

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
Of the 23rd Navajo Nation Council--First Year 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A LEASE INCORPORATING A RIGHT-OF-WAY FOR NAVAJO TRIBAL UTILITY AUTHORITY TO CONSTRUCT AND OPERATE A PHOTOVOLTAIC FACILITY, INCLUDING AN INTERCONNECTION AND INTERCONNECTION FACILITY UPGRADE TO NAVAJO TRIBAL UTILITY AUTHORITY'S EXISTING KAYENTA SUBSTATION LOCATED IN THE KAYENTA CHAPTER, NAVAJO NATION (KAYENTA, 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 been delegated the authority to give final approval of rights-of-way and leases in accordance with applicable federal and Navajo Nation laws; and
- B. The Navajo Tribal Utility Authority (NTUA), Post Office Box 170, Fort Defiance, Arizona 86504, has submitted a right-of-way/lease application (attached as Exhibit "A") to obtain authority to construct and operate a Photovoltaic Facility, including an Interconnection and Interconnection Facility upgrade to NTUA's existing Kayenta Substation, located in Kayenta Chapter vicinity, Navajo Nation (Navajo County, Arizona) referenced as Work Order No. 6213786; and
- C. The site in question is situated across Navajo Nation Trust Lands, Township 39 North, Ranges 19 and 20 East, Gila & Salt River Meridian, in the Kayenta Chapter vicinity, Navajo Nation (Navajo County, Kayenta, Arizona).
- D. The site will be used to construct, operate and maintain a 27.5 megawatt solar energy generation facility within 300+ acres of land and an underground distribution line which will deliver power to NTUA's existing 230kV Substation. The above/underground distribution line will

be 153.28 feet in length, fifty (50) feet wide, consisting of 9.18 acres. The total acreage of the proposed is 300.18 acres, more or less. The location is more particularly described on the attached maps marked as Exhibit "A-1" and A-2"; and

- E. NTUA finds it necessary to construct, operate and maintain a 27.5 megawatt solar energy generation facility to address the energy needs of the Navajo Nation, specifically the Kayenta Chapter and the surrounding communities to improve the safety, reliability, redundancy, and increase the energy independence of the utility thereby ensuring that the NTUA can maintain the energy cost of the Navajo Nation; and
- F. NTUA is required by Federal Energy Regulatory Commission and North American Energy Reliability Corporation to operate a modern, safe reliable electric system. The interconnection facility and upgrades at the Kayenta Substation are necessary to meet federal reliability requirements for NTUA's utility system; and
- G. The Kayenta Chapter passed resolution No. KY15-205-03 on March 18, 2015, attached hereto as Exhibit "F", supporting the proposed project; and
- H. The Project Review Section of the Division of Natural Resources has obtained the necessary consents from the affected land users (grazing permittees), which are attached hereto as Exhibit "G" and
- I. All environmental studies and cultural resources inventories have been completed and the proposed right-of-way/lease has received appropriate clearances (see Exhibits "C, D and E"); and
- J. NTUA has requests the Navajo Nation to waive consideration to the project because proposed undertaking is likely to have a positive effect on commercial and residential customers in the communities for the future including the Navajo Nation and NTUA's long range plans of providing the much needed electrical services across the Navajo Nation. Waiver of damages is not requested and the grantee shall be responsible for and promptly pay all such damages if and when they are sustained.

**Section Two. Approval**

- A. Resources and Development Committee of the Navajo Nation Council hereby approves and consents to the grant of a right-of-way/lease, attached as Exhibit B, to the Navajo Tribal Utility Authority to construct, operate and maintain a 27.5 megawatt solar energy generation facility and an underground distribution line which will deliver power to NTUA's existing 230 kV substation in the Kayenta Chapter vicinity, Navajo Nation (Navajo County, Arizona).
- B. The Resources and Development Committee of the Navajo Nation Council further approves and consents to the grant of the lease with right-of-way incorporated therein.
- C. The Resources and Development Committee of the Navajo Nation Council waives the consideration of \$42,734.00 for the right-of-way/lease project.
- D. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute the lease agreement containing of right-of-way.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstained this 15<sup>th</sup> day of September, 2015.



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

Motion: Honorable Leonard Pete  
Second: Honorable Benjamin Bennett  
(Presiding Chairperson Not Voting)



NAVAJO TRIBAL UTILITY AUTHORITY  
AN ENTERPRISE OF THE NAVAJO NATION

May 13, 2015

Honorable President Russell Begaye  
The Navajo Nation  
Post Office Box 9000  
Window Rock, Arizona 86515

Dear President Begaye:

The Navajo Tribal Utility Authority (NTUA), Fort Defiance, Arizona is filing a Right-of-Way Application for a parcel of approximately 300± acres to construct, operate and maintain a 27.5 megawatt photovoltaic generation facility and a power line which will deliver power to NTUA's existing 230kV substation in the vicinity of Kayenta Chapter, Navajo County, Arizona.

This project will be a community scale renewable energy project and will allow NTUA to continue to provide the citizens of the Navajo Nation energy and more importantly energy created and maintained within the Navajo Nation.

The project is described on the attached plats entitled, "*Kayenta Solar Generation Plant with Power Line Project, Kayenta, AZ, NTUA Work Order No. 6213786*".

The NTUA will comply with all Tribal and Federal regulations and requirements as stated in the Code of Federal Regulations, 25 CFR-Part 169 and the Act of February 5, 1948 (62 Stat. 17), subject to prior valid existing rights or adverse claims. The NTUA requests Waiver of Damages, except to those of local improvements such as fences, corrals, homes, crops, animals, and people. The NTUA also requests that it be allowed to assign the right-of-way to its subsidiary to allow for financing of the proposed photovoltaic generation facility. *lease*

Attached are the pertinent application documents for your information and use. If you should have any questions, please contact Ms. Bernice Tsosie, Government Liaison/ROW Specialist, directly at 729-6204.

Sincerely yours,

Walter W. Haase, P.E.  
General Manager

WWH:DAD/tt  
Attachments

Home Office: P.O. BOX 170 FT. DEFIANCE, AZ 86504	KAYENTA P.O. BOX 37 KAYENTA, AZ 86033	TUBA CITY P.O. BOX 398 TUBA CITY, AZ 86045	SHIPROCK P.O. BOX 1749 SHIPROCK, NM 87420	CHINLE P.O. BOX 549 CHINLE, AZ 86503	FORT DEFIANCE P.O. BOX 587 FT. DEFIANCE, AZ 86504	DILCON HC 63 BOX D WINSLOW, AZ 86047	CROWNPOINT P.O. BOX 1825 CROWNPOINT, NM 87313
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CALL 800-528-5011 OR 928-729-5721 FOR ALL OFFICES.

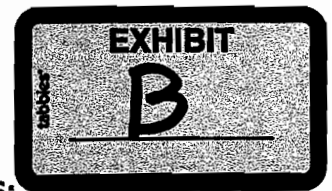
## **Exhibit A**

### **Legal Description and Survey Map of Leased Premises**

## **Exhibit B**

### **Navajo Nation Right of Way Terms and Conditions**

## EXHIBIT "B"



### **NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS: NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)**

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 the Interior.
2. Consideration for the use of land covered by this Delegation is assessed at \$N/A, which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of construction and maintaining Overhead and Underground Electric Distribution Lines. The Grantee may not develop, 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 no greater than 69 kilovolts (kV). Once constructed, the capacity of the power line, whether expressed in terms of watts, volts, amperes, and 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;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operation 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;
  - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq.; and
  - d. 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 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, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development, use or occupancy or use of the right-of-way by the Grantee.
12. For the purpose of maximizing project financing, the Grantee shall be allowed to sublet, assign, convey or transfer this right-of-way to its subsidiaries or affiliates without the prior written consent of the Navajo Nation and Secretary of the Interior. The Grantee may not sublet, assign, convey or transfer, 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 to a third party, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer to a third party 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 in part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any terms or conditions 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;
  - c. An abandonment of the right-of-way;
  - d. The use of land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.
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 the 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 hereon.
16. The Navajo Nation and the Secretary 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 the 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 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 of the Navajo people) 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 claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.
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 subsidiaries, affiliates, 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 subsidiaries, affiliates, 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 remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Grantee shall construct the power line in accordance with "Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006".

LEASE NO. \_\_\_\_\_

**KAYENTA CHAPTER SOLAR SITE LEASE AND RIGHT-OF-WAY  
BETWEEN  
THE NAVAJO NATION  
AND THE  
NAVAJO TRIBAL UTILITY AUTHORITY**

**THIS LEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between THE NAVAJO NATION, hereinafter called the “Lessor,” or the “Nation,” whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the “Lessee,” whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Lease is made in accordance with the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

**1. DEFINITIONS.**

(A) “Approved Encumbrance” means an encumbrance approved in writing by Lessor in accordance with the terms and conditions of this Lease.

(B) “Sublease” means an agreement that allows Lessee to sublease the site to Lessee’s subsidiary to secure the most favorable financing for the Kayenta Solar Project.

(C) “Encumbrancer” means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(D) “Hazardous Substance” means any “hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(E) “NNCERCLA” means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) “Regulated Substance” means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

(G) “Secretary” means the Secretary of the United States Department of the Interior or a duly authorized representative or successor, such as the Bureau of Indian Affairs (“BIA”).

## **2. LEASED PREMISES.**

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all, or a portion of, that tract or parcel of land situated within the Chapter of Kayenta, Navajo Nation, state of Arizona more particularly described in the survey map with legal description attached hereto as Exhibit "A," and by this reference made a part hereof, containing approximately 300 acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below, hereinafter called the "Leased Premises." The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Exhibit "A".

## **3. COMPLIANCE WITH FEDERAL LAW.**

This Lease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Lease is designed to assure that the Lease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Lease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Lease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Lease. The parties understand and agree the Lessor determined the Secretary will approve the Lease pursuant to 25 CFR §162 until such time that the Navajo Nation regulations are amended and the Navajo Nation is prepared to approve Leases. During this time, any rights granted to Lessor under this Lease shall be granted to the Secretary, including any notice to which Lessor is entitled, or which Lessor may provide may be given by the Secretary.

## **4. PURPOSE, UNLAWFUL USES.**

(A) Lessee shall develop, use and occupy the Leased Premises solely for the purpose of constructing, operating and maintaining a solar energy project and related interconnection facilities. Lessee shall have the right to fence all, or any portion, of the Leased Premises as may be necessary to conduct Lessee's operations. Whether or not Lessee chooses to fence the Leased Premises, Lessee shall be solely responsible for securing the Leased Premises so as to protect Lessee's solar energy project, related structures and any related interconnection facilities located on the Leased Premises and for protecting members of the general public, as well as Lessee's agents and invitees, from personal injury on the Leased Premises.

(B) The Leased Premises shall not be developed or used by Lessee for any purpose other than as described in Section 4(A) above, except upon grant of a Sublease or with the prior written consent of Lessor.

(C) Lessee shall not use, or permit to be used, any part of the Leased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.

**5. TERM.**

(A) Primary Term. The Primary Term of this Lease shall be for a period of twenty-five (25) years, commencing on the later date the Lease is approved by the Nation or by the Secretary, if the Secretary's approval is necessary (the "Effective Date").

**6. RENTAL.**

(A) Lessor hereby waives an annual rental payment so long as NTUA uses the Leased Premises for non-commercial purposes. When NTUA desires to use the Leased Premises for commercial operation(s), it must obtain approval from the Resources and Development Committee.

(B) The Lessee shall make an additional annual of payment of \$2,000.00 to the Nation for each Sublease proposed by the Lessee and approved by the Nation. Annual payments shall be paid in advance in the same manner as required by this Lease.

(C) Payments under this Lease shall be addressed to: Navajo Nation, Accounts Receivable Section, Post Office Box 3150, Window Rock, Arizona 86515.

(D) The consideration for the right-of-way associated with this lease is assessed at \$42,724.00. The Navajo Nation's contributes this amount to the project, pursuant to Exhibit B.

The NTUA must obtain the approval of the Resources and Development Committee if any portion of the right-of-way is used to serve commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation

**7. CONDITION OF LEASED PREMISES.**

Lessee has examined the Leased Premises and any improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor, or the Secretary, prior to or at the time of execution of this Lease. Lessee warrants that its decision to enter into this Lease is based solely upon Lessee's independent investigation of the Leased Premises.

**8. IMPROVEMENTS.**

(A) All buildings and other improvements to the Leased Premises, including, but not limited to, the solar panels, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Lessee during and after the Term.

(B) Lessor agrees and acknowledges that Lessee shall have the right to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property of Lessee, at any time during the term, up to twelve months past the expiration of the Term. Prior and up to twelve months past the expiration of the Term, at Lessee's expense, Lessee shall remove any buildings, improvements and all personal property in a workmanlike manner, and shall restore the Leased Premises to substantially

the same condition, including reasonable wear and tear, as existed prior to the installation of Lessee's improvements. The solar plant foundations may be excluded from removal if the Nation determines in writing its beneficial use to the Nation. Lessee will be released from liability when approved by an inspection of the premises. Any structures, buildings and other improvements which are not removed within twelve months after the expiration or termination of the lease shall become the property of the Navajo Nation. The Lessee shall remain liable for any and all clean up and removal costs of any property not removed within the twelve month window.

## **9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.**

(A) All buildings and other improvements placed on the Leased Premises by Lessee or its Subtenant shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation reserves the right to require Lessee to modify or remove any improvements to the Leased Premises that do not comply with the requirements of this Section 9(A).

(B) Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

## **10. UTILITY SERVICE LINE AGREEMENTS.**

(A) Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Leased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Leased Premises;
- (2) such agreements authorize utility service lines only within the Leased Premises;
- (3) such agreements do not extend beyond the Term of this Lease;
- (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 and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Lessee and its Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Lessor has the right to enter into service line agreements with utility companies for service lines across the Leased Premises, the Lessor shall ensure that any such

agreements do not interfere with Lessee's use of the Leased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Lessor agrees to coordinate with Lessee prior to entering into any such agreements.

#### **11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.**

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or any improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

(B) Lessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Leased Premises, any interest therein or any improvements thereon, for which Lessee is liable. Upon request by Lessor, Lessee shall furnish Lessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Lessee, Lessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Leased Premises, any interest therein or improvements thereon.

(D) Lessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Leased Premises. Lessee may permit Sublessees to pay such charges directly, but in the event of nonpayment by Sublessee, Lessee shall be responsible for paying such charges. Lessee shall have no right to recover any payment on behalf of a Sublessee from Lessor or to offset such payments against rent owed to Lessor.

(E) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee. Interest shall accrue from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

#### **12. ASSIGNMENTS AND SUBLEASES.**

With the exception of ability of Lessee to sublease to a direct subsidiary for financing purposes, as provided in Exhibit C, the Lessee shall not assign, convey, or otherwise transfer this

Lease without the prior written approval of Lessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, conveyance, or transfer, without Lessor's prior written approval shall be void and of no effect. The approval of Lessor may be granted, granted upon conditions, or withheld at the sole discretion of Lessor. Any Sublease of the Leased Premises shall be effective only upon approval of the Sublease by the Nation, as provided in Section 14 below. The Leasehold may be sold, assigned or transferred by the Lessee, with approval or consent of the Lessor, to Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. The Lessor shall provide BIA a copy of the assignment within 30 days after it is executed. Lessor permits the Lessee to sublease, assign, convey or otherwise transfer this Lease only to a direct subsidiary solely for the purpose of securing financing for the Kayenta Solar Project.

### **13. QUIET ENJOYMENT.**

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

### **14. ENCUMBRANCE.**

- A. This Lease or any right to or interest therein may not be encumbered without the prior written approval of the Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Lessee or Sublessee of the terms of an approved encumbrance, Encumbrancer may exercise any rights provided in such approved encumbrance, provided that prior to any sale of leasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given to Lessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.



- D. If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such purchase shall be valid unless and until purchaser shall so agree.

## **15. DEFAULT.**

(A) Time is declared to be of the essence in this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post any required bond, failure to cooperate with a BIA request to make appropriate records, reports, information available or be in violation of any other provision of this Lease, and should such violation not be cured within thirty (30) days of written notice from Lessor, or, with respect to any default other than a failure to make a timely payment of monies due and owed, within such additional time as is needed to cure provided Lessee is diligently prosecuting the same to completion, said violation may be acted upon by the Nation in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor or the Secretary, either jointly or severally, may exercise the following options upon Lessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
- (2) Re-enter the premises, if the Lessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its solar operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Lease, for the account of Lessee, but without prejudice to Lessor's right to terminate the Lease under applicable law thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of any 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 altering and repairing or re-letting the Leased Premises and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, 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) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse 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.

(D) Lessor and/or the Secretary shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor and the Secretary shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease if an Encumbrancer has cured or is diligently taking action to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

## **16. SANITATION.**

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Leased Premises.

## **17. HAZARDOUS AND REGULATED SUBSTANCES.**

(A) Lessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Leased Premises without first notifying Lessor and obtaining Lessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Leased Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Lessee shall indemnify and hold harmless the Lessor and the Secretary 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, any and all sums paid for settlement of claims, and any costs related to marketing the Leased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Lease term and arising as a result of such contamination regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. 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 the federal government or the Nation. Without limitation of the foregoing, if Lessee causes or permits any Hazardous or Regulated Substance on the Leased Premises and the presence of such results in any

contamination of the Leased Premises, 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 Hazardous or Regulated Substance on the Leased Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

(B) Lessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, 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 Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program  
Navajo Environmental Protection Agency  
Post Office Box 3089  
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department  
Navajo Environmental Protection Agency  
Post Office Box 1690  
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

## **18. PUBLIC LIABILITY INSURANCE.**

(A) Lessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence and \$500,000.00 for damage to property. Lessor and the United States shall be named as an Additional Insured with respect to this Lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess. Lessee 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 non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Lessor annually, or upon written request.

(B) Lessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

(C) In no event shall the amount of Lessee's insurance policy limit Lessee's liability or its duty to indemnify Lessor under this Agreement.

## **19. PERFORMANCE BOND**

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

## **20. NON-LIABILITY.**

Neither Lessor nor the United States Government, nor their officers, agents, or employees (collectively, the "Lessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, that is caused by any use of the Leased Premises by Lessee or any Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Lessor Parties' negligence or intentional misconduct. Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to defend and hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Lessor Parties' negligence or intentional misconduct.

## **21. INSPECTION.**

The Lessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Lessee, to enter upon the Leased Premises, or any part thereof, to inspect the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the 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 provided such contamination arose due to Lessee's acts or omissions. 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.

## **22. MINERALS.**

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also 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 any improvements constructed by Lessee.

## **23. EMINENT DOMAIN.**

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

**24. DELIVERY OF LEASED PREMISES.**

At the termination 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.

**25. HOLDING OVER.**

Except as otherwise provided, holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder in or to the Leased Premises or to any improvements located thereon.

**26. 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 or in pursuing an action against Lessee for breach, default or liability arising under this Lease. Lessee will not be liable for costs incurred by Lessor if a judgment is rendered in favor of Lessee.

**27. INDEMNIFICATION.**

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Lessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Leased Premises by Lessee or any Sublessee.

**28. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

Lessee and Lessee's employees or agents, and Sublessees and their employees or agents agree to abide by all laws, regulations, and ordinances of the 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 including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of the right-of-way;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

**29. GOVERNING LAW.**

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee against the Nation in connection with or arising out of the terms and conditions of this Lease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Lessee against the Nation in any court or administrative body of any State.

**30. AIR QUALITY.**

The Lessee 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 Lease.

**31. KEEPING LANDS CLEAR**

The Lessee shall clear and keep clear the lands within the Lease and right-of-way to the extent compatible with the purpose of this Lease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

**32. RECLAIMED LANDS**

The Lessee shall reclaim all surface lands disturbed related to the Lease and 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 commencement of such a plan.

**33. MAINTENANCE OF LAND**

The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

**34. PERMISSION TO CROSS**

The Lessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

**35. TERMINATION**

The Navajo Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

At the termination of this Lease, the Lessee 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 Lessee shall provide the Navajo Nation, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

**36. ENTRY UPON PREMISES**

The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the Lease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

**37. DISPUTE RESOLUTION.**

In the event that a dispute arises under this Lease, Lessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Lease.

**38. CONSENT TO JURISDICTION.**

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

**39. COVENANT NOT TO CONTEST JURISDICTION.**

Lessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Lease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess 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 in this section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Nation.

