having a reasonable value of Five Hundred Thousand Dollars (\$500,000) or more.
2. Except as otherwise provided in this Lease, all buildings and improvements, excluding removable personal property and trade fixtures, on the Leased Premises shall remain on said premises after termination of this Lease and shall thereupon become the property of Lessor. However, Lessor may require Lessee, at Lessee's expense, to remove the improvements and restore the Leased Premises to the original state, within reason, upon termination of this Lease. Any removal of property from the Leased Premises by Lessee must be completed within ninety (90) days after termination of this Lease; such presence on the premises shall not be deemed a holdover or trespass, provided Lessee is acting in a diligent manner to remove any such property. The Lessor in its sole discretion may grant an additional extension to reenter the Leased Premises to remove any remaining improvements, if reasonable.
3. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor and may be disposed of in any manner by Lessor.

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F. COMPLETION OF DEVELOPMENT.

1. The Lessee shall complete the full improvement and development of the Leased Premises in accordance with the general plan and architect's design. The date for substantial completion of development shall be twelve (12) months from the date the Lease is executed by the Navajo Nation President. If the Lessee fails to substantially complete development within such period, such failure shall constitute a default and may be cause for termination, subject to Section F(4), unless otherwise agreed.

2. Prior to the commencement of construction of any new improvements on the Leased Premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on the behalf of Lessor.
3. Upon completion of construction, the Lessee is required to submit any layout or general plans of the building or facility to Lessor.
4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lockout occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of building visible to the public or from adjacent properties shall present a pleasant appearance as determined by the Lessor, and all service areas shall be screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the Leased Premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.
2. Lessee shall have the right during the term of this Lease to make alterations, additions or repairs to improvements on the Leased Premises unless the amount of the full completion of the alteration, addition or repair, will exceed One Hundred Thousand Dollars (\$100,000). Alterations, additions or repairs in excess of this amount or any removal or demolition of an improvement can be made only with the written approval of Lessor.
3. Lessee shall indemnify and hold harmless Lessor, Navajo Nation and the United States against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

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H. RENTAL AND PERFORMANCE SECURITY.

1. Lessee agrees to post a certificate of deposit (CD), letter of credit or security deposit in the amount of Seven Thousand Dollars (\$7,000), which shall remain in force for the full term of this Lease. From time to time, the amount of the security may be increased or decreased by Lessor, which shall be placed in writing and become an attachment to this Lease. The purpose of such security is to guarantee performance on the Lease.
2. A copy of the security posted shall be submitted to Lessor, within thirty (30) days of execution of the Lease.

I. CONSTRUCTION BOND.

1. At the option of Lessor, prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause its construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work

performed in or materials furnished for construction of the improvements. The construction contractor or the Lessee may provide security by either:

- a. Posting a corporate surety bond in an amount equal to the cost of each improvement. Said bond to be deposited with Lessor, shall remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or its construction contractor and shall give all claimants a right of action to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee, or his construction contractor, agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds, if any, shall be paid to Lessee.
- b. Providing Lessor with a non-revocable letter of credit or CD at an institution acceptable to Lessor, in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the Leased Premises. Interest on said security, if any, shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or its construction contractor, whichever is applicable.

J. INSURANCE.

1. Lessee shall obtain Commercial General Liability Insurance within thirty (30) days from the date of execution of the Lease, provided however it is explicitly understood and agreed the Lessee must submit a copy of the certificate of insurance before commencing operations on the Leased Premises. The Commercial General Liability Insurance shall be with an unimpaired minimum combined single limit not less than in the amount of Five Hundred Thousand Dollars (\$500,000) with each occurrence a General Aggregate Limit of One Million Dollars (\$1,000,000).

K. SUBLEASES.

No subleases are permitted.

L. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon any Party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon the Navajo Nation:

President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

To or upon Lessor:

Kayenta Township
P. O. Box 1490
Kayenta, Navajo Nation (Arizona) 86033
Telefax: 1-928-697-8461

To or upon Lessee:

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Ward, Inc.
P.O. Box 1550
Kayenta, Arizona 86033
Telefax: (928) 697-3696

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.
3. Any Party may at any time change its address for purposes of this Section by written notice.

M. APPLICABLE TERMS AND CONDITIONS.

The Standard Terms and Conditions for Economic Development Leases (Navajo Nation Trust Land) in Part II of this Lease apply to this Lease and are incorporated herein in their entirety.

The Standard Terms and Conditions for All Business Site Leases in Section 1 of Part II apply to all Leases. The Special Terms and Conditions for Business Site Leases with Storage Tanks in Section 2 of Part II apply where appropriate. If underground or aboveground storage tanks are present on the premises when the Lessee signs the lease, or are installed after the Lessee signs the lease, these Special Terms and Conditions will apply to the Lease as a matter of law.

- N. EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

IN WITNESS WHEREOF, the Parties have set their hands.

LESSEE

Donna Hall Ward 8.14.12
(Lessee) Date

KAYENTA TOWNSHIP (Lessor)

By: [Signature]
Authorized Representative

Date: 8.16.12

APPROVED BY:
THE NAVAJO NATION

By: [Signature]
President or Designee Date

Date: 10/05/2012

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LAND TITLES & REVENUE
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE, N.M.

