

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- Third Year, 2021

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE RED MESA
TAPAHA SOLAR PROJECT LEASE FOR THE NAVAJO TRIBAL UTILITY
AUTHORITY TO CONSTRUCT AND OPERATE A SOLAR GENERATION FOR RED
MESA TAPAHA SOLAR PROJECT, RED MESA CHAPTER VICINITY, NAVAJO
NATION (SAN JUAN COUNTY, UTAH)

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. Section § 501 (B)(2), The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

SECTION TWO. FINDINGS

- A. The Navajo Tribal Utility Authority seeks approval of the Red Mesa Tapaha Solar Project Lease, attached as **Exhibit A**, which includes a sublease for a portion of the land for the construction and operation of a 70MW solar generation facility, related facilities and an access road that connects to BIA N5062 for the Red Mesa Tapaha Solar Project located in the Red Mesa Chapter vicinity, Navajo Nation (San Juan County, Utah).
- B. The proposed Red Mesa Tapaha Solar Project Lease contains 700.09 acres, more or less, Navajo Nation, State of Utah, is described in **Exhibit B**. Five hundred fifty (550) acres are to be subleased to NTUA Generation-Utah, LLC which is a wholly owned entity of NTUA.
- C. The Red Mesa Tapaha Solar Project will address the energy needs of both NTUA and the sixteen municipal members of the Utah Associated Municipal Power Systems ("UAMPS"). UAMPS has agreed to purchase 66-megawatts of the 70-megawatt for a

period of 25 years. The remaining 4-megawatt will be purchased by NTUA and distributed by NTUA to serve its customers throughout the Navajo Nation.

- D. A portion of the output from the Red Mesa Tapaha Solar Project shall be utilized to service the Navajo Nation and NTUA will need to have an interconnection facility to connect to NTUA's utility system. NTUA's utility system is required to meet the federal reliability requirements established by Federal Energy Regulatory Commission and North American Energy Reliability Corporation to operate a modern, safe reliable electric system
- E. Red Mesa Chapter Resolution RMC-07-041519, attached as **Exhibit C**, dated April 15, 2019, supports the Red Mesa Tapaha Solar Project.
- F. The Right-of-Way Agent has obtained the necessary consents from the affected land users (grazing permittees) which are attached as **Exhibit D**.
- G. The Biological Resources Compliance Form is attached as **Exhibit E**; the Cultural Resources Compliance Form is attached as **Exhibit F**; the Traditional Cultural Property (TCP) Record is attached as **Exhibit G**. The Biological Survey Report is attached as **Exhibit H**.
- H. The proposed Red Mesa Tapaha Solar Project Lease has been reviewed through Executive Official Review Document Number 015806 which is attached as **Exhibit I**.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the lease and sublease, attached hereto as **Exhibit A**, to the Navajo Tribal Utility Authority to construct, operate and maintain the Red Mesa Tapaha Solar Project as described herein. The location is more particularly described on the survey map attached hereto as **Exhibit B**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 31st day of March 2021.

A handwritten signature in black ink, appearing to be 'R. Nez'.

Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Thomas Walker, Jr.

Second: Honorable Kee Allen Begay, Jr.

Chairperson Rickie Nez not voting.



LEASE NO. _____

**RED MESA SOLAR SITE LEASE
BETWEEN
THE NAVAJO NATION
AND THE
NAVAJO TRIBAL UTILITY AUTHORITY**

THIS SOLAR SITE LEASE is made and entered into this day of _____, 2021, 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 the Navajo Nation General Leasing Regulations of 2013, 16 N.N.C. § 2301 *et seq.* and 25 U.S.C. § 415(e), 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) "Additional Terms" shall have the meaning set forth in Section 5.

(B) "Affiliate" means any corporation, general partnership, limited partnership, limited liability partnership, trust, company (including, without limitation, any limited liability company or joint stock company) or other organization or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with one of the Parties of this Lease.

(C) "Approved Encumbrance" means an encumbrance approved in writing or otherwise deemed approved by Lessor in accordance with the terms and conditions of this Lease.

(D) "Commercial Operations Date" means the date upon which the Project, as defined in Section 4(A), is mechanically complete and operating in accordance with its manufacturing specifications, net electricity is regularly generated and delivered and Lessee (or a Sublessee, as applicable) has commenced sale thereof to purchasers of generated electricity as agreed to by Lessee (or a Sublessee, as applicable) and any such purchaser, in each case, as determined by Lessee (or a Sublessee, as applicable) and evidenced by Lessee's (or Sublessee's as applicable), at least thirty days written Notice to Lessor, thereof; provided, however, in no event shall "Commercial Operations Date" be deemed to have occurred during periods of start-up and testing of the Project.

(E) "Decommissioning Period" means the twelve-month period after (1) termination by either party or (2) the end of the Term, including the Primary Term and/or Additional Terms, during which time the Lessee shall have to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property from the Leased Premises and restore the land to its prior condition, as further described in Section 8(B).

(F) "Development Period" means the period of time wherein Lessee or its designee commences construction of a project on all or a portion of the Leased Premises, wherein such period of time is expected to be no more than five years, absent an extension requested by Lessee

and not unreasonably denied by Lessor. Further, the Lessee may shorten the Development Period and return all or a portion of the Leased Premises not developed or supporting commercial operations.

(G) "Effective Date" means the date the Lease is fully approved and executed by the Lessor and Lessee.

(H) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including, without limitation, any Sublessee Mortgage, and all successors and assigns.

(I) "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.

(J) "Lessor Parties" means the Navajo Nation and its officers, agents and employees.

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

(L) "Primary Term" shall have the meaning set forth in Section 5.

(M) "Project" shall have the meaning set forth in Section 4.

(N) "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.

(O) "Sublease" means an agreement that allows Lessee to sublease the site to Lessee's subsidiary.

(P) "Term" shall have the meaning set forth in Section 5.

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 Red Mesa, Navajo Nation, state of Utah 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 700.09 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." At the end of the Development Period, any undeveloped portion of the Leased Premises would be returned to the Nation in its undeveloped condition. The Navajo Land Department will submit one copy of this document to the Bureau of Indian Affairs for recording pursuant to 16 N.N.C. §§ 2322(B).

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. Among other things, the Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. 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.

4. PURPOSE, UNLAWFUL USES.

(A) Lessee shall develop, use and occupy the Leased Premises solely for the purpose of constructing, operating and maintaining solar energy projects, battery storage and related interconnection facilities and all other related facilities and improvements (collectively the "Project"). 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 the Project 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. The consent of Lessor may be withheld, granted, or granted upon conditions, solely in the discretion 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.

The term of this Lease shall be for a period of twenty-five (25) years (the "Primary Term"), commencing on the Effective Date. The Primary Term includes both a development period not to exceed five years from the Effective Date, and an operational period which would commence on the Commercial Operations Date of the Project and continue until the end of the Primary Term, absent exercising the Additional Terms described below. Lessee may provide notice to Lessor to renew the Lease for an additional term of fifteen (15) years, followed by an additional term of ten (10) years, for a total of an additional 25 years ("Additional Terms"). Such renewal for any of the Additional Terms require that the Lessee abided by the terms and conditions of this Lease and that the Lessee is not in default hereunder. Lessee shall provide such notice in writing to Lessor of its intent to proceed with any of the Additional Terms no later than sixty (60) days prior to the end of the Primary Term or any additional extension thereof. "Term" is defined as including the Primary Term and any additional extension thereof via the Additional Terms.

6. RENTAL.

(A) Lessee or its designee agrees to pay a lump sum payment to the Lessor for the Leased Premises thirty days after the Effective Date the amount of \$100/per acre, and annually thereafter, during the Development Period, until the Commercial Operations Date of the Project.

(B) Upon the Commercial Operation Date, Lessee agrees to commence making annual payments to the Lessor based on the number of acres used for commercial operation(s) of the Project in the amount of \$415/per acre. Lessee or its designee shall make such payment to the Lessor within 30 days of the Commercial Operations Date of the Project or anniversary date of the Commercial Operation Date of the Project. For any lands of the Leased Premises that remain underdeveloped and not supporting commercial operations, Lessee agrees to continue making annual payments of \$100/per acre during the Development Period. Furthermore, for each Sublease established by the Lessee on the Leased Premises the Lessor or its designee shall annually pay \$2,000 to the Navajo Nation for the administration of each Sublease. These administration payments shall be paid in advance on the anniversary of the date of each such Sublease.

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

(D) Lessee will be required to pursue rights-of-way for all transmission lines and infrastructure that requires a right-of-way and is not eligible for a service line agreement.

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 or any agent of Lessor 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 on the Leased Premises, including, but not limited to, the solar panels, inverters, structures, batteries, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Lessee during the Term. Lessor shall have no ownership or other interest in any (and Lessee is the sole and exclusive owner of all) buildings and other improvements installed on the Leased Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect during 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 or during the Decommissioning Period. Prior and up to expiration of the Decommissioning Period, 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. Lessee will be released from liability when approved by an inspection of the Leased Premises. Any struc-

tures, buildings and other improvements which are not removed within the Decommissioning Period 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 Decommissioning Period.

(C) Lessee shall at all times during the Term of the Lease and at the Lessee's sole cost and expense, maintain the Leased Premises and all improvements located thereon and make all necessary reasonable repairs resulting from any damages to the Leased Premises, other than those caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way, for which Lessee shall have no liability.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Leased Premises by Lessee or its Sublessee shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes for solar generation and energy storage facilities. 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 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.

(A) 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 unreasonably interfere with Lessee's use of the Leased Premises. For the avoidance of any doubt regarding potential interference, Lessor agrees to coordinate with Lessee prior to entering into any such agreements. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not cause or permit any liens of any kind or nature whatsoever arising from any work performed, services rendered, materials furnished, responsibilities, or obligations incurred or authorized 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 applicable taxes including, but not limited to, property, use, or gross receipts taxes or assessments, or any other like charges levied upon or against the Leased Premises by a third party, 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 due or 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 a bond to prevent enforcement of any lien resulting therefrom, if consistent with applicable Navajo Nation laws and regulations.

(C) Lessee agrees to defend, protect, indemnify and hold harmless Lessor 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 of any kind or nature whatsoever therefor, any sale, collection efforts, causes of action, suits, demands, and judgements of every kind, or other proceedings to enforce payment thereof, and all costs and expenses in connection therewith. Lessor shall comply with reasonable requests by Lessee to provide appropriate documents in Lessor's possession with reference to any real estate tax exemption under state law that is applicable to the Leased Premises, any interest therein or improvements thereon.

(D) Lessee shall pay, before becoming delinquent, all charges for utility services, including electricity, water and communication services, supplied to the Leased Premises. Lessee may permit Sublessees to pay such charges directly to the service provider, but in the event of nonpayment by Sublessee, Lessee shall be responsible for paying such charges, applicable taxes, and late fees. Lessee shall have no right to contest or recover from Lessor 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 third party imposed 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. 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 lesser of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Lessor until full repayment is made by Lessee. Interest shall accrue from the date of payment or incursion thereof by Lessor and continue to accrue until full repayment is made by Lessee.

12. ASSIGNMENTS AND SUBLEASES.

The Lessee is authorized under this Lease to assign and/or sublease to wholly or partially owned direct subsidiaries of Lessee all or a portion of the Leased Premises materially in the form attached hereto as Exhibit C. With the exception of ability of Lessee to sublease to its subsidiaries, 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. This leasehold may be sold, assigned or transferred by the Lessee, without the 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.

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 no such encumbrance shall be valid or binding without such prior written approval; provided, however, that any Sublessee shall have the right at any time and from time to time to mortgage, encumber or pledge (including by mortgage, deed of trust or personal property security instrument) to any Sublease Mortgagee, without the consent of Lessor, all or any part of Sublessee's rights and/or interests under its Sublease, and the subleasehold created thereby, and/or in any personal property and fixture of the Sublessee, and any such financing by a Sublessee shall be deemed an Approved Encumbrance. As used herein, the term "Sublease Mortgagee" means any financial institution or other person or entity that from time to time provides any hedge arrangement, development, bridge, construction, permanent debt or tax equity financing or refinancing for some or all of a Sublessee's projects on the Leased Premises, personal property and/or fixtures, or operations on the Leased Premises, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender, and their respective representatives, successors and assigns whose name and address for notices have been provided to Lessor in writing. An Approved Encumbrance shall be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee, and its respective personal property and fixtures, and shall not jeopardize in any way Lessor's interest in the land constituting the Leased Premises. With respect to any proposed encumbrance not deemed an Approved Encumbrance as set forth above, Lessee agrees to furnish any requested financial statements or analyses pertinent to the proposed encumbrance that the Lessor 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 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, including 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 right in subsection (B) to repay an Approved Encumbrance, 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 if the purchaser at such is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor, 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, approval by the Nation is required and 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.

(E) Lessee shall not agree to a modification or amendment of this Lease if the same could reasonably be expected to materially reduce the rights or remedies of an Encumbrancer or Sublessee or impair or reduce the security for an Encumbrancer's lien, and Lessor shall not accept a surrender of the Leased Premises or any part thereof or a termination of this Lease, in each such case, without the prior written consent of each Encumbrancer and Sublessee. Each Encumbrancer shall have the absolute right to assign its lien, enforce its lien, and acquire title to the Project (whether by foreclosure, assignment in lieu of foreclosure or other means).

(F) In case of the rejection, disaffirmation or other termination of this Lease as a result of, or in the course of, any default or the bankruptcy or insolvency of Lessee, Lessor shall give prompt notice thereof to the Encumbrancers and Sublessees. Upon written request of the Sublessees (with respect to the portion of the Leased Premises subleased by such Sublessees), or the first priority Encumbrancer (with respect to the portion of the Leased Premises subject to such Encumbrancer's Sublease Mortgage, if applicable), the Lessor agrees to enter into a new lease agreement with such Sublessee or Encumbrancer, or its designee, under the terms and conditions substantially similar to those included herein and consistent with Laws of the Navajo Nation in an expeditious manner. Such new lease agreement shall be effective as of the date of such rejection, disaffirmation or termination, shall be for a term equal to the remainder of the Term of this Lease and shall be upon the same terms, covenants and conditions as contained in this Lease; and, until such time as such new Lease is executed and delivered, such Sublessee or Encumbrancer may enter, use and enjoy the Leased Premises (or its respective portion of the Leased Premises) and conduct the activities permitted of the Lessee hereunder as if this Lease was still in effect and will agree to comply with the terms of this Lease. The provisions of this Section 14 shall survive the rejection, disaffirmation or other termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 14 were a separate and independent contract made by Lessor, Lessee and each Encumbrancer and Sublessee. Upon the execution of such new lease agreement, the Sublessee or Encumbrancer, as applicable (with respect to its respective portion of the Leased Premises, if applicable), shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Lease (had this Lease not been terminated) from the date of the termination of this Lease to the date of the new lease agreement (but only with respect to its respective portion of the Leased Premises, if applicable), and (iii) agree in writing to perform or cause to be performed all of the other covenants set forth in this Lease to be performed by Lessee, to the extent that Lessee failed to perform the same prior to the execution and delivery of the new lease agreement (but only with respect to its respective portion of the Leased Premises, if applicable).