**40. 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 Nation.



**41. INTEREST OF MEMBER OF CONGRESS.**

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise here from. This provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

**42. OBLIGATIONS TO THE UNITED STATES.**

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.

**43. NOTICES AND DEMANDS.**

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Lessor:

W. Mike Halona, Director  
Navajo Land Department  
DIVISION OF NATURAL RESOURCES  
P.O. Box 2249  
Window Rock, Navajo Nation (Arizona) 86515  
Fax: 1- 928-871-7039

To or upon Lessee:

Navajo Tribal Utility Authority  
P.O. Box 170  
Fort Defiance, Arizona 86504  
Fax: 1-928-729-2135

To or upon the Secretary (if approval by the Secretary is required):

Regional Director  
Navajo Region  
Bureau of Indian Affairs  
United States Department of the Interior  
301 West Hill Street  
P.O. Box 1060  
Gallup, New Mexico 87305  
Fax: 1-505-863-8324

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be

effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Lease is required.

(D) Lessor, Lessee and the Secretary may at any time change its address for purposes of this section by Notice.

#### **45. SUCCESSORS AND ASSIGNS.**

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 Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

#### **46. RESERVATION OF JURISDICTION.**

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Lease and all lands burdened by the Lease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Lease; and the area under the Lease and all lands burdened by the Lease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

#### **47. EFFECTIVE DATE; VALIDITY.**

This Lease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification of or amendment to this Lease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the date first above written.

**THE NAVAJO NATION, LESSOR**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

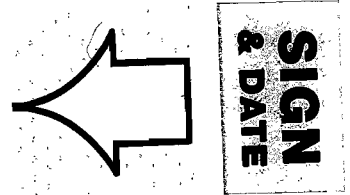
**THE NAVAJO TRIBAL UTILITY  
AUTHORITY, LESSEE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Walter Haase, General Manager

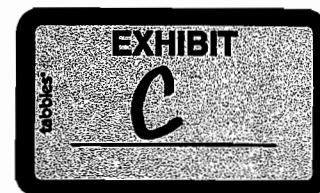
APPROVED: \_\_\_\_\_  
Pursuant to Secretarial Redelelegation Order  
209 DM 8, 230 DM 1 and 3 IAM 4.

\_\_\_\_\_  
Regional Director, Navajo Region  
Bureau of Indian Affairs



## **Exhibit C**

### **Sublease**



**KAYENTA CHAPTER SOLAR SITE SUBLEASE  
BETWEEN  
NAVAJO TRIBAL UTILITY AUTHORITY  
AND THE  
NTUA GENERATION, INC.**

**THIS SUBLEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the "Sublessor," whose address is P.O. Box 170, Fort Defiance, AZ 86504, and NTUA GENERATION, INC., hereinafter called the "Sublessee," whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Sublease shall follow the the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

**1. DEFINITIONS.**

(A) "Approved Encumbrance" means an encumbrance approved in writing by Sublessor in accordance with the terms and conditions of this Sublease.

(C) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(D) "Hazardous Substance" means any "hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(E) "NNCERCLA" means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) "Navajo Nation" or "Nation" means the government of the Navajo Nation, as engaged under this Sublease through the Navajo Land Department.

(G) "Regulated Substance" means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

**2. SUBLEASED PREMISES.**

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Sublessor hereby subleases to Sublessee all, or a portion of, that tract or parcel of land situated within the Chapter of Kayenta, Navajo Nation, state of Arizona more particularly described in the survey map with legal description attached hereto as Attachment "1," and by this reference made a part hereof, containing approximately 300 acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below,

hereinafter called the "Subleased Premises." The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Attachment "1".

### **3. COMPLIANCE WITH FEDERAL LAW.**

This Sublease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Sublease is designed to assure that the Sublease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Sublease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Sublease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Sublease. The parties understand and agree the Sublessor determined Navajo Nation Land Department will approve the Sublease pursuant to form.

### **4. PURPOSE, UNLAWFUL USES.**

(A) Sublessee shall develop, use and occupy the Subleased Premises solely for the purpose of constructing, operating and maintaining a solar energy project and related interconnection facilities. Sublessee shall have the right to fence all, or any portion, of the Subleased Premises as may be necessary to conduct Sublessee's operations. Whether or not Sublessee chooses to fence the Subleased Premises, Sublessee shall be solely responsible for securing the Subleased Premises so as to protect Sublessee's solar energy project, related structures and any related interconnection facilities located on the Subleased Premises and for protecting members of the general public, as well as Sublessee's agents and invitees, from personal injury on the Subleased Premises.

(B) The Subleased Premises shall not be developed or used by Sublessee for any purpose other than as described in Section 4(A) above.

(C) Sublessee shall not use, or permit to be used, any part of the Subleased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the subleased premises.

### **5. TERM.**

(A) Primary Term. The Primary Term of this Sublease shall be for a period of twenty-five (25) years, commencing on the later date the Lease is approved (the "Effective Date").

### **6. RENTAL.**

(A) Sublessor shall pay \$2,000 as an annual rental payment so long as Sublessee uses the Leased Premises for the development and operation of 27.5 MW delivered photovoltaic

facility. Annual payments shall be paid in advance, by the December 15 of the year prior to the commencement of each annual term.

(B) Payments under this Sublease shall be addressed to: The Navajo Tribal Utility Authority, Accounts Receivable Section, Post Office Box 170, Fort Defiance, Arizona 86516.

## **7. CONDITION OF SUBLEASED PREMISES.**

Sublessee has examined the Subleased Premises and any improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Subleased Premises have been made by Sublessor, any agent of Sublessor, or the Secretary, prior to or at the time of execution of this Sublease. Sublessee warrants that its decision to enter into this Sublease is based solely upon Sublessee's independent investigation of the Subleased Premises.

## **8. IMPROVEMENTS.**

(A) All buildings and other improvements to the Subleased Premises, including, but not limited to, the solar panels, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Sublessee during and after the Term.

(B) Sublessor agrees and acknowledges that Sublessee shall have the right to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property of Sublessee, at any time during the term, up to twelve months past the expiration of the Term. Prior and up to twelve months past the expiration of the Term, at Sublessee's expense, Sublessee shall remove any buildings, improvements and all personal property in a workmanlike manner, and shall restore the Subleased Premises to substantially the same condition, including reasonable wear and tear, as existed prior to the installation of Sublessee's improvements. The solar plant foundations may be excluded from removal if the Nation determines in writing its beneficial use to the Nation. Sublessee will be released from liability when approved by an inspection of the premises. Any structures, buildings and other improvements which are not removed within twelve months after the expiration or termination of the Sublease shall become the property of the Navajo Nation. The Sublessee shall remain liable for any and all clean up and removal costs of any property not removed within the twelve month window.

## **9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.**

(A) All buildings and other improvements placed on the Subleased Premises by Sublessee or its Subtenant shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation reserves the right to require Sublessee to modify or remove any improvements to the Subleased Premises that do not comply with the requirements of this Section 9(A).



(B) Sublessee shall maintain the Subleased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

#### **10. UTILITY SERVICE LINE AGREEMENTS.**

(A) Sublessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Subleased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Subleased Premises;
- (2) such agreements authorize utility service lines only within the Subleased Premises;
- (3) such agreements do not extend beyond the Term of this Sublease;
- (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 Sublessor and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Sublessor has the right to enter into service line agreements with utility companies for service lines across the Subleased Premises, the Sublessor shall ensure that any such agreements do not interfere with Sublessee's use of the Subleased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Sublessor agrees to coordinate with Sublessee prior to entering into any such agreements.

#### **11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.**

(A) Sublessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Sublessee to be enforced against the Subleased Premises, any interest therein or any improvements thereon. Sublessee shall discharge all such liens before any action is brought to enforce same.

(B) Sublessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Subleased Premises, any interest therein or any improvements thereon, for which Sublessee is liable. Upon request by Sublessor, Sublessee shall furnish Sublessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Sublessee have been paid, satisfied or otherwise discharged. Sublessee shall have the right to contest any asserted tax, assessment or

other like charge against the Subleased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Sublessee agrees to protect and hold harmless Sublessor, the Secretary and the Subleased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Sublessee, Sublessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Subleased Premises, any interest therein or improvements thereon.

(D) Sublessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Subleased Premises. .

(E) Sublessor shall have the right to pay any lien, tax, assessment or other charge payable by Sublessee under this Sublease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Sublessor, Sublessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Sublessor in so doing shall be repaid by Sublessee to Sublessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee. Interest shall accrue from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee.

## **12. ASSIGNMENTS AND SUBLEASES.**

The Sublessee shall not assign, convey, or otherwise transfer this Sublease without the prior written approval of Sublessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Sublease. Any such attempted assignment, conveyance, or transfer, without Sublessor's prior written approval shall be void and of no effect. The approval of Sublessor may be granted, granted upon conditions, or withheld at the sole discretion of Sublessor. Any assignment of the Subleased Premises shall be effective only upon approval of the assignment by the Sublessor and the Navajo Nation, as provided in Section 14 below. The Subleasehold may not be sold, assigned or transferred by the Sublessee, with approval or consent of the Sublessor, to Sublessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Sublessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Sublessee or transfer upon partnership or corporate dissolution of Sublessee shall constitute an assignment hereunder.

## **13. QUIET ENJOYMENT.**

Sublessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Sublease, Sublessee shall peaceably and quietly have, hold and enjoy the Subleased Premises without any hindrance, interruption, ejection or molestation by Sublessor or by any other person or persons claiming from or under Sublessor.

## **14. ENCUMBRANCE.**

- A. This Sublease or any right to or interest therein may not be encumbered without the prior written approval of the Sublessor, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the subleasehold interest of a Sublessee and shall not jeopardize in any way Sublessor's interest in the land. Sublessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that the Sublessor may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Sublessee of the terms of an approved encumbrance, Encumbrancer may exercise any rights provided in such approved encumbrance, provided that prior to any sale of leasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Sublessor notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Sublessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Sublessor exercises the above right, all right, title and interest of Sublessee in this Sublease shall terminate and Sublessor shall acquire this Sublease; provided, however, that such termination shall not relieve Sublessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Sublease by Sublessor under these circumstances shall not serve to extinguish this Sublease by merger or otherwise.
- D. If Sublessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Sublessee in this Sublease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Sublease without any further approval by Sublessor, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Sublease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such purchase shall be valid unless and until purchaser shall so agree.

## **15. DEFAULT.**

(A) Time is declared to be of the essence in this Sublease. Should Sublessee default in any payment of monies when due under this Sublease, fail to post any required bond, failure to cooperate with a BIA request to make appropriate records, reports, information available or be in violation of any other provision of this Sublease, and should such violation not be cured within thirty (30) days of written notice from Sublessor, or, with respect to any default other than a failure to make a timely payment of monies due and owed, within such additional time as is needed to cure provided Sublessee is diligently prosecuting the same to completion, said violation may be acted upon by the Nation in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Sublessor, either jointly or severally, may exercise the following options upon Sublessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Sublessee's compliance with all provisions of this Sublease; or
- (2) Re-enter the premises, if the Sublessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its solar operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Sublease, for the account of Sublessee, but without prejudice to Sublessor's right to terminate the Sublease under applicable law thereafter, and without invalidating any right of Sublessor or any obligations of Sublessee hereunder. The terms and conditions of any re-letting shall be in the sole discretion of Sublessor, who shall have the right to alter and repair the Subleased 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 altering and repairing or re-letting the Subleased Premises and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, and thereafter toward payment to liquidate the total liability of Sublessee. Sublessee shall pay to Sublessor monthly when due, any deficiency and Sublessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Sublease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Sublease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Sublessor, or any other rights or remedies now held or which may be held by Sublessor in the future.

(D) Sublessor shall give to an Encumbrancer a copy of each notice of default by Sublessee at the same time as such notice of default shall be given to Sublessee. Sublessor shall accept performance by an Encumbrancer of any of Sublessee's obligations under this Sublease, with the same force and effect as though performed by Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Sublessee would be entitled to pursue. Sublessor shall not terminate this Sublease if an Encumbrancer has cured or is diligently taking action to cure Sublessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

## **16. SANITATION.**

Sublessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Sublessee further agrees at all times to maintain the entire Subleased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Subleased Premises.

## **17. HAZARDOUS AND REGULATED SUBSTANCES.**

(A) Sublessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Subleased Premises without first notifying Sublessor and obtaining Sublessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Subleased Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Sublessee shall indemnify and hold harmless the Sublessor and the Secretary from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Subleased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Subleased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Sublease term and arising as a result of such contamination regardless of fault, with the exception that the Sublessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. 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 the federal government or the Nation. Without limitation of the foregoing, if Sublessee causes or permits any Hazardous or Regulated Substance on the Subleased Premises and the presence of such results in any contamination of the Subleased Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Sublessee shall promptly, at its sole expense, take any and all necessary actions to return the Subleased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Subleased Premises. Sublessee shall first obtain Sublessor's approval for any such remedial action.

(B) Sublessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Sublease which Sublessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Sublessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Sublease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program  
Navajo Environmental Protection Agency  
Post Office Box 3089  
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department  
Navajo Environmental Protection Agency

Post Office Box 1690  
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

## **18. PUBLIC LIABILITY INSURANCE.**

(A) Sublessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence and \$500,000.00 for damage to property. Sublessor and the United States shall be named as an Additional Insured with respect to this Sublease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess. Sublessee shall provide for notification to Sublessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Sublessor annually, or upon written request.

(B) Sublessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Sublessor or the United States.

(C) In no event shall the amount of Sublessee's insurance policy limit Sublessee's liability or its duty to indemnify Sublessor under this Agreement.

## **21. PERFORMANCE BOND**

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

## **22. NON-LIABILITY.**

Neither Sublessor nor their officers, agents, or employees (collectively, the "Sublessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Sublessee or any other person whomsoever, that is caused by any use of the Subleased Premises by Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Sublessor Parties' negligence or intentional misconduct. Sublessee, as a material part of the consideration for this Sublease, hereby waives on Sublessee's behalf all claims against Sublessor and the United States Government and agrees to defend and hold Sublessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Sublessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Sublessor Parties' negligence or intentional misconduct.

## **23. INSPECTION.**

The Sublessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Sublessee, to enter upon the Subleased Premises, or any part thereof, to inspect the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the Subleased 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, Sublessee shall pay the costs of such testing provided such contamination arose due to Sublessee's acts or omissions. Nothing in this section shall limit Sublessee's obligation under applicable law or this Sublease to perform testing or remediation or otherwise limit Sublessee's liability.

## **24. MINERALS.**

All minerals, including sand and gravel, contained in or on the Subleased Premises are reserved for the use of Sublessor. Sublessor also reserves the right to enter upon the Subleased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Sublessee's personal property or any improvements constructed by Sublessee.

## **25. EMINENT DOMAIN.**

If the Subleased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Sublease, Sublessee's interest in the Subleased Premises or the part of the Subleased Premises taken shall thereupon cease. Compensation awarded for the taking of the Subleased Premises or any part thereof, including any improvements located thereon, shall be awarded to Sublessor and Sublessee as their respective interests may appear at the time of such taking, provided that Sublessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

## **26. DELIVERY OF SUBLEASED PREMISES.**

At the termination of this Sublease, Sublessee will peaceably and without legal process deliver up the possession of the Subleased Premises, in good condition, usual wear and tear excepted.

## **27. HOLDING OVER.**

Except as otherwise provided, holding over by Sublessee after termination of this Sublease shall not constitute a renewal or extension thereof or give Sublessee any rights hereunder in or to the Subleased Premises or to any improvements located thereon.

## **28. ATTORNEY'S FEES.**



Sublessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Sublessor in enforcing the provisions of this Sublease or in pursuing an action against Sublessee for breach, default or liability arising under this Sublease. Sublessee will not be liable for costs incurred by Sublessor if a judgment is rendered in favor of Sublessee.

**29. INDEMNIFICATION.**

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Sublessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Subleased Premises by Sublessee.

**30. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

Sublessee and Sublessee's employees or agents, agree to abide by all laws, regulations, and ordinances of the 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 including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of the right-of-way;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

**31. GOVERNING LAW.**

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Sublease. Any action or proceeding brought by Sublessee against the Nation in connection with or arising out of the terms and conditions of this Sublease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Sublessee against the Nation in any court or administrative body of any State.

**30. AIR QUALITY.**

The Lessee 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 Lease.

**31. KEEPING LANDS CLEAR**

The Lessee shall clear and keep clear the lands within the Lease and right-of-way to the extent compatible with the purpose of this Lease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

**32. RECLAIMED LANDS**

The Lessee shall reclaim all surface lands disturbed related to the Lease and 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 commencement of such a plan.

**33. MAINTENANCE OF LAND**

The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

**34. PERMISSION TO CROSS**

The Lessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

**35. TERMINATION**

The Navajo Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

At the termination of this Lease, the Lessee 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 Lessee shall provide the Navajo Nation, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

**36. ENTRY UPON PREMISES**

The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the Lease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

**37. DISPUTE RESOLUTION.**

In the event that a dispute arises under this Sublease, Sublessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Sublease.

**38. CONSENT TO JURISDICTION.**

Sublessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Sublessee within the Nation.

**39. COVENANT NOT TO CONTEST JURISDICTION.**

Sublessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Sublease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess 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 in this section shall be construed to negate or impair federal responsibilities with respect to the Subleased Premises or to the Nation.

**40. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Sublease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

**41. INTEREST OF MEMBER OF CONGRESS.**

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Sublease or to any benefit that may arise here from. This provision shall not be construed to extend to this Sublease if made with a corporation or company for its general benefit.

**42. OBLIGATIONS TO THE UNITED STATES.**

It is understood and agreed that while the Subleased Premises are in trust or restricted status, all of Sublessee's obligations under this Sublease and the obligations of its sureties are to the United States as well as to Sublessor.

**43. NOTICES AND DEMANDS.**

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Sublease, or given or made in connection with this Sublease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Navajo Nation:

W. Mike Halona, Director  
Navajo Land Department  
DIVISION OF NATURAL RESOURCES  
P.O. Box 2249  
Window Rock, Navajo Nation (Arizona) 86515  
Fax: 1- 928-871-7039

To or upon Sublessor:

Navajo Tribal Utility Authority  
P.O. Box 170  
Fort Defiance, Arizona 86504

Fax: 1-928-729-2135

To or upon the Sublessee:

NTUA GENERATION, INC.  
P.O. Box 170  
Fort Defiance, Arizona 86504  
Fax: 1-928-729-2135

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Sublease is required.

(D) Sublessor, Sublessee and the Secretary may at any time change its address for purposes of this section by Notice.

#### **44. SUCCESSORS AND ASSIGNS.**

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 Sublessee. Except as the context otherwise requires, the term "Sublessee," as used in this Sublease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

#### **45. RESERVATION OF JURISDICTION.**

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Sublease and all lands burdened by the Sublease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Sublease; and the area under the Sublease and all lands burdened by the Sublease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

#### **46. EFFECTIVE DATE; VALIDITY.**

This Sublease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification of or amendment to this Sublease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

**IN WITNESS WHEREOF**, the parties hereto have caused this Sublease to be executed as of the date first above written.

**THE NAVAJO TRIBAL UTILITY  
AUTHORITY, SUBLESSOR**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Walter Haase, General Manager

**THE NTUA GENERATION, INC.  
AUTHORITY, SUBLESSEE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Authorized Officer]





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**Biological Survey Report  
for Species of Concern on the Kayenta Solar Generation  
Plant and Transmission Line Project,  
Kayenta Chapter, Arizona  
Work Order Number 6213786**

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Prepared by

Zoology Unlimited, LLC  
Post Office Box 31132  
Flagstaff, Arizona 86003  
928-613-4019

Prepared for

Navajo Tribal Utility Authority  
Post Office Box 170  
Fort Defiance, Arizona 86504  
928-729-5727

December 5, 2014

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## I. INTRODUCTION

The Navajo Utility Authority (NTUA) is proposing to construct, operate, and maintain a solar generation plant and transmission line (work order number 6213786). The solar plant and transmission line will affect approximately 300 acres. The solar plant site and transmission line are located north of the community of Kayenta, Kayenta Chapter, Navajo Nation, Navajo County, Arizona (see Figure 1). The solar plant and transmission line would provide environmentally friendly renewable energy to the Navajo Nation.

Zoology Unlimited, LLC, (ZU) was retained by NTUA to complete a Threatened, Endangered, and Sensitive species survey, habitat evaluation, and assessment of wetland areas on the project site and transmission corridor. This document contains the description of the area, presents the species of concern, survey methodology, results, conclusions, and mitigations for the proposed project.