BA - SOUTHWEST REGION
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PART II
STANDARD TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP
ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)

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STANDARD TERMS AND CONDITIONS FOR ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)
**1.0 STANDARD TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP
BUSINESS SITE LEASES**

1.1 DEFINITIONS.

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Navajo Nation, Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- C. "Encumbrance" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- D. "Federal Laws" means all applicable federal laws, including:
- (1) Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and
 - (2) Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, *et seq.*
- E. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.
- F. "Lessor" means the Kayenta Township on behalf of the Navajo Nation who conveys property under a lease agreement.

G. "Navajo Nation" means the Navajo Nation government.

H. "Tribal Regulations" mean the Navajo Nation Business Leasing Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and Kayenta Township Business Site Leasing Regulations, and any amendments thereto, relative to business leases on restricted lands within the exterior boundaries of the Kayenta Township which by this reference is made a part hereto.

1.2 CONDITION OF LEASED PREMISES.

A. Lessee has examined and knows the leased premises and improvements thereon and accepts the same as-is, where is. No representations as to the condition of the leased premises have been made by Lessor, the Navajo Nation or United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of the Lessor, the Navajo Nation or United States, but solely upon Lessee's independent investigation.

B. The independent investigation, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of any storage tanks and/or other regulated substances.

1.3 ACCOUNTING.

A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.

B. The Navajo Nation Office of Auditor General and Lessor or any of their duly authorized representatives, shall, at any time up until the expiration or five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

1.4 UTILITY SERVICE LINE AGREEMENTS.

A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall

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obtain approval from any third parties, the Navajo Nation, Lessor and the Secretary as may be necessary or appropriate and as required by 25 C.F.R. §169 for such rights-of-way.

B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by the Navajo Nation or Lessor on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
- (2) such agreements authorize utility service lines only within the leased premises; and
- (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the utility companies with Lessor within thirty (30) days of their execution; and
- (5) such agreements are in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

C. The Lessor reserves the right for their benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, the Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to the Lessor.

1.5 SUBLEASE, ASSIGNMENT, MODIFICATION, TRANSFER.

A. Lessee shall not sublease, assign, modify, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of Lessor as well as the sureties. Unless otherwise provided for in Part I, no such sublease, assignment, sale, modification or transfer shall be valid or binding without such approval and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, modification, or transfer, except as set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, approval of one sublease, assignment, sale, modification or transfer shall not validate a

subsequent sublease, assignment, sale, modification or transfer, and the restrictions of this Section shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

B. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

C. Approval or disapproval of any sublease, assignment, modification or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, modification, or transfer.

1.8 ENCUMBRANCE.

A. This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered for the purposes of securing a line of credit to develop and improve the leased premises.

B. Any encumbrance will:

- (1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee, as the case may be; and
- (2) not jeopardize in any way the Lessor's interest in the land; and
- (3) be subject to the written approval of the Lessor as well as the sureties, if any. The Lessor shall not unreasonably withhold its approval to an encumbrance.

C. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

D. Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or Sublease, whichever is applicable. The Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the

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Lessee fails to act, the Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.

- (1) To pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment; and
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the subleasehold described in said sublease subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance.

F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised, and the Lessee or Lessor, shall, on the same date, acquire the subleasehold interest; provided, however, the acquisition of the subleasehold by Lessee or Lessor under these circumstances shall not serve to extinguish the sublease by merger with the Lease or otherwise. As between the Lessor and Lessee, Lessee shall have the first right to exercise the right to pay the amounts due as described above and to obtain the subleasehold interest. The Sublease shall require that the Sublessee will have the duty to execute any documents and take any action needed to effectuate the termination and transfer of Sublessee's subleasehold interest.

G. In the event the Lessee or Lessor does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

H. In the event of default by the Lessee, the encumbrancer may exercise any rights provided for in such approved encumbrance, provided that before

any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default of any of them upon which notice of sale is based shall then continue, the Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.

- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

I. Each encumbrancer must provide, if the Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall terminate and the Lessor shall acquire the Lease; provided, however, that such termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by the Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.

J. In the event the Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and

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conditions of this Lease and will assume in writing all the obligations thereunder.

1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee.

Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee, the Lessor may become liable.

Upon request, Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor, the Navajo Nation, the United States and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.

In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for construction and/or operation and maintenance of any improvements or as necessary for said leased premises.

1.8 LESSOR'S AGENT PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from Lessor fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date payment by Lessor until repayment is made by Lessee. Failure to make such repayment on demand shall constitute a breach of this Lease.

1.9 SANITATION.

A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose(s) of this document as set forth in Part I. Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and outside of all buildings operated on the leased premises. Non-compliance with this Section shall constitute a breach of this Lease.

B. Lessee further agrees to comply with applicable State, Navajo Nation and local laws, statutes, ordinances, regulations, court and administrative orders and decrees pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, non-hazardous trash and any regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, non-hazardous trash and any regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfill, and Lessee or Sublessee, as applicable, shall maintain records to demonstrate compliance with this requirement.

C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation, Lessor and federal government.

1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined in by Part II, Section 2.1(A)) to be used, stored, generated or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days, such consent shall be deemed given.

If regulated substances are used, stored, generated or disposed of, on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any regulated substance on the leased premises that results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessees will first obtain the Navajo Nation's approval for any such remedial action.