(G) Lessee shall be responsible for providing Lessor with any and all names, addresses and other relevant information of any Encumbrancers under the Lease or Sublease for the Project

to be developed on the Lease Premises. Lessee shall provide such information within 180 days after the Commercial Operations Date. Furthermore, in the event that an Encumbrancer seeks to act under this provision, the Lessee shall immediately, but no later than forty (40) days after receipt of notice from the Encumbrancer, provide notice to Lessor and describe the circumstances and proposed actions of such Encumbrancer.

15. DEFAULT.

(A) Time is declared to be of the essence in this Lease. Subject to the provisions of Section 14 above and clause (D) below, should Lessee default in any payment of monies when due under this Lease, fail to post any required bond, failure to cooperate with a Navajo Nation 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 and 16 N.N.C. §2361, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor 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, 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 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 shall give to each Encumbrancer and Sublessee a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor shall accept performance by any Encumbrancer or Sublessee of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. Each Encumbrancer and Sublessee shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. The Lessor shall not terminate this Lease if the Lessee, an Encumbrancer or Sublessee has cured or is diligently taking action to cure Lessee's default with respect to the portion of the Leased Premises subleased by such Sublessees or encumbered by such Encumbrancer or, with respect to an Encumbrancer, has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure, in each case with respect to such Encumbrancer's or Sublessee's respective portion of the Leased Premises, if applicable.

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 of a type not typically used in similar projects or in quantities in excess of that typically used in similar projects, 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 by Lessee or its agents, with or without Lessor's consent, or if the Leased Premises become contaminated in any manner as a result of the actions of Lessee or its agents, Lessee shall indemnify and hold harmless the Lessor 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 reasonable attorney fees, consultant and expert fees arising during or after the Term and arising as a result of such contamination, with the exception that the Lessee is not required to indemnify any Lessor Parties for liability or cost arising from the Lessor Parties' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the Leased Premises or any cleanup, removal, remediation 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 Nation 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 Substances, investigation, testing, or remediation at the Leased Premises 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 Nation 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. 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 \$1,000,000.00 for damage to property. Lessor 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. A 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 18 be increased at any time, whenever Lessor shall determine that such increase reasonably is necessary for the protection of Lessor.

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

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 if 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 of NTUA. NTUA will require its Sublessee to provide a performance bond and to include the Navajo Nation as a covered party on such performance bond.

20. NON-LIABILITY.

The Lessor Parties shall not 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 or other improvement 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 agrees to defend and hold Lessor 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, attorney fees 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 and its authorized representatives shall have the right, at any reasonable time during the Lease and upon at least 24 hours' notice to Lessee (except in the case of an emergency, in which case no notice is required) 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.

22. MINERALS.

While maintaining Section 13 to maximum extent practicable, it is understood that all minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor; provided, however, during the Term, Lessor agrees to coordinate with Lessee to maintain its quiet enjoyment of the Leased Premises prior to any activity related to Lessor's rights to minerals on or under the Leased Premises.

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 and any Sublessee.

24. DELIVERY OF LEASED PREMISES.

At the termination of this Lease and following expiration of the Decommissioning Period, 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. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of the Nation and their agents, employees and contractors, Lessee shall defend, indemnify and hold harmless the Nation and its 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.

27. 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 162;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*;
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*;
- 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 Department of Water Resources, or its successor; and
- e. The Navajo Nation General Leasing Regulations of 2013, 16 N.N.C. § 2301 *et seq.*

28. 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.

29. 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.

30. KEEPING LANDS CLEAR.

The Lessee shall clear and keep clear the lands within the Leased Premises 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 in accordance with applicable laws and regulations.

31. RECLAIMED LANDS.

The Lessee shall reclaim all surface lands disturbed related to the Lease, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency prior to commencement of such a plan.

32. PERMISSION TO CROSS; COOPERATION; FURTHER ASSURANCES.

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

(B) Lessor shall cooperate with the title insurance company ("Title Company"), if any, selected by Lessee to issue title insurance insuring (a) Lessee's leasehold and easement interests in the Leased Premises or any Sublessee's sub-leasehold interest in all or any portion of the Leased Premises, and/or (b) any mortgage encumbering such leasehold and/or subleasehold, and shall promptly execute and deliver such title affidavits and such other documents otherwise reasonably required by the Title Company.

(C) Lessor shall cooperate with Lessee and any Sublessee in the exercise of their rights under this Lease or any Sublease. Without limiting the generality of the foregoing, Lessor shall enter into any reasonable consent and non-disturbance agreement with any Encumbrancer and/or Sublessee, stating that Lessor shall recognize the rights of the Encumbrancer and/or Sublessee, as applicable, and not disturb its possession of the Leased Premises so long as it is not in default under this Lease beyond any applicable notice and cure periods, and stating such other things as such Encumbrancer and/or Sublessee may reasonably request.

33. TERMINATION.

Subject to the provisions of Sections 14 and 15, the Navajo Nation may terminate this Lease for violation of any of the terms and conditions stated herein following the expiration of all notice and cure rights set forth in this Lease.

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 Leased Premises at least sixty (60) days prior to delivery of the Leased Premises.

34. 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. If such efforts fail to resolve such dispute within sixty (60) business days, either party may subsequently pursue any legal, equitable or other action available to it, subject to the provisions of this Lease.

35. 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.

36. 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.

37. 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.

38. 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, Encumbrancers, and Sublessees are to the United States as well as to Lessor.

39. 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

Office of the President and Vice President
The Navajo Nation
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-4025

To or upon Lessee:

Navajo Tribal Utility Authority
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) The Navajo Land Department will send documentation to the Bureau of Indian Affairs regarding this Lease.

(D) Lessor and Lessee may at any time change its address for purposes of this section by providing written notice to the other party in accordance with this section.

40. 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.

41. 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.

42. VALIDITY.

No modification of or amendment to this Lease shall be valid or binding on either party until it is executed by both parties.

43. MEMORANDUM.

Lessee shall ensure a notarized memorandum of this Lease in substantially the form attached hereto ("Memorandum"), as Exhibit B, is filed contemporaneously with or immediately following execution of this Lease within the respective county recorder where the Leased Premises are located.

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

THE NAVAJO NATION, LESSOR

**THE NAVAJO TRIBAL UTILITY
AUTHORITY, LESSEE**

Date: _____

Date: _____

By: _____
Jonathan Nez, President
The Navajo Nation

By: _____
Walter W. Haase, P.E.
General Manager

Exhibit B

MEMORANDUM OF LEASE

WHEN RECORDED, RETURN TO:

[TO BE DETERMINED]

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

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is executed as of the ____ day of _____ to recognize that the NAVAJO NATION, ("Lessor"), and NAVAJO TRIBAL UTILITY AUTHORITY, ("Lessee"), a Navajo Nation enterprise, whose address is P.O. Box 170, Fort Defiance, AZ have entered into that certain Lease, as further described herein.

WITNESSETH:

Lessor and Lessee have made and entered into that certain Red Mesa Chapter Solar Site Lease, dated _____, (the "Lease"); whereby Lessor has leased and granted unto Lessee, and Lessee has leased and received from Lessor, on and subject to the terms, provisions and conditions of the Lease, the leased premises and easements as more particularly described on Attachment 1 attached hereto.

The terms, provisions and conditions of which are incorporated herein by this reference to the same extent as if recited in their entirety herein, whereby Lessor has leased and granted unto Lessee, and Lessee has leased and received from Lessor, on and subject to the terms, provisions and conditions of the Lease, the leased premises and easements as more particularly described on Attachment 1 attached hereto.

Any terms used in this Memorandum which are not defined herein shall have the same meaning as are ascribed to such terms in the Lease. Specific reference is hereby made to the following terms, provisions and conditions of the Lease:

1. Term. The Term of this Lease shall be for a period of fifty (50) years, which consists of a Primary Term of 25 years and Additional Term of 25 years, commencing on Effective Date of the Lease.

2. Notices and Demands. 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, 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

Notice to all Parties. The Lease contains other terms and provisions not herein set forth which are incorporated herein by reference for all purposes, and this Memorandum is executed for the purpose of placing third parties dealing with the leased premises on notice of the existence of the sublease and, where appropriate, its contents, and shall ratify and confirm all other terms and provisions of the Lease (including all exhibits) as fully as if the same had been set forth herein.

Notice of Existence of Lease; No Amendment. This Memorandum is intended to be recorded solely for the purpose of evidencing of record the existence of the Lease. A copy of the signature page of the Lease is attached hereto, as Attachment 2. This Memorandum does not modify any of the agreements, rights or obligations of Lessor and Lessee under the Lease, which alone fully expresses the agreements, rights and obligations of Lessor and Lessee under the Lease.

IN WITNESS WHEREOF, the Navajo Tribal Utility Authority has caused this Memorandum of Lease to be filed for recordation.

NAVAJO TRIBAL UTILITY AUTHORITY

Date: _____

By: _____
[TO BE DETERMINED]
Navajo Tribal Utility Authority

STATE OF ARIZONA)
) ss.
COUNTY OF NAVJO)

On this _____ day of _____, before me, the undersigned offer, personally appeared _____, who acknowledged her/himself to be _____, of NAVAJO TRIBAL UTILITY AUTHORITY, a Navajo Nation enterprise:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a
credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contain on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

**RED MESA CHAPTER SOLAR SITE SUBLEASE
BETWEEN
NAVAJO TRIBAL UTILITY AUTHORITY
AND THE
NTUA GENERATION-UTAH, LLC**

THIS SOLAR SITE SUBLEASE is made and entered into this ___ day of ___, 2021 ("Effective Date"), 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-UTAH, LLC, hereinafter called the "Sublessee," whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Sublease shall follow the provisions of the Navajo Nation General Leasing Regulations of 2013, 16 N.N.C. § 2301 *et seq.* and 25 U.S.C. § 415(e), 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) "Additional Term" means the ten (10) years following the Primary Term.

(B) "Affiliate" means any corporation, general partnership, limited partnership, limited liability partnership, trust, company (including, without limitation, any limited liability company or joint stock company) or other organization or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with one of the Parties of this Sublease.

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

(D) "Commercial Operations Date" means the date upon which the Project is mechanically complete and operating in accordance with its manufacturing specifications, net electricity is regularly generated and delivered and Sublessee has commenced sale thereof to purchasers of generated electricity as agreed to by Sublessee and any such purchaser, in each case, as determined by Sublessee and evidenced by Sublessee written Notice to Sublessor thereof; provided, however, in no event shall "Commercial Operations Date" be deemed to have occurred during periods of start-up and testing of the Project.

(E) "Decommissioning Period" means the twelve month period after (1) termination by Sublessor or (2) the end of the Term, including the Primary Term and/or Additional Term, during which time the Sublessee shall have to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property from the Subleased Premises and restore the land to its prior condition, as further described in Section 8(B).

(F) "Effective Date" means the date the Sublease is fully approved and executed by the Sublessor and Sublessee.

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

(H) "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.

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

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

(K) "Primary Term" means the first twenty five years of the Term under the Lease and Sublease.

(L) "Project" shall have the meaning set forth in Section 4.

(M) "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.

(N) "Sublessor Parties" includes the Sublessor, its officers, agents, or employees.

(O) "Term" shall have the meaning set forth in Section 5.

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 Red Mesa, Navajo Nation, state of Utah more particularly described in the survey map with legal description attached hereto as Attachment "1," and by this reference made a part hereof, containing 550 acres of the total approximately 700.09 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 Navajo Land Department will submit one copy of the Lease and Sublease to the Bureau of Indian Affairs for recording pursuant to 16 N.N.C. §§ 2322(B).

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. Among other things, the Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. 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.

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, battery storage and related interconnection facilities and all other related facilities and improvements (collectively the "Project"). 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 Project 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.

The term of this Sublease shall be for a period of twenty-five (25) years, commencing on the Effective Date (the "Primary Term") and an additional ten (10) years upon the expiration of the Primary Term ("Additional Term").

6. RENTAL.

(A) Sublessee shall pay \$2,000 annually as an administrative payment for this Sublease to the Sublessor, as well as an annual rental payment in amount of \$415 per acre of the Subleased Premises. With the exception of the first year, which shall be paid within thirty days after the Effective Date, each payment shall be paid in advance, by December 15 of the year prior to the commencement of each calendar year during the 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 Nation, 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 on 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. Sublessor shall have no ownership or other interest in any (and Sublessee is the sole and exclusive owner of all) buildings and other improvements installed on the Subleased Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Sublease or as may come into effect during 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 or during the Decommissioning Period. Prior and up to expiration of the Decommissioning Period, 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. Sublessee will be released from liability when approved by an inspection of the Subleased Premises. Any structures, buildings and other improvements which are not removed within Decommissioning Period 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 Decommissioning Period.

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 Sublessor reserves the right to require Sublessee to modify any improvements to the Leased 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.

Although Sublessor or the Nation has the right to enter into service line agreements with utility companies for service lines across the Subleased Premises, the Sublessor or the Nation shall ensure that any such agreements do not unreasonably interfere with Sublessee's use of the Subleased Premises. For the avoidance of any doubt regarding potential interference, Sublessor or the Nation agrees to coordinate with Sublessee prior to entering into any such agreements. Nothing contained herein shall be construed to limit the right of Sublessor or the Nation to enter into service line agreements with utility companies for service lines across the Subleased Premises, provided that such service lines do not unreasonably interfere with Sublessee's use of the Subleased Premises, nor otherwise affect the rights-of-way reserved to Sublessor in Section 2 of this Sublease.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Sublessee shall not cause or permit any liens of any kind or nature whatsoever arising from any work performed, services rendered, materials furnished, responsibilities or obligations incurred or authorized 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 or shall bond over such liens in a manner sufficient to prevent any action against the Subleased Premises. Sublessee shall have the right to contest any such asserted lien against the Subleased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement thereof.

(B) Sublessee shall pay, before becoming delinquent, all applicable taxes including, but not limited to, 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 due or 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, if consistent with applicable Navajo Nation laws and regulations.

(C) Sublessee agrees to defend, protect, indemnify and hold harmless Sublessor, the Nation 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 of any kind or nature whatsoever therefor, any sale, collection efforts, causes of action, suits, demands, and judgments of every kind, or other proceedings to enforce payment thereof, and all costs and expenses in connection therewith. Sublessor shall comply with reasonable requests by Sublessee to provide any appropriate documents in Sublessor's possession with reference to any real estate tax exemption under State law that is applicable to 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 full 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 and continue to accrue until full repayment is made by Sublessee.

12. ASSIGNMENT.

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) Sublessee shall have the right at any time and from time to time to mortgage, encumber or pledge (including by mortgage, deed of trust or personal property security instrument) to any Sublease Mortgagee, without the consent of Sublessor, all or any part of Sublessee's rights and/or interests under this Sublease, and the subleasehold created thereby, and/or in any personal property and fixture of Sublessee, and any such financing by Sublessee shall be deemed an Approved Encumbrance. As used herein, the term "Sublease Mortgagee" means any financial institution or other person or entity that from time to time provides any hedge arrangement, development, bridge, construction, permanent debt or tax equity financing or refinancing for some or all of Sublessee's projects on the Subleased Premises, personal property and/or fixtures, or operations on the Subleased Premises, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender, and their respective representatives, successors and assigns whose name and address for notices have been provided to Sublessor in writing. An Approved Encumbrance shall be confined to the leasehold interest of Sublessee or the subleasehold interest of Sublessee, and its respective personal property and fixtures, and shall not jeopardize in any way the Nation's or Sublessor's interests in the land constituting the Subleased Premises. With respect to any proposed encumbrance not deemed an Approved Encumbrance as set forth above, Sublessee agrees to furnish any requested financial statements or analyses pertinent to the proposed 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 right in Subsection (B), 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, approval by the Nation is required, 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.