## II. LOCATION AND DESCRIPTION OF PROJECT AREA

The proposed project site and transmission line are located approximately 2.7 miles north of Kayenta, Arizona. The solar generation plant is located adjacent to US Highway 163, on the west side, and extends past an existing 230kV switchyard to the west. A short transmission line (approximately 0.03 miles in length) will connect the proposed solar plant and the existing switchyard. The elevation in the project area ranges from 5,610 to 5,680 feet above sea level. The project area can be found on one USGS quadrangle map: Agathla Peak, Navajo County, Arizona (see Figure 2).

The soils in the project area are defined as Fruitland-Camborthids-Torrifluvents Association (Hendricks 1985). This association consists of well-drained soils on high plains. The plains are broken by occasional steep-sided drainageways and scattered buttes. The soils are formed in a thick-to-thin, wind and water-laid mantle of alluvium weathered from sandstone and shale. The terrain in the project area consists of rolling valleys with flat valleys, ridges, and hills. The terrain consists of rolling hills and a couple blowout areas. There are two small unnamed washes through the project area.

The vegetation community in the survey area corresponds to the Great Basin Desertscrub (Brown 1994). The dominant vegetation includes Mormon tea (*Ephedra viridis*), gama grass (*Bouteloua gracilis*), sacaton (*Sporobolus wrightii*), broom snakeweed (*Gutierrezia sarothrae*) and tumble weed (*Salsola kali*). There are no multi-canopies/thickets of shrubs or riparian growth present on the project site. There are no natural, permanent or semipermanent source of water located within the corridors.

The survey area has been previously disturbed by US Highway 163, Navajo Road (NR) 6450, dirt roads, 230kV transmission lines, a 230kV switchyard, power lines, fencing, livestock, and rural home sites. The survey area is currently being grazed by livestock and impact of grazing is determined to be heavy (see Figures 3a, 3b, and 3c).





Figure 1. Navajo County road map



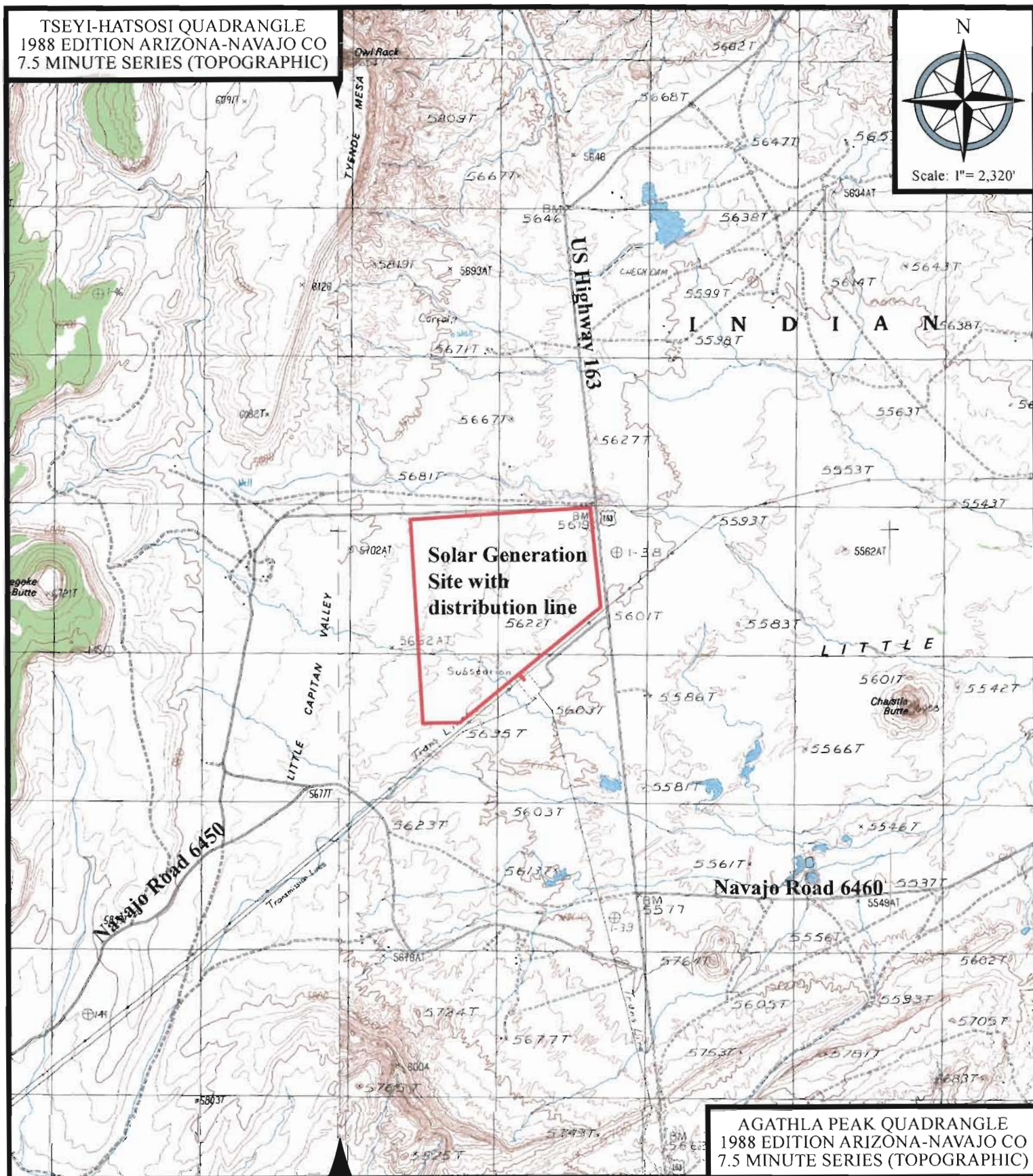


Figure 2. Kayenta Solar Generation Plant with distribution line project site map.





Photo 1: Looking southwest from southeastern corner of project site.



Photo 2: Looking north near southwestern corner.

Figure 3a. Kayenta Solar Generation Plant with distribution line project site photographs.



Photo 3: Looking southeast from northwestern corner.



Photo 4: Looking north from southeastern corner.

Figure 3b. Kayenta Solar Generation Plant with distribution line project site photographs.





Photo 5: Looking north onto project site.



Photo 6: Looking west onto project site.

Figure 3c. Kayenta Solar Generation Plant with distribution line project site photographs.

### III. SPECIES OF CONCERN

The Navajo Fish and Wildlife Department (NFWD) and U.S. Fish and Wildlife Service (USFWS) were contacted and species lists were obtained prior to conducting the survey. The species lists were combined and all are listed below with status definitions (see Appendix A for copies of lists).

**Table 1. Species of Concern and their status ( NFWD 2014 and USFWS 2014a)**

Scientific Name	Common Name	Status
<i>Aquila chrysaetos</i>	Golden eagle	NFWD-G3
<i>Asclepias welshii</i>	Welsh's milkweed	NDFW-G3, USFWS-LT
<i>Athene cunicularia</i>	Burrowing owl	NFWD-G4
<i>Buteo regalis</i>	Ferruginous hawk	NFWD-G3
<i>Canis lupus</i>	Gray wolf	USFWS-EX
<i>Canis lupus baileyi</i>	Mexican gray wolf	USFWS-PE
<i>Carex specuicola</i>	Navajo sedge	USFWS-LT
<i>Coccyzus americanus</i>	Yellow-billed cuckoo	USFWS-LC
<i>Empidonax traillii extimus</i>	Southwestern willow flycatcher	USFWS-LE
<i>Falco peregrinus</i>	Peregrine falcon	NFWD-G4
<i>Gila robusta</i>	Roundtail chub	USFWS-LC
<i>Gymnogyps californianus</i>	California condor	USFWS-LE
<i>Lepidomeda vittata</i>	Little Colorado spinedace	USFWS-LT
<i>Lithobates chiricahuensis</i>	Chiricahua leopard frog	USFWS-LT
<i>Lithobates pipiens</i>	Northern leopard frog	NFWD-G2
<i>Mustela nigripes</i>	Black-footed ferret	USFWS-EX
<i>Oncorhynchus apache</i>	Apache trout	USFWS-LT
<i>Oncorhynchus gilae</i>	Gila trout	USFWS-LT
<i>Pediocactus peeblesianus peeblesianus</i>	Peebles Navajo cactus	USFWS-LE
<i>Puccinellia parishii</i>	Parish's alkali grass	NFWD-G4
<i>Strix occidentalis lucida</i>	Mexican spotted owl	USFWS-LT
<i>Thamnophis eques megalops</i>	Northern Mexican gartersnake	USFWS-LC
<i>Zapus hudsonius luteus</i>	New Mexico meadow jumping mouse	USFWS-LE

### **Status Definitions For Table 1.**

#### **Navajo Endangered Species List Status Codes and Definitions**

- G2-** Group 2: Endangered - Any species or subspecies which is in danger of being eliminated from all or a significant portion of its range on the Navajo Nation.
- G3-** Group 3: Threatened - Any species or subspecies which is likely to become endangered within the foreseeable future, throughout all or a significant portion of its range on the Navajo Nation.
- G4-** Group 4: Candidate - Any species or subspecies for which the NFWD does not currently have sufficient information to support their listing as G2 or G3 but has reason to consider them. The NFWD is actively seeking information to determine if they warrant inclusion in a different group or removal from the list. They are not protected under Tribal Code but should be considered in project planning.

#### **Federal Status Codes and Definitions**

- LE -** Listed Endangered by the USFWS under the Endangered Species Act (ESA).
- LT -** Listed Threatened by the USFWS under the ESA.
- LC -** Listed Candidate by the USFWS.
- PE -** Listed Proposed Endangered by the USFWS.
- EX -** Listed Experimental Population by the USFWS.

## **IV. METHODOLOGY**

ZU conducted the survey on the Navajo Nation under NFWD permit number 17NNC;23NNC, 16USC;18USC, Special Permit 789.

The proposed site and corridor were surveyed on foot by two experienced biologists with knowledge of the listed species of concern. Complete survey coverage of the tract and corridor were obtained by walking multiple parallel transects within the right-of-way (ROW). The ROW for the site is a five-sided polygon (approximately 4,125-feet x 3,940-feet x 2,125-feet, by 3,750-feet x 815-feet) and the survey corridor for the transmission line was approximately 160-feet long by 200-feet wide. The corners of the project site and centerline of the corridor were previously staked by NTUA. Detailed field notes were taken of the species and habitats encountered during the survey of the tract and corridor. Species observed during the field survey are listed in Appendix B. If a listed species or potentially suitable habitat was observed, the site and corridor was subject to further investigation to determine the potential impact of the proposed project or presence of individuals. No species-specific survey requiring special techniques were performed as part of the survey.

A 0.25-mile zone of influence surrounding the tract and corridor was utilized to conduct evaluations for evidence of raptors and their nests. If active adult raptors or a nest(s) of raptors was observed, the general area was intensively examined to determine the potential impacts of the project. Active adults were defined as those raptors engaged in courtship actions, building or improving nests, or displaying territorial behavior. The general reconnaissance of the 0.25-mile zone of influence consisted of closely examining the surrounding area. No transects were followed, but complete coverage was obtained by utilizing high ground as observation areas and by walking and driving blind spots.

An assessment of the wetland areas occurring within the project parcel and corridor was also included in the survey procedure. The National Wetland Inventory (NWI) map: Kayenta, Arizona-Utah, 1:100,000 scale were examined (see Appendix C). In addition, evaluations were conducted

for suspected areas not recorded on the NWI map. The wetland criterion developed by the Army Corps of Engineers was utilized (Environmental Laboratory 1987).

## V. RESULTS

The field survey dates were November 29 and 30, 2014. The survey was not conducted during the appropriate flowering season for plant species. Expected project impacts on the species of concern were based upon the presence or absence of individuals and habitat present. The survey dates were sunny with high, scattered clouds, and winds were less than 10 miles per hour. No precipitation was observed both days.

The **golden eagle** is common throughout Arizona in a variety of vegetation types with open areas for hunting (Glinski 1998). They can be found throughout the Navajo Nation at all elevations. Its diet consists mainly of rabbits, large rodents, and sometimes carrion. Golden eagles tend to nest on a bulky platform of sticks in tall trees or cliffs (Peterson 1990). Nests are reused and tend to become a huge mass of sticks and debris. The NFWF response letter indicated that portion of the project tract and/or corridor are located within 3.0 miles of a known occurrence of the golden eagle.. Mr. Chad Smith, NNHP Zoologist, was contacted regarding this occurrence (pers. comm., Dec. 2014). The Golden and Bald Eagle Nest Protection Regulations (GBENPR) and Raptor Electrocution Prevention Regulations (REPR) were discussed and applied to this project. It was determined in consultation with Mr. Smith, that the project would not impact known eagles and/or their nest due to distance. No suitable nesting habitat is available for this species within the project tract, corridor and zone of influence. Foraging habitat is present throughout the project area. No individuals or stick nests were observed during the survey.

The **Welsh's milkweed** is a member of the *Asclepiadaceae* (milkweed family). This species is recognized by large seeds, which are 0.79 inches long. The main leaves are obovate or broadly elliptic and rounded to truncate apically (Atwood et al. 1991). Welsh's milkweed habitat requirements are open, sparsely vegetated, semi-stabilized sand dunes or lee slopes of actively drifting sand dunes (USFWS 1992). No sand dunes but marginal habitat such as wind blown sand were observed within the project parcel. These areas of loose sand were closely examined but no individuals were observed during the survey dates. No impacts are expected to the Welsh's milkweed.

The **burrowing owl** is a small brown owl marked with white splashes and very distinctive long legs (Peterson 1990). The owl inhabits open grassland, prairies, dikes, deserts, and farms and needs the presence of burrowing mammals, because the burrowing owl nests in the mammal burrows. This species is opportunistic feeder, willing to take both invertebrates and vertebrates (Glinski 1998), and feeds primarily on small mammals. No prairie dogs or their burrows were observed within or near the proposed tract and corridor. No individuals or signs (owl scat, feathers or whitewash) were seen within the tract and zone of influence. No suitable habitat for this owl is present in the survey area. No impacts are expected to burrowing owl.



The **ferruginous hawk** can be found statewide during migration as it moves toward its wintering grounds. On the Navajo reservation, there are 22 known nesting sites (Glinski 1998). This hawk inhabits areas of unbroken terrain such as grasslands, arid prairies, or areas of scattered pinyon-juniper woodlands (Johnsgard 1990). Nesting occurs in any available tree (6 to 60 feet) or a cliff ledge or on top of a rocky pinnacle of boulder-strewn elevation. Its diet consists almost exclusively of small mammals (Ehrlich et al. 1988). No suitable nesting or foraging habitat is present for this species within the project tract, corridor and zone of influence due to the terrain, permanent presence of home sites and associated infrastructure. No individuals or nests were observed. No impacts to the ferruginous hawk are anticipated.

The **gray wolf** was once found throughout Arizona except in the Mohave and Sonoran desertscrub communities. This wolf is a large canid with a large body when compared to a dog (*Canis familiaris*), a broader nose pad, and more massive skull (Hoffmeister 1986). The gray wolf have been extirpated in Arizona with the last wolf north of the Mogollon Rim reportedly taken in 1942. The gray wolf has been reintroduced in east, central Arizona in the past couple of years. Although potential habitat is present, due to the development of the area, permanent presence of area residents, and designation as an experimental population, no impacts are expected to the gray wolf.

The **Mexican gray wolf** is the smallest, southern-most occurring, and most genetically distinct subspecies of gray wolf in North America. Mexican wolves typically weigh 50 to 80 pounds and measure about 5.5 feet from nose to tail, and stand 28 to 32 inches at the shoulder. They have a distinctive, richly colored coat of buff, gray, rust, and black, often with distinguishing facial patterns; solid black or white variations do not exist as with other North American gray wolves (USFWS 2014b). They live in extended family groups, or packs, consisting of an adult mated pair and their offspring, often from several generations. Prey for Mexican wolves includes elk, mule deer, white-tailed deer, javelina, rabbits, and other small mammals. Mexican wolves are found in a variety of southwestern habitats; however, they are not low desert dwellers as once commonly believed. They prefer mountain woodlands, probably because of the favorable combination of cover, water, and available prey. Due to the permanent presence of area residents, and designation as an experimental population, no impacts are expected to the Mexican gray wolf.

The **Navajo sedge** is a member of the *Cyperaceae* (sedge family). This grass-like plant reaches a height of 10 to 16 inches with numerous stems growing from a rhizome, giving each plant a clumped form. Its habitat consists of shaded seep-spring, and hanging gardens on sandstone bedrock at an elevation range of 5,700 to 6,000 feet above sea level (USFWS 1987). This species is found within canyons located in pinyon-juniper woodlands in northern Arizona. No suitable habitat such as shaded seep-springs are present within the project tract and corridor, and no individuals were observed. No impacts are expected to the Navajo sedge.

The **yellow-billed cuckoo** nests primarily along wooded streams in the southern and central portions of the state (Arizona Game and Fish Department [AGFD] 1996) and is associated primarily with cottonwood gallery forests and/or cottonwood/willow associations. It has been recorded as a rare transient in desert habitats and in towns (Phillips et al. 1964). The cuckoo's diet consists of hairy caterpillars, bird eggs, frogs, lizards, berries and fruit. It builds platform nests in shrubs and young

are fed insect regurgitate (Ehrlich et al. 1988). No suitable riparian habitat nor individuals were observed in the survey area. No impacts are anticipated to the yellow-billed cuckoo.

The **southwestern willow flycatcher** is one of about 10 species in the *Empidonax* genus complex. All species in this complex are extremely similar in appearance. Identification must be made by song while the species is on its breeding grounds (Kaufman 1990). The characteristic "fitz-bew" song identifies this species. Southwestern willow flycatchers are closely associated with riparian habitats, specifically areas of high shrub densities (AGFD 1996). Recent survey efforts for this flycatcher have found this species in a variety of habitats including monotypic willow thickets, gallery cottonwood forests, and tamarisk stands. No riparian areas nor individuals of the *Empidonax* genus complex were observed within the survey area. No impacts are expected to the southwestern willow flycatcher.

In Arizona, more than 200 **peregrine falcon** breeding areas are known (Glinski 1998). The habitat characteristics most commonly associated with this species are open country in the presence of tall cliffs with open airspace. The species is now being observed in urban areas with open fields and near dams with open water. Its prey includes a variety of birds that vary from gull-size to swallow-size. They can usually be found where concentrations of bird species are high (USFWS 1991). Prey is taken on the wing during a high-speed dive or stoop. No suitable nesting and foraging habitat are present for this species within the project site, corridor and zone of influence. No individuals or eyries were observed during the survey. No impacts are anticipated to the peregrine falcon.

The **roundtail chub** is related to the endangered humpback chub, and is characterized by a robust body and tail trunk. This species has a green back with silvery sides, and a white belly. The roundtail chub is found in most tributaries of the Colorado River basin and in some mainstem areas. They feed mostly on drifting insects (Valdez 1993). This species is known from the San Juan River and Zuni drainage (Sublette et al 1990). No suitable aquatic habitat such as rivers or streams exists for this species in the survey area. No impacts are expected to the humpback chub.

The **California condor** is the largest bird of prey in North America, with a wingspan approaching 10 feet and weighing 20-22 pound. In December 1996, an experimental population of condors were released at the Vermillion Cliffs in northern Arizona (Glinski 1998). Immature condors differ from adults by lacking conspicuous white underlinings. The young have black, dusky bare heads, and adults have yellow or orange bare heads. They are not habitat specialists, and historically, occupied diverse ecological zones ranging from seacoasts to grasslands and forest-covered mountains (Glinski 1998). No suitable nesting habitat is present within the project tract, corridor and zone of influence. Potential foraging habitat is present for the condor in the project area. No individuals or nests were observed during the survey.

The **Little Colorado spinedace** is a small (usually less than 4 inches) silvery minnow. This fish is darker on the back than on the belly. The spinedace inhabits moderate to small streams and is characteristically found in pools with water flowing over fine gravel and silt-mud substrates (Minckey 1973). This fish persists in deep pools and spring areas which retain water, and during times of flooding the spinedace redistributes itself throughout the stream (USFWS 1991). No

suitable habitat such as spring areas and streams exist for this species in the survey area. No impacts are expected to the Little Colorado spinedace.