1.11 LIABILITY INSURANCE.

Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to

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Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. These coverages are as follows:

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the leasehold, and Employers' Liability insurance with a minimum amount as is required and regulated by the State in which the leased premises are located. In case of any contracted work on the leasehold, the Lessee will require the contractor, and all subcontractors, to provide the same as above.
- B. Commercial General Liability Insurance to cover:
 - (1) The minimum single amount, including a General Aggregate Limit, sufficient for each occurrence, as provided for in Part I of this Lease.
 - (2) This policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, completed operations coverage. The policy shall contain a severability of interests provision.
 - (3) If the leased premises are undeveloped, the Lessee must obtain the appropriate insurance.
- C. Commercial automobile liability insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business, which shall be based upon the minimum amount required and regulated under the State in which the leased premises are located.
- D. If the Lessee is engaged in a profession, the Lessee shall carry professional liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the leased premises.
- F. The policies required by Sections B and C shall be endorsed to include Lessor, the Navajo Nation and United States, and their agents, representatives, officers, directors, officials and employees, as additional insureds, and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by Lessor or the Navajo Nation or their agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

G. An acceptable certificate of insurance shall be issued to Lessor by the Lessee, on the date the Lease is approved or unless granted a postponement, by Lessor or successors, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless at least thirty (30) days prior written notice is given to the Lessor.

Certificates of insurance shall be sent to:

Kayenta Township
P.O. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

- H. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which Lessor may immediately terminate this Lease.
- I. Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- J. Lessee and its insurers providing the required coverages shall waive all rights of recovery against Lessor, the Navajo Nation and United States, and their agents, officials and employees.
- K. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.
- L. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.
- M. The Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

1.12 FIRE AND CASUALTY INSURANCE.

- A. Lessee shall carry from the date the Lease is approved, adequate and sufficient insurance coverages, unless granted a postponement, for either: (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall carry fire and casualty insurance with extended coverage endorsement, covering not less than full replacement value of all improvements on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of "A" or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor, the Navajo Nation and United States and shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including nonpayment of premiums.

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A copy of said policy shall be sent to:

Kayenta Township
P. O. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

- B. In the event of damage to any improvement on the leased premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. The insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money remaining in escrow after reconstruction has been completed shall be paid to Lessee.
- C. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal, unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct the improvements, all insurance proceeds shall be paid to Lessor.
- D. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this Section, and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by

the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good as or better than before the damage occurred.

1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

Except for Lessor's gross negligence, Lessee shall indemnify, protect, defend and hold harmless the Lessor, the Navajo Nation and United States from and against any and all claims, loss of rents, damages, costs, liens, judgments, penalties, permits, attorney's or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premises by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against the Lessor, the Navajo Nation or United States by reason of any of the foregoing matters, Lessee, upon any notice from any the Lessor, the Navajo Nation or United States, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, the Navajo Nation or United States, and Lessor, the Navajo Nation or United States shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor, the Navajo Nation and/or United States as long as such defense, settlement or compromise does not unduly prejudice the Lessor, the Navajo Nation and/or United States.

1.14 EMINENT DOMAIN.

If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and Lessor as their interests appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an encumbrancer to receive such awards as set out in an approved encumbrance. If the condemnation is for less than the entire leased premises and/or improvements, the lease shall continue as for the remainder of the term of the lease, however the rental shall be reduced proportionately. If a temporary condemnation of all or a portion of the leased premises and/or improvements, Lessee will be entitled to the entire amount of an award, whether paid by way of damages,

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rent or otherwise; however, if such condemnation extends beyond the term of the lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the term remaining following the condemnation and the duration of the condemnation following the end of the term of the lease.

1.15 DEFAULT.

- A. Time is declared to be of the essence of this Lease.
- B. Lessor may determine that Lessee is in default for the following:
- (1) Lessee fails to pay rents, monies or any other amounts such as posting a security deposit or acquiring insurance when due and such failure continues for ten (10) days after notice of default is sent to Lessee.
 - (2) Lessee fails to perform any of its material non-monetary obligations or duties under the Lease when required, and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure such failure, and provided further, that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.
 - (3) Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor.
- C. Lessee shall, within ten (10) days, from the mailing of the notice of default either:
- (1) Notify in writing Lessor that the default has been cured and submit documentation necessary to indicate the default has indeed been cured; or
 - (2) Submit in writing to Lessor a statement and explanation disputing Lessor's determination that the Lessee is in default and why the Lease should not be terminated; or
 - (3) Request in writing to be given an additional ten (10) days to cure unless found not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of Lessor.
- D. No waiver of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other provision or covenant of this Lease.

E. If any approved encumbrancer shall give Lessor before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

1.16 REMEDIES.

- A. Lessor may take any of the following actions in accordance with the Tribal Regulations:
- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
 - (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
 - (3) Terminate this Lease, as a matter of law; or
 - (4) Grant an extension of time to cure the default; or
 - (5) Pursue the execution on security deposit or collection of insurance proceeds; or
 - (6) Pursue any other remedy set forth in the business site leasing management plan(s); or

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(7) Take any other action deemed necessary to protect any interest of Lessor or the Navajo Nation.

B. If Lessor terminates the Lease, Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days after receipt of the termination letter, unless an appeal has been filed.

C. The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between Lessor and Lessee.

E. The exercise of any of the remedies outlined in this Section shall not exclude recourse as to any other remedies, by suit or otherwise, which may be exercised by Lessor or any other rights or remedies now held or which may be held by Lessor in the future.

1.17 MUTUAL TERMINATION.

The Lessee may terminate this Lease, without penalty, subject to approval from Lessor only during the development period, if any, or with or without penalty after the Development Period in the discretion of Lessor, as set forth in Part I of this Lease and conditioned upon compliance with the Navajo Business and Procurement Code, 12 §§ N.N.C. 1501 et seq. Lessee must notify Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of such development period.