(E) Sublessee shall not agree to a modification or amendment of this Sublease if the same could reasonably be expected to materially reduce the rights or remedies of an Encumbrancer or impair or reduce the security for its lien, and Sublessor shall not accept a surrender of the Subleased Premises or any part thereof or a termination of this Sublease; in each such case without the prior written consent of each Encumbrancer. Each Encumbrancer shall have the absolute right to assign its lien, enforce its lien, and acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means).

(F) In case of the rejection, disaffirmation or other termination of this Sublease as a result of or in the course of any default or the bankruptcy or insolvency of Sublessee, Sublessor shall give prompt notice thereof to the Encumbrancers. Sublessor shall, upon written request of the first priority Encumbrancer, enter into a new sublease agreement with such Encumbrancer, or its designee, within twenty (20) days after the receipt of such request. Such new sublease agreement shall be effective as of the date of such rejection, disaffirmation or termination, shall be for a term equal to the remainder of the Term of this Sublease and shall be upon the same terms, covenants and conditions as contained in this Sublease; and, until such time as such new Sublease is executed and delivered, such Encumbrancer may enter, use and enjoy the Subleased Premises and conduct the activities permitted of the Sublessee hereunder as if this Sublease and the rights of way granted hereunder were still in effect and will agree to comply with the terms of this Sublease. The provisions of this Section 14 shall survive the rejection, disaffirmation or other termination of this Sublease and shall continue in full force and effect thereafter to the same extent as if this Section 14 were a separate and independent contract made by Sublessor, Sublessee and each Encumbrancer. Upon the execution of such new sublease agreement, the Encumbrancer shall (i) pay Sublessor any amounts which are due Sublessor from Sublessee, (ii) pay Sublessor any and all amounts which would have been due under this Sublease (had this Sublease not been terminated) from the date of the termination of this Sublease to the date of the new sublease agreement, and (iii) agree in writing to perform or cause to be performed all of the other covenants set forth in this Sublease to be performed by Sublessee, to the extent that Sublessee failed to perform the same prior to the execution and delivery of the new sublease agreement.

(G) Sublessee shall be responsible for providing Sublessor with any and all names, addresses and other relevant information of any Encumbrancers under the Sublease for the Project to be developed on the Subleased Premises. Sublessee shall provide such information within 60 days after the Commercial Operation Date. Furthermore, in the event that an Encumbrancer seeks to act under this provision, the Sublessee shall immediately, but no later than twenty (20) days after receipt of notice from the Encumbrancer, provide notice to Sublessor and describe the circumstances and proposed actions of such Encumbrancers.

15. DEFAULT.

(A) Time is declared to be of the essence in this Sublease. Subject to the provisions of Section 14 above and clause (D) below, should Sublessee default in any payment of monies when due under this Sublease, fail to post any required bond, failure to cooperate with the Nation's 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 and 16 N.N.C. §2361, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Sublessor 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, 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 (subject to the terms of the Lease), 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 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. If Sublessor shall become entitled to terminate this Sublease due to an uncured default by Sublessee, Sublessor shall not terminate this Sublease unless it has first given a second written notice of such uncured default and of its intent to terminate this Sublease to each Encumbrancer and has given each Encumbrancer at least sixty (60) additional days to cure the default to prevent such termination of this Sublease; provided, however, that if such default cannot reasonably be cured within such sixty (60) day period, then such Encumbrancer shall have such additional period of time as is reasonably required to cure such default. Furthermore, if within such sixty (60) day period an Encumbrancer notifies Sublessor that it must foreclose on Sublessee's interest or otherwise take possession of Sublessee's interest under this Sublease in order to cure the default, Sublessor shall not terminate this Sublease and shall permit such Encumbrancer a sufficient period of time as may be necessary for such Encumbrancer, with the exercise of due diligence, to foreclose or acquire Sublessee's interest under this Sublease and to perform or cause to be performed all of the covenants and obligations to be performed and observed by Sublessee; provided, however, that if an Encumbrancer is prohibited by any process or action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Sublessee from commencing or prosecuting foreclosure proceedings or acquiring Sublessee's interest, then the period specified above for commencing and prosecuting such proceedings shall be extended for the period of such prohibition. 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 of a type not typically used in similar projects or in quantities in excess of that typically used in similar projects, 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 by Sublessee or its agents, with or without Lessor's consent, or if the Leased Premises become contaminated in

any manner as a result of the actions of Sublessee or its agents, Sublessee shall indemnify and hold harmless the Sublessor and Lessor 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 reasonable attorneys' fees, consultant and expert fees arising during or after the Term and arising as a result of such contamination, with the exception that the Sublessee is not required to indemnify any Lessor Parties (as that term is defined in the Lease) for liability or cost arising from the Lessor Parties' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the Leased Premises or any cleanup, removal, remediation 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 Nation 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 Substances, investigation testing, or remediation at the Leased Premises 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 Nation 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. INSURANCE.

(A) Sublessee shall obtain and maintain a general commercial liability insurance policy in an amount of no less than \$5,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence and \$5,000,000.00 for damage to property. Sublessor, the Nation 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. A 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 Sublessor determines that such increase reasonably is necessary for the protection of Sublessor or the Nation.

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

19. PERFORMANCE BOND

Sublessor is requiring Sublessee to comply with the Performance Bond Requirement pursuant to 16 N.N.C. §2335(A) under this Sublease.

20. NON-LIABILITY.

The Sublessor Parties shall not 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 or other improvement 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, the Nation and the United States Government and agrees to defend and hold Sublessor, the Nation 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, attorney fees 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. Notwithstanding any provision in this Sublease to the contrary, neither Sublessee nor Sublessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Sublease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Sublease. The foregoing provision shall not prohibit Sublessee or Sublessor from seeking and obtaining general contract damages for a breach of this Sublease.

21. INSPECTION.

The Sublessor, the Nation, and their authorized representatives shall have the right, at any reasonable time during the Sublease and upon at least 12 hours' notice to Sublessee (except in the case of an emergency, in which case no notice is required), 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.

22. MINERALS.

It is understood that all minerals, including sand and gravel, contained in or on the Subleased Premises are reserved for the use of the Nation; provided, however, during the Term, the Nation agrees to coordinate with Sublessor to maintain Sublessee quiet enjoyment of the Subleased Premises prior to any activity related to the Nation's rights to minerals on or under the Subleased Premises.

23. 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.

24. DELIVERY OF SUBLEASED PREMISES.

At the termination of this Sublease and following expiration of the Decommissioning Period, Sublessee will peaceably and without legal process deliver up the possession of the Subleased Premises, in good condition, usual wear and tear excepted, and as otherwise set forth in Section 8 above.

25. 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.

26. 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.

27. 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.

28. 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 162;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*;
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*;
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Sublessee shall apply for and submit all applicable permits and information to the Navajo Nation Department of Water Resources, or its successor; and
- e. The Navajo Nation General Leasing Regulations of 2013, 16 N.N.C. § 2301 *et seq.*

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 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 Sublessee 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 Sublease.

31. KEEPING LANDS CLEAR.

The Sublessee shall clear and keep clear the lands within the Subleased Premises to the extent compatible with the purpose of this Sublease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities in accordance with applicable laws and regulations.

32. RECLAIMED LANDS.

The Sublessee shall reclaim all surface lands disturbed related to the Sublease and right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency prior to commencement of such a plan.

33. PERMISSION TO CROSS; COOPERATION: FURTHER ASSURANCES.

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

(B) Sublessor shall cooperate with the title insurance company ("Title Company"), if any, selected by Sublessee to issue title insurance insuring (a) Sublessee's leasehold and easement interests in the Subleased Premises or any Sublessee's sub-leasehold interest in all or any portion of the Subleased Premises, and/or (b) any mortgage encumbering such leasehold and/or subleasehold, and shall promptly execute and deliver such title affidavits and such other documents otherwise reasonably required by the Title Company.

(C) Sublessor shall fully support and cooperate with Sublessee in the exercise of its rights under this Sublease. Without limiting the generality of the foregoing, Sublessor shall enter into any reasonable consent and non-disturbance agreement with any Encumbrancer, stating that Sublessor shall recognize the rights of the Encumbrancer and not disturb its possession of the Subleased Premises so long as it is not in default under this Sublease beyond any applicable notice and cure periods, and stating such other things as such Encumbrancer may reasonably request; and (ii) enter into an amendment to this Sublease to bifurcate the provisions herein in connection with any assignment by Sublessee of partial interest in the Subleased Premises and/or any of the rights of way granted herein or pursuant hereto to fully effectuate any such partial assignment.

(D) Sublessor shall fulfill all obligations owed by it under, and shall enforce all of its rights granted under, its lease for the Subleased Premises with the Navajo Nation.

34. TERMINATION.

At the termination of this Sublease and upon expiration of the Decommissioning Period, the Sublessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted, and otherwise as set forth in Section 8 above. Upon the written request of the Sublessor, the Sublessee shall provide the Sublessor, at the Sublessee's sole cost and expense, with an environmental audit assessment of the Subleased Premises at least sixty (60) days prior to delivery of the Subleased Premises.

35. 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.

If such efforts fail to resolve such dispute within ten (10) business days, either party may subsequently pursue any legal, equitable or other action available to it, subject to the provisions of this Sublease.

36. 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.

37. 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.

38. NO WAIVER OF SOVEREIGN IMMUNITY OF THE NATION; LIMITED WAIVER BY SUBLESSOR.

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

(B) Sublessor irrevocably waives its sovereign immunity on a limited basis and consents to be sued, should an action be commenced to determine and enforce obligations of the parties, including any permitted Encumbrancers, under this Sublease, pursuant to and accordance with that Resolution ___ of the Management Board of Sublessor, dated _____. With respect to the foregoing limited waiver, Sublessor represents and warrants that all notices, approvals, consents and other actions required to authorize such waiver have been given and done, and the waiver is enforceable by Sublessee without further qualification and collection.

(C) Except as may be otherwise expressly provided herein, the transactions related to Project and Sublease may be construed in accordance with and governed by the laws of the State of Utah (excluding conflicts of law provisions) and applicable federal law.

39. 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 and Encumbrancers are to the United States as well as to Sublessor.

40. 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-UTAH, LLC
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 Nation may at any time change its address for purposes of this section by Notice.

41. 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.

42. 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.

43. 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.

44. MEMORANDUM.

Sublessor and Sublessee shall ensure a notarized memorandum of this Sublease in substantially the form attached hereto ("Memorandum"), as Attachment 2, is filed contemporaneously with or immediately following execution of this Sublease within the respective county recorder where the Project is located.

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**

**NTUA GENERATION-UTAH, LLC
SUBLESSEE**

Date: _____

Date: _____

By: _____
Tom Nelson, CFO

By: _____
Walter Haase, President

WHEN RECORDED, RETURN TO:

[TO BE DETERMINED]

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

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE is executed as of the ____ day of _____ to recognize that the **NAVAJO TRIBAL UTILITY AUTHORITY**, ("Sublessor"), a Navajo Nation enterprise, whose address is P.O. Box 170, Fort Defiance, AZ 86504, and **NTUA Generation-Utah, LLC**, ("Sublessee"), a Delaware corporation, whose address is P.O. Box 170, Fort Defiance, AZ have entered into that certain Sublease, as further described herein.

WITNESSETH:

Sublessor and Sublessee have made and entered into that certain Red Mesa Chapter Solar Site Sublease, dated _____, (the "Sublease"); whereby Sublessor has leased and granted unto Sublessee, and Sublessee has leased and received from Sublessor, on and subject to the terms, provisions and conditions of the Sublease, the leased premises and easements as more particularly described on Exhibit A attached hereto.

The terms, provisions and conditions of which are incorporated herein by this reference to the same extent as if recited in their entirety herein, whereby Sublessor has leased and granted unto Sublessee, and Sublessee has leased and received from Sublessor, on and subject to the terms, provisions and conditions of the Sublease, the leased premises and easements as more particularly described on Item A attached hereto.

Any terms used in this Memorandum which are not defined herein shall have the same meaning as are ascribed to such terms in the Sublease. Specific reference is hereby made to the following terms, provisions and conditions of the Sublease:

1. Term. Commencing on the Effective Date of the Sublease, the Term shall be for a period of thirty-five (35) years, which consists of a Primary Term of 25 years and an Additional Term of 10 years.

2. Notices and Demands. 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, 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 Sublessee:

NTUA Generation-Utah, LLC
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

Notice to all Parties. The Sublease contains other terms and provisions not herein set forth which are incorporated herein by reference for all purposes, and this Memorandum is executed for the purpose of placing third parties dealing with the leased premises on notice of the existence of the sublease and, where appropriate, its contents, and shall ratify and confirm all other terms and provisions of the Sublease (including all exhibits) as fully as if the same had been set forth herein.

Notice of Existence of Sublease; No Amendment. This Memorandum is intended to be recorded solely for the purpose of evidencing of record the existence of the Sublease. A copy of the signature page of the Sublease is attached hereto, as Item B. This Memorandum does not modify any of the agreements, rights or obligations of Sublessor and Sublessee under the Sublease, which alone fully expresses the agreements, rights and obligations of Sublessor and Sublessee under the Sublease.

IN WITNESS WHEREOF, the Navajo Tribal Utility Authority has caused this Memorandum of Sublease to be filed for recordation.

NAVAJO TRIBAL UTILITY AUTHORITY

Date: _____

By: _____
[TO BE DETERMINED]
Navajo Tribal Utility Authority

STATE OF ARIZONA)
) ss.
COUNTY OF NAVJO)

On this _____ day of _____, before me, the undersigned offer, personally appeared _____, who acknowledged her/himself to be _____, of NAVAJO TRIBAL UTILITY AUTHORITY, a Navajo Nation enterprise:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a
_____ credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contain on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

ATTACHMENT 1

Legal Description and Survey Map of Subleased Premises

SUBLEASE PARCEL SURVEY

550 ACRE TRACT B
WITHIN SECTIONS 20, 21, 28, & 29, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "B", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude -109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 4,367.52 feet to the calculated northwest corner of Tract "B", having Local NAD83(2011) US Survey Feet Coordinates of N10016851.24, E2247026.00, Latitude 37°07'37.1", Longitude -109°25'09.1", from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N48°40'50"W a distance of 1,466.96 feet,

Thence N88°43'51"E a distance of 4,204.94 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N80°37'50"W a distance of 5,377.39 feet,

Thence continuing N88°43'51"E a distance of 1,362.99 feet to the calculated northeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10016974.57, E2252592.57, Latitude 37°07'37.0", Longitude -109°24'00.4", from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S16°21'19"W a distance of 4,491.48 feet,

Thence S09°45'18"W a distance of 4,360.39 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",

Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning,

The above described Tract of Land contains 550.07 Acres more or less in area.