The **Chiricahua leopard frog** is highly aquatic, and is found inhabiting rocky streams with deep rock-bound pools in oak, mixed oak, pine woodlands and forests. This species also ranges into areas of chaparral, grassland and desert, where it frequents streams, river overflow pools, oxbows, permanent springs, ponds and earthen stock tanks. These frogs breeding at higher elevations breeds from May to August, and in lower, warmer localities from mid-March to June (Stebbins 1985). No suitable aquatic habitat was observed for this frog within the survey area. No impacts are expected to the Chiricahua leopard frog.

The **northern leopard frog** can be found in areas of permanent water such as ponds and streams with marshy edges, algae-grown overflow pools, and near springs with emergent vegetation. Winter hibernation is thought to be in holes near springs or other areas where water is unfrozen and constantly renewed. Its diet consists of a wide variety of invertebrates. No suitable habitat such as ponds, streams, or springs exist for this species within the survey area. No impacts are expected to the northern leopard frog.

The **black-footed ferret** is a small carnivore of the *Mustelidae* or weasel family. Ferrets are generally 1.5 feet long, light in color except for the face, feet, and the tip of the tail which are dark to black. These ferrets lead a solitary existence, except for the period when mother and young are together. Their diet consists primarily of prairie dogs and they live within the boundaries or in close proximity to prairie dog towns (Cockrum 1982). No black-footed ferrets were observed. No prairie dogs or their burrows were observed in the project area. Based on these observations and the criteria set forth in the black-footed ferret guidelines (NFWF 1985), no impacts are expected to the black-footed ferret.

The **Apache (Arizona) trout** is a yellow or yellow-olive, cutthroat-like trout with large, dark spots on its body. The dorsal, anal, and caudal fins are edged with white. This fish inhabits clear, cool water of high mountain streams. The only pure populations remain in the few streams on the Fort Apache Reservation and Apache-Sitgreaves National Forest (USFWS 1987). No suitable habitat such as streams or rivers exist for this species in the survey area. No impacts are anticipated to the Apache trout.

The **Gila trout** are golden-yellow in color, with small dark spots above the lateral line and a larger dark spot on the adipose fin. The tips of the dorsal, pelvic, and anal fins are tipped with yellow or white. Gila trout live in freshwater rivers and perennial streams at elevations from 5,400 to 9,200 feet above sea level. The majority of their habitat consists of cold headwater and moderate valley streams that rarely exceed 70°F. They can be found in the upper Gila River watershed in New Mexico, and the Francisco River watershed in Arizona (USFWS 2002). No suitable aquatic habitat exists for this species in the survey area. No impacts are anticipated to the Gila trout.

The **Peebles Navajo cactus** is a member of the *Cactaceae* (cactus family). This cactus is very difficult to find because the plant is very small and during dry weather, will retract into the soil. The

stems are solitary, globose, up 1 inch tall and about 0.75 inch in diameter. This species flowers are yellow to yellow-green, and appear in the spring. The cactus grows in gravelly soils of the Shinarump Conglomerate of the Chinle Formation on the Navajoan Desert. This species is known from central Navajo County, near Holbrook Arizona (USFWS 1992). No individuals were observed and no suitable habitat, such as the Shinarump Conglomerate were noted within project area. Due to the absence of suitable habitat, no impacts are expected to the Peebles Navajo cactus.

The **Parish's alkali grass** is closely related to the *Poa* (bluegrass family). This species is a dwarf, blue-green, tufted annual, with three to six flowered spikelets (Gould 1993). Moist, saline soil is the main habitat requirement for this species. New populations of this species have been discovered, but still is considered rare by the NFWF. Known locations are in the western part of the Navajo Nation, Coconino County, Arizona. No suitable habitat such as moist, saline soils were noted within the project tract and corridor. No impacts are expected to the Parish's alkali grass.

The **Mexican spotted owl** (MSO) is one of three owls in North America with dark eyes, and the current population estimates are crude, but suggest that there may be 600 to 1,200 MSOs in Arizona (Glinski 1998). Preferred habitat includes steep mountains or canyons containing mixed conifer, ponderosa pine, pine-oak forests or deciduous riparian forest (Spahr et al. 1991, Ganey et al. 1988). A large majority of MSO roost sites have been located in canyon bottoms and on lower slopes within dense unmanaged stands of trees. Its diet consists mostly of rodents and lagomorphs (Ehrlich et al. 1988), although, these owls are considered opportunistic and are known to take insects, reptiles, and birds. There is no suitable unmanaged, multi-canopy woodland habitat with abrupt topography present for this species in the project parcel, corridor and zone of influence. No impacts are expected to the MSO.

The **northern Mexican gartersnake** is a striped snake with a whitish to greenish crescent behind the corner of the mouth and paired black blotches at the back of the head. This species occurs primarily in permanent streams and marshes in central south-central, and southeastern Arizona (AGFD 1996). The snake is primarily a highland canyon snake of pine-oak forest and pinon-juniper woodland, usually found in or near water, where it apparently feeds chiefly on frogs (Stebbins 1985). No suitable aquatic habitat is present within the project area for this species. No impacts to the northern Mexican gartersnake are anticipated.

The **New Mexico meadow jumping mouse** has elongated hind legs, a long, not heavily haired tail, pale coloration with a weak dorsal dark band and with much ochraceous color on the dorsum (Hoffmeister 1986). This jumping mouse inhabits grassy places in close association with water (creeks and rivers) high in the White and Mogollon mountains, just below the spruce-fir and among yellow pines at least 8,000 feet in elevation. The mouse feeds on fruits and seed, but frequently feed on insects, snails, slugs, and milipeds. No suitable wet meadow habitat is present for this mouse. Furthermore, the project area is lower in elevation than the species range. No impacts are expected to the New Mexico meadow jumping mouse.

## VI. CONCLUSIONS

It is determined that there will be no impacts to the following species:

1. Welsh's milkweed
2. Burrowing owl
3. Ferruginous hawk
4. Gray wolf
5. Mexican gray wolf
6. Navajo sedge
7. Yellow-billed cuckoo
8. Southwestern willow flycatcher
9. Peregrine falcon
10. Roundtail chub
11. Little Colorado spinedace
12. Chiricahua leopard frog
13. Northern leopard frog
14. Black-footed ferret
15. Apache trout
16. Gila trout
17. Peebles Navajo cactus
18. Parish's alkali grass
19. Mexican spotted owl
20. Northern Mexican gartersnake
21. New Mexico meadow jumping mouse

These species were not present in the proposed project tract and corridor and/or zone of influence and are highly unlikely to be present in the project area due to the absence of critical habitat requirements, or due to presence local resident/infrastructure or absence of individuals. No mitigation is required for these species.

Potential foraging habitat exist within the project corridor and/or zone of influence for the following species:

1. Golden eagle
2. California condor

No suitable nesting habitat is present for the golden eagle and California condor. Foraging habitat exists for the golden eagle and California condor. Approximately 300.0 acres of foraging habitat will be affected. Neither of these species or their nests were observed in the project parcel and corridor and zone of influence. These species could be temporarily displaced from foraging habitat while construction is on-going. However, due to transient nature of foraging individuals, they are not expected to be adversely impacted. The existence of the solar generation plant and transmission line should not deter the species from using the area in the future.

No wetlands were found within the project tract and corridor, and none are depicted within the project parcel and corridor on the NWI map. No mitigation is required.

## **VII. MITIGATIONS**

The proposed solar generation plant would be a 25 megawatt plant. It is recommended that NTUA use all available existing roads during the construction of the solar generation plant and transmission line.

No other mitigation is recommended for this project, however, due to the lack of information on the effects of such a solar generation plant on the Navajo Nation, we suggest that a study be conducted to ascertain the effects of the solar generation plant on wildlife within the region. The study should be conducted for at least one year, but we recommend that data be collected under the study for two or more years.

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## **Appendix A**

**Response letter from Navajo Fish and Wildlife Department and  
species list from the U.S. Fish and Wildlife Service website**



PO Box 1480  
Window Rock, AZ  
86515

P 928.871.6472  
F 928.871.7603

<http://nnhp.nndfw.org>

14ntua112

14-November-2014

Bernice Tsosie  
Government Liaison / ROW Specialist  
Navajo Tribal Utility Authority  
PO Box 170  
Fort Defiance, AZ 86504

**SUBJECT: NTUA's Proposed Kayenta Solar Generation Plant Project, Work Order No. 6213786**

Bernice Tsosie,

NNHP has performed an analysis of your project in comparison to known biological resources of the Navajo Nation and has included the findings in this letter. The letter is composed of seven parts. The sections as they appear in the letter are:

1. **Known Species** – a list of all species within relative proximity to the project
2. **Potential Species** – a list of potential species based on project proximity to respective suitable habitat
3. **Quadrangles** – an exhaustive list of quads containing the project
4. **Project Summary** – a categorized list of biological resources within relative proximity to the project grouped by individual project site(s) or quads
5. **Conditional Criteria Notes** – additional details concerning various species, habitat, etc.
6. **Personnel Contacts** – a list of employee contacts
7. **Resources** – identifies sources for further information

Known Species lists "species of concern" known to occur within proximity to the project area. Planning for avoidance of these species is expected. If no species are displayed then based upon the records of the Navajo Nation Department of Fish and Wildlife (NNDFW) there are no "species of concern" within proximity to the project. Refer to the Navajo Endangered Species List (NESL) Species Accounts for recommended avoidance measures, biology, and distribution of NESL species on the Navajo Nation ([http://nnhp.nndfw.org/sp\\_account.htm](http://nnhp.nndfw.org/sp_account.htm)).

Potential Species lists species that are potentially within proximity to the project area and need to be evaluated for presence/absence. If no species are found within the Known or Potential Species lists, the project is not expected to affect any federally listed species, nor significantly impact any tribally listed species or other species of concern. Potential for species has been determined primarily on habitat characteristics and species range information. A thorough habitat analysis, and if necessary, species specific surveys, are required to determine the potential for each species.

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 legally protected species, the following tribal and federal statuses are indicated: NESL, federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only

ESA candidate, NESL group 4 status, and species listed on the Sensitive Species List. Please be aware of these species during surveys and inform the NNDFW of observations. Reported observations of these species and documenting them in project planning and management is important for conservation and may contribute to ensuring they will not be up listed in the future.

In any and all correspondence with NNDFW or NNHP concerning this project please cite the Data Request Code associated with this document. It can be found in this report on the top right corner of the every page. Additionally please cite this code in any biological evaluation documents returned to our office.

### 1. Known Species *(NESL=Navajo Endangered Species List, FE=Federally Endangered, FT=Federally Threatened, FC=Federal Candidate)*

#### Species

AQCH = Aquila chrysaetos / Golden Eagle NESL G3

### 2. Potential Species

#### Species

AQCH = Aquila chrysaetos / Golden Eagle NESL G3

ASWE = Asclepias welshii / Welsh's Milkweed NESL G3 FT

ATCU = Athene cunicularia / Burrowing Owl NESL G4

BURE = Buteo regalis / Ferruginous Hawk NESL G3

FAPE = Falco peregrinus / Peregrine Falcon NESL G4

PUPA = Puccinellia parishii / Parish's Alkali Grass NESL G4

RAPI = Rana pipiens / Northern Leopard Frog NESL G2

### 3. Quadrangles (7.5 Minute)

#### Quadrangles

Agathla Peak (36110-G2) / AZ

### 4. Project Summary *(EO1 Mile/EO 3 Miles=elements occurring within 1 & 3 miles., MSO=mexican spotted owl PACs, POTS=potential species, RCP=Biological Areas)*

SITE	EO1MI	EO3MI	QUAD	MSO	POTS	AREAS
Connection Transmission Line	None	None	Agathla Peak (36110-G2) / AZ	None	RAPI, FAPE, BURE, ATCU, AQCH, PUPA, ASWE	Area 3
Solar Plant Site	None	AQCH	Agathla Peak (36110-G2) / AZ	None	RAPI, FAPE, BURE, ATCU, AQCH, PUPA, ASWE	Area 3

**5. Conditional Criteria Notes** *(Recent revisions made please read thoroughly. For certain species, and/or circumstances, please read and comply)*

- A. Biological Resource Land Use Clearance Policies and Procedures (RCP)** - The purpose of the RCP is to assist the Navajo Nation government and chapters ensure compliance with federal and Navajo laws which protect, wildlife resources, including plants, and their habitat resulting in an expedited land use clearance process. After years of research and study, the NNDFW has identified and mapped wildlife habitat and sensitive areas that cover the entire Navajo Nation.  
The following is a brief summary of six (6) wildlife areas:
1. **Highly Sensitive Area** - recommended no development with few exceptions.
  2. **Moderately Sensitive Area** - moderate restrictions on development to avoid sensitive species/habitats.
  3. **Less Sensitive Area** - fewest restrictions on development.
  4. **Community Development Area** - areas in and around towns with few or no restrictions on development.
  5. **Biological Preserve** - no development unless compatible with the purpose of this area.
  6. **Recreation Area** - no development unless compatible with the purpose of this area.
- None** - outside the boundaries of the Navajo Nation  
This is not intended to be a full description of the RCP please refer to the our website for additional information at <http://www.nndfw.org/clup.htm>.
- B. Raptors** - If raptors are known to occur within 1 mile of project location: Contact Chad Smith at 871-7070 regarding your evaluation of potential impacts and mitigation.
- o **Golden and Bald Eagles**- If Golden or Bald Eagle are known to occur within 1 mile of the project, decision makers need to ensure that they are not in violation of the Golden and Bald Eagle Nest Protection Regulations found at [http://nnhp.nndfw.org/docs\\_reps/gben.pdf](http://nnhp.nndfw.org/docs_reps/gben.pdf).
  - o **Ferruginous Hawks** - Refer to "Navajo Nation Department of Fish and Wildlife's Ferruginous Hawk Management Guidelines for Nest Protection" [http://nnhp.nndfw.org/docs\\_reps.htm](http://nnhp.nndfw.org/docs_reps.htm) for relevant information on avoiding impacts to Ferruginous Hawks within 1 mile of project location.
  - o **Mexican Spotted Owl** - Please refer to the Navajo Nation Mexican Spotted Owl Management Plan [http://nnhp.nndfw.org/docs\\_reps.htm](http://nnhp.nndfw.org/docs_reps.htm) for relevant information on proper project planning near/within spotted owl protected activity centers and habitat.
- C. Surveys** - Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts [http://nnhp.nndfw.org/sp\\_account.htm](http://nnhp.nndfw.org/sp_account.htm). Surveyors on the Navajo Nation must be permitted by the Director, NNDFW. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NNDFW Zoologist (Chad Smith) for animals at 871-7070, and Botanist (Andrea Hazelton) for plants at (928)523-3221. Questions regarding biological evaluation should be directed to Jeff Cole at 871-7068.
- D. Oil/Gas Lease Sales** - Any settling or evaporation pits that could hold contaminants should be lined and covered. Covering pits, with a net or other material, will deter waterfowl and other migratory bird use. Lining pits will protect ground water quality.
- E. Power line Projects** - These projects need to ensure that they do not violate the regulations set forth in the Navajo Nation Raptor Electrocution Prevention Regulations found at [http://nnhp.nndfw.org/docs\\_reps/repr.pdf](http://nnhp.nndfw.org/docs_reps/repr.pdf).

- F. **Guy Wires** – Does the project design include guy wires for structural support? If so, and if bird species may occur in relatively high concentrations in the project area, then guy wires should be equipped with highly visual markers to reduce the potential mortality due to bird-guy wire collisions. Examples of visual markers include aviation balls and bird flight diverters. Birds can be expected to occur in relatively high concentrations along migration routes (e.g., rivers, ridges or other distinctive linear topographic features) or where important habitat for breeding, feeding, roosting, etc. occurs. The U.S. Fish and Wildlife Service recommends marking guy wires with at least one marker per 100 meters of wire.
- G. **San Juan River** – On 21 March 1994 (Federal Register, Vol. 59, No. 54), the U.S. Fish and Wildlife Service designated portions of the San Juan River (SJR) as critical habitat for *Ptychocheilus lucius* (Colorado pikeminnow) and *Xyrauchen texanus* (Razorback sucker). Colorado pikeminnow critical habitat includes the SJR and its 100-year floodplain from the State Route 371 Bridge in T29N, R13W, sec. 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian) up to the full pool elevation. Razorback sucker critical habitat includes the SJR and its 100-year floodplain from the Hogback Diversion in T29N, R16W, sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian). All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of critical habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.
- H. **Little Colorado River** - On 21 March 1994 (Federal Register, Vol. 59, No. 54) the U.S. Fish and Wildlife Service designated Critical Habitat along portions of the Colorado and Little Colorado Rivers (LCR) for *Gila cypha* (humpback chub). Within or adjacent to the Navajo Nation this critical habitat includes the LCR and its 100-year floodplain from river mile 8 in T32N R6E, sec. 12 (Salt and Gila River Meridian) to its confluence with the Colorado River in T32N R5E sec. 1 (S&GRM) and the Colorado River and 100-year floodplain from Nautuloid Canyon (River Mile 34) T36N R5E sec. 35 (S&GRM) to its confluence with the LCR. All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of Critical Habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.
- I. **Wetlands** – In Arizona and New Mexico, potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the Navajo Natural Heritage Program (NNHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NNHP). The NNHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale, and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation. In Utah, the U.S. Fish & Wildlife Service's National Wetlands Inventory maps are not yet available for the Utah portion of the Navajo Nation, therefore, field surveys should be completed to determine whether wetlands are located close enough to the project site(s) to be impacted. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. For more information contact the Navajo Environmental Protection Agency's Water Quality Program.

- J. **Life Length of Data Request** – The information in this report was identified by the NNHP and NNDFW's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is necessary. 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 NNDFW information is continually updated, any given information response is only wholly appropriate for its respective request.
- K. **Ground Water Pumping** - Projects involving the ground water pumping for mining operations, agricultural projects or commercial wells (including municipal wells) will have to provide an analysis on the effects to surface water and address potential impacts on all aquatic and/or wetlands species listed below. NESL Species potentially impacted by ground water pumping: *Carex specuicola* (Navajo Sedge), *Cirsium rydbergii* (Rydberg's Thistle), *Primula specuicola* (Cave Primrose), *Platanthera zothecina* (Alcove Bog Orchid), *Puccinellia parishii* (Parish Alkali Grass), *Zigadenus vaginatus* (Alcove Death Camas), *Perityle specuicola* (Alcove Rock Daisy), *Symphyotrichum welshii* (Welsh's American-aster), *Coccyzus americanus* (Yellow-billed Cuckoo), *Empidonax traillii extimus* (Southwestern Willow Flycatcher), *Rana pipiens* (Northern Leopard Frog), *Gila cypha* (Humpback Chub), *Gila robusta* (Roundtail Chub), *Ptychocheilus lucius* (Colorado Pikeminnow), *Xyrauchen texanus* (Razorback Sucker), *Cinclus mexicanus* (American Dipper), *Speyeria nokomis* (Western Seep Fritillary), *Aechmophorus clarkia* (Clark's Grebe), *Ceryle alcyon* (Belted Kingfisher), *Dendroica petechia* (Yellow Warbler), *Porzana carolina* (Sora), *Catostomus discobolus* (Bluehead Sucker), *Cottus bairdi* (Mottled Sculpin), *Oxyloma kanabense* (Kanab Ambersnail)

## 6. Personnel Contacts

**Wildlife Manager****Sam Diswood****928.871.7062****sdiswood@nndfw.org****Zoologist****Chad Smith****928.871.7070****csmith@nndfw.org****Botanist****Andrea Hazelton****928.523.3221****ahazelton@nndfw.org****Biological Reviewer****Pamela Kyselka****928.871.7065****pkyselka@nndfw.org****GIS Supervisor****Dexter D Prall****928.871.6489****prall@nndfw.org****Wildlife Tech****Sonja Detsoi****928.871.6472****sdetsoi@nndfw.org**

## 7. Resources

National Environmental Policy Act

Navajo Endangered Species List:  
<http://nnhp.ndfw.org/Endangered.htm>

Species Accounts:  
[http://nnhp.ndfw.org/sp\\_account.htm](http://nnhp.ndfw.org/sp_account.htm)

Biological Investigation Permit Application  
[http://nnhp.ndfw.org/study\\_permit.htm](http://nnhp.ndfw.org/study_permit.htm)

Navajo Nation Sensitive Species List  
[http://nnhp.ndfw.org/study\\_permit.htm](http://nnhp.ndfw.org/study_permit.htm)

Various Species Management and/or Document and Reports  
[http://nnhp.ndfw.org/docs\\_reps.htm](http://nnhp.ndfw.org/docs_reps.htm)

Consultant List  
(Coming Soon)

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



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

xc: file/chrono





U.S. Fish and Wildlife Service

## Trust Resources List

This resource list is to be used for planning purposes only — it is not an official species list.