1.18 ATTORNEY'S FEES.

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease.

1.19 NO PARTNERSHIP.

No term of this agreement shall be so construed as to provide that a partnership exists between Lessor and Lessee; the only relationship between the parties being that of Lessor and Lessee.

1.20 TERMINATION OF FEDERAL TRUST.

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibility with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee and their approved encumbrancers, surety or sureties, if any, shall be notified of any such change in the status of the land.

1.21 OBLIGATIONS OF LESSEE.

While the leased premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of their approved encumbrancers and sureties, are to the Navajo Nation and United States as well as to the Lessor.

1.22 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall automatically terminate any approved subleases.

1.23 INSPECTION.

A. Lessor and its authorized representatives, shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this Section shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

B. Lessor and its authorized representatives, shall have the right, during normal business hours, during the term of this Lease or if the Lease is terminated or expired, at any time, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Kayenta Township Annual Lease Compliance Form, and Lessor and its authorized representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.

1.24 HOLDING OVER.

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of the Lessor's other remedies.

1.25 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health and safety, or general welfare, which is currently enacted or which may be enacted at a later date.

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1.26 DELIVERY OF LEASED PREMISES.

- A. At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises, in good condition, usual wear and tear excepted.
- B. Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 380 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to Lessor sixty (60) days prior to the expiration or termination of the Lease or the delivery of the leased premises, whichever occurs first. In turn, Lessor shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

1.27 NAVAJO PREFERENCE.

In connection with all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for termination of the Lease or any other remedy prescribed by the NPEA and NBOA, provided such compliance does not violate applicable federal laws.

1.28 MINERALS.

All minerals, including sand and gravel, contained in or on the leased premises are reserved for the use of Navajo Nation, unless placed on the leased premises by the Lessee. The Navajo Nation reserves the right to enter upon the leased premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

1.29 SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

1.30 INTEREST OF MEMBER OF CONGRESS.

No member of, or delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company.

1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from

Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.

1.32 AGREEMENT TO ABIDE BY LOCAL, NAVAJO AND FEDERAL LAWS.

Lessee and its employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Kayenta Township and Navajo Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may be hereafter in force and effect.

1.33 GOVERNING LAW AND CHOICE OF FORUM.

Subject to Section 1.38 and except as may be prohibited by federal applicable law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the Lessor in connection with or arising out of the terms and conditions of this Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Lessor in any court or administrative body of any state.

1.34 CONSENT TO JURISDICTION.

Subject to Section 1.38, Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

1.35 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to similar challenges to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the leased premises or to the Lessor.

1.36 NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation, Kayenta Township or Kayenta Township Commission.

1.37 SAVINGS CLAUSE.

It is agreed that if any provision of this Lease shall be determined to be void then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two interpretations, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.

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1.38 QUALIFICATIONS OF BUSINESS.

In the event Lessee hereunder is a business entity, the person(s) executing this Lease on behalf of Lessee hereby covenants and warrants that Lessee is a duly qualified business entity and all steps have been taken prior to the date hereof to qualify the Lessee to do business in the Navajo Nation; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees, and other documents necessary to comply with applicable laws will be filed when due.

1.39 COMPLIANCE WITH THE BUSINESS SITE LEASING REGULATIONS.

Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Kayenta Township Business Site Leasing Regulations, which prescribe rules for the regulation of businesses within the Kayenta Township, and the Kayenta Township Business Site Leasing Management Plan, and Kayenta Township Business Site Leasing Administrative Plan, applicable provisions of the Navajo Nation Business Leasing Regulations of 2005 and Economic Development Committee Uniform Business Lease Regulations of 2008, which prescribe rules for the regulation of businesses on the Navajo Nation, as required by and consistent with 25 U.S.C. §415(e).

1.40 RESCISSION OF DELEGATION OF AUTHORITY.

Upon determination by the Economic Development Committee that Kayenta Township has its approval authority rescinded, the Lease shall immediately revert to the authority of the Navajo Nation Division of Economic Development. The Lessees shall be immediately notified by the Economic Development Committee upon its decision.

1.41 NO ORAL AGREEMENTS.

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease.

1.42 VALIDITY.

This Lease, and any modification of or amendment to this Lease, shall not be void or binding upon either party hereto until approved by Lessor and the President of the Navajo Nation, pursuant to Navajo Law.

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2.0 SPECIAL TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES WITH STORAGE TANKS

2.1 DEFINITIONS.

- A. "Regulated Substance" is as defined in Section 9001(7) of the Resources Conservation and Recovery Act ("RCRA"), codified at 42 U.S.C. § 6991(7), which includes any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), codified at 42 U.S.C. § 9601(14), but does not include any substances regulated as a hazardous waste under subtitle C of RCRA, codified at 42 U.S.C. § 8921 et seq., and petroleum.
- B. "Storage Tank" is any tank defined by either of the following:
- (1) An underground storage tank as defined in RCRA, 42 U.S.C. 6991(1), or any storage tank, regardless of whether such tank is located above or below ground, and which is not excluded under 42 U.S.C. 6991(1) and used for the storage of regulated substances, or;
 - (2) Any above ground storage tank as defined in the proposed Navajo Nation Above Ground Storage Tank Act or any underground storage tank as defined in the Navajo Nation Underground Storage Tank Act, upon passage of each respective proposed Act.