ITEM A
Legal Description of Subleased Premises

SUBLEASE PARCEL SURVEY

550 ACRE TRACT B
WITHIN SECTIONS 20, 21, 28, & 29, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "B", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude -109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 4,367.52 feet to the calculated northwest corner of Tract "B", having Local NAD83(2011) US Survey Feet Coordinates of N10016851.24, E2247026.00, Latitude 37°07'37.1", Longitude -109°25'09.1", from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N48°40'50"W a distance of 1,466.96 feet,

Thence N88°43'51"E a distance of 4,204.94 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N80°37'50"W a distance of 5,377.39 feet,

Thence continuing N88°43'51"E a distance of 1,362.99 feet to the calculated northeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10016974.57, E2252592.57, Latitude 37°07'37.0", Longitude -109°24'00.4", from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S16°21'19"W a distance of 4,491.48 feet,

Thence S09°45'18"W a distance of 4,360.39 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",

Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning,

The above described Tract of Land contains 550.07 Acres more or less in area.

**LEASE PARCEL SURVEY
550 ACRE TRACT B
WITHIN SECTIONS 20, 21, 28, & 29, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT**

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "B", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude -109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 4,367.52 feet to the calculated northwest corner of Tract "B", having Local NAD83(2011) US Survey Feet Coordinates of N10016851.24, E2247026.00, Latitude 37°07'37.1", Longitude -109°25'09.1", from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N48°40'50"W a distance of 1,466.96 feet,

Thence N88°43'51"E a distance of 4,204.94 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears N80°37'50"W a distance of 5,377.39 feet,

Thence continuing N88°43'51"E a distance of 1,362.99 feet to the calculated northeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10016974.57, E2252592.57, Latitude 37°07'37.0", Longitude -109°24'00.4", from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S16°21'19"W a distance of 4,491.48 feet,

Thence S09°45'18"W a distance of 4,360.39 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",

Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning,

The above described Tract of Land contains 550.07 Acres more or less in area.

ATTACHMENT A
Legal Description of Leased Premises

LEASE PARCEL SURVEY
WITHIN SECTIONS 16, 17, 20, 21, 28, & 29, TOWNSHIP 42 SOUTH,
RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "A", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 16, 17, 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude -109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 5,380.30 feet to a point where the tract boundary enters section 17, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears S88°40'17"W a distance of 1,273.69 feet,

Thence continuing N09°45'18"E a distance of 182.87 feet to the northwest corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N10018029.57, E2247228.59, Latitude 37°07'48.7", Longitude -109°25'06.3",

Thence N88°43'51"E a distance of 3,975.47 feet to a point where the tract boundary enters section 16, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S01°18'37"E a distance of 5,454.25 feet,

Thence continuing N88°43'51"E a distance of 1,592.48 feet to the northeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N10018152.95, E2252795.16, Latitude 37°07'48.7", Longitude -109°23'57.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S50°15'28"W a distance of 8,777.38 feet,

Thence S09°45'18"W a distance of 176.52 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S15°04'09"W a distance of 5,527.00 feet,

Thence continuing S09°45'18"W a distance of 5,379.55 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",
Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning,

The above described Tract of Land contains 700.09 Acres more or less in area.

LEASE PARCEL SURVEY
WITHIN SECTIONS 16, 17, 20, 21, 28, & 29, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "A", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 16, 17, 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude - 109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 5,380.30 feet to a point where the tract boundary enters section 17, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears S88°40'17"W a distance of 1,273.69 feet,

Thence continuing N09°45'18"E a distance of 182.87 feet to the northwest corner of Tract "A", being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10018029.57, E2247228.59, Latitude 37°07'48.7", Longitude - 109°25'06.3",

Thence N88°43'51"E a distance of 3,975.47 feet to a point where the tract boundary enters section 16, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S01°18'37"E a distance of 5,454.25 feet,

Thence continuing N88°43'51"E a distance of 1,592.48 feet to the northeast corner of Tract "A", being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10018152.95, E2252795.16, Latitude 37°07'48.7", Longitude - 109°23'57.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S50°15'28"W a distance of 8,777.38 feet,

Thence S09°45'18"W a distance of 176.52 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S15°04'09"W a distance of 5,527.00 feet,

Thence continuing S09°45'18"W a distance of 5,379.55 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "A", being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",

Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning.

The above described Tract of Land contains 700.09 Acres more or less in area.

Exhibit A

**LEASE PARCEL SURVEY
WITHIN SECTIONS 16, 17, 20, 21, 28, & 29, TOWNSHIP 42 SOUTH,
RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) SOLAR TRACT PROJECT**

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "A", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 16, 17, 20, 21, 28 and 29, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the Southwestern corner of said tract, located in section 29, T42S, R23E, SLM, being a set 5/8" rebar with orange plastic cap AZRLS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N10012530.29, E2246283.12, Latitude 37°06'54.5", Longitude -109°25'19.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears N87°21'05"W a distance of 237.40 feet,

Thence N09°45'18"E a distance of 16.83 feet to a point where the tract boundary enters section 20, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S88°39'35"W a distance of 240.06 feet,

Thence continuing N09°45'18"E a distance of 5,380.30 feet to a point where the tract boundary enters section 17, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 20, T42S, R23E, SLM bears S88°40'17"W a distance of 1,273.69 feet,

Thence continuing N09°45'18"E a distance of 182.87 feet to the northwest corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N10018029.57, E2247228.59, Latitude 37°07'48.7", Longitude -109°25'06.3",

Thence N88°43'51"E a distance of 3,975.47 feet to a point where the tract boundary enters section 16, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S01°18'37"E a distance of 5,454.25 feet,

Thence continuing N88°43'51"E a distance of 1,592.48 feet to the northeast corner of Tract "A", having the Local NAD83(2011) US

Survey Feet Coordinates of N10018152.95, E2252795.16, Latitude 37°07'48.7", Longitude -109°23'57.5", from which point the found BLM Brass Cap for the northwest corner of section 29, T42S, R23E, SLM bears S50°15'28"W a distance of 8,777.38 feet,

Thence S09°45'18"W a distance of 176.52 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S15°04'09"W a distance of 5,527.00 feet,

Thence continuing S09°45'18"W a distance of 5,379.55 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears S88°39'08"W a distance of 526.14 feet,

Thence continuing S09°45'18"W a distance of 23.97 feet to the southeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N10012653.59, E2251849.72, Latitude 37°06'54.5", Longitude -109°24'10.7",
Thence S88°43'51"W a distance of 21.33 feet to a point where the boundary crosses the east edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 40.82 feet to a point where the boundary crosses the west edge of a proposed access road,

Thence continuing S88°43'51"W a distance of 459.39 feet to a point where the tract boundary enters section 29, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N01°18'49"W a distance of 22.81 feet,

Thence continuing S88°43'51"W a distance of 5,046.41 feet to the southwest corner of Tract "A" and the point of beginning,

The above described Tract of Land contains 700.09 Acres more or less in area.

**ACCESS ROAD SURVEY
WITHIN SECTION 28, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH
TAPAHA (RED MESA) ACCESS ROAD PROJECT**

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as an access road, for the Navajo Tribal Utility Authority, situated within section 28, Township 42 South, Range 23 East, Salt Lake Meridian, Red Mesa, San Juan County, State of Utah, and being more particularly described as follows:

Beginning at the northwestern corner of the road, located in section 28, T42S, R23E, SLM, said point having the Local Coordinates of N10012652.21, E2251787.59, Latitude 37°06'54.5", Longitude -109°24'11.5", from which point the found BLM Brass Cap for the northwest corner of section 28, T42S, R23E, SLM bears N88°25'37"W a distance of 459.97 feet,

Thence N88°43'51"E coincident to the Tract "A" south boundary, a distance of 40.82 feet to the northeastern corner of the tract, from which point the set Base Control Point having the True Utah State Plane South, NAD83(2011), US Survey Feet Coordinates of N10012690.96, E2252075.70, Latitude 37°06'54.8", Longitude -109°24'07.9", bears N81°18'01"E a distance of 250.19 feet,

Thence S00°00'00"W a distance of 66.00 feet to a point on existing BIA Route N5062,

Thence S89°28'53"W coincident to the north boundary of BIA Route N5062 a distance of 40.88 feet,

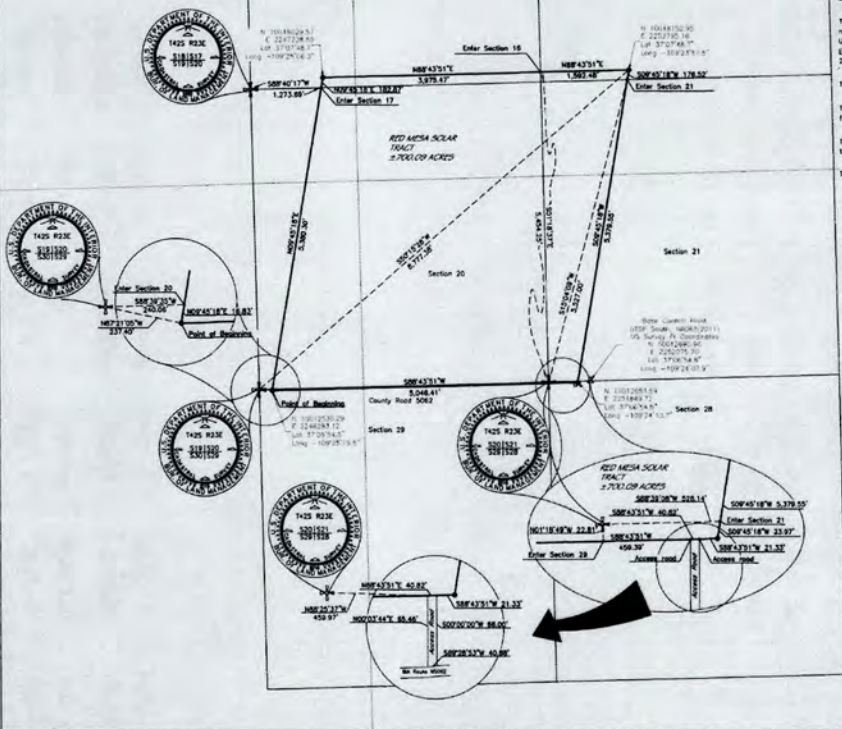
Thence N00°03'44"E a distance of 65.46 feet to a point on the south boundary of Tract "A" and the point of beginning.

The above Tract of Land contains 0.06 Acres, more or less in area.

1425 R23E

NAVAJO NATION TRUST LAND

Section 17 Section 18



SURVEYOR'S STATEMENT

This survey is subject to any facts that may be disclosed by a title research and abstract.
I, Katherine Gallegos, Arizona Registered Surveyor Number 53472, do hereby certify this right of my statement is based on a field survey made by me or under my direct supervision, that this survey meets the Minimum Standards for Surveying in Arizona, 0101.18, the best of my professional knowledge, information, and belief, it correctly represents the facts found by the survey.

OSPE, LLC
Katherine Gallegos, AZRS No. 53472
CRA No. 1502

ACCESS ROAD SURVEY
WITHIN SECTIONS 28, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH

SURVEYOR'S DESCRIPTION OF: A section tract of land, hereby designated as an access road, for the Navajo Tribal Utility Authority, situated within section 28, Township 42 South, Range 23 East, San Juan County, Utah, and being more particularly described as follows:

Beginning at the Northeast corner of the road, located in section 28, T42S, R23E, SLM, said point being the Local Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N892537.0'W a distance of 408.87 feet.

Thence N894351'E a distance of 40.82 feet to the Northeast corner of the tract, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N892537.0'W a distance of 408.87 feet.

Thence S000000'W a distance of 66.30 feet to a point on section 28, T42S, R23E, SLM, said point being the Local Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N892537.0'W a distance of 408.87 feet.

Thence N005344'E a distance of 65.46 feet to a point on the south boundary of Tract "A" and the point of beginning.

The above Tract of Land contains 0.06 Acres, more or less in area.

NOTES:

1. BASE OF BEARINGS - Bearings shown herein are based on the Utah State Plane Coordinate System, South Zone, North American Datum of 1983 (2011).
Combined Scale Factor = 0.9998634
Convergence Angle = 0°17'07.05"
All bearings are grid bearings, distances are ground distances.
Field data for this project was obtained using Trimble dual frequency GPS receivers in RTK and Static Mode. Horizontal and vertical control information was generated from National Geospatial Survey's Online Positioning User System (OPUS) with an observation of the base control point.
The base control point is a True State Plane Coordinate. Coordinates of the base control point are NAD83(2011), Utah State Plane South Zone in US Survey Feet. All other points and coordinates are ground coordinates related to the base control point. All elevations are MSL elevations.
All field work was completed by the field crew and supervised by Katherine C. Gallegos, AZRS No. 53472 on August 25, 2018.

2. Number 5 meter with orange plastic cap set at all corners



STATE OF ARIZONA

COUNTY OF APACHE
WALTER W. HANDE, P.E., being duly sworn, says he is hereafter the applicant. That the survey of the above tract is for the Navajo Tribal Utility Authority's TAPAHUA (RED MESA) SOLAR TRACT AND ACCESS ROAD PROJECT, located in T42S, R23E, San Juan County, Navajo Nation Trust Land, Red Mesa, San Juan County, State of Utah was made under his direction and under the authority of the Navajo Tribal Utility Authority of the Navajo Nation and that such survey is accurately represented on this map, insofar as the applicant may claim benefits of the act of February 5, 1946 (52 Stat. L. 177) (25 U.S.C. 323-328) Department Regulation 25 CFR, Part 169.18, and subject to any prior valid existing right or adverse claim.

WALTER W. HANDE, P.E.
General Manager

Sworn and subscribed this 13th day of August 2018

By commission expires February 22, 2023

STATE OF NEW MEXICO

COUNTY OF BERNALILLO
Katherine C. Gallegos, being duly sworn, says she is a Registered Land Surveyor in the State of Arizona. That the survey of the above tract is for the Navajo Tribal Utility Authority's TAPAHUA (RED MESA) SOLAR TRACT AND ACCESS ROAD PROJECT, located in T42S, R23E, San Juan County, Navajo Nation Trust Land, Red Mesa, San Juan County, State of Utah was made under her direction and under the authority of the Navajo Tribal Utility Authority of the Navajo Nation and that such survey is accurately represented on this map, insofar as the applicant may claim benefits of the act of February 5, 1946 (52 Stat. L. 177) (25 U.S.C. 323-328) Department Regulation 25 CFR, Part 169.18, and subject to any prior valid existing right or adverse claim.

Sworn and subscribed this 13th day of August 2018

By commission expires February 22, 2023

OFFICIAL SEAL

5-8-24

LEASE PARCEL SURVEY
WITHIN SECTIONS 16, 17, 20, 21, 28, 29, TOWNSHIP 42 SOUTH, RANGE 23 EAST, SLM
RED MESA, SAN JUAN COUNTY, UTAH

SURVEYOR'S DESCRIPTION OF: A section tract of land, hereby designated as Tract "A", a new generation site for the Navajo Tribal Utility Authority, situated within sections 16, 17, 20, 21, 28 and 29, Township 42 South, Range 23 East, San Juan County, Utah, and being more particularly described as follows:

Beginning at the Southeast corner of said tract, located in section 28, T42S, R23E, SLM, being a set of "x" meter with orange plastic cap AZRS 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N892537.0'W a distance of 237.40 feet.

Thence N894351'E a distance of 18.83 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N892537.0'W a distance of 240.36 feet.

Thence continuing N894351'E a distance of 5.36030 feet to a point where the tract boundary enters section 17, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N894351'E a distance of 1.273.69 feet.