Endangered Species Act species list information for your project is available online and listed below for the following FWS Field Offices:

Arizona Ecological Services Field Office  
2321 WEST ROYAL PALM ROAD, SUITE 103  
PHOENIX, AZ 85021  
(602) 242-0210  
<http://www.fws.gov/southwest/es/arizona/>  
<http://www.fws.gov/southwest/es/EndangeredSpecies/lists/>

***Project Name:***

Kayenta Solar

***Project Counties:***

Navajo, AZ

***Project Type:***

Power Generation

***Endangered Species Act Species List (USFWS Endangered Species Program).***

There are a total of 17 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fishes may appear on the species list because a project could cause downstream effects on the species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section below for critical habitat that lies within your project area. Please contact the designated FWS office if you have questions.

**Species that should be considered in an effects analysis for your project:**

Amphibians	Status		Has Critical Habitat	Contact
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## Trust Resources List

Chiricahua leopard frog ( <i>Lithobates chiricahuensis</i> ) Population: Entire	Threatened	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a> <a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Birds				
California condor ( <i>Gymnogyps californianus</i> ) Population: Entire, except where listed as an experimental population below	Endangered	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Mexican Spotted owl ( <i>Strix occidentalis lucida</i> ) Population: Entire	Threatened	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Southwestern Willow flycatcher ( <i>Empidonax traillii extimus</i> ) Population: Entire	Endangered	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Yellow-Billed Cuckoo ( <i>Coccyzus americanus</i> ) Population: Western U.S. DPS	Threatened	<a href="#">species info</a>	<a href="#">Proposed critical habitat</a>	Arizona Ecological Services Field Office
Fishes				
Apache trout ( <i>Oncorhynchus apache</i> ) Population: Entire	Threatened	<a href="#">species info</a>		Arizona Ecological Services Field Office
Gila trout ( <i>Oncorhynchus gilae</i> ) Population: Entire	Threatened	<a href="#">species info</a>		Arizona Ecological Services Field Office
Little Colorado spinedace ( <i>Lepidomeda vittata</i> ) Population: Entire	Threatened	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office



## Trust Resources List

Roundtail chub ( <i>Gila robusta</i> ) Population: Lower Colorado River Basin DPS	Candidate	<a href="#">species info</a>		Arizona Ecological Services Field Office
Flowering Plants				
Navajo sedge ( <i>Carex specuicola</i> )	Threatened	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Peebles Navajo cactus ( <i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i> )	Endangered	<a href="#">species info</a>		Arizona Ecological Services Field Office
Welsh's milkweed ( <i>Asclepias welshii</i> )	Threatened	<a href="#">species info</a>	<a href="#">Final designated critical habitat</a>	Arizona Ecological Services Field Office
Mammals				
Black-Footed ferret ( <i>Mustela nigripes</i> ) Population: U.S.A. (specific portions of AZ, CO, MT, SD, UT, and WY)	Experimental Population, Non- Essential	<a href="#">species info</a>		Arizona Ecological Services Field Office
Gray wolf ( <i>Canis lupus</i> ) Population: Mexican gray wolf, EXPN population	Experimental Population, Non- Essential	<a href="#">species info</a>		Arizona Ecological Services Field Office
Mexican gray wolf ( <i>Canis lupus baileyi</i> ) Population:	Proposed Endangered	<a href="#">species info</a>		Arizona Ecological Services Field Office
New Mexico meadow jumping mouse ( <i>Zapus hudsonius luteus</i> ) Population:	Endangered	<a href="#">species info</a>	<a href="#">Proposed critical habitat</a>	Arizona Ecological Services Field Office



## Trust Resources List

Reptiles				
Northern Mexican gartersnake ( <i>Thamnophis eques megalops</i> )	Threatened	<a href="#">species info</a>	<a href="#">Proposed critical habitat</a>	Arizona Ecological Services Field Office

### **Critical habitats within your project area: (View all critical habitats within your project area on one map)**

The following critical habitats lie fully or partially within your project area.

Birds	Critical Habitat Type
Mexican Spotted owl ( <i>Strix occidentalis lucida</i> ) Population: Entire	<a href="#">Final designated critical habitat</a>
Fishes	
Little Colorado spinedace ( <i>Lepidomeda vittata</i> ) Population: Entire	<a href="#">Final designated critical habitat</a>
Reptiles	
Narrow-headed garter snake ( <i>Thamnophis rufipunctatus</i> ) Population:	<a href="#">Proposed critical habitat</a>
Northern Mexican gartersnake ( <i>Thamnophis eques megalops</i> )	<a href="#">Proposed critical habitat</a>

### ***FWS National Wildlife Refuges (USFWS National Wildlife Refuges Program).***

*There are no refuges found within the vicinity of your project.*

### ***FWS Migratory Birds (USFWS Migratory Bird Program).***

The protection of birds is regulated by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. For more information regarding these Acts see: <http://www.fws.gov/migratorybirds/RegulationsandPolicies.html>.



## Trust Resources List

All project proponents are responsible for complying with the appropriate regulations protecting birds when planning and developing a project. To meet these conservation obligations, proponents should identify potential or existing project-related impacts to migratory birds and their habitat and develop and implement conservation measures that avoid, minimize, or compensate for these impacts. The Service's Birds of Conservation Concern (2008) report identifies species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become listed under the Endangered Species Act as amended (16 U.S.C 1531 et seq.).

For information about Birds of Conservation Concern, go to:

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BCC.html>.

To search and view summaries of year-round bird occurrence data within your project area, go to the Avian Knowledge Network Histogram Tool links in the Bird Conservation Tools section at: <http://www.fws.gov/migratorybirds/CCMB2.htm>.

For information about conservation measures that help avoid or minimize impacts to birds, please visit:

<http://www.fws.gov/migratorybirds/CCMB2.htm>.

### **Migratory birds of concern that may be affected by your project:**

There are 37 birds on your Migratory birds of concern list. The underlying data layers used to generate the migratory bird list of concern will continue to be updated regularly as new and better information is obtained. User feedback is one method of identifying any needed improvements. Therefore, users are encouraged to submit comments about any questions regarding species ranges (e.g., a bird on the USFWS BCC list you know does not occur in the specified location appears on the list, or a BCC species that you know does occur there is not appearing on the list). Comments should be sent to [the ECOS Help Desk](#).

Species Name	Bird of Conservation Concern (BCC)	Species Profile	Seasonal Occurrence in Project Area
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	Yes	<a href="#">species info</a>	Wintering
Bendire's Thrasher ( <i>Toxostoma bendirei</i> )	Yes	<a href="#">species info</a>	Year-round, Breeding
Black-chinned Sparrow ( <i>Spizella atrogularis</i> )	Yes	<a href="#">species info</a>	Breeding
Black-throated Gray Warbler ( <i>Dendroica nigrescens</i> )	Yes	<a href="#">species info</a>	Breeding
Brewer's Sparrow ( <i>Spizella breweri</i> )	Yes	<a href="#">species info</a>	Breeding, Wintering, Migrating
Burrowing Owl ( <i>Athene cunicularia</i> )	Yes	<a href="#">species info</a>	Breeding



## Trust Resources List

Canyon Towhee ( <i>Pipilo fuscus</i> )	Yes	<a href="#">species info</a>	Year-round
Cassin's Finch ( <i>Carpodacus cassinii</i> )	Yes	<a href="#">species info</a>	Year-round
Chestnut-collared Longspur ( <i>Calcarius ornatus</i> )	Yes	<a href="#">species info</a>	Wintering
Common Black-Hawk ( <i>Buteogallus anthracinus</i> )	Yes	<a href="#">species info</a>	Breeding
Costa's Hummingbird ( <i>Calypte costae</i> )	Yes	<a href="#">species info</a>	Breeding
Elf Owl ( <i>Micrathene whitneyi</i> )	Yes	<a href="#">species info</a>	Breeding
Ferruginous hawk ( <i>Buteo regalis</i> )	Yes	<a href="#">species info</a>	Year-round
Flammulated owl ( <i>Otus flammeolus</i> )	Yes	<a href="#">species info</a>	Breeding
Fox Sparrow ( <i>Passerella iliaca</i> )	Yes	<a href="#">species info</a>	Wintering
Gilded Flicker ( <i>Colaptes chrysoides</i> )	Yes	<a href="#">species info</a>	Year-round
Golden eagle ( <i>Aquila chrysaetos</i> )	Yes	<a href="#">species info</a>	Year-round
Grace's Warbler ( <i>Dendroica graciae</i> )	Yes	<a href="#">species info</a>	Breeding
Gray vireo ( <i>Vireo vicinior</i> )	Yes	<a href="#">species info</a>	Breeding
Juniper Titmouse ( <i>Baeolophus ridgwayi</i> )	Yes	<a href="#">species info</a>	Year-round
Lewis's Woodpecker ( <i>Melanerpes lewis</i> )	Yes	<a href="#">species info</a>	Wintering, Year-round
Loggerhead Shrike ( <i>Lanius ludovicianus</i> )	Yes	<a href="#">species info</a>	Year-round
Lucy's warbler ( <i>Vermivora luciae</i> )	Yes	<a href="#">species info</a>	Breeding
Mountain plover ( <i>Charadrius montanus</i> )	Yes	<a href="#">species info</a>	Wintering, Breeding
Northern Beardless-Tyrannulet ( <i>Camptostoma imberbe</i> )	Yes	<a href="#">species info</a>	Breeding
Olive Warbler ( <i>Peucedramus taeniatus</i> )	Yes	<a href="#">species info</a>	Breeding
Olive-Sided flycatcher ( <i>Contopus cooperi</i> )	Yes	<a href="#">species info</a>	Breeding
Peregrine Falcon ( <i>Falco peregrinus</i> )	Yes	<a href="#">species info</a>	Breeding, Year-round
phainopepla ( <i>phainopepla nitens</i> )	Yes	<a href="#">species info</a>	Breeding
Pinyon Jay ( <i>Gymnorhinus cyanocephalus</i> )	Yes	<a href="#">species info</a>	Year-round



## Trust Resources List

Prairie Falcon ( <i>Falco mexicanus</i> )	Yes	<a href="#">species info</a>	Year-round
Red-faced Warbler ( <i>Cardellina rubrifrons</i> )	Yes	<a href="#">species info</a>	Breeding
Sage Thrasher ( <i>Oreoscoptes montanus</i> )	Yes	<a href="#">species info</a>	Breeding
Sonoran Yellow Warbler ( <i>Dendroica petechia ssp. sonora</i> )	Yes	<a href="#">species info</a>	Breeding
Swainson's hawk ( <i>Buteo swainsoni</i> )	Yes	<a href="#">species info</a>	Breeding
Williamson's Sapsucker ( <i>Sphyrapicus thyroideus</i> )	Yes	<a href="#">species info</a>	Wintering, Breeding
Willow Flycatcher ( <i>Empidonax traillii</i> )	Yes	<a href="#">species info</a>	Breeding

### ***NWI Wetlands (USFWS National Wetlands Inventory).***

The U.S. Fish and Wildlife Service is the principal Federal agency that provides information on the extent and status of wetlands in the U.S., via the National Wetlands Inventory Program (NWI). In addition to impacts to wetlands within your immediate project area, wetlands outside of your project area may need to be considered in any evaluation of project impacts, due to the hydrologic nature of wetlands (for example, project activities may affect local hydrology within, and outside of, your immediate project area). It may be helpful to refer to the USFWS National Wetland Inventory website. The designated FWS office can also assist you. Impacts to wetlands and other aquatic habitats from your project may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal Statutes. Project Proponents should discuss the relationship of these requirements to their project with the Regulatory Program of the appropriate U.S. Army Corps of Engineers District.

### **Data Limitations, Exclusions and Precautions**

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.



## Trust Resources List

Wetlands or other mapped features may have changed since the date of the imagery and/or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

**Exclusions** - Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

**Precautions** - Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

**The following wetland types intersect your project area in one or more locations:**

Wetland Types	NWI Classification Code	Total Acres
Freshwater Emergent Wetland	<u>PEM1Cx</u>	0.6498
Freshwater Emergent Wetland	<u>PEM1Kx</u>	0.02
Freshwater Emergent Wetland	<u>PEM1Ah</u>	3.6587
Freshwater Emergent Wetland	<u>PEM1Ax</u>	0.9249
Freshwater Emergent Wetland	<u>PEM1F</u>	16.6696
Freshwater Emergent Wetland	<u>PEM1C</u>	100.6951
Freshwater Emergent Wetland	<u>PEM1A</u>	3.8116
Freshwater Emergent Wetland	<u>PEM1B</u>	7.9416
Freshwater Emergent Wetland	<u>PEM1Kh</u>	0.4527
Freshwater Emergent Wetland	<u>PEM1Ch</u>	22.6995
Freshwater Emergent Wetland	<u>PEM1K</u>	30.6127
Freshwater Forested/Shrub Wetland	<u>PSS1Ch</u>	6.5387





## Trust Resources List

Freshwater Forested/Shrub Wetland	<u>PSS2J</u>	243.6262
Freshwater Forested/Shrub Wetland	<u>PSS2Jh</u>	35.2991
Freshwater Forested/Shrub Wetland	<u>PSS2Jx</u>	0.7914
Freshwater Forested/Shrub Wetland	<u>PSS1Ah</u>	23.7903
Freshwater Forested/Shrub Wetland	<u>PSS2Ah</u>	0.6554
Freshwater Forested/Shrub Wetland	<u>PSS2A</u>	9.0773
Freshwater Forested/Shrub Wetland	<u>PSS1J</u>	36.6005
Freshwater Forested/Shrub Wetland	<u>PSS1K</u>	14.7426
Freshwater Forested/Shrub Wetland	<u>PSS1A</u>	85.693
Freshwater Forested/Shrub Wetland	<u>PFO1A</u>	78.1395
Freshwater Forested/Shrub Wetland	<u>PSS1C</u>	16.5747
Freshwater Pond	<u>PAB4Fh</u>	0.5301
Freshwater Pond	<u>PUBFx</u>	8.3821
Freshwater Pond	<u>PAB3Fh</u>	7.1266
Freshwater Pond	<u>PUSCh</u>	55.2193
Freshwater Pond	<u>PUSCx</u>	11.047
Freshwater Pond	<u>PAB4F</u>	0.6985
Freshwater Pond	<u>PUSAx</u>	20.7882
Freshwater Pond	<u>PUBHh</u>	22.3539
Freshwater Pond	<u>PUBKx</u>	9.5631
Freshwater Pond	<u>PAB4Hh</u>	2.4489
Freshwater Pond	<u>PUBHx</u>	3.2626
Freshwater Pond	<u>PAB3Hh</u>	19.0343
Freshwater Pond	<u>PUSJx</u>	46.7456
Freshwater Pond	<u>PUSC</u>	1.615
Freshwater Pond	<u>PUSA</u>	12.5406



## Trust Resources List

Freshwater Pond	<u>PUSAh</u>	95.6185
Freshwater Pond	<u>PUSJh</u>	95.203
Freshwater Pond	<u>PUSJ</u>	208.9453
Freshwater Pond	<u>PUBF</u>	8.1959
Freshwater Pond	<u>PUSKx</u>	7.1647
Freshwater Pond	<u>PUBFh</u>	3.9837
Freshwater Pond	<u>PUSKh</u>	16.9548
Lake	<u>L2USJh</u>	58.9344
Lake	<u>L1UBKh</u>	312.733
Lake	<u>L2USAh</u>	7.8008
Lake	<u>L2USK</u>	8.6519
Lake	<u>L1AB4Hh</u>	13.793
Lake	<u>L2USJ</u>	61.6821
Lake	<u>L2USA</u>	60.9874
Lake	<u>L1UBHh</u>	116.0945
Lake	<u>L2UBK</u>	0.7273
Lake	<u>L2USCh</u>	20.9986
Lake	<u>L2UBFh</u>	57.5672
Lake	<u>L2USKh</u>	121.2617
Riverine	<u>R4SBC</u>	0.1421
Riverine	<u>R4SBA</u>	2451.4806
Riverine	<u>R4SBJ</u>	412.63
Riverine	<u>R2USJ</u>	1.2015
Riverine	<u>R2USC</u>	0.6944
Riverine	<u>R2USA</u>	233.8619
Riverine	<u>R2UBH</u>	1.6728



U.S. Fish and Wildlife Service

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Riverine	<u>R4SBJx</u>	16.304
Riverine	<u>R3USA</u>	0.7628
Riverine	<u>R4SBKx</u>	10.1923

## **Appendix B**

### **Tables of Mammals, Birds, Reptiles, Amphibians, and Plant Species encountered during the Field Survey**

## Mammal Species

None

## Bird Species

Horned lark  
Common raven

*Eremophila alperstris*  
*Corvus corax*

## Reptile and Amphibian Species

None

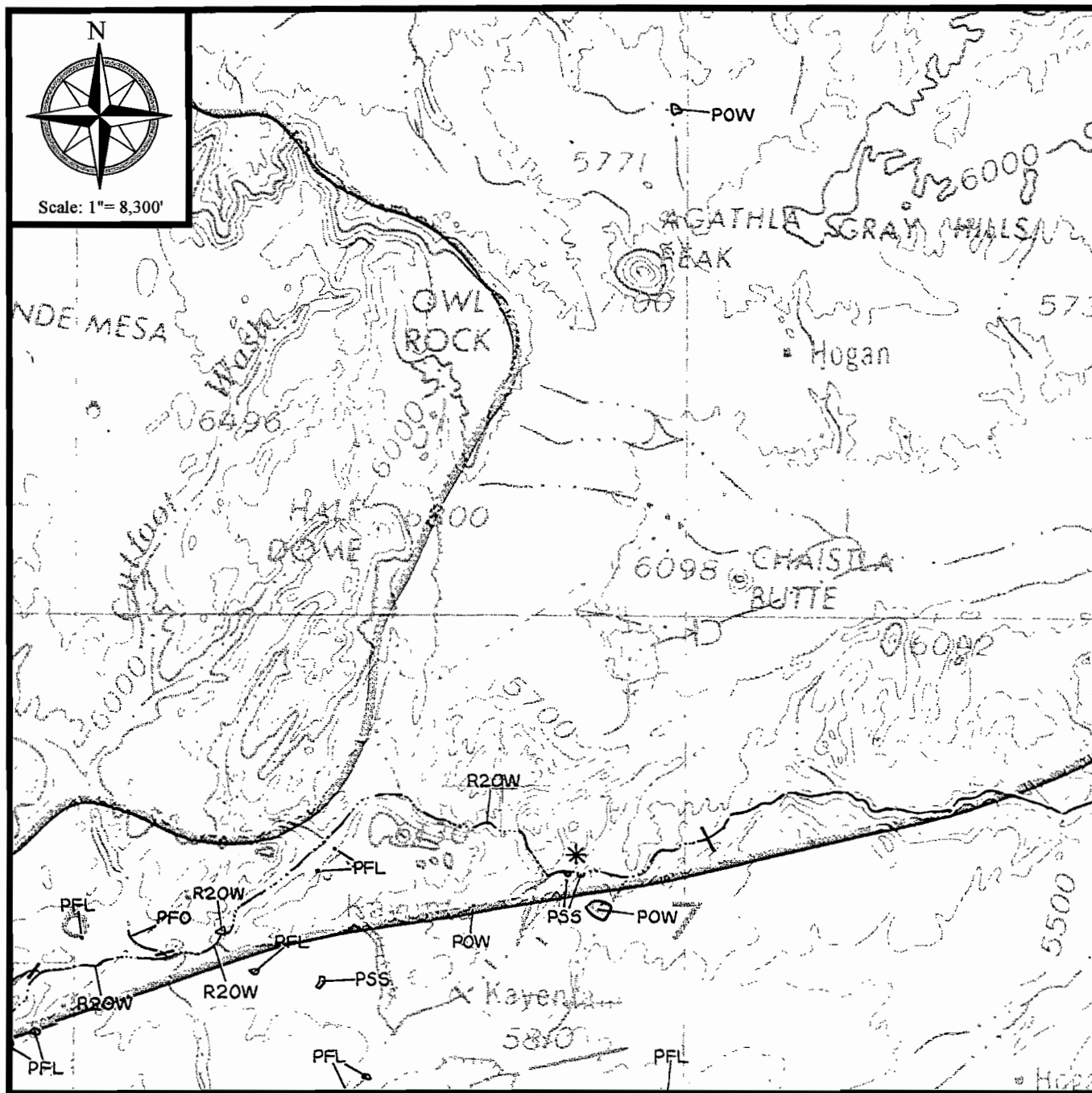
## Plant Species

Blue gama  
Galleta  
Fluffgrass  
Crested wheatgrass  
Three-awn  
Sacaton  
Cheatgrass brome  
Sand dropseed  
Green ephedra  
Sagebrush  
Rabbitbrush  
Broom snakeweed  
Narrowleaf yucca  
Plains prickly pear cactus  
Purple aster  
Bristly hiddenflower  
Scarlet false-mallow  
Silverleaf nightshade  
Lupine  
Woolly plantain  
Tumble weed

*Bouteloua gracilis*  
*Hilaria jamesii*  
*Tridens pulchellus*  
*Agropyron smithii*  
*Aristida purpurea*  
*Sporobolus wrightii*  
*Bromus tectorum*  
*Sporobolus cryptandrus*  
*Ephedra viridis*  
*Artemisia tridentata*  
*Chrysothamnus nauseosus*  
*Gutierrezia sarothrae*  
*Yucca augustissima*  
*Opuntia phaeacantha*  
*Machaeranthera canescens*  
*Cryptantha setosissima*  
*Sphaeralces coccinea*  
*Solanum elaeagnifolium*  
*Lupinus argenteus*  
*Plantago patagonica*  
*Salsola kali*

## **Appendix C**

### **National Wetland Inventory Map: Kayenta, Arizona-Utah**



Appendix C. National Wetlands Inventory Map: Kayenta, Arizona-Utah.