2.2 REGULATED SUBSTANCES.

- A. Lessee shall not cause or permit any regulated substance (as defined by RCRA, 42 U.S.C. § 6901 et seq., CERCLA, 42 U.S.C. § 9601 et seq. or any other federal law) to be used, stored, generated or disposed of on or in the leased premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If such agency does not respond to a request for consent within thirty (30) days, consent shall be deemed granted.

If regulated substances are used, stored, generated or disposed of on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by Lessor, the Navajo Nation or federal government. Without limitation of the foregoing, if Lessee causes

or permits the presence of any hazardous or regulated substance on the leased premises that results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessee shall first obtain the Navajo Nation's approval for any such remedial action.

- B. Lessee shall provide the Navajo Nation Environmental Protection Agency and Lessor with a clear and legible copy of all notices or reports concerning storage tank installation, testing, leakage, or remediation at the premises subject to this Lease which Lessee is required by applicable law or regulation to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Nation Environmental Protection Agency shall be by first class mail to:

UST-AST Program
Navajo Nation Environmental Protection Agency
Post Office Box 339
Window Rock, Navajo Nation (Arizona) 86515

and

Kayenta Township
P. o. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

or their respective institutional successors.

2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased premises, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H, regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to Lessor. This bond, insurance or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as Lessor certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the financial responsibility requirements of 40 C.F.R. Part 280, Subpart H. It shall be the responsibility of the Lessee and the Sublessee to provide Lessor with all proof required for release of bond or termination of insurance coverage.

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2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

- A. Entry Audit: If there are storage tanks located on the leased premises, the Lessee will supply the Navajo Nation Environmental Protection Agency and Lessor with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.

The Lessee shall notify the Navajo Nation Environmental Protection Agency and Lessor, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the leased premises has performed a Phase Two environmental audit on the leased premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively and legally bound by the findings of such Phase Two environmental audit.

- B. Environmental Audit(s): Lessee shall pay to Lessor the amount of \$15,000, which will be held by Lessor during the term of the Lease. Lessee shall pay Lessor \$5,000 per year at the end of first, second and third years of Lessee's Lease, until the full \$15,000 has been paid.

The \$15,000 is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease which Lessor determines, based on probable cause, to be reasonably necessary to ascertain whether environmental contamination by regulated substances has occurred. The Navajo Nation Environmental Protection Agency and Lessor shall determine whether an audit shall be necessary.

If the Navajo Nation Environmental Protection Agency and Lessor determine an environmental audit should be performed at the leased premises prior to the Lessee's deposit of the entire \$15,000 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines regulated substances are unlawfully present, Lessee shall, upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this Section during the term of the Lease which finds regulated substances unlawfully present and which is financed by all or part of the above referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with Lessor sufficient to

reestablish the amount deposited prior to the audit and to reimburse Lessor for any amount Lessor spent on the environmental audit in excess of the \$15,000 deposit.

The deposit shall be kept in an account by Lessor on behalf of the Lessee to meet the expenses of the obligations stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the leased premises, Lessor shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate or remove regulated substances which were released on the leased premises.

Nothing stated herein shall be construed to limit Lessee's liability for costs associated with investigation, or remediation, of regulated substances located on the leased premises including Lessee's liability for litigation costs and attorneys fees.

2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS.

- A. The ownership and removal responsibility for any regulated substances or petroleum products manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, Navajo Nation and local law including requirements for corrosion protection, spill and overflow protection and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide Lessor with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.

- B. Unless otherwise notified by Lessor, the regulated substances and storage tanks placed on the leased premises are the property of Lessee and do not become the property of the Navajo Nation and Lessor for RCRA liability purposes, unless or upon the expiration of the Lease. Lessee is the owner for RCRA, 42 U.S.C. 6991(3), purposes of any storage tanks placed on the leased premises. Petroleum manufacturing, processing, storage, storage tanks, or conveyance facilities shall be removed by Lessee unless notified by Lessor in writing not to remove all of part of such property.

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ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION
OFFICE OF ENVIRONMENTAL REVIEW
PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/729-4323
Website: www.navajonationepa.org

M E M O R A N D U M

TO: Howard Draper, Program & Project Specialist
Project Review Office
Navajo Land Department
Division of Natural Resources

FROM: 
Rita Whitehorse-Larsen, Senior Environmental Specialist
Office Of Environmental Review

DATE: June 30, 2014

SUBJECT: 164 EOR 001899 NTUA Powerline Extension Jo D Laundromat

The Navajo Tribal Utility Authority (NTUA), PO Box 170, Fort Defiance, Arizona, 86504, submitted a commercial as built right-of-way (ROW) application to construct, operate and maintain a powerline and fiber optic system project on, over and across Navajo Nation Trust Lands within the Kayenta Township Project, Navajo County, Arizona. The proposed as-built ROW system is 153.49 feet long, 30 feet wide consisting of 0.11 acre, more or less, located in the N/2 of Section 13, T38N, R19E, G&SRM, Navajo County, Arizona.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed¹ and recommends *approval* for the proposed action.