Thence continuing N894351'E a distance of 182.87 feet to the northeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N894351'E a distance of 1.273.69 feet.

Thence continuing N894351'E a distance of 1.583.48 feet to the northeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears N894351'E a distance of 1.273.69 feet.

Thence S004518'W a distance of 176.32 feet to a point where the tract boundary enters section 21, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears S004518'W a distance of 1.273.69 feet.

Thence continuing S004518'W a distance of 5.37651 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears S004518'W a distance of 5.37651 feet.

Thence continuing S004518'W a distance of 5.37651 feet to a point where the tract boundary enters section 28, T42S, R23E, SLM, from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears S004518'W a distance of 5.37651 feet.

Thence continuing S004518'W a distance of 23.87 feet to the southeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears S004518'W a distance of 23.87 feet.

Thence continuing S004518'W a distance of 23.87 feet to the southeast corner of Tract "A", having the Local NAD83(2011) US Survey Feet Coordinates of N1001852.85, E2251787.55, Latitude 370654.5', Longitude -1092411.5', from which point the found BLM Brass Cap for the northeast corner of section 28, T42S, R23E, SLM bears S004518'W a distance of 23.87 feet.

Thence continuing S004518'W a distance of 5.04641 feet to the southeast corner of Tract "A" and the point of beginning.

The above described Tract of Land contains 700.09 Acres more or less in area.

WORK ORDER NUMBER 72-180-0001

NAVAJO TRIBAL UTILITY AUTHORITY

FT. DEFANCE, AZ

ARIZONA 27 SHIPROCK

DATE	REVISIONS	TAPAHUA (RED MESA) SOLAR TRACT AND ACCESS ROAD PROJECT
		PERMIT MAP 1 OF 1
		STATE COUNTY DETAIL
		UT SAN JUAN

SCALE:
1 INCH = 1000 FEET



F.B. x33 Measurement Tract 18/75C3 DRAWN XCG CHECKED XE APPROVED DATE 8/15/20 ENGINEER FILE NO. 160091

NOTES: (Drawing not to be used without the 1000 7.5 MM SCALE) See Note 1 of the Survey Report, dated 8/15/2018, for details of the survey and the location of the survey points. The survey was conducted on August 25, 2018, and the survey points were located on the ground and verified by the surveyor.

Section line and subdivision information shown herein is based on the record information shown on the BLM plat referenced above and the recorded monuments as shown, and is subject to BLM verification and re-survey. Underground utilities shown collected from evidence on the ground and require verification from utility owner.

1425 R23E

LEGEND

Tract B Boundary

estimated point

set rebar with orange plastic cap, 42.5 53472

Found BLM section corner Brass Cap as shown

NAVAJO NATION TRUST LAND

Section 17

Section 18

Section 20

Section 21

Section 29

Section 28

SURVEYOR'S STATEMENT

This survey is subject to any facts that may be discovered by a title research and abstract. Katherine C. Golegus, Arizona Registered Surveyor Number 53472, do hereby certify this right of way easement plat is based on a field survey made by me or under my direct supervision. That this survey meets the minimum standards for surveying in Arizona, and to the best of my professional knowledge, information, and belief, it correctly represents the facts known at the time of survey.

Katherine C. Golegus, ARS No. 53472
 Registered Professional Engineer & Surveyor
 February 24, 2012

STATE OF ARIZONA

COUNTY OF PIMA

WALTER W. HANSEN, P.E., being duly sworn, says he is the holder of the Applicant. That the survey of the lease tract is for the Navajo Tribal Utility Authority's TAPAHUA (RED MESA) 550 ACRE LEASE TRACT PROJECT, located in 1425, R23E, Section 20, Township 23 North, Range 23 East, San Juan County, State of Utah, and that such survey is accurately represented on this map, in order that the applicant may obtain benefits of the Act of February 5, 1948 (62 Stat. L. 17) (25 U.S.C. 323-328) Department Regulation 25 CFR, Part 169.18, and subject to any prior valid existing right or adverse claim.

NAVAJO TRIBAL UTILITY AUTHORITY

Walter W. Hansen

Sworn and subscribed this 13th day of August, 2012

Notary Public

My commission expires February 24, 2015

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

Katherine C. Golegus, being duly sworn, says she is a Registered Land Surveyor in the State of Arizona. That the survey of the lease tract is for the Navajo Tribal Utility Authority's TAPAHUA (RED MESA) 550 ACRE LEASE TRACT PROJECT, located in 1425, R23E, Section 20, Township 23 North, Range 23 East, San Juan County, State of Utah, and that such survey is accurately represented on this map, in order that the applicant may obtain benefits of the Act of February 5, 1948 (62 Stat. L. 17) (25 U.S.C. 323-328) Department Regulation 25 CFR, Part 169.18, and subject to any prior valid existing right or adverse claim.

NAVAJO TRIBAL UTILITY AUTHORITY

Katherine C. Golegus, ARS No. 53472

Sworn and subscribed this 13th day of August, 2012

Notary Public

NOTES

1. BASIS OF BEARINGS - Bearings shown herein are based on the Utah State Plane Coordinate System, South Zone, North American Datum of 1983 (NAD83).

Combined Scale Factor = 0.99978534
 Convergence Angle = 01°17'37.08" All bearings are grid bearings, distances are ground distances.

Field data for this project was obtained using Trimble dual frequency GPS receivers in RTK and Static mode. Horizontal and vertical control calibration was generated from National Geospatial Survey's Online Positioning User System (OPUS) with an observation at the base control point.

The base control point is a True State Plane Coordinate. Coordinates at the base control point are NAD83(2011), Utah Zone South Zone in US Survey Feet. All other points and coordinates are ground coordinates related to the base control point. All elevations are NAVD83.

All field work was completed by the field crew and supervised by Katherine C. Golegus, ARS No. 53472 on August 29, 2012.

2. Number 5 rebar with orange plastic cap set at all corners.



LEASE PARCEL SURVEY
 550 ACRE TRACT B
 WITHIN SECTIONS 20, 21, 28 & 29, TOWNSHIP 23 NORTH, RANGE 23 EAST, SAN JUAN COUNTY, UTAH
 TAPAHUA (RED MESA) SOLAR TRACT PROJECT

SURVEYOR'S DESCRIPTION OF: A certain tract of land, hereby designated as Tract "B", a solar generation site for the Navajo Tribal Utility Authority, situated within sections 20, 21, 28 and 29, Township 23 North, Range 23 East, San Juan County, Utah, and being more particularly described as follows:

Beginning at the Southeast corner of said tract, located in section 29, 1425, R23E, SLM, being a set "W" rebar with orange plastic cap 42.5 53472, having the Local NAD83(2011) US Survey Feet Coordinates of N1001250.29, E2244531.15, Latitude 37°05'34.5", Longitude -109°27'18.5", from which point the found Blue Brass Cap for the northeast corner of section 28, 1425, R23E, SLM bears N87°21'02"W a distance of 237.40 feet.

Thence N09°45'18"E a distance of 18.83 feet to a point where the tract boundary enters section 29, 1425, R23E, SLM, from which point the found Blue Brass Cap for the northeast corner of section 28, 1425, R23E, SLM bears S88°28'25"W a distance of 240.56 feet.

Thence continuing N09°45'18"E a distance of 4,267.52 feet to the calculated northeast corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N1001881.24, E2244531.15, Latitude 37°05'34.5", Longitude -109°27'18.5", from which point the found Blue Brass Cap for the northeast corner of section 25, 1425, R23E, SLM bears N48°40'20"W a distance of 1,481.48 feet.

Thence N09°45'18"E a distance of 4,380.38 feet to a point where the tract boundary enters section 28, 1425, R23E, SLM, from which point the found Blue Brass Cap for the northeast corner of section 28, 1425, R23E, SLM bears S88°28'25"W a distance of 526.14 feet.

Thence continuing S88°28'25"W a distance of 23.87 feet to the southwest corner of Tract "B", having the Local NAD83(2011) US Survey Feet Coordinates of N1001263.59, E2251949.72, Latitude 37°05'34.5", Longitude -109°27'18.5", from which point the found Blue Brass Cap for the northeast corner of section 28, 1425, R23E, SLM bears N01°18'49"W a distance of 22.81 feet.

Thence continuing S88°28'25"W a distance of 5,048.41 feet to the southwest corner of Tract "B" and the point of beginning.

The above described Tract of Land contains 550.67 Acres more or less in area.

REFERENCES: Showing but not under plat: 1988 7.5 MIN. QUADS: One last plat of this area, showing the location of the lease tract, was filed for record on February 24, 2012.

Section line and subdivision line information shown herein is based off the record dimensions shown on the BLM plat referenced above, and the required measurements as shown, and is subject to BLM verification or representation. Underground utilities shown collected from evidence on the ground and require verification from utility owner.

SCALE:
 1 INCH = 1000 FEET

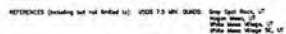


NAVAJO TRIBAL UTILITY AUTHORITY
 FT. DEFANCE, AZ
 ARIZONA 27 SHIPROCK

F.B. ARX Instrument Trimble RB/TS/C DRAWN ECG CHECKED KE APPROVED DATE 8/11/20 SHORT FILE NO. 00001

WORK ORDER NUMBER 72-180-0001

DATE	REVISIONS	TAPAHUA (RED MESA) 550 ACRE SOLAR LEASE TRACT PROJECT
		PERMIT MAP 1 OF 1
		STATE COUNTY DETAIL
		UT SAN JUAN



A horizontal number line with tick marks at 2000, 3000, and 4000. The segment between 2000 and 3000 is shaded gray.



ARIZONA 27 SHIPROCK

DATE	REVISIONS

UT	SAN JUAN
----	----------



RED MESA CHAPTER
Red Mesa, Navajo Nation, Utah
RMC- 07-041519



SUPPORTING AND APPROVING NAVAJO TRIBAL AUTHORITY (NTUA) TO DEVELOP SOLAR GENERATION PLANT(S) IN THE VICINITY OF THE RED MESA CHAPTER, SAN JUAN COUNTY, UTAH

WHEREAS:

1. The Red Mesa Chapter is a Chapter within the Navajo Nation 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 utility and resource development within the Navajo Nation, 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 approximately 700 acres (*The actual number of acres will be included in the Lease Agreement with the Navajo Nation, after the site has been surveyed for the purpose of establishing such a Lease Agreement*) located within the Red Mesa Chapter to develop solar generation, and related facilities, such as energy storage and interconnection facilities, which will be interconnect with transmission facilities operated and/or under the contractual control of NTUA, to partially serve the Red Mesa Chapter, the Navajo Nation and other communities with environmentally friendly renewable energy; and
4. NTUA needs to commence evaluation of the site by conducting land surveys, which would include a cultural and environmental analysis in to order to coordinate the development and construction schedules of the solar generation to take advantage of the current solar equipment, construction pricing, and available tax credits that would allow for the actual cost of the energy to ensure the proposed project is viable on both a cost and timing basis; and
5. NTUA seeks to secure site control so that the proposed solar projects may commence development and construction in fourth quarter 2019 and provide jobs and economic development to the Red Mesa Chapter and the surrounding region, with initial project construction completion anticipated within twenty-four months after commencement; and
6. NTUA maintains that this project is not being developed at the expense of the Navajo people, but rather it is an essential component in creating energy and financial independence for the Navajo Nation and its people; and
7. NTUA recognizes that through the development of this large-scale project, that it should coincide with the opportunity for NTUA to build more utility infrastructure (e.g. communications, electric distribution, water, and wastewater line, etc.) within the Red Mesa Chapter, surrounding Chapters, and the surrounding communities; and
8. NTUA fully supports and will advocate, along with the Red Mesa Chapter Officials, that the Red Mesa Chapter should be compensated from the proceeds of the proposed Lease Agreement with the Navajo Nation for the proposed site of this solar energy project.

NOW THEREFORE BE IT RESOLVED:

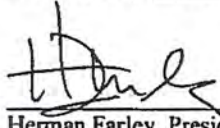
1. The Red Mesa Chapter hereby agrees that the identified approximate 700 acres within the Red Mesa Chapter are authorized for development of the aforementioned solar energy project, which includes interconnection facilities and ancillary resources by the Navajo Tribal Utility or its subsidiaries; and
2. The Red Mesa Chapter hereby supports and approves the Navajo Tribal Utility Authority or its subsidiaries to conduct all activities related to the site survey, analysis, development, construction, and operation of the solar generation, as well as energy storage, interconnection facilities and ancillary resources.

CERTIFICATION

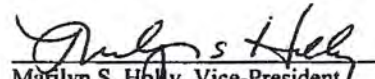
We hereby certify that the foregoing resolution was duly considered by the Red Mesa Chapter at a duly called meeting in Red Mesa, Utah, at which a quorum was present and that the same was passed by a vote of 26 in Favored; 00 -Opposed, and 03 ; Abstained, this 15th day of April 2019.

Motioned by: Mr. Stanley Sam

Seconded by: Mr. Norman Sam



Herman Farley, President



Marilyn S. Holly, Vice-President



Marlene Dee-Ben, Secretary/Treasurer

Charlaine Tso, Council Delegate

**NAVAJO TRIBAL UTILITY AUTHORITY**

AN ENTERPRISE OF THE NAVAJO NATION

MEMORANDUM

TO : Bernice Tsosie, Assistant Manager *lot*
Electric Systems Planning Section

FROM : Esther Kee, R/W Agent *Esther Kee*
Electric Systems Planning Section

DATE : May 3, 2019

SUBJECT: Red Mesa Solar and Access Road Project
Work Order No. 72-180-0001

Navajo Tribal Utility Authority (NTUA) proposes to withdraw 700.09± acres of Navajo Tribal Trust Lands to construct, operate and maintain Red Mesa Solar Generation Plant and Access Road and utilize the full capacity of the available interconnection at the Red Mesa Substation megawatts, which allow NTUA to deliver more renewable energy to homes on the Navajo Nation, located near the vicinity of Red Mesa Chapter, San Juan County, Utah.

NTUA met with the affected grazing permittees identified by Henrico Benally, Red Mesa Chapter Grazing official and informed the land users of the proposed request. NTUA obtained written consents from the affected grazing permittees: Peter Tapaha and Lorena Dishface with no objection along with the concurrence of Henrico Benally. Land users will be compensated \$87,500.00 (700 acres x \$125. per acre, payment will be divided into two equal share).

Field clearance completed, land users consent are all attached for your information and use.

CONSENT FORM # 2
(Compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN

I Lorena Dishface hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority of P.O. Box 170, Ft Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): Withdraw 700 acres, more or less, across Navajo Tribal Trust lands to develop a Solar Generation Plant, a 115kV Transmission Line with Fiber Optic Cable and Access Road to be interconnected with NTUA's existing electric grid located within the vicinity of Red Mesa Chapter, San Juan County, Utah 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 \$43,750.00 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: _____

4/2/19 Lorena Dishface 9-2450
Date: and I bear Signature (thumb print) Census No. Permit No. _____
Montezuma Creek, Utah
Address: (P.O. Box, City, State, Zip) 84534 Social Security No. _____

WITNESS:

4-2-19 Heidi Ray 9
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).