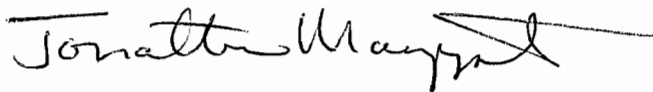
**Appendix D**  
**Signature Page**



## **SIGNATURE PAGE**

The following two Zoology Unlimited, LLC, biologists conducted the field survey and prepared the compliance documentation for the proposed project:

A. Signature One for the Biological Survey Report for Species of Concern on the Kayenta Solar Generation Plant and Transmission Line Project, Kayenta Chapter, Arizona, Work Order Number 6213786, dated December 5, 2014.

A handwritten signature in black ink, appearing to read "Jonathan Manygoats", with a long horizontal flourish extending to the right.

Jonathan Manygoats  
Project Manager/Editor

B. Signature Two for the Biological Survey Report for Species of Concern on the Kayenta Solar Generation Plant and Transmission Line Project, Kayenta Chapter, Arizona, Work Order Number 6213786, dated December 5, 2014.

A handwritten signature in black ink, appearing to read "Bob Manygoats", with a long horizontal flourish extending to the right.

Bob Manygoats  
Biologist/Report Preparation

ENVIRONMENTAL ASSESSMENT  
FOR  
KAYENTA SOLAR GENERATION FACILITY  
WITH POWER LINE PROJECT

NTUA Work Order No. 6213786

Prepared by  
NAVAJO TRIBAL UTILITY AUTHORITY  
Post Office Box 170  
Fort Defiance, Arizona 86504  
928/729-5721

March 2015

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## 1.0 - PROPOSED ACTION

### A. Project Description

The Navajo Tribal Utility Authority (NTUA), Fort Defiance, Arizona proposes to construct, operate and maintain up to 27.5 megawatt solar energy generation facility within a 300± acres of land and power line which will deliver power to NTUA's existing 230kV substation in the vicinity of Kayenta Chapter, Navajo County, Arizona.

NTUA is a non-profit enterprise established by the Navajo Nation Council to provide reliable multi-utility services to the Navajo Nation and the Navajo People. Since 1959, NTUA has supplied electricity, water, natural gas, wastewater treatment, and photovoltaic (solar power) services to residents throughout the Navajo Nation.

The power line will consist of a fifty (50) feet being 153± feet in length and containing 0.18 acres, more or less, across lands of the Navajo Nation Trust Lands. Construction activities will consist of the following:

1. NTUA will comply with the 25 Code of Federal Regulations, Part 169: Right-of-Way over Indian Lands.
2. Site preparation will involve removal of the sparse vegetation, ground leveling, compacting, and grading within the 300± acres tract.
3. Installation of posts and inverter station foundations.
4. Assemble the racking to the posts, attaching the panels to the racking, connecting wires, wiring the arrays to combiner boxes, to inverters, and finally to the interconnection point.
5. Installation of electrical system, wiring, substation and components.
6. Approximately 153± feet of power line will be constructed from the solar system to the substation.
7. The entire 300± acres will be securely fenced for construction purposes and securely and aesthetically fenced during operation of the solar facility.
8. An operations and maintenance mobile building will be constructed within the 300± acres.

9. Construction crew will pick up debris resulting from the construction.

10. The operation stage will consist of maintenance and monitoring of the solar facility.

#### **B. Purpose and Need for Action**

The purpose and need of these facilities is requested by NTUA, headquartered in Fort Defiance, Arizona.

Energy Generation Resources are needed to meet the current and future energy demand across the Navajo Nation. This project will meet a growing demand by the Navajo Nation to utilize its own renewable resources to meet energy demand.

In addition, this project shall promote green energy efficiency and create green jobs thereby promoting economic growth in the Kayenta, AZ region. This region has been negatively impacted by job losses at the Black Mesa Coal Mine and at the Navajo Generating Station.

#### **C. Locations**

The proposed project is situated within Township 39 North, Ranges 19 and 20 East, Gila and Salt River Meridian, Kayenta, Navajo County, State of Arizona.

Quadrangle Maps: Agathla Peak, AZ.

#### **D. Vicinity Maps**

Exhibit "A-1" Right-of-Way Map

Exhibit "A-2" Location Map

## 2.0 - ALTERNATIVES

### **A. Formulation of Alternatives**

Alternatives are Electric power distribution, Solar energy, Wind Energy, and No action.

### **B. Reasonable Alternatives**

#### **1. Electric Power Distribution Line**

Although NTUA has transmission and distribution electric lines across Navajo Nation, NTUA currently relies on power supply sources located outside of the Navajo Nation. NTUA continues to evaluate mechanisms to invest in the local Navajo Nation communities and to create energy independence. NTUA is concerned that it may not be able to maintain low rates due to energy dependence on external energy sources.

#### **2. Solar Energy**

Solar energy provides renewable and clean energy. Investing locally in solar energy will mitigate the negative economic impacts from reduced capacity of coal-fire generation facilities and will create a Navajo owned generation facility to meet Navajo needs with maintaining lower rates.

#### **3. Wind Energy**

Wind energy is an alternative renewable technology to solar, however, it is dependent on even greater land usage and based on the agrarian nature of the Navajo people. In addition to the difficulty in securing the land necessary the wind study and environmental impact study process would be significantly more time consuming and expensive.

#### **4. No Action**

Taking no action would result in the same circumstances as exist today and would not address the need to create energy dependence for the Navajo people. NTUA can continue to rely on other sources of generation and be subject to those generators increased costs being borne by the low income citizens of the Navajo Nation. NTUA will not supply renewable and clean energy and create energy dependence.

### **C. Alternatives Beyond BIA Authority**

The Navajo Tribal Utility Authority does not know of other reasonable alternatives beyond BIA Authority that may be considered.

### 3.0 - DESCRIPTION OF THE AFFECTED ENVIRONMENT

#### **A. Land Resources**

The project area is located four miles north of the town of Kayenta adjacent to Arizona State Highway 163 and adjacent to NTUA's existing 230kV substation. The land is primarily used for grazing. The elevation ranges about 5,600 feet.

Soil types in the project area are comprised of Palma-Clovis-Trail Association; deep coarse to moderately fine-textured, nearly level to rolling soils on plains.

#### **B. Water Resources**

NTUA's existing water and wastewater facilities are found in the immediate vicinity the project area and small drainages.

#### **C. Air Resources**

Air quality in the area is generally good. The area may be influenced by air pollution from the mining activities and power plants located on the Navajo Nation. Passing motor vehicles on dirt roads and prevailing dusty winds provides period of dense particulate pollution within the project areas.

Visibility can exceed 30 miles or more on clear days. During winter months and windy days, visibility may get obstructed.

The proposed project area receives 8-12 inches of rainfall annually. The annual mean temperature is 25 degrees Fahrenheit during winter months and 90 degrees Fahrenheit during the summer months.

#### **D. Biotic Resources**

##### **1. Wildlife**

Wildlife species observed within the project area are listed in Appendix B of the Biological Survey Report for Species of Concern on the Kayenta Solar Generation Plant and Transmission Line Project, prepared by Zoology Unlimited, Flagstaff, Arizona, Exhibit "C".

Sonja Detsoi, Wildlife Technician, Navajo Natural Heritage Program, Window Rock, Arizona, in a letter dated November 14, 2014, provided species known, potential and species of concern include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance to occur near the project area and are listed in Appendix A of the report.



In addition, list of species for Navajo County are also found in report.

On November 29 and 30, 2014, Zoology Unlimited conducted the biological field surveys within the tract and along the power line.

No suitable habitat exists for the Golden eagle; however, foraging habitat is present throughout the project area. No individuals or stick nests were found during the surveys.

No suitable habitat exists for the Burrowing owl, Ferruginous hawk, Mexican gray wolf, Yellow-billed cuckoo, Southwestern willow flycatcher, Peregrine falcon, Roundtail chub, California condor, Little Colorado spinedace, Chiricahua leopard frog, Northern leopard frog, Apache (Arizona) trout, Gila trout, Mexican spotted owl, Northern Mexican gartersnake, and New Mexico meadow jumping mouse. No individuals were found during the surveys.

Potential habitat is found within the project area for the Gray wolf; however, no individuals were found during the surveys.

No prairie dogs or burrows were observed. Based on observations and criteria set forth in the black-footed ferret guidelines, no impacts are expected to the black-footed ferret.

## 2. Vegetation

Plant species observed within the project area are listed in *Appendix B* of the report.

No suitable habitat exists within the project area for the Welsh's milkweed, Navajo sedge, Peebles Navajo cactus, and Parish's alkali grass. No individuals were found during the surveys.

The Biological Resources Compliance Form No. 14ntual12 was issued on April 30, 2015. See Exhibit "D".

## E. Cultural Resources

The Navajo Nation Historic Preservation Department (NNHPD) files states several small previous projects have been conducted and no sites were recorded within 300 feet of the project area.

Between November and December 2014, the Dinétahdóó Cultural Resources Management (DCRM), Farmington, New Mexico, conducted the cultural resources inventory within the tract and along the power line corridor. A total of three archaeological sites, 42 Isolated Occurrences (I.O.s), and one Traditional Cultural Properties (TCPs) were observed and recorded, DCRM 2014-35.

## F. Socioeconomic Conditions

Major employment on the Navajo Nation is found with Navajo Tribal offices, Federal agencies, and businesses situated locally or within principal towns of the Navajo Nation.

Kayenta Chapter's population is estimated to be 5,928±. The project is located within the Kayenta Chapter and BIA's Western Navajo Agency.

The community is centered on the traditional lifestyle of the Navajo people by farming, silversmith, rug weaving, and arts & crafts.

## G. Resources/Land Use Patterns

Natural resources in the Kayenta Chapter include scenic attractions, farming, coal, and sand & gravel. The community is accessible by Arizona State Highway Nos. 160 and 163. Bus and air services are available in the community.

The community has chapter house, new hospital, Senior Citizens Center, community center, fire station, dialysis center, health center, and numerous tribal and federal offices.

The Kayenta Community has school facilities, which include a high school, elementary school, junior high school, and pre-school.

The community has recreation facilities include a fair ground, park, basketball courts, baseball fields, tennis courts, recreation buildings, and library.

There are numerous commercial establishments such as gas stations, convenient stores, Laundromats, bank, supermarket, restaurants, movie theatre, and other small businesses in the community. In addition, there are several churches and organizations in the community.

## H. Other Values

The project area is not located within or near wilderness areas and will not cross wetlands area.

In reference to the 300± acres for the solar tract, prior to construction, NTUA will file a Notice of Intent (NOI) with the Navajo Nation Environmental Protection Agency for a National Pollutant Discharge Elimination System (NPDES) permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) pursuant to the Clean Water Act Section 402(p).

#### 4.0 - ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION

The following impacts (adverse or non-adverse) may occur as a result of the proposed undertaking:

##### **A. Biological Impacts**

1. Approximately 300± acres of surface area may be potentially disturbed during installation of the solar facility, which may result in an influx of disturbed-soil associated species and loss of wildlife cover and forage species.
2. There may be a temporary avoidance of the project area by certain wildlife species during the construction.
3. Foraging habitat may be temporarily affected for the Golden eagle and the California condor during construction.

##### **B. Physical Impacts**

1. Preparation of land to set up the solar facility and clearing of vegetative land cover will be required during the construction period. Because of the scarcity of vegetation in the area, these impacts will be limited.
2. The construction and operation of the solar project will alter the visual landscape. The land would be converted from a grazing use to utility complex as the area is already comprised by a large utility substation and transmission lines.
3. The construction will be temporary and not have any lasting affect on local residents. Actual construction will be during the daylight hours only and temporary increase of noise from the construction activities.
4. Material storage will be conducted on site and at the NTUA District compound. This will be determined at the pre-construction meeting, which is held for every project.
5. The existing road into the existing substation will be used for access during the construction period.
6. Fugitive dust generated by vehicular and equipment traffic, and wind erosion associated with construction activities, is expected to impact air quality on a minor, short-term basis.

## 5.0 - MITIGATION MEASURES OF THE PROPOSED ACTION

### A. Biological Measures

The following mitigative measures are provided to alleviate or minimize negative impacts.

Avoid unnecessary ground disturbance and removal of vegetation within and adjacent to the tract during the construction and maintenance of the solar project by use of vehicles, construction equipment, and machinery.

NTUA will comply with the Vegetative Reclamation for Powerlines Plan prepared by the Navajo Department of Agriculture within the disturbed areas.

To avoid any impacts to the Golden eagle and nests, construction may be scheduled outside the breeding season (February 1 to July 15). If unavoidable, a pre-construction survey will be conducted.

Due to the transient nature of the foraging Golden eagle and California condor, they are not expected to be adversely impacted.

Due to the lack of information on the effects of a solar facility, studies will be conducted to ascertain the effects of the solar facility on wildlife. Reports will be filed with Navajo Fish & Wildlife Department for, if need, further recommendation.

### B. Physical Measures

The *existing* access road will be utilized during the construction phase and operation of the solar facility and *existing* disturbed sites for parking areas and staging areas.

### C. Solid Waste Management

Navajo Tribal Utility Authority will practice the general procedure in regards to Solid Waste Management as follows:

1. Solid waste such as trash/garbage generated in result from the construction activities will be collected and transported by NTUA to a designated nearest trash bins. Salvage materials will be returned to NTUA warehouse yard.
2. NTUA will not and does not generate any hazardous waste.

#### **D. Archaeological Resources**

Dinétahdóó Cultural Resources Management conducted the cultural resources inventory within the tract and along the power line corridor. A total of three archaeological sites, 42 Isolated Occurrences (I.O.), and one Traditional Cultural Properties (TCPs) were observed and recorded.

The stipulations contained in the Cultural Resources Compliance Form No. HPD-15-255 dated April 24, 2015 will be adhered to. See Exhibit "E".

#### **E. Socioeconomic Resources**

Pursuant to Navajo Tribal Council Resolution No. CN-61-59, it is requested the Navajo Tribal Utility Authority provide reliable and adequate electric, water, wastewater, and natural gas services across the Navajo Nation.

On March 18, 2015, the Kayenta Chapter passed resolution No. KY15-205-03 supporting and approving the efforts of NTUA to develop a solar plant. See Exhibit "F".

The Project Review Section office consulted the permit holders and acquired their consents to approve the proposed project. See Exhibit "G".

#### **F. Pollution Prevention**

To minimize dust and vehicle emissions, the vehicles are equipped with regular exhaust mufflers. A mechanic is scheduled to make routine preventive maintenance for vehicles, equipment, and other machinery at the job sites.

## 6.0 - CONCLUSIONS REGARDING THE SIGNIFICANCE

A total of 23 species were identified that have potential to occur on or near the project area. Twenty-one of the 23 species were not present in the proposed areas and are unlikely to be present in the right-of-way corridor, due to the absence of critical habitat requirements. The Biological Resources Compliance Form No. 14ntua112 was issued on April 30, 2015.

Dinétahdóó Cultural Resources Management conducted the cultural resources inventory within the tract and along the right-of-way corridor. The stipulations contained in Compliance Form No. HPD-15-255 will be adhered to.

The construction of the solar facility and power line will be temporary and no significant adverse impacts on the environment are expected as a result of the proposed project.

The proposed solar facility will provide and improve safe, reliable, and adequate electrical services and accommodate future developments across the Navajo Nation.

**A. Personnel**

The Navajo Tribal Utility Authority, Fort Defiance, Arizona conducted the field investigations and research analyses associated with the Environmental Assessment.

1. Bernice Tsosie, Government Liaison/ROW Specialist

**B. Consultation and Coordination**

1. Dinétahdóó Cultural Resources Management  
P.O. Box 2012  
Farmington, New Mexico 87499
2. T&D Services, LLC  
Consulting Engineers & Surveyors  
8904 Washington Street NE  
Albuquerque, New Mexico 87113
3. Gloria M. Tom, Director  
Navajo Nation Department of Fish & Wildlife  
P.O. Box 1480  
Window Rock, Arizona 86515
4. Zoology Unlimited LLC  
P.O. Box 31132  
Flagstaff, Arizona 86504
5. Harrilene Yazzie, Regional NEPA Coordinator  
Division of Environmental, Cultural & Safety Management  
BIA - Navajo Area Office  
P.O. Box 1060  
Gallup, New Mexico 87305-1060
6. Real Estate Services Office  
BIA - Navajo Area Office  
P.O. Box 1060  
Gallup, New Mexico 87305-1060
7. Navajo Nation Historic Preservation Department  
P.O. Box 4950  
Window Rock, Arizona 86515
8. NTUA Kayenta District Office  
P.O. Box 37  
Kayenta, Arizona 86033
9. Derek A. Dyson, Esq.  
Duncan, Weinberg, Genzer, & Pembroke, P.C.  
1615 M Street, NW, Suite 800  
Washington, D.C. 20036
10. Navajo Nation Kayenta Chapter  
P.O. Box 1088  
Kayenta, Arizona 86033

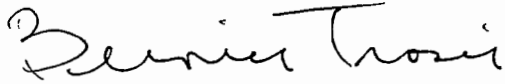
C. **Bibliography/References**

1. A Cultural Resources Inventory of NTUA's Proposed Kayenta Solar Generation Facility with Distribution Line North of Kayenta, Navajo County, Arizona, NTUA Work Order No. 6213786. Author(s): Natasha Ignacio and Clifford Werito. DCRM 2014-35, April 3, 2015.
2. Cultural Resources Compliance Form No. HPD-15-255, April 24, 2015.
3. Biological Survey Report for Species of Concern on the Kayenta Solar Generation Plant and Transmission Line Project, Kayenta Chapter, Arizona. Work Order No. 6213786, Prepared by Zoology Unlimited, LLC, December 5, 2014.
4. Biological Resources Compliance Form No. 14ntua112, April 30, 2015.
5. Kayenta Solar Generation Plant with Power Line, Navajo County, AZ, Work Order No. 6213786, March 10, 2015.
6. Navajo Tribal Utility Authority Environmental Report for 2008-2011 Construction Work Plan, Prepared by Navajo Tribal Utility Authority, April 2008, Submitted to Rural Utilities Service, U.S. Department of Agriculture, Washington D.C., (EA-08-058).
7. Chapter Images: 1996 Edition, Division of Community Development, The Navajo Nation, P.O. Box 1896, Window Rock, Arizona 86515, Compiled, Edited, and Prepared by Larry Rodgers.
8. Regional Hydrogeology of the Navajo and Hopi Indian Reservations, Arizona, New Mexico, and Utah, Geological Survey Professional Paper 521-A.
9. Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006.
10. U.S. Code of Federal Regulations, Title 40, Protection of the Environment.
11. U.S. Code of Federal Regulations, Title 50, Wildlife and Fisheries.
12. National Historic Preservation Act (NHPA), 36 CFR 60.4.
13. Archaeological Resources Protection Act of 1979 (ARPA), 43 CFR Part 7.
14. American Indian Religious Freedom Act (AIRFA), Public Law 95 341.