1. Navajo Nation Clean Water Act:

- a. Section 401- A Section 401 certification is required if any drainage with discernable ordinary high water mark will be crossed/disturbed as determined by Patrick

¹ Bitsui Environmental Consultant. Environmental Assessment of ±3,606.43 Acres of Navajo Nation Trust Land for Use and Development by Kayenta Township Commission in Kayenta, Navajo County, Arizona. April 1999.
164 EOR 001899 NTUA ROW Kayenta Jo D Laundromat powerline

- Antonio, Principal Hydrologist, NNEPA Water Quality Program on previous proposed projects.
- b. Section 402 –Land surface disturbance in excess of 1.0 acre will require compliance with the federal General Construction Permit requirements for storm water discharges. The project will disturb 1.37 acres of surface land.
 - c. Section 404 – Boring under the drainage will require a Section 404 as determined by Patrick Antonio, Principal Hydrologist, NNEPA Water Quality Program. Contact the US Army Corps of Engineers.
2. ***Navajo Nation Safe Drinking Water Act:***
 - a. Ensure there are no existing drinking waterlines and/or domestic waste waterlines located within the premises of the proposed site to avoid significant impacts to the Kayenta (Township and Chapter) and surrounding communities' safe drinking water resources before trenching and/or digging.
 3. ***Navajo Nation Air Pollution Prevention and Control Act:***
 - a. Apply water to control dust to lessen air impacts to community members and public located in or near the proposed action.
 4. ***Navajo Nation Pesticide Act:***
 - a. NTUA is required to monitor and prevent invasive and noxious weeds either by manual or chemical control.
 - b. Before applying any chemicals, contact the NNEPA Pesticide Program at 928/871-7815/7810/7892 to ensure the product is in compliance and appropriately applied by a certified and licensed applicator.
 - c. Pesticide staff will also may need to be onsite to monitor during pesticide/herbicide application.
 5. ***Navajo Nation Solid Waste Act:***
 - a. Solid waste generated from the construction and operation activities will be collected and transported by contractor to a designated trash bins to minimize significant impacts to human and wildlife resources.
 - b. If a sub-contractor will be hired to transport waste, ensure the contractors are certified and licensed with the Navajo Nation Business Regulatory Office.
 - c. The contractor must submit a copy of the landfill receipt/ticket to guarantee the construction waste has been properly disposed.
 - d. Do not allow public to take construction and operation waste. Cumulatively NNEPA receives complaints and reports on illegal trash dumpings on rural areas and in the waters of the US and Navajo Nation.
 - e. All illegal waste currently on the proposed site is the responsibility of the land user.
 6. ***Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act (NNEPRA):***
 - a. No Hazardous waste will be store, generated or transported to and from the proposed project site.
 7. ***Navajo Nation Storage Tank Act:***
 - a. Amended and approved by the Navajo Nation Council, CJA-09-12, February 2012, the aboveground tanks are included to be regulated.
 - b. No underground or aboveground greater than 100 gallons is expected to be at the proposed site.

8. *Others:*

- a. Avoid unnecessary ground disturbance and removal of vegetation within and adjacent to the ROW corridors.

If there are any questions you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: Paula Holyan, Manager, Electric System Planning Section, Navajo Tribal Utility Authority,
Box 170, Fort Defiance, Arizona 86504
NNEPA Water Quality; PWSSP; Air Quality, OPP; Pesticides; Radon; RCRP;
Storage Tank Program; Superfund; Administration chrono file
Contact Person: Carol Tom, NTUA, 928/729-6124
Quad Names: Kayenta, Arizona

THE
NAVAJO
NATION

NAVAJO LAND DEPARTMENT

• P.O. BOX 2249 • WINDOW ROCK, ARIZONA • (928) 871 - 6401 • Fax (928) 871 - 7039 •

Joe Shirley, Jr.
President

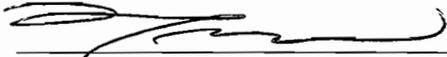
Ben Shelley
Vice -President

July 8, 2014



MEMORANDUM:

TO: Akhtar Zaman, Program Manager
Navajo Minerals Department

FROM: 
Howard Phillip Draper, Projects/Programs Specialist
Navajo Land Department, Project Review Section

SUBJECT: Doc No. 001899: [formerly NTUA Project No. 161330030 ...] Spectrum/Frontier
d.b.a. NTUA for NTUA "As Built" Commercial Right-of-Way request for Jo D
Laundromat in Kayenta, Arizona.

Our office originally processed Doc. No. 1899 as an NTUA right-of-way that the applicant (NTUA) requested processing under the Delegation of Authority approved pursuant to RC Resolution No. RCD-104-10. However, Mr. Mike Halona, Department Manager II, with Navajo Land Department wrote a letter dated 1/14/2014 to Mr. Wally Chief, Manager, with NTUA stating that this right-of-way should be processed as an "As Built" Commercial Right-of-Way (see attachment).

Our office is hereby forwarding Doc. No. 1899 for Navajo Minerals Department review for 164 review. There is a terms and condition attached but I believe it refers to the Delegation of Authority per RC Resolution No. RCD-104-10 and not applicable to commercial rights-of-way. Please attached the appropriate terms and conditions with appropriate payment assessment recommendation. Please correspond back to our office with your recommendations. Thank you.

ATTACHMENTS

XC:

NLD/PRO project file

THE NAVAJO NATION



W. Mike Halona
1-16-14

BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

January 14, 2014

Mr. Wally Chief, Manager
Engineering & Technical Services Division
Navajo Tribal Utility Authority
PO Box 170
Ft. Defiance, AZ

Dear Mr. Chief:

The Navajo Land Department (NLD) is in receipt of your "Commitment Letter" dated January 08, 2014 as discussed in the meeting our office had with Navajo Tribal Utility Authority (NTUA) on January 07, 2014. It was determined that the Commercial Service Line request for Jo D Laundromat in Kayenta, AZ was actually on Distribution Lines that have "No" formal approved Rights-of-Way. In order for NLD to provide a conditional approval for the urgent Commercial Service Line Agreement for Jo D Laundromat in Kayenta, AZ, NTUA must agree to bring the established Distribution Lines into compliance by submitting all required documents for an "As Built" Commercial Right-of-Way and Service Line Agreement to the Navajo Land Department no later than April 30, 2014.