Esther Kue
Field Agent Signature

CONSENT FORM #2
(Compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN

I PETER TAPATA hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit Navajo Tribal Utility Authority of P.O. Box 170, Ft Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): Withdraw 700 acres, more or less, across Navajo Tribal Trust lands to develop a Solar Generation Plant, a 115kV Transmission Line with Fiber Optic Cable and Access Road to be interconnected with NTUA's existing electric grid located within the vicinity of Red Mesa Chapter, San Juan County, Utah 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 \$43,750.00 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: _____

04-02-19 Peter Tapata 0603
Date: Land User Signature (thumb print) Census No. Permit No.
21 Feb 84540
Address: (P.O. Box, City, State, Zip) Social Security No.

WITNESS:

4-2-19 [Signature] 9
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 At to the land user in Navajo X or English / / (check where applicable).

[Signature]
Field Agent Signature

NNDFW Review No. 19ntual17

**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.: Tapaha (Red Mesa) Solar Tract & Access Road, WO#72-180-0001

DESCRIPTION: NTUA proposes to construct, operate, and maintain a solar generation plant and access road. The solar tract and access road will affect 700.15± acres of land.

LOCATION: Sections 16, 17, 20, 21, 28, & 29, T42S, R23E, Red Mesa Chapter, San Juan County, Utah

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 Tapaha (Red Mesa) Solar Tract and Access Road Project/10 DEC 2019/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: The NNDFW concurs with the mitigation measures outlined in the BSR.

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/09 JAN 2020

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

01/10/20

***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
Heritage & Historic Preservation Department
P.O. Box 4950 • Window Rock, Arizona 86515
(928) 871-7198 (tel) • (928) 871-7886 (fax)



CULTURAL RESOURCE COMPLIANCE FORM

NNHHPD NO.: HPD-19-726

CONSULTANT REPORT NO.: CAG 2019-05

OTHER PROJECT NO.: WO# 72-180-0001

PROJECT TITLE: A Cultural Resources Inventory of the Proposed NTUA Tapaha (Red Mesa) Solar Tract and Access Road Project in San Juan County, Utah NTUA Work Order No. 72-180-0001

LEAD AGENCY: BIA/NRO

SPONSOR: Bemica Tsosle, Navajo Tribal Utility Authority, PO Box 170, Ft. Defiance, AZ, 86504

PROJECT DESCRIPTION: NTUA is proposing to construct, operate and maintain a photovoltaic solar facility and access road located on a 700.15-acre tract. Construction will involve heavy vehicle traffic, removal of destructive vegetation, the construction of the solar facilities and hardware. The area of effect is 700.15-acres.

PROJECT ARCHAEOLOGIST: Brandi Bitsilli

NAVAJO ANTIQUITIES PERMIT NO.: B19376

DATE OF REPORT: 10/9/2019

DATE INSPECTED: 7/29/2019

TOTAL ACREAGE INSPECTED: 726.0

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

Number of Eligible Properties: 0

Number of Non-Eligible Properties: 0

Number of Unevaluated Properties: 0

Number of Burials: 0

Number of TCPs: 0

Number of Isolated Occurrences: 25

Number of In-Use Sites: 0

EFFECT/CONDITIONS OF COMPLIANCE: No Historic Properties Affected

PROCEED RECOMMENDED: Yes

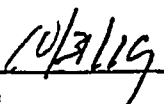
CONDITIONS: No


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

FORM PREPARED BY: Tamara Billie

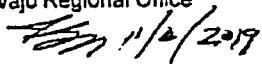
FINALIZED: 10/30/2019


Richard M. Begay, Department Manager/THPO
Navajo Nation Heritage and Historic Preservation Department


Date

Navajo Region Approval: 
BIA- Navajo Regional Office


Date


11/14/2019

~ DOCUMENT IS VOID IF ALTERED ~



THE NAVAJO NATION
Historic Preservation Department
PO Box 4950, Window Rock, AZ 86515
TEL: (928) 871-7198 / 7134 FAX: (928) 871-7886

TRADITIONAL CULTURAL PROPERTY (TCP) RECORD
SEARCH VERIFICATION FORM

****TCP WILL NOT SIGN/APPROVE IF THIS PORTION IS LEFT BLANK****

Project Information:	
DATE	7/25/2019
RESEARCHER & COMPANY	Jeremy Begay, Jeffrey Begay, Brandi Bitsilli, Lisa Zohnnie, Rius Goodman (CAG)
PROJECT NAME	A CRI of the Proposed NTUA 700 Acre Red Mesa Solar Farm
PROJECT/PERMIT NUMBER	CAG19-05 B19376
PROJECT LOCATION	Red Mesa, San Juan Co, Utah

*****TO BE FILLED OUT & SIGNED BY AUTHORIZED NNHPD STAFF ONLY*****

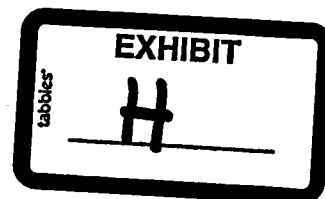
A literature search of TCP Records at NNHPD on the above date indicates the following:

<input checked="" type="checkbox"/>	There are <u>no</u> TCP(s) present within the project area and/or buffer zone. The project may proceed as proposed.
<input type="checkbox"/>	TCP(s) <u>are</u> present within the project area and/or buffer zone. Project may have the potential to adversely affect TCP(s). Please document TCP(s) as a summary (with only general location information) in the body of reports submitted for review to HPD/CRCs. Give full detail on the TCP Documentation Forms in a separate, and clearly labeled, confidential appendix.
<input type="checkbox"/>	Project may proceed with the following stipulations:
<input type="checkbox"/>	Further consultation is required. Consult with the following:
<input type="checkbox"/>	There are no mitigative measures. Project may not proceed.

NNHPD/TCP Program Reviewer:		Date: 7/26/19
-----------------------------	--	---------------

****Return this form along with report to the NNHPD/Compliance Section****

Note: In addition to the TCP Record search, the consultant must demonstrate that a good-faith effort to consult with 1.) Surface user(s): grazing-permit holder(s) (individuals whose consents for right-of-way have been sought by developer); any other residents in or within view of the proposed project area. 2. Chapter(s) within which the proposed project is located: chapter officers and/or delegate(s) of the Navajo Nation Council; at the request of any of these individuals, the developer's consulting anthropologist will also make a presentation at a meeting of general chapter membership. 3. Other knowledgeable people recommended by the present surface user(s), chapter officials, and chapter members.



**Biological Survey Report
for Species of Concern on the Tapaha (Red Mesa) Solar
Tract and Access Road Project, San Juan County, Utah
Work Order Number 72-180-0001**

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 10, 2019

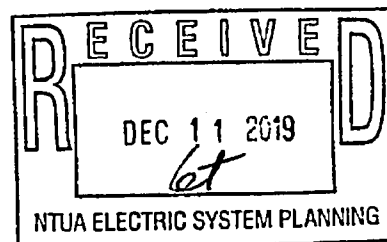


TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LOCATION AND DESCRIPTION OF PROJECT AREA	1
III.	SPECIES OF CONCERN	6
IV.	METHODOLOGY	6
V.	RESULTS	7
VI.	CONCLUSIONS	10
VII.	MITIGATIONS	11
VIII.	REFERENCES	12
APPENDIX A: Legal Description of Project Tract and Access Road		
APPENDIX B: Response letter from Navajo Department of Fish and Wildlife		
APPENDIX C: Lists of Mammals, Birds, Reptiles and Amphibians, and Plant Species encountered during the Field Survey.		
APPENDIX D: National Wetland Inventory Map: National Wetland Inventory website map.		
APPENDIX E: Signature Page		

LIST OF FIGURES

Figure 1.	Navajo Country road map	2
Figure 2.	Tapaha (Red Mesa) solar tract and access road project map	3
Figure 3a.	Tapaha (Red Mesa) solar tract and access road project photographs	4
Figure 3b.	Tapaha (Red Mesa) solar tract and access road project photographs	5

LIST OF TABLES

Table 1.	Species of Concern and their status	6
----------	---	---

I. INTRODUCTION

The Navajo Utility Authority (NTUA) is proposing to construct, operate, and maintain a solar generation plant and access road (work order number 72-180-0001). The Tapaha (Red Mesa) Solar tract and access road project will affect approximately 700.15 acres (see Figure 1). The solar plant site is located north of the community of Red Mesa, within the Navajo Nation, San Juan County, Utah (see Appendix A for Legal Description of Project Tract and Access Road). The solar plant would generate 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 tract and access road. 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 solar tract and access road are located about 4.5 miles northwest of the Red Mesa chapter house, San Juan County, Utah. The solar tract is roughly a one, square mile polygon. The polygon shaped tract is approximately one mile on each side. There is an access road located near the southwest corner of the tract. The access road runs directly south, until it reaches an existing road (County Road 5062). The elevation within the project area ranges from 4,910 to 5,070 feet above sea level. The proposed project tract and access road can be found on two 7.5 minute USGS quadrangle maps: Grey Spot Rock, and Hogan Mesa, San Juan County, Utah (see Figure 2).

The soils in the project area are defined as Aneth-Sheppard Association (Nielson et al, 1980). This association consists of very deep, and deep, somewhat excessively drained soils that are formed on uplands and valley bottoms in eolian deposits and alluvium derived from sandstone. This map unit is on valley bottoms and undulating to rolling uplands. The Aneth soils are generally on valley bottoms and the Sheppard soils on undulating to rolling uplands. The terrain in the survey area consists of relatively flat, rolling valley with deep loose sand.

The vegetation community in the survey area corresponds with the Great Basin Desertscrub (Brown 1994). The dominant vegetation includes galleta (*Hilaria jamesii*), broom snakeweed (*Gutierrezia sarothrae*), Mormon tea (*Ephedra viridis*), and tumbleweed (*Salsola kali*). There are no multi-canopies/thickets of trees or shrubs or riparian growth present on the project tract and access road. There are no natural, permanent or semipermanent sources of water within the tract and access road. There is one small, unnamed wash crossed along the northwest corner.

The survey area has been previously disturbed by County Road (CR) 5061, CR 5062, dirt roads, transmission power lines, home sites, and livestock grazing. The survey area is currently being grazed by livestock and the impacts is determined to be heavy (see Figures 3a and 3b).

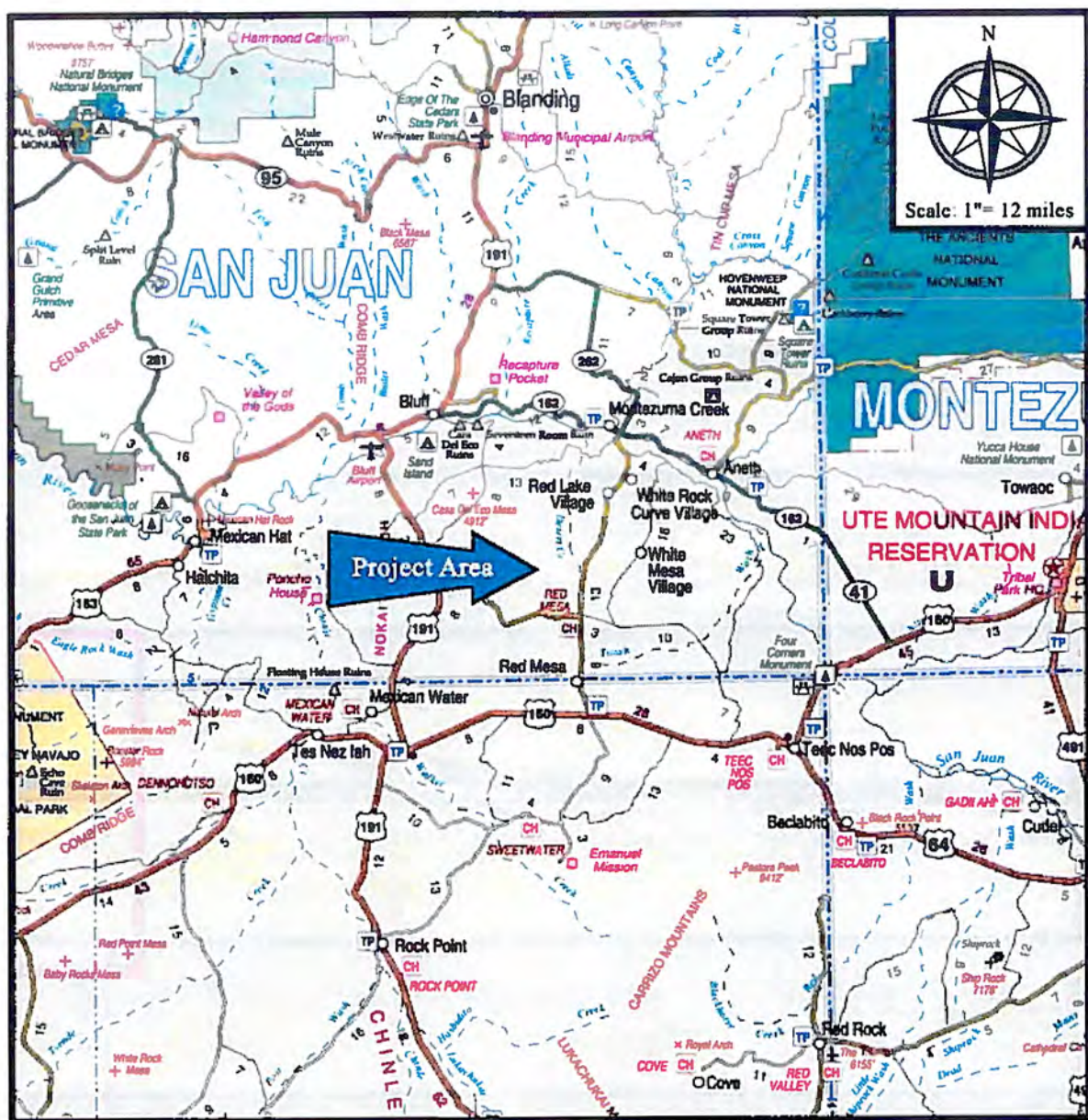


Figure 1. Navajo Country road map



Photo 1: Looking north from southeast corner of solar tract.



Photo 2: Looking north from southwest corner of solar tract.

Figure 3a. Tapaha (Red Mesa) solar tract and access road project photographs.



Photo 3: Looking east from northwest corner of solar tract.



Photo 4: Looking southwest along unnamed wash near the western boundary of solar tract.

Figure 3b. Tapaha (Red Mesa) solar tract and access road project photographs.

III. SPECIES OF CONCERN

The Navajo Department of Fish and Wildlife (NDFW) was contacted and species list obtained prior to conducting the survey. The species list is listed below with status definitions (see Appendix B for copy of list).

Table 1. Species of Concern and their status (NDFW 2019)

Scientific Name	Common Name	Status
<i>Aquila chrysaetos</i>	Golden eagle	NDFW-G3
<i>Astragalus cronquistii</i>	Cronquist milk-vetch	NDFW-G3
<i>Asclepias welshii</i>	Welsh's milkweed	NDFW-G3
<i>Athene cunicularia</i>	Burrowing owl	NDFW-G4
<i>Buteo regalis</i>	Ferruginous hawk	NDFW-G3
<i>Carex specuicola</i>	Navajo sedge	NDFW-G3
<i>Charadrius montanus</i>	Mountain plover	NDFW-G4
<i>Cirsium rydbergii</i>	Rydberg's thistle	NDFW-G4
<i>Empidonax trailii extimus</i>	Southwestern willow flycatcher	NDFW-G2
<i>Falco peregrinus</i>	Peregrine falcon	NDFW-G4
<i>Platanthera zothecina</i>	Alcove bog-orchid	NDFW-G3
<i>Paccinellia parishii</i>	Parish's alkali grass	NDFW-G4
<i>Zigadenus vaginatus</i>	Alcove death camass	NDFW-G3

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 NDFW does not currently have sufficient information to support their listing as G2 or G3 but has reason to consider them. The NDFW is actively seeking information to determine if they warrant inclusion in a different group or removal from the list.