15. 36 CFR Part 800: Protection of Historic Properties.
16. Navajo Nation Cultural Resources Protection Act, Tribal Council Resolution No. CMY-19-88.
17. U.S. Code of Federal Regulations, Title 25, Part 169: Rights-of-Way over Indian Lands.

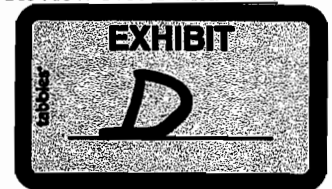
D. **Signature**



---

Bernice Tsosie  
Government Liaison/ROW Specialist  
Office of the General Manager  
**NAVAJO TRIBAL UTILITY AUTHORITY**  
Post Office Box 170  
Fort Defiance, Arizona 86504  
928/729-6204  
e-mail address: niecy@ntua.com

**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.: Kayenta Solar Generation Plant and Transmission Line, WO#6213786

DESCRIPTION: NTUA proposes to construct, operate, and maintain a 26 megawatt solar generation plant on 300± acres of land. The project includes approximately 153± feet of underground distribution power line to tie into the existing substation immediately south of the project.

LOCATION: Sections 13, 18, & 24, T39N, R19-20E, G&SRM, Kayenta, Navajo County, Arizona

REPRESENTATIVE: Bernice Tsosie, Government Liaison/ROW Specialist, Navajo Tribal Utility Authority

ACTION AGENCY: Navajo Nation and Bureau of Indian Affairs

B.R. REPORT TITLE / DATE / PREPARER: BSR for Species of Concern on the Kayenta Solar Generation Plant and Transmission Line Project/05 DEC 2014/Zoology Unlimited, LLC.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

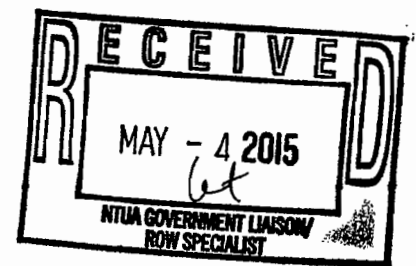
OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE\*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/29 APR 2015

COPIES TO: (add categories as necessary)



2 NTC § 164 Recommendation:

Signature

Date

☒ Approval

☐ Conditional Approval (with memo)

☐ Disapproval (with memo)

☐ Categorical Exclusion (with request letter)

☐ None (with memo)

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

A handwritten signature in black ink, appearing to read "Gloria M. Tom".

4/30/15

\*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



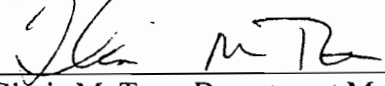
# THE NAVAJO NATION



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

## MEMORANDUM

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

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


**DATE** : April 29, 2015

**SUBJECT** : **DELEGATION OF AUTHORITY**

I will be on travel and I am hereby delegating you to act in the capacity of the Director, Department of Fish and Wildlife, effective 8:00 am on Thursday, April 30, 2015. This delegation shall end at 5:00 p.m. on Thursday, April 30, 2015.

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

## ACKNOWLEDGEMENT:



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

xc: Moroni T. Benally, Executive Director, DNR



Exhibit "E"

THE NAVAJO NATION  
HISTORIC PRESERVATION DEPARTMENT

PO Box 4950, Window Rock, Arizona 86515  
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCE COMPLIANCE FORM



ROUTE COPIES TO:	NNHPD NO.: <b>HPD-15-255</b>
<input checked="" type="checkbox"/> DCRM	OTHER PROJECT NO.: <b>DCRM 2014-35</b>

**PROJECT TITLE:** A Cultural Resource Inventory of NTUA's Proposed Kayenta Solar Generation Facility with Distribution Line North of Kayenta, Navajo County, Arizona. NTUA Work Order No. 6213786

**LEAD AGENCY:** BIA/NR

**SPONSORS:** Bernice Tsosie, Navajo Tribal Utility Authority, PO Box 170, Fort Defiance, Arizona 86504

**PROJECT DESCRIPTION:** The proposed undertaking will involve the withdrawal of 300-acres for the development of a solar generation facility with distribution line. The solar farm will include an array of solar panels and associated appurtenances. The area of effect is 300.02-acres. Ground disturbance will be intensive and extensive with the use of heavy equipment.

<b>LAND STATUS:</b>	Navajo Tribal Trust
<b>CHAPTER:</b>	Kayenta
<b>LOCATIONS:</b>	Project is located on the Agathla Peak Quadrangle, Navajo County, Arizona G&SRPM T. 39 N, R. 20 E- Sec. 18 T. 39 N, R. 19 E- Sec. 24 & 13

<b>PROJECT ARCHAEOLOGIST:</b>	Natasha Ignacio & Clifford Werito
<b>NAVAJO ANTIQUITIES PERMIT NO.:</b>	B14487
<b>DATE INSPECTED:</b>	11/24/2014 – 12/04/2014
<b>DATE OF REPORT:</b>	04/03/2015
<b>TOTAL ACREAGE INSPECTED:</b>	316.24- acres

**METHOD OF INVESTIGATION:** Class III pedestrian inventory with transects spaced 10 m apart.

<b>LIST OF CULTURAL RESOURCES FOUND:</b>	(3) Sites (AZ-J-10-20; AZ-J-10-21; AZ-J-10-22) (42) Isolated Occurrences (IO) (1) Traditional Cultural Property (TCP)
<b>LIST OF ELIGIBLE PROPERTIES:</b>	None
<b>LIST OF NON-ELIGIBLE PROPERTIES:</b>	(3) Sites (AZ-J-10-20; AZ-J-10-21; AZ-J-10-22) (42) Isolated Occurrences (IO) (1) Traditional Cultural Property (TCP)
<b>LIST OF ARCHAEOLOGICAL RESOURCES:</b>	None

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

Sites AZ-J-10-20; AZ-J-10-21; AZ-J-10-22:

Recordation has exhausted all research potential. No further work is warranted.

**TCP:**

1. Prior to any ground disturbing activities, the TCP boundary will be permanently fenced under the direction of a qualified archaeologist. Fencing will assure complete avoidance and protection of the resource.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7198.

FORM PREPARED BY: Tamara Billie

FINALIZED: April 15, 2015

Notification to Proceed  
Recommended

Conditions:

☒ Yes ☐ No

☒ Yes ☐ No

*Tamara Billie* 4/15/15

The Navajo Nation

Date

Historic Preservation Office

Navajo Region Approval

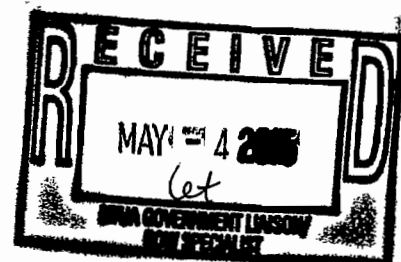
☒ Yes ☐ No

*DM* 4.24.15

Acting BIA - Navajo Regional Office

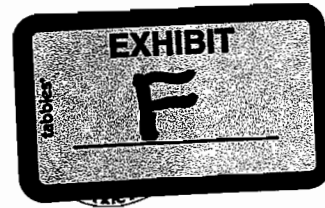
Date

*Tim 4.23.15*





Navajo Nation Kayenta Chapter  
Post Office Box 1088  
Kayenta Chapter, Navajo Nation, AZ 86033  
Chapter Resolution



**Resolution No: KY15-205-03**

**SUPPORTING AND APPROVING NAVAJO TRIBAL UTILITY AUTHORITY (NTUA) TO DEVELOP FOR A SOLAR PLANT IN THE VICINITY OF THE KAYENT CHAPTER, KAYENTA, ARIZONA.**

**WHEREAS,**

1. The Kayenta Chapter is a duly Certified Chapter of the Navajo Nation Government and has the authority and responsibility to provide assistance and to address matters that are in the best interest of the community; and
2. The Navajo Tribal Utility Authority (NTUA) is delegated the authority for operations and management of NTUA, including renewable energy development in a cost effective and feasible manner pursuant to 21 N.N.C. § 5 (a) (1) and (2); and
3. NTUA has identified 300 acres located within the Kayenta Chapter to develop a solar plant to be interconnected with NTUA's transmission and distribution facilities to serve the Kayenta Chapter and the Navajo Nation with environmentally friendly renewable energy; and
4. NTUA needs to immediately to commence the develop and construction of the solar plant to in order to take advantage of the current solar equipment and construction pricing that would allow for the actual cost of the energy to be consumed within the Navajo Nation can remain within the current NTUA rate structure; and
5. NTUA anticipates that the solar project if commenced in first quarter of 2015 can complete construction and commence operation by the fourth quarter of 2015; and
6. NTUA maintains that this project is not some commercial project being developed at the expense of the Navajo people, but rather it is an essential component in creating energy independence for the Navajo Nation and its people; and

**NOW THEREFORE, BE IT RESOLVED,**

1. THE KAYENTA CHAPTER HEREBY AGREES THAT THE IDENTIFIED 300 ACRES WITHIN THE KAYENTA CHAPTER ARE AUTHORIZED FOR DEVELOPMENT OF SOLAR PLANT AND ANCILIARY RESOURCES BY THE NAVAJO TRIBAL UTILITY AUTHORITY; AND
2. THE KAYENTA CHAPTER HEREBY SUPPORTS AND APPROVES THE NAVAJO TRIBAL UTILITY AUTHORITY TO CONDUCT ALL ACTIVITIES RELATED TO THE DEVELOPMENT CONSTRUCTION AND OPERATION OF THE SOLAR PLANT AND ACILLARY RESOURCES.

\*\*\*\*\*

**CERTIFICATION**

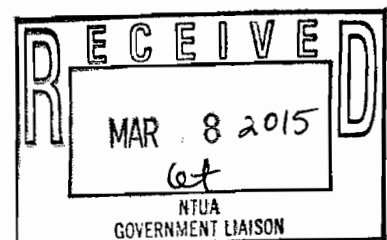
\*\*\*\*\*

I hereby certify that the foregoing resolution was duly considered by the **KAYENTA** Chapter, **KAYENTA**, Navajo Nation, Arizona, at which a quorum was present and that the same was passed by a vote of 31 in favor, 0 opposed, and 06 abstaining, this 18th day of March, 2015.

Motion: Picky Gray

Second: Shanon Singh

Stanley Clitso  
Stanley Clitso, Kayenta Chapter President







# THE NAVAJO NATION

Exhibit "G"

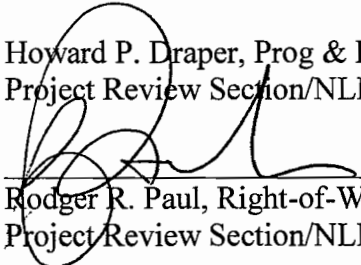


BEN SHELLY  
PRESIDENT

VICE-PRESIDENT

## MEMORANDUM

**TO:** Howard P. Draper, Prog & Project Specialist  
Project Review Section/NLD

**FROM:**   
Rodger R. Paul, Right-of-Way Agent  
Project Review Section/NLD

**DATE:** March 17, 2015

**SUBJECT:** ***FIELD CLEARANCE FOR SOLAR GENERATION PLANT***  
Kayenta, Navajo County, Arizona



The Navajo Tribal Utility Authority (NTUA), Post Office Box # 170, Fort Defiance, Arizona 86504 has submitted an application requesting to withdraw three hundred acres, more or less of land to develop a Solar Generation Plant with distribution line to be interconnected with NTUA's existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona.

Chinle Project Review Section/Navajo Land Department has conducted and completed the field investigation on the above project, met with Mr. Johnathan Nez the affected chapter (Kayenta Chapter) Grazing Committee Member to identify the affected land users (grazing permittee). Upon review of the attached map, according to his knowledge and records there are five (05) land users (grazing permittee) affected by the proposed project. Project Review Section has contacted the affected land users (Florence Parrish, Jefferson Yazzie Black, Bessie Parrish, Ellen C. Todecheene & John Todacheene) to inform them and to obtained their written consent for the proposed project, Applicant (NTUA) has agreed to compensate the affected land users (grazing permittee) for surface damage compensation at three hundred dollars per acre (\$300.00) Total surface damage compensation is ninety thousand dollars (\$90,000.00), and total surface damage compensation will be divided among the affected land users (grazing permittee) equally at \$18,000.00 each. ( $\$90,000.00/5 = \$18,000.00$ ). Attached hereto are the copies of the land users consent for your information and use.

If you have any question(s) you can contact me at (928) 674- 2315 or cell ph. (928) 797-1835.

**cc:** Office File  
B. Tsosie/NTUA

## FIELD CLEARANCE CHECKLIST

This form covers only damages and compensation to individual land users. It doesn't cover consideration or other fee to the Navajo Nation. (use back if necessary to complete this form).

1. Project Identification:  
Application: Navajo Tribal Utility Authority  
Type of Project: Land Withdrawal/Right-of-Way  
Purpose: Construct, Operate Maintain Solar Plant Project  
Location: Kayenta, Navajo County, Arizona  
Identification number(s): \_\_\_\_\_
2. Amount of land affected; \_\_\_\_\_
3. Land Status: \_\_\_\_\_ Trust: XX Fee: \_\_\_\_\_ Other: \_\_\_\_\_
4. List names of all individuals whose land use rights will be affected by the proposed project.

Name	Census Number	Type of Land Use Right
1. Florence Parrish	73848	G/P# 08-0772
2. Jefferson Yazzie Black	089959	G/P# 08-576
3. Bessie Parrish	077881	G/P # 08-1078
4. John Todacheene	301813	G/P # 08-1322
5. Ella Todacheene	072566	G/P # 08-1002
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____

5. Are all the land users with claims to the affected lands as shown in Branch Land Operation records included in the list in item 4? Yes
6. Have the Grazing Committee or Land Board Member (which ever appropriate) for the affected area confirm land user list in item 4 by signing acknowledgement below. Yes

### ACKNOWLEDGEMENT

I acknowledge that due notice was given to the affected community of the proposed project, and according to my records and to the best of my knowledge, the list of the individual in item 4 includes all land users who have land use rights in the affected lands.

03-11-15  
Date:

  
Grazing Committee/Land Board Member

8-1  
Dist. No.

**CONSENT FORM # 2**  
**(Compensation for damages)**

**CONSENT TO USE**  
**NAVAJO TRIBAL LANDS**

**TO WHOM IT MAY CONCERN**

I Ella Todecheene hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority (NTUA) of Post Office Box # 170, Fort Defiance, Arizona 86515 to use a portion of my land use area for the following purpose(s): to withdraw 300 acres, more or less, of Navajo Tribal Trust Land (NTTL) to develop a solar generation plant with a distribution line to be interconnected with NTUA existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona as shown on the map showing the location of the proposed project on the back of this consent form.

My consent is given subject to the receipt of compensation \$18,000.00  
Eighteen Thousand Dollars which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above referenced project as proposed.

**REMARKS:**

3/6/15 X Ella Todecheene 072566 G/P# 08-1002  
Date: Land User Signature (thumb print) Census No. Permit No.  
P.O. Box # 943, Kayenta 86033 526-80-8264  
Address: (P.O. Box, City, State, Zip) Social Security No.

**WITNESS:**

03-11-15 [Signature] 8-1  
Date: Grazing Committee or Land Board Member District No.

**Acknowledgement of Field Agent**

I acknowledge that the contents of this consent form was read / / or fully explained / / to the land user in Navajo / / or English / / (check where applicable).

[Signature]  
Field Agent Signature

**CONSENT FORM # 2**  
**(Compensation for damages)**

**CONSENT TO USE**  
**NAVAJO TRIBAL LANDS**

**TO WHOM IT MAY CONCERN**

I JOHN TODECHEENE hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority (NTUA) of Post Office Box # 170, Fort Defiance, Arizona 86515 to use a portion of my land use area for the following purpose(s): to withdraw 300 acres, more or less, of Navajo Tribal Trust Land (NTTL) to develop a solar generation plant with a distribution line to be interconnected with NTUA existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona as shown on the map showing the location of the proposed project on the back of this consent form.

My consent is given subject to the receipt of compensation \$18,000.00 Eighteen Thousand Dollars which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above referenced project as proposed.

**REMARKS:** \_\_\_\_\_

<u>3-6-2015</u>	<u>John Todecheene</u>	<u>301813</u>	<u>G/P# 08-1322</u>
Date:	Land User Signature (thumb print)	Census No.	Permit No.
	<u>P.O. Box # 943, Kayenta, Arizona 86033</u>	<u>526-80-8264</u>	
	Address: (P.O. Box, City, State, Zip)	Social Security No.	

**WITNESS:**

<u>3-11-15</u>	<u>[Signature]</u>	<u>8-1</u>
Date:	Grazing Committee or Land Board Member	District No.

**Acknowledgement of Field Agent**

I acknowledge that the contents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☒ (check where applicable).

[Signature]  
Field Agent Signature

**CONSENT FORM # 2**  
**(Compensation for damages)**

**CONSENT TO USE**  
**NAVAJO TRIBAL LANDS**

**TO WHOM IT MAY CONCERN**

I Bessie Parrish hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority (NTUA) of Post Office Box # 170, Fort Defiance, Arizona 86515 to use a portion of my land use area for the following purpose(s): to withdraw 300 acres, more or less, of Navajo Tribal Trust Land (NTTL) to develop a solar generation plant with a distribution line to be interconnected with NTUA existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona as shown on the map showing the location of the proposed project on the back of this consent form.

My consent is given subject to the receipt of compensation ~~\$18,000.00~~  
Eighteen Thousand Dollars which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above referenced project as proposed.

**REMARKS:** \_\_\_\_\_

<u>3/11/15</u> Date:	<u>Bessie Parrish</u> Land User Signature (thumb print)	<u>077881</u> Census No.	<u>G/P# 08-1078</u> Permit No.
	<u>P.O. Box # 2548, Kayenta, Arizona 86033</u> Address: (P.O. Box, City, State, Zip)	<u>585-76-0635</u> Social Security No.	

**WITNESS:**

<u>03/11/15</u> Date:	<u>[Signature]</u> Grazing Committee or Land Board Member	<u>8-1</u> District No.
--------------------------	--------------------------------------------------------------	----------------------------

**Acknowledgement of Field Agent**

I acknowledge that the consents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☐ (check where applicable).

[Signature]  
Field Agent Signature

**CONSENT FORM # 2**  
**(Compensation for damages)**

**CONSENT TO USE**  
**NAVAJO TRIBAL LANDS**


**TO WHOM IT MAY CONCERN**

I Jefferson Yazzie Black hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority (NTUA) of Post Office Box # 170, Fort Defiance, Arizona 86515 to use a portion of my land use area for the following purpose(s): to withdraw 300 acres, more or less, of Navajo Tribal Trust Land (NTTL) to develop a solar generation plant with a distribution line to be interconnected with NTUA existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona as shown on the map showing the location of the proposed project on the back of this consent form.

My consent is given subject to the receipt of compensation \$18,000.00  
Eighteen Thousand Dollars which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above referenced project as proposed.

**REMARKS:** \_\_\_\_\_

12-2-14  
Date:

 his right thumb print  
\_\_\_\_\_  
P.O. Box # 408, Kayenta Arizona 86033  
Address: (P.O. Box, City, State, Zip)

089959 G/P# 08-576  
Census No. Permit No.  
527-64-1548  
Social Security No.

**WITNESS:**

Carol Yazzie  
08-11-15

Date:

[Signature]  
Grazing Committee or Land Board Member

8-1  
District No.

**Acknowledgement of Field Agent**

I acknowledge that the contents of this consent form was read / ☒ or fully explained / ☒ to the land user in Navajo / ☒ or English / ☐ (check where applicable).