The NLD hereby gives NTUA conditional approval to proceed with providing urgent utility services to Jo D Laundromat in Kayenta, AZ utilizing existing utility service lines with the understanding that the NTUA "As Built" Commercial Right-of-Way and Service Line Agreement is forthcoming.

We understand the urgency for the electrical services for economic development and therefore in full support, NTUA may provide services immediately. If you have any question contact our office at (928) 871-6401

Sincerely,

NAVAJO NATION

A handwritten signature in black ink, appearing to read "W. Mike Halona", written over a horizontal line.

W. Mike Halona, Department Manager III
NAVAJO LAND DEPARTMENT

xc: Fred White, Executive Director, DNR
Howard Draper, Senior Program Project Specialist, NLD
Caroline Tom, Right-of-Way Agent, NTUA
Katy Grounds, Attorney, DOJ
Chrono/File



NAVAJO LAND DEPARTMENT

Post Office Box 2249 / Window Rock, AZ / 86515 / Telephone: (928) 871-6401 / Fax: (928) 871-7039

EXECUTIVE OFFICIAL REVIEW

#161330030

Title of Document: Powerline ext.&JoD Laundromat.NTUA

Contact Name: DRAPER, HOWARD *or* Carroll Tom NTUA
729-612

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net

Phone Number: 928 871-6447

Business Site Lease Sufficient Insufficient

1. Division: _____ Date: _____

2. Office of the Controller: _____ Date: _____
(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)

3. Office of the Attorney General: _____ Date: _____

Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions

1. Division: _____ Date: _____

2. Office of the Attorney General: _____ Date: _____

Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications

1. Office of Management and Budget: _____ Date: _____

2. Office of the Controller: _____ Date: _____

3. Office of the Attorney General: _____ Date: _____

Navajo Housing Authority Request for Release of Funds

1. NNEPA: _____ Date: _____

2. Office of the Attorney General: _____ Date: _____

Lease Purchase Agreements

1. Office of the Controller: _____ Date: _____
(recommendation only)

2. Office of the Attorney General: _____ Date: _____

Grant Applications

1. Office of Management and Budget: _____ Date: _____

2. Office of the Controller: _____ Date: _____

3. Office of the Attorney General: _____ Date: _____

Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval

1. Division: _____ Date: _____

2. Office of the Attorney General: _____ Date: _____

Relinquishment of Navajo Membership

1. Land Department: _____ Date: _____

2. Elections: _____ Date: _____

3. Office of the Attorney General: _____ Date: _____

DIVISION OF
NATURAL RESOURCES
SEP 11 2014



RECEIVED

JUN 05 2014

NAVAJO FISH AND WILDLIFE

Land Withdrawal or Relinquishment for Commercial Purposes

Sufficient Insufficient

- 1. Division: _____ Date: _____
- 2. Office of the Attorney General: _____ Date: _____

Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases

- 1. NLD _____ Date: _____
- 2. F&W _____ Date: _____
- 3. HPD _____ Date: _____
- 4. Minerals _____ Date: _____
- 5. NNEPA _____ Date: _____
- 6. DNR _____ Date: _____
- 7. DOJ _____ Date: _____

Rights of Way

Commercial Row

- 1. NLD _____ Date: ~~02 July 14~~
- 2. F&W _____ Date: *6/10/14*
- 3. HPD _____ Date: *6-20-14*
- 4. ~~Minerals~~ _____ Date: _____
- 5. NNEPA _____ Date: *6/30/2014*
- 6. Office of the Attorney General: _____ Date: _____
- 7. ~~OPVP~~ _____ Date: _____

Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease

- 1. Minerals _____ Date: _____
- 2. OPVP _____ Date: _____
- 3. NLD _____ Date: _____

Assignment of Mineral Lease

- 1. Minerals _____ Date: _____
- 2. DNR _____ Date: _____
- 3. DOJ _____ Date: _____

ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)

- 1. NLD *AI* _____ Date: *02 July 14*
- 2. F&W _____ Date: _____
- 3. HPD _____ Date: _____
- 4. Minerals *subject to consideration payments A2* _____ Date: *7-16-14*
- 5. NNEPA _____ Date: _____
- 6. DNR _____ Date: *9/11/14*
- 7. DOJ *(ic)* _____ Date: *9/30/14*
- 8. OPVP _____ Date: *9/30/14*

OTHER:

- 1. _____ Date: _____
- 2. _____ Date: _____
- 3. _____ Date: _____
- 4. _____ Date: _____
- 5. _____ Date: _____



NAVAJO NATION DEPARTMENT OF JUSTICE



383

DOCUMENT REVIEW REQUEST FORM

RESUBMITTAL (7/2014)

DOJ 9-23-14 10411 DATE / TIME 7 Day Deadline DOC #: 001899 SAS #: UNIT: Nav

*** FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 9/23/2014 DIVISION: Natural Resources CONTACT NAME: Howard or Vera DEPARTMENT: Land PHONE NUMBER: X6447 or 6450 E-MAIL: TITLE OF DOCUMENT: RESUB (3) Approving ROW for NTUA for JoD Laundromat Powerline extension

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 9/23/14 11am REVIEWING ATTORNEY/ADVOCATE: Minnie Chee 10/2/14 DATE/TIME OUT OF UNIT:

DOJ ATTORNEY / ADVOCATE COMMENTS

Doc. resub w/connections. Doc. is now legally sufficient. This is Commercial ROW so RDC will need to approve it. Required doc. are all attached.