IV. METHODOLOGY

ZU conducted the survey on the Navajo Nation under the year 2019 NDFW permit number 17NNC;23N, 16USC;18US, Special Permit 1195.

The proposed project tract and access road were surveyed by two biologists with knowledge of the listed species of concern. Complete survey coverage of the tract and road was obtained by walking multiple parallel transects within the project tract and along the access road. The solar tract is four sided polygon: west side (5,380.30 feet long), north side (5,567.95), east side (5,379.51 feet long), and south side (5,046.41 feet long) and the corner and edges had been previously staked by NTUA. The access road is 66 feet long with a width of 40 feet. The solar tract is 700.09 acres and the access road is 0.06 acres, for a grand total of 700.15 acres. Detailed field notes were taken of the species and habitats encountered during the survey of the project area. Species encountered during the field survey are listed in Appendix C. If a listed species or potentially suitable habitat was observed, the area was subject to further investigation to determine the potential impacts of the proposed project. 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 access road was utilized to conduct evaluations for evidence of raptors and their nests. If active adult raptors or a nest 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 reconnaissance of the 0.25-mile zones of influence consisted of closely examining mesas, rock outcrops, and ridges. No transects were followed, but complete coverage was obtained by utilizing high ground as observation areas, by walking and/or driving blind spots.

An assessment of the wetland areas occurring within the project tract and access road was also included in the survey procedure. The National Wetland Inventory (NWI) map presented in the USFWS National Wetland Inventory website was consulted (USFWS 2000 [see Appendix D]). The wetland criterion developed by the Army Corps of Engineers was utilized (Environmental Laboratory 1987) and supplemented by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) (US Army Corps of Engineers 2008). The unnamed wash located northwest corner is designated as R4SBJ (R [Riverine], 4 [Intermittent], SB [Steambed]), and J [Intermittently Flooded]).

The construction of the solar plant and access road would result in some ground disturbance due to the need to install the solar panels, provide access for construction vehicles, and eventually maintenance of the project infrastructure. The Navajo Nation Clean Water Act, Section 404 addresses potential dredge and fill impacts to the "Waters of the Navajo Nation". The project area is located in vegetation community and terrain type that results in precipitation runoff that is generally high in sedimentation.

V. RESULTS

The field survey was conducted on September 19, 20, and 21, 2019. The survey was not conducted during the 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 generally sunny with high clouds (30 percent) with winds less than 10 miles per hour and no precipitation during the survey.

The golden eagle 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. Potential nesting habitat is available for this species within the project zone of influence. Foraging habitat is present throughout the project area. No individuals or stick nests were observed during the survey.

The Cronquist milk-vetch is member of the *Fabaceae* (pea family). This perennial plant has a stout taproot and underground rootcrown. The milk-vetch's flowers are small, pink-purple coloration occurring from April to June. Its habitat is salt desert formations and blackbrush communities on sandy or gravelly soils derived from the Cutler and Morrison Formations (Roth 2001a). Known Navajo Nation distribution is in the four corners region. It is known to occur at an elevation range of 4,750 to 5,800 feet above sea level. No suitable habitat in the form of salt desert formations or blackbrush communities occur in the project area. No individuals were observed. No impacts to the Cronquist milk-vetch are anticipated.

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 active sand dunes derived from Navajo sandstone in sagebrush, juniper, and ponderosa pine communities at an elevational range of 5,000 to 6,230 feet above sea level (Roth 2001b). Areas of loose sand were noted but no active sand dunes were observed during the survey. 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 mammals' burrows. This species is an opportunistic feeder, willing to take both invertebrates and vertebrates (Glinski 1998). No suitable habitat such as prairie dog towns were observed for the burrowing owl within the project area. No individuals, pairs, their nests or sign (pellets, feathers, whitewash, etc.) were observed within the project area. No impacts are expected to the 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 pinon-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). Potentially suitable nesting habitat is present for this species within the project zone of influence. Foraging habitat is present throughout the project area. No individuals or nests were observed.

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 seeps and hanging gardens on vertical sandstone cliffs and alcoves at an elevation range of 4,600 to 7,200 feet above sea level (Roth 2001c). This species is found within canyons located in pinyon-juniper woodlands in northern Arizona. No suitable habitat such as shaded seep-springs or hanging gardens are present within the project tract and access road. No individuals were observed. No impacts are expected to the Navajo sedge.

The **mountain plover** inhabits open grassy areas ranging from sandy sparsely vegetated flats to open grassy bogs and pasture lands. On the Navajo Nation, it is a species found on arid plains and short grass prairies, often in association with prairie dog towns. Nest sites are chosen in flat country with sparse and low-laying vegetation. More common as winter transients, these plovers usually forage in small flocks. Its diet is almost exclusively insects including grasshoppers, beetles, crickets, and flies (Ehrlich et al. 1988). No suitable nesting and foraging habitat were observed for this species within project area. No impacts to the mountain plover are anticipated.

The **Rydberg's thistle** is member of the *Asteraceae* (thistle family). This perennial herb is usually 39 to 118 inches tall. This spiny plant has one to several erect, ascending to lax stems with very large, elliptic, 1 to 2 times pinnately lobed leaves (Roth 2008). The thistle flowers pink or purple petals from late spring through September. The habitat for the thistle consists of hanging gardens, seeps and sometimes stream banks below hanging gardens at an elevation of 3,300 to 6,500 feet above sea level. No suitable habitat such as hanging gardens, seeps or streams were available for this species within the project tract and access road. No impacts to the Rydberg's thistle are anticipated.

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. Willow flycatchers are closely associated with riparian habitats, specifically areas of high shrub densities (AGFD 1996). Recent survey efforts have found this species in a variety of habitats including monotypic willow thickets, gallery cottonwood forests, and tamarisk stands. No suitable riparian habitat or individuals were observed in the survey area. No impacts are expected to the southwestern willow flycatcher.

The habitat characteristics most commonly associated with the peregrine falcon are open country in 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. Nest sites are called eyries. Its prey includes a wide 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 or foraging habitat was observed for the falcon within the project area. No individuals or eyries were observed during the survey. No impacts to the peregrine falcon are anticipated.

The **alcove bog-orchid** is a member of the *Orchidaceae* (orchid family). The plant has 1.5 to 9.3 inch long leaves that are oblong-elliptic to linear-oblong shaped. Its habitat consists of seeps,

hanging gardens, and moist streams at an elevation range of 4,000 to 7,200 feet above sea level (Roth 2001d). The alcove bog-orchid has been found from the desert shrub zone to the oak brush zone (Atwood et al. 1991). No suitable riparian or mesic habitat was observed within the project tract and access road. No impacts are expected to the alcove bog-orchid.

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). Alkaline seeps, springs, and seasonally wet areas such as washes are the main habitat requirement for this species (Roth 2001e). New populations of this species have been discovered, but still is considered rare by the NDFW. The NDFW response letter indicated that portions of the project tract and/or access road are located within 3.0 miles of a known occurrence of an Parish's alkali grass. Ms. Nora Talkington, NDFW botanist was contacted regarding this occurrence (pers. comm., August/December 2019). No suitable habitat such as moist, saline soil were observed within the project tract and access road. It was determined, in consultation with Ms. Talkington that the project would not impact known Parish's alkali grass due to an absence of suitable habitat within the project tract and access road and distance to the 'known' occurrence. No impacts are expected to the Parish's alkali grass.

The Alcove death camas is related to the *Liliaceae* (lily family). This stout perennial utilizes rhizomes, and is usually 11.5 to 42.5-inches tall. This camas flowers from late July through August. Its habitat is hanging gardens in seeps and alcoves, mostly on Navajo Sandstone at an elevation range of 3,700 to 6,700 feet above sea level (Roth 2005). No suitable riparian habitat was noted within the project tract and access road. No impacts to the Alcove death camas are anticipated.

VI. CONCLUSIONS

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

1. Cronquist milk-vetch
2. Welsh's milkweed
3. Burrowing owl
4. Navajo sedge
5. Mountain plover
6. Rydberg's thistle
7. Southwestern willow flycatcher
8. Peregrine falcon
9. Alcove bog-orchid
10. Parish's alkali grass
11. Alcove bog orchid

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

Potential nesting and/or foraging habitat exists within the project area for the following species:

1. Golden eagle
2. Ferruginous hawk

Potential nesting habitat is present for the golden eagle and ferruginous hawk only within the zone of influence. Foraging habitat exists within both the project tract, access road, and zone of influence for the golden eagle and ferruginous hawk. Approximately 700.15 acres of foraging habitat will be affected. Foraging individuals could be temporarily displaced from foraging habitat while construction is on-going. However, due to the transient nature of foraging species, they are not expected to be adversely impacted. No mitigation is required.

Potential impacts to wetlands present within unnamed wash located on the northwest corner of the project tract would be avoided thru limiting and/or avoiding construction within wash. Solar panels would be placed as far as possible from the edges of the incised channel to avoid any impacts to the potential wetland. The avoidance of the incised channel and limiting construction will result in the avoidance of potential impacts to wetlands. No other wetlands were found nor depicted on the NWI maps as occurring near the project area. No mitigation is recommended other than what is listed below in the Mitigations section.

NTUA intends to comply with Section 404 of the Navajo Nation Clean Water Act by applying the following procedures: no construction work in wetlands (no generation of dredged materials); no discharge of fill material or any sort of construction material into the washes ("Waters of the Navajo Nation"); and limit ground disturbance as much as possible to reduce sedimentation loads.

VII. MITIGATIONS

A pre-construction survey (if construction occurs January thru July) must be conducted for the golden eagle and ferruginous hawk prior to the start of construction if construction is not completed in 2019.

Construction of the solar plant should avoid the Migratory Bird breeding season of March 1 to August 15. If any construction occurs during this time period after 2019, a pre-construction survey is recommended.

It is recommended that NTUA use all available existing roads during the construction, operation, and maintenance of the solar plant and access road. No other mitigation is recommended for this project.

VIII. REFERENCES

- Arizona Game and Fish Department. 1996. Threatened Native Wildlife in Arizona. Arizona Game and Fish Department Publication, Phoenix, Arizona.
- Atwood, D., Holland, J., Bolander, R., Franklin, B., House, D.E., Armstrong, L., Thorne, K., and England, L. 1991. Utah Threatened, Endangered, and Sensitive Plant Field Guide. Utah Natural Heritage Program, Salt Lake City, Utah.
- Brown, D.E. 1994. Biotic Communities Southwest United States and Northwestern Mexico. University of Utah, Salt Lake City, Utah.
- Ehrlich, P.R., Dobkin, D.S., and Wheye, D. 1988. The Birders Handbook. Simon & Schuster, Inc., New York, New York.
- Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.
- Gliniski, R.P. Ed. 1998. The Raptors of Arizona. University of Arizona Press and Arizona Game and Fish Department, Tucson, Arizona.
- Gould, H.W. 1993. Grasses of the Southwestern United States. The University of Arizona Press, Tucson, Arizona.
- Johnsgard, P.S. 1990. Hawks, Eagles, and Falcons of North America. Smithsonian Institution Press, Tucson, Arizona.
- Kaufman, K. 1990. Advanced Birding. Houghton Mifflin Company, Boston, Massachusetts.
- Navajo Department of Fish and Wildlife. 2019. Response letter from NDFW dated July 18, 2019. Navajo Department of Fish and Wildlife, Window Rock, Arizona.
- Nielson, W., and Erickson, A. J. 1980. Soil Survey of Navajo Indian Reservation, San Juan County, Utah. United States Department of the Agriculture, Soil Conservation Service, and United States Department of the Interior, Bureau of Indian Affairs, in cooperation with the Utah Agricultural Experiment Station.
- Peterson, R.T. 1990. Western Birds. Houghton Mifflin Company, Boston, Massachusetts.
- Roth, D. 2001a. Species account for *Astragalus cronquistii*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.

- Roth, D. 2001b. Species account for *Asclepias welshii*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- Roth, D. 2001c. Species account for *Carex specuicola*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- Roth, D. 2001d. Species account for *Platanthera zothecina*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- Roth, D. 2001e. Species account for *Puccinellia parishii*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- Roth, D. 2005. Species account for *Zigadenus vaginatus*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- Roth, D. 2008. Species account for *Cirsium rydbergii*. Navajo Natural Heritage Program, Post Office Box 1480, Window Rock, Arizona.
- U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
- U.S. Fish and Wildlife Service. 1991. Endangered and Threatened Species of Arizona with 1992 Addendum. Ecological Field Office, Phoenix, Arizona.
- U.S. Fish and Wildlife Service. Publication date (2000's). National Wetland Inventory website. U. S. Department of Interior, Fish and Wildlife Service, Washington D.C. Website: <http://www.fws.gov/wetland/>

APPENDIX A:

Legal Description of Project Tract and Access Road

NTUA's Tapaha (Red Mesa) Solar Tract and Access Road
San Juan County, Utah
NTUA Work Order Number 72-180-0001

T42S R23E

Section 16

Section 17

Section 20

Section 21

Section 28

Section 29

APPENDIX B:

Response letter from Navajo Department of Fish and Wildlife



PO BOX 1480
Window Rock, AZ 86515

P 928.871.6472
F 928.871.7803

www.nndfw.org

19ntua117

18-July-2019
Jason Yazzie
NTUA

SUBJECT: NTUA's Proposed Red Mesa (Solar Tract) Project, San Juan County, Utah, Work Order No. 72-180-0001

Jason Yazzie,

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 (www.nndfw.org/nnhp/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

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

2. Potential Species

Species

AQCH = *Aquila chrysaetos* / Golden Eagle NESL G3
 ASCR = *Astragalus cronquistii* / Cronquist Milk-vetch 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
 CASP = *Carax specuicola* / Navajo Sedge NESL G3 FT
 CHMO = *Charadrius montanus* / Mountain Plover NESL G4
 CIRY = *Cirsium rydbergii* / Rydberg's Thistle NESL G4
 EMTREX = *Empidonax traillii eximius* / Southwestern Willow Flycatcher NESL G2 FE
 FAPE = *Falco peregrinus* / Peregrine Falcon NESL G4
 PLZO = *Platanthera zothecina* / Alcove Bog-orchid NESL G3
 PUPA = *Puccinellia parishii* / Parish's Alkali Grass NESL G4
 ZIVA = *Zigadenus vaginalis* / Alcove Death Camass NESL G3

3. Quadrangles (7.5 Minute)

Quadrangles

Gray Spot Rock (37109-A4) / UT, AZ
 Hogan Mesa (37109-B4) / UT

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	RCP
Solar Tract	None	PUPA	Gray Spot Rock (37109-A4) / UT, AZ	None	AQCH, ATCU, BURE, CASP, CHMO, CIRY, EMTREX, FAPE, PLZO, ZIVA	Area 3