[Signature]  
Field Agent Signature

**CONSENT FORM # 2**  
**(Compensation for damages)**

**CONSENT TO USE**  
**NAVAJO TRIBAL LANDS**

**TO WHOM IT MAY CONCERN**

I Florence Parrish hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority (NTUA) of Post Office Box # 170, Fort Defiance, Arizona 86515 to use a portion of my land use area for the following purpose(s): to withdraw 300 acres, more or less, of Navajo Tribal Trust Land (NTTL) to develop a solar generation plant with a distribution line to be interconnected with NTUA existing Kayenta Switching Station, located within the vicinity of Kayenta, Navajo County, Arizona as shown on the map showing the location of the proposed project on the back of this consent form.

My consent is given subject to the receipt of compensation \$18,000.00 Eighteen Thousand Dollars which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above referenced project as proposed.

**REMARKS:** \_\_\_\_\_

12/2/14 X Florence Parrish 73848 G/P# 0772  
Date: Land User Signature (thumb print) Census No. Permit No.  
Box # 1792, Kayenta, Arizona 527-90-3973  
Address: (P.O. Box, City, State, Zip) Social Security No.

**WITNESS:**

03-11-15 [Signature] 8-1  
Date: Grazing Committee or Land Board Member District No.

**Acknowledgement of Field Agent**

I acknowledge that the consents of this consent form was read / ☒ or fully explained / ☒ to the land user in Navajo / ☐ or English / ☐ (check where applicable).

[Signature]  
Field Agent Signature



THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**  
JONATHAN NEZ **VICE PRESIDENT**



**ENVIRONMENTAL PROTECTION AGENCY**

OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION

OFFICE OF ENVIRONMENTAL REVIEW

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

Website: [www.navajonationepa.org](http://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 Executive Director/Administration  
Office of Environmental Review  
NNEPA

**DATE:** June 9, 2015

**SUBJECT: 164 EOR 003948 Kayenta Solar Generating Plant Power Line Project**

The Navajo Tribal Utility Authority (NTUA), PO Box 170, Fort Defiance, Arizona, 86504, filed a right-of-way (ROW) application to construct and operate a Photovoltaic Facility, including an interconnection facility upgrade to NTUA's existing Kayenta Substation located in Kayenta, Arizona, Navajo County, Arizona. The ROW is 300± acres of land and the power line is 153.28 feet in length, fifty (50) feet wide consisting 0.18 acres. The total acreage of the project is 300.18 acres, more or less. NTUA will maintain the 27.5 megawatt solar energy generation facility to address the energy needs of the Navajo Nation specifically the Kayenta Chapter and the surrounding communities to improve the safety, reliability, redundancy and increase the energy independence of the utility. NTUA is required by Federal Energy Regulatory Commission and North American Energy Reliability Corporation to operate a modern safe reliable electricity system. The interconnection facility and upgrades at the Kayenta substation are necessary to meet federal reliability requirements for NTUA's utility system.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed<sup>1</sup> and recommends ***conditional approval*** for the proposed action.

---

<sup>1</sup> NTUA. Environmental Assessment for Kayenta Solar Generation Facility with Power Line Project NTUA Work Order No. 6213786. March 2015.



- 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: Navajo Tribal Utility Authority (NTUA), PO Box 170, Fort Defiance, Arizona, 86504  
NNEPA Departments; Programs; Administration




# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

May 15, 2015

## MEMORANDUM:

TO: Mr. W. Mike Halona, Department Manager III  
Navajo Land Department, DNR

FROM:   
Howard Phillip Draper, Program & Project Specialist  
Navajo Land Department, Project Review Section

SUBJECT: Document #003948: Right-of-Way Application from the Navajo Tribal Utility Authority (NTUA) for 300± acres 27.5 megawatt photovoltaic generation facility and power line within the vicinity of Kayenta, Navajo County, Arizona. NTUA Project ID No. 6213786.

I reviewed the above document (package) submittals and cannot determine if the entire portion of the ROW (i.e. 300± acres) is going to be considered as commercial or non-commercial. The documents submitted by NTUA does not specifically mention if any portion of the 300± acres should be commercial or non-commercial. The attached NTUA application letter addressed to Honorable President Russell Begaye from Mr. Walter W. Haase, P.E. General Manager, dated May 13, 2015 does request for Waiver of Damages in the fourth paragraph which I assume means the entire contents of this document package is for non-commercial purposes.

### Jurisdiction authority:

If any portion of this ROW is commercial then this ROW needs Resources & Development Committee (RDC) approval for commercial applicability (i.e. Minerals payment assessment for commercial applicability).

NTUA: It appears that NTUA packaged this ROW application and obtained the Doc#003948 on 5/13/2015. The NTUA application letter dated May 13, 2015 requests for Waiver of Damages (4th paragraph) which is an administrative component involving NTUA projects where the Delegation of Authority (DOA).

*pursuant to (former) Resources Committee Resolution No. RCD-104-10 is assumed.*

*↑  
attached w/RCAP-25-07*

**Field clearance**

I was verbally advised by the Navajo Nation Department of Justice (NNDJOJ) to get a copy of the appraisal to compare with the field clearance report conducted by the Navajo Land Department (NLD) dated March 17, 2015. I left a note-message in the NTUA box in our office and have not received any response to my request for appraisal to date.

**Conclusion**

Further clarification of the above mentioned items would help to process this request in a timely manner. If you have any questions, please call Mr. Howard Phillip Draper, Program & Project Specialist, Navajo Land Department at X-6447, 6695, 6401. Thank you.

XC: project file  
Berniece Tsosie, Government Liaison  
NTUA



## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

May 20, 2015



Mr. W. Mike Halona  
Department Manager III  
Navajo Land Department, DNR

Mr. Howard Phillip Draper  
Program and Project Specialist  
Project Review Section  
Navajo Land Department, DNR

RE: Response To Navajo Land Department Letter Dated May 15, 2015 Regarding Document # 003948  
Right of Way Application from Navajo Tribal Utility Authority for ±300 Acres for a 27.5 megawatt  
Project ID No. 6213786

Mr. Halona/Mr. Draper:

In response to your inquiry, the Navajo Tribal Utility Authority (NTUA) provides the following responses:

1. Jurisdictional Authority – NTUA submits that its application is for a non-commercial project. None of the project is designated for commercial purposes.
2. Field Clearance – NTUA was provided the estimated cost per acre of the land by the Navajo Land Department. NTUA did not conduct a separate appraisal to dispute the amount provided by the Navajo Land Department.

We hope that this response adequately addresses your concerns and that the Right of Way Application submitted by NTUA can proceed through the review process. If you have any further questions, please contact Niecy Tsosie in our office at 928.729.6204. Thank you.

Sincerely,

Walter W. Haase, P.E.  
General Manager

WWH:DAD/tt



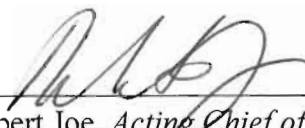
# THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**  
JONATHAN NEZ **VICE PRESIDENT**

## MEMORANDUM

**TO:** Ethel Branch, Acting Attorney General  
Office of the Attorney General

Howard Draper  
Division of Natural Resources

**FROM:**   
Robert Joe, *Acting Chief of Staff*  
Office of the President & Vice President

**DATE:** June 30, 2015

**SUBJECT:** 164 Document number 3948

The Office of President and Vice President are in receipt of an application for a right of way from NTUA for 300 acres, 27.5 megawatt photovoltaic generation facility and power line within the vicinity of Kayenta, Navajo County, AZ. In review of the application, the Department of Justice ("DOJ") marked the application as legally insufficient. The explanation by the DOJ is this must be a lease with withdrawal. As such, it appears the right of way is the wrong mechanism and must be redone as a lease. However, there is no further explanation why a lease is needed versus a right of way.

Additionally, the other concern of this Office is the reviewing attorney found the document to be legally sufficient, but the supervising attorney marked the package as legally INSUFFICIENT. There seems to be a disagreement within DOJ on the appropriate mechanism.

Please provide further clarification on DOJ's position to this issue so the President can act accordingly. If there are any further questions, please contact me at 928-551-2450. Thank you.





**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

---

ETHEL BILLIE BRANCH  
*Acting ATTORNEY GENERAL*

MEMORANDUM

TO: Honorable Russell Begay, President  
Honorable Jonathan Nez, Vice President  
The Navajo Nation

FROM:

Toni Flora, *Acting* Assistant Attorney General  
Natural Resources Unit  
Navajo Nation Department of Justice

DATE: July 17, 2015

SUBJECT: **NTUA ROW and Lease Application, Document 003948**

NTUA filed for a Right of Way Application for a 300 acre solar facility with associated power lines. I originally marked this document "insufficient" because of the inconsistency with the General Leasing Act of 2013, which states that these "Regulations apply to all Leases. . . authorize under 25 U.S.C. . . . §415(e) . . . including Leases for the development or utilization of natural resources, including renewable energy Leases. . . ." On June 30, 2015, Robert Joe, *Acting* Chief of Staff, wrote to me asking for an explanation as to why. Since that date, NTUA has agreed to and provided a draft lease and sublease. The sublease is to their subsidiary for the purpose of obtaining financing and tax credits for this development. DOJ has reviewed and approved the lease and sublease for the facility itself. The ROW is still needed for the electric utility lines to take power off the solar facility. As such, the document is now legally sufficient with the lease, sublease, and ROW Terms and Conditions.

Z:\NRU\NTUA\2015-07-17 TF Memo Legal Sufficiency of NTUA leases, sublease and ROW



# THE NAVAJO NATION


RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

July 23, 2015

## MEMORANDUM:

**TO:** Akhtar Zaman, Program Manager  
Minerals Department



**FROM:**   
Howard Phillip Draper, Program/Project Specialist  
Navajo Land Dept Project Review Section

**RE:** 164 Doc No 3948: Navajo Tribal Utility Authority (NTUA) lease and right-of-way applications for Kayenta Photovoltaic Facility (i.e. solar plant) Lease facility and power line right-of-way at Kayenta, Arizona.

Our office received the attached package from the NTUA and hereby forwarding said lease and right-of-way packages to your Program for procurement clearance.

### **Right-of-Way portions:**

The initial Doc No. 3948 was processed as one (1) combined right-of-way application package that consisted of both the 300 acre solar plant and 0.18 acre power line. During Navajo Nation 164 technical review it was determined that this solar plant/power line should be separated into two (2) different components: 300 acre “lease” portion and 0.18 acre power line “right-of-way” portion (see NN Department of Justice Memorandum to Hon. Russell Begaye, President from Toni Flora, *Acting* Assistant Attorney General dated July 17, 2015).

### **Lease and right-of-way components:**

Our office has drafted a proposed Resources and Development Committee (RDC) Resolution for a solar plant of 300 acres “lease” and a separate proposed RDC Resolution for 0.18 acre power line “right-of-way” portion (see attachments). It

was further clarified that both proposed *lease* and *right-of-way* packages do not need to be re-processed for another 164 review process again<sup>1</sup>. Our office is hereby submitting to your office for appropriate 164 review or procurement review.

If you have any further questions please contact our office at (928) 871-6447, 6401 or 6490. Thank you.

cc: project file  
Berniece Tsosie, Government Liason  
NTUA

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<sup>1</sup> E-mail transmission from Toni Flora, *Acting* Assistant Attorney General to Brittany A. Smith, Administrative Assistant, Office of the President/Vice President, July 17, 2015



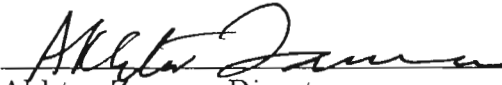


# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## Memorandum

TO: Howard Draper, Project Specialist  
Project Review Office, Navajo Land Department

FROM:   
Akhtar Zaman, Director  
Minerals Department

DATE: July 24, 2015

SUBJECT: 164 Doc.#003948: KAYENTA SOLAR PLANT SITE AND RIGHT-OF-WAY

The attached document was briefly reviewed by the Minerals Department and we have the following comments:

1. As indicated on Executive Official Review sheet that it is a non-commercial project, which is not true, the power produced will be sold to the other entities and we are sure that there will be a power sale contract between Navajo Tribal Utility Authority (NTUA) and the power purchaser(s) before the facility is constructed.
2. The right-of-way consideration (\$42,734.00) is assessed in parity with an alike commercial 230KV commercial transmission line for 25 year term.
3. The project site if dedicated entirely for a commercial operation, the assessed annual rental will be \$234,000 not considering the full economic beneficial use of the land. NTUA is proposing a \$2,000.00 rental payment per year to the Navajo Nation; we can't figure out the rationale of the proposed annual rent.
4. Is the NTUA Generating Inc. (Sublease) a non/profit entity? It seems to us that it is a for profit commercial entity.
5. Section 24 of the lease reserves the mineral rights to the Navajo Nation, but the same section of the sublease reserves the mineral rights to NTUA.
6. No royalty / sharing gross proceeds to the Navajo Nation is addressed in the lease.
7. What constitutes commercial / non-commercial use it should be clearly address in Section 6. (Rental) of the lease.

Please do not hesitate to contact me or Mr. Steven Prince, Acting Principal Mining Engineer if you have any questions at (928) 871-6587.

AZ/mej

xc : Bidtah N. Becker, Executive Director , Division of Natural Resources



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

July 24, 2015

Navajo Tribal Utility Authority  
P.O.Box 170  
Fort Defiance, Arizona 86504  
Attention: Berniece Tsosie

RE: PROPOSED: lease (ROW) located within the Kayenta chapter vicinity.

Dear Ms. Tsosie:

Our office received a written memorandum to address comments that our office cannot answer and hereby forwarding comments to Navajo Tribal Utility Authority (NTUA) for appropriate response. The comments are from the Navajo Minerals Department and they have changed their initial recommendation from sufficient to *insufficient*. Therefore it is advised that NTUA properly respond to said comments and copy our office for recordation.

If you have further questions please call the Navajo Land Department Project Review Section Office at (928) 871-6447 or 6695 if you have any questions. Thank you.

Sincerely,

Howard Phillip Draper, Program & Project  
Specialist  
NLD Project Review Section

ATTACHMENTS

cc: Chrono/Project File  
Bidtah Becker, (*Acting*) Division Director  
Division of Natural Resources (DNR) Administration  
W. Mike Halona, Department Director  
Navajo Land Department (NLD)  
Toni Flora, Acting Assistant Attorney General  
Navajo Nation Department of Justice (NNDJOJ)

1. As indicated on Executive Official Review sheet that it is a non-commercial project, which is not true, the power produced will be sold to the other entities and we are sure that there will be a power sale contract between Navajo Tribal Utility Authority (NTUA) and the power purchaser(s) before the facility is constructed.
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3. The project site if dedicated entirely for a commercial operation, the assessed annual rental will be \$234,000 not considering the full economic beneficial use of the land. NTUA is proposing a \$2,000.00 rental payment per year to the Navajo Nation; we can't figure out the rationale of the proposed annual rent.
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6. No royalty / sharing gross proceeds to the Navajo Nation is addressed in the lease.
7. What constitutes commercial / non-commercial use it should be clearly address in Section 6. (Rental) of the lease.

Any questions contact Mr. Steven Prince, Acting Principal Mining Engineer at (928) 871-6587.



## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

July 28, 2015

Mr. Howard Phillip Draper  
Program and Project Specialist  
Project Review Section  
Navajo Land Department, DNR

RE: Response to Navajo Land Department Letter and Attachment Dated April 24, 2015

Mr. Draper:

Please note that this letter responds to your July 24<sup>th</sup> correspondence which included misinformation, false statement and accusations about the Kayenta Solar project. We note that in May 2015, NTUA submitted a letter you and your office stating this is a non-commercial project. Furthermore, the information used for the estimated cost per acre of land was supplied by your office prior to obtaining the approval of the Kayenta Chapter and subsequently confirmed at the initiation of review process. A copy of the NTUA letter addressing both issues is attached.

The only change to the original review and approval by the Navajo Land Department has been the vehicle to be used, specifically converting the vehicle to be used from the ROW form to a lease form. As highlight by Bureau of Indian Affairs review and comments, the decision on the type of vehicle does not change the transaction and should not have required a de novo review. Even more so where the same questions, which have been asked and answered NTUA, are in the possession of the of the Navajo Land Department.

However, in an effort to address the comments and questions raised in the attachment to the Letter dated April 24, 2015, NTUA provides the following responses.

1. The statement is false and is not based upon any documentation or other statements made by NTUA. The statement should not be held as the truth related to the Kayenta Solar Project. The Kayenta Solar Project, as stated to the citizens of the Chapter and in the resolution, will supply renewable energy to the Kayenta Chapter. This is **NOT A COMMERCIAL PROJECT**. A false statement made from someone who has neither inquired about the project nor participated in its development should not be allowed to alter the written correct statements of NTUA.
2. This is the amount provided by the Navajo Nation Land Department.

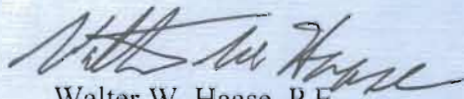


3. The amount quoted in the statement under comment 2 was provided by the Navajo Land Department. No changes to this amount should be allowed. The project has relied upon information supplied by this office; any changes will jeopardize the implementation of the project.
4. NTUA is proposing the NTUA Generation, Inc., the tax equity structure created to take advantage of the Federal Investment Tax Credit for solar projects, without the tax equity structure NTUA would need to increase rates of the Navajo customers. Without the use of the tax equity structure, the project is not financially viable.
5. The Sublease is between NTUA and NTUA Generation, Inc., the rights of the Navajo Nation are protected by having such rights addressed by the Sub-lessor, e.g., NTUA, who in turn recognizes under the lease that the Navajo Nation holds all such rights.
6. The economics of the project have not changed from converting the land use vehicle from ROW to lease. This remains a non-commercial utility project and there are no royalty or sharing gross proceeds available from this project.
7. This is a non-commercial utility project, no further information is necessary for the rental section of the document.

We hope that this response adequately addresses your concerns and that the Application and related documents submitted by NTUA can proceed to the next step which is to Legislative Counsel and placed on the agenda of the Resources Committee for review and approval. If you have any further questions, please contact Niccy Tsosie in our office at 928.729.6204.

Thank you,

NAVAJO TRIBAL UTILITY AUTHORITY



Walter W. Haase, P.E.  
General Manager

WWH:DAD/tt



NAVAJO TRIBAL UTILITY AUTHORITY  
AN ENTERPRISE OF THE NAVAJO NATION

May 20, 2015



Mr. W. Mike Halona  
Department Manager III  
Navajo Land Department, DNR

Mr. Howard Phillip Draper  
Program and Project Specialist  
Project Review Section  
Navajo Land Department, DNR

RE: Response To Navajo Land Department Letter Dated May 15, 2015 Regarding Document # 003948  
Right of Way Application from Navajo Tribal Utility Authority for ±300 Acres for a 27.5 megawatt  
Project ID No. 6213786

Mr. Halona/Mr. Draper:

In response to your inquiry, the Navajo Tribal Utility Authority (NTUA) provides the following responses:

1. Jurisdictional Authority – NTUA submits that its application is for a non-commercial project. None of the project is designated for commercial purposes.
2. Field Clearance – NTUA was provided the estimated cost per acre of the land by the Navajo Land Department. NTUA did not conduct a separate appraisal to dispute the amount provided by the Navajo Land Department.

We hope that this response adequately addresses your concerns and that the Right of Way Application submitted by NTUA can proceed through the review process. If you have any further questions, please contact Niecy Tsosie in our office at 928.729.6204. Thank you.

Sincerely,

Walter W. Haase, P.E.  
General Manager

WWH DAD/tt

**EXECUTIVE OFFICIAL REVIEW**Title of Document: KayentaSolarGen.Plant.PowerLinePrjt Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: 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: _____ | □ | □ |

☐ **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**

1. NLD \_\_\_\_\_ Date: 28 May 15 ☒ ☐
2. F&W \_\_\_\_\_ Date: 5/22/15 ☒ ☐
3. HPD \_\_\_\_\_ Date: 5/13/15 ☒ ☐
4. Minerals *NON-Commercial comments attached* \_\_\_\_\_ Date: 7/24/15 ☐ ☒
5. NNEPA \_\_\_\_\_ Date: 6-9-2015 ☒ ☐
6. Office of the Attorney General: *fid* \_\_\_\_\_ Date: 6/15/15 ☒ ☒
7. OPVP \_\_\_\_\_ Date: 6-17-2015 ☐ ☐

☐ **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 \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
8. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ **OTHER: General Land Lease portion**

1. **Controller** \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
4. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
5. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