REVIEWED BY: (Print) James A. Ass Date/Time 9/24/14 SURNAME BY: (Print) Becker Date/Time 9/30/14 8:45m

DOJ Secretary Called: Vera Shirley for Document Pick Up on 9/30/14 at By: [Signature]

PICKED UP BY: (Print) Vera Shirley DATE / TIME: 9/30/14 9:35am

NNDJ/DRRF-July 2013

COMPLETED

AS-BUILT 3 PHASE POWERLINE EXTENSION WITH FIBER OPTIC CABLE AND JO D LAUNDROMAT KAYENTA, NAVAJO COUNTY, ARIZONA

A PORTION OF THE SOUTHERN HALF OF SECTION 12, AND
NORTHERN HALF OF SECTION 13,
TOWNSHIP 38 NORTH, RANGE 19 EAST OF
THE GILA & SALT RIVER MERIDIAN,
KAYENTA, NAVAJO COUNTY, ARIZONA



SURVEYOR'S CERTIFICATION
I, MELVIN F. BAUTISTA, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP WAS CORRECTLY PREPARED AND DRAWN BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM AWARE OF THE CONTENTS OF THIS MAP AND THAT I AM NOT PROVIDING ANY INFORMATION THAT IS FALSE OR MISLEADING AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETIRED.

M.F. Bautista PLS# 129164 DATE: 4/14/14

APPLICANT'S CERTIFICATION
I, WALTER W. HANSEL, DO HEREBY CERTIFY THAT I AM THE GENERAL MANAGER OF THE NAVAJO TRIBAL UTILITY AUTHORITY, THE NAVAJO NATION, AND THAT I AM THE APPLICANT FOR THIS PROJECT. I AM EMPLOYED BY THE NAVAJO NATION AND I AM AWARE OF THE CONTENTS OF THIS MAP AND THAT I AM NOT PROVIDING ANY INFORMATION THAT IS FALSE OR MISLEADING AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETIRED.

Walter W. HANSEL
GENERAL MANAGER
NAVAJO TRIBAL UTILITY AUTHORITY
4/14/14

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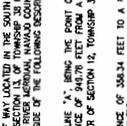
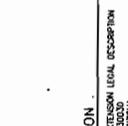
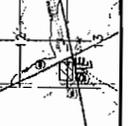
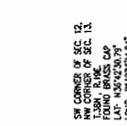
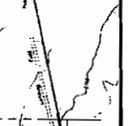
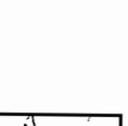
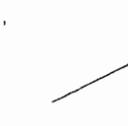
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Walter W. HANSEL
GENERAL MANAGER
NAVAJO TRIBAL UTILITY AUTHORITY
4/14/14



LEGAL DESCRIPTION

RIGHT OF WAY POWER LINE EXTENSION LOCAL DESCRIPTION
NVA PROJECT NUMBER: 161330030
KAYENTA, NAVAJO COUNTY, ARIZONA

A THIRTY (30) FOOT RIGHT OF WAY LOCATED IN THE SOUTH HALF OF SECTION 12, NORTHERN HALF OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 19 EAST OF THE GILA AND SALT RIVER MERIDIAN, NAVAJO COUNTY, ARIZONA, BEING FIFTEEN (15) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

LINE "A": THE SOUTHERN HALF OF LINE "X", BEING THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "B": THE NORTHERN HALF OF LINE "X", BEING THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "C": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "D": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "E": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "F": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "G": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "H": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "I": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "J": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "K": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "L": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "M": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "N": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "O": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "P": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

BASIS OF BEARINGS

BEARINGS ARE GEODESIC DETERMINED BY GPS OBSERVATIONS TAKEN AT THE FOUR CORNERS OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 19 EAST OF THE GILA AND SALT RIVER MERIDIAN, NAVAJO COUNTY, ARIZONA, BEING FIFTEEN (15) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

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LINE "D": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

LINE "E": THE POINT OF BEGINNING WHICH BEARS S89°29'30"W A DISTANCE OF 374.22 FEET;

SUMMARY BY LINE

| LINE | LENGTH | DESCRIPTION | WIDTH | WILEAGE | ACREAGE |
|------|--------------|-------------|---------|--------------------|----------------------|
| A | 1088.54 FEET | POWERLINE | 30 FEET | 0.20 MI. MORE/LESS | 0.74 ACRES MORE/LESS |
| B | 331.55 FEET | POWERLINE | 30 FEET | 0.06 MI. MORE/LESS | 0.23 ACRES MORE/LESS |
| C | 153.49 FEET | POWERLINE | 30 FEET | 0.03 MI. MORE/LESS | 0.11 ACRES MORE/LESS |

NAVAJO TRIBAL UTILITY AUTHORITY
P.O. BOX 170
FORT DEFENCE, ARIZONA

SCALE: 1"=200'
SECTION: 12&13
TOWNSHIP: 38N
RANGE: 19E

DRAWN BY: AM
CHECKED BY:
DATE: 2/7/14

AS-BUILT 3 PHASE POWERLINE EXTENSION
WITH FIBER OPTIC CABLE
AND JO D LAUNDROMAT
KAYENTA, NAVAJO COUNTY, ARIZONA