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 Neskahal 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 Neskahal 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 zoltecina* (Alcove Bog Orchid), *Puccinellia parishii* (Parish Alkali Grass), *Zigadenus vaginatus* (Alcove Death Camas), *Perityle specuicola* (Alcove Rock Daisy), *Symphotrichum welshii* (Welsh's American-aster), *Coccyzus americanus* (Yellow-billed Cuckoo), *Empidonax traillii eximius* (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), *Oxytoma kanabense* (Kanab Ambersnail)

6. Personnel Contacts

Wildlife Manager
(Vacant)
928.871.7062

Zoologist (Acting Manager)
Chad Smith
928.871.7070
csmith@nndfw.org

Botanist
Nora Talkington
ntalkington@nndfw.org

Biological Reviewer
Pamela Kyselka
928.871.7065
pkyselka@nndfw.org

GIS Supervisor
Dexter D Prall
928.645.2898
prall@nndfw.org

Wildlife Tech
Sonja Detsol
928.871.6472
sdetsol@nndfw.org

7. Resources

Navajo Endangered Species List:
www.nndfw.org/nnhp/Endangered.htm

Species Accounts:
www.nndfw.org/nnhp/sp_account.htm

Biological Investigation Permit Application
www.nndfw.org/nnhp/study_permit.htm

Navajo Nation Sensitive Species List
www.nndfw.org/nnhp/trackinglist.htm

Various Species Management and/or Document and Reports
www.nndfw.org/nnhp/docs_reps.htm

Consultant List
www.nndfw.org/bi_consult_list_2014.pdf

Dexter D Prall

Digitally signed by Dexter D Prall
DN: cn=Dexter D Prall, o=Navajo Nation
Department of Fish and Wildlife,
ou=Navajo Natural Heritage Program,
email=prall@nndfw.org, c=US
Date: 2019.07.18 13:22:24 -0700

Dexter D Prall, GIS Supervisor - Natural Heritage Program
Navajo Nation Department of Fish and Wildlife

APPENDIX C:

**Lists of Mammals, Birds, Reptiles and Amphibians, and Plant
Species encountered during the Field Survey.**

Mammal Species

Jackrabbit

Lepus californicus

Bird Species

Common raven

Corvus corax

Horned lark

Eremophila alperstris

Turkey vulture

Cathartes aura

Reptile and Amphibian Species

None

Plant Species

Galleta

Hilaria jamesii

Sand dropseed

Sporobolus cryptandrus

Rabbitbrush

Chrysothamnus nauseosus

Broom snakeweed

Gutierrezia sarothrae

Green ephedra

Ephedra viridis

Groundsel

Senecio douglasii

Navajo yucca

Yucca navajoa

Plains cactus

Opuntia phaeacantha

Three-awn

Aristida purpurea

Purple aster

Machaeranthera canescens

Lupine

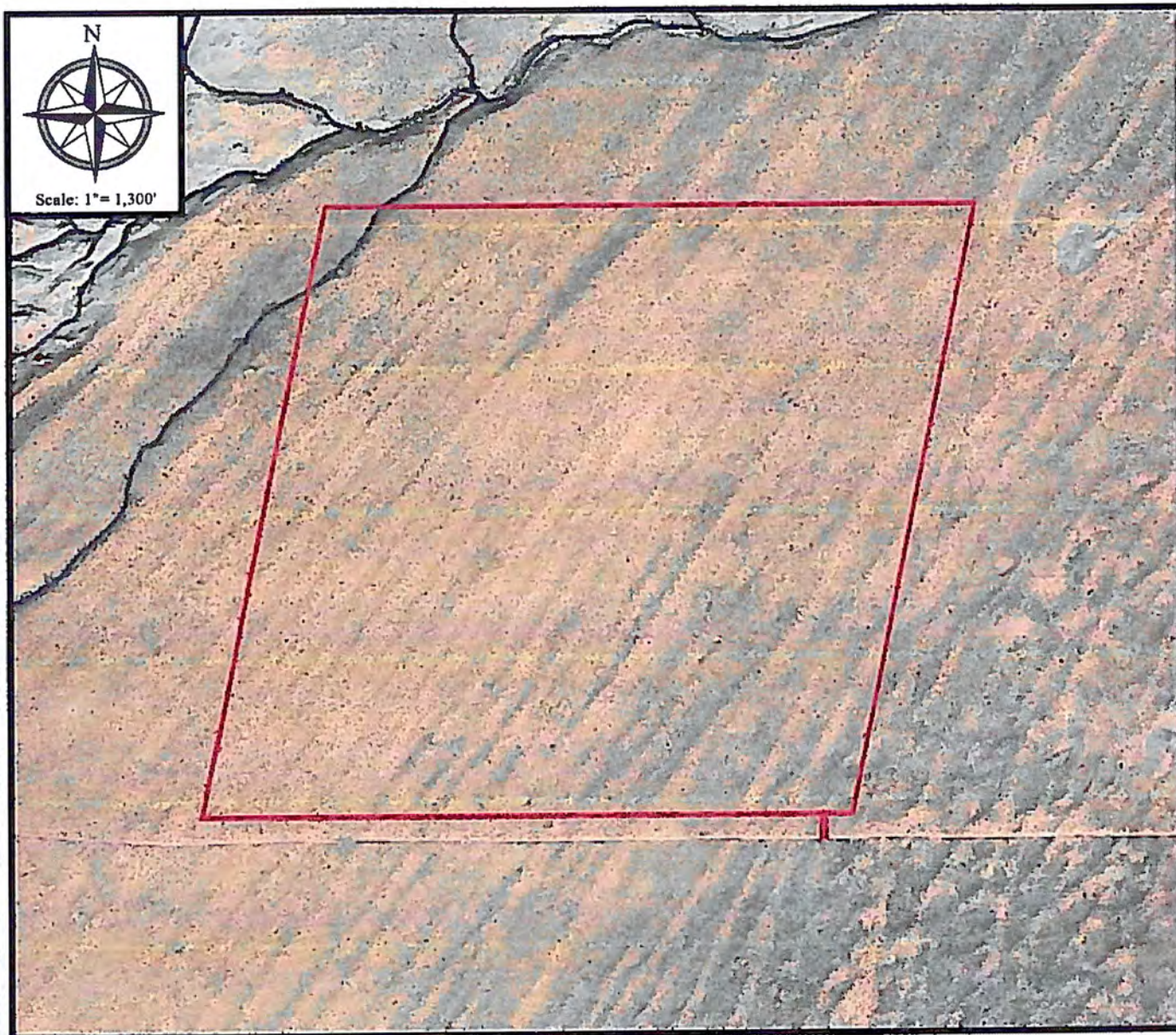
Lupinus argenteus

Tumble weed

Salsola kali

APPENDIX D:

**National Wetland Inventory Map: National Wetland Inventory
website map.**



Appendix D. National Wetlands Inventory Map: National Wetland Inventory website map.

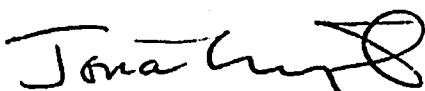
APPENDIX E:

Signature Page

SIGNATURE PAGE

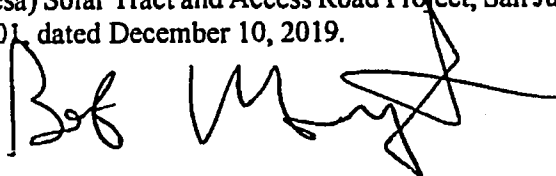
The following two Zoology Unlimited, LLC, biologists conducted the field survey and/or prepared the compliance documentation for the proposed project:

A. Signature One for the Biological Survey Report for Species of Concern on the Tapaha (Red Mesa) Solar Tract and Access Road Project, San Juan County, Utah, Work Order Number 72-180-0001, dated December 10, 2019.



Jonathan Manygoats
Project Manager/Editor

B. Signature Two for the Biological Survey Report for Species of Concern on the Tapaha (Red Mesa) Solar Tract and Access Road Project, San Juan County, Utah, Work Order Number 72-180-0001, dated December 10, 2019.



Bob Manygoats
Biologist/Report Preparation

Document No. 015806Date Issued: 02/08/2021**EXECUTIVE OFFICIAL REVIEW**Title of Document: NTUA Red Mesa Solar Farm Contact Name: YAZZIE, ELERINA BProgram/Division: DIVISION OF NATURAL RESOURCESEmail: e_yazzie@navajo-nsn.gov Phone Number: 928-871-6447

<input type="checkbox"/>			Sufficient	Insufficient
<input type="checkbox"/>	Business Site Lease			
	1. Division:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	(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:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	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:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications			
	1. Office of Management and Budget:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Navajo Housing Authority Request for Release of Funds			
	1. NNEPA:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Lease Purchase Agreements			
	1. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	(recommendation only)			
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Grant Applications			
	1. Office of Management and Budget:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	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:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Relinquishment of Navajo Membership			
	1. Land Department:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Elections:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>

☐ 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 *(ic)* *OWN* _____ Date: 3/18/21 ☒ ☐
Van Bludt
PNM _____ Date: 3-22-21 ☒ ☐

☐ Rights of Way

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. Office of the Attorney General: _____ Date: _____ ☐ ☐
7. OPVP _____ Date: _____ ☐ ☐

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

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

☐ Assignment of Mineral Lease

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

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

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

☐ OTHER:

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

☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

Sufficient Insufficient

- | | | | | |
|------------------------------------|-------|-------------|--------------------------|--------------------------|
| 1. Division: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

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

- | | | | | |
|--------------------|-------|-------------|--------------------------|--------------------------|
| 1. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. DOJ <i>(ic)</i> | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Rights of Way**

- | | | | | |
|------------------------------------|-------|-------------|--------------------------|--------------------------|
| 1. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Office of the Attorney General: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

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

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Assignment of Mineral Lease**

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. DOJ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **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: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. DOJ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **OTHER:**

- | | | | | |
|----------|-------|-------------|--------------------------|--------------------------|
| 1. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL

<p>RECEIVED MAR 17 2021 DEPARTMENT OF JUSTICE ADMINISTRATION</p>	DOJ
	DATE / TIME 1721 @ 304p
	7 Day Deadline
	DOJ #: 015806
	UNIT: Nam

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

CLIENT TO COMPLETE

DATE OF REQUEST:	3/17/2021	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie	DEPARTMENT:	GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447 or x 6423	E-MAIL:	michellehoskie@navajo-nsn.gov

TITLE OF DOCUMENT: EOR#15806, Red Mesa Solar Lease

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	3.17.21 3:30	REVIEWING ATTORNEY/ADVOCATE:	Irvin Chee 3.18.21 9:30 Email to Veronica April 3.26.21
DATE TIME OUT OF UNIT:			

DOJ ATTORNEY / ADVOCATE COMMENTS

Legally Sufficient. Negotiated lease was inserted in the packet. Also note that NTUA will be processing the ROW separately. ** 3.18.21 2:15 EMAIL TO VAB + ACP - 2/

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
IRVIN Chee	3.18.21	V.Blackhat	3/18/21 3:20pm

DOJ Secretary Called: *Email Michelle* for Document Pick Up on 3.19.21 at 8:20 By: *RJ*

PICKED UP BY: (Print)	DATE / TIME:
-----------------------	--------------

NNDOJ/DRRF-July 2013

**So ROW terms and conditions were removed from the packet.

COMPLETED

Navajo Land Title Data System (NLTDS)
Navajo Land Title, NLTDS - Admin:
Document Information

Document Information

Document Name: 005_R004_00015806_NTUA Red Mesa Solar Farm.zip
Revision:
Version: 1
Document Desc: NTUA Red Mesa Solar Farm
Document Author: Stevie Hudson GLDD (NLTDS - Admin)
Document Status: Pending Verification
Document Type: 164 Review Process
Effective Date: 08-Feb-2021
Expires: Never
Uploaded from: Navajo Land Title Data System (NLTDS)
Folder Name: 005_R004_00015806
Size: 7929 KB
Date Uploaded: 08-Feb-2021
Maintained by: Project Management Team

No Document Distribution Locations

Applicant:

Census-Applicant:

Census-Co-Applicant:

Co-Applicant:

Tier 1 Document Voting Results

User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date
Najamh Tariq (Navajo Land Title Data System - Windowrock AZ)	Approver	Department of Water Resources	Approved	<i>no comments</i>	<i>No Reply</i>	08-Feb-2021
Pam Kyselka F&W (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	<i>no comments</i>	<i>No Reply</i>	08-Feb-2021
Rebecca Gilchrist MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	1. This vote is contingent upon the uploaded Terms and Conditions, dated 02.17.2021, permanently being included in the application approval package. -rkg	1.	22-Feb-2021
Tamara Billie NNHP (Navajo Land Title Data System - Windowrock AZ)	HPD Reviewer	Historic Preservation Department	Approved	1. HPD-19-726	1.	16-Feb-2021

Tier 2 Document Voting Results

User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date
Leanna Begay (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	<i>no comments</i>	<i>No Reply</i>	23-Feb-2021
Richard Begay NNHP (Navajo Land Title Data System - Windowrock AZ)	Navajo Nation Historic Preservation Officer	Historic Preservation Department	Approved	<i>no comments</i>	<i>No Reply</i>	22-Feb-2021
Robert Allan DNR (Navajo Land Title Data System - Windowrock AZ)	Deputy Director DNR	DNR Administration	Approved	1. CONDITIONAL: Need an approved lease form.	1.	22-Feb-2021
Steven Prince MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	<i>no comments</i>	<i>No Reply</i>	17-Mar-2021
W. Mike Halona (NLTDS - Admin)	NLD Department Manager III	NLD	Approved	1. Contingent on an approved lease by DOJ for RDC considerations and response to concerns by GLDD.	1.	15-Mar-2021

Red Mesa and Cameron Solar Projects

Steven L. Prince

Wed 3/17/2021 1:55 PM

To: Stevie R. Hudson <steviehudson@navajo-nsn.gov>;

Cc: Rebecca K. Gilchrist <rkgilchrist@navajo-nsn.gov>;

Good afternoon Stevie,

Please be aware that the consideration amounts on the Terms and Conditions (T&C) documents attached to the two subject projects reflect Minerals Department's standard assessments. However, our standard consideration amounts were superseded by alternate amounts negotiated between the Navajo Nation Government and NTUA and included in the final leases for these two projects. Except for the consideration prices, the remainder of the T&Cs should remain in effect. Would you please place the name of each project in the title of each of the T&Cs? Thanks for your help!

Warmest regards,
Steven

Steven L. Prince, Principal Petroleum Engineer
Navajo Nation Minerals Department - Oil & Gas
[PO Box _____, Window Rock, Arizona 86515](#)
OFFICE (928) 871-6587
DIRECT (928) 871-
FAX (928) 871-7095



NAVAJO TRIBAL UTILITY AUTHORITY
AN ENTERPRISE OF THE NAVAJO NATION



June 10, 2020

Honorable President Jonathan Nez
The Navajo Nation
Post Office Box 7440
Window Rock, Arizona 86515

Dear Honorable President Nez:

The Navajo Tribal Utility Authority (NTUA), Fort Defiance, Arizona is filing a Lease Application for a parcel of approximately 700.09± acres and a Right-of-Way Application for an access road of approximately 0.06 acres in the vicinity of Red Mesa Chapter, San Juan County, Utah. NTUA proposes to utilize the land by developing a transmission line, distribution facilities, generation, communications facilities, water resources, as well as a field office. Furthermore, NTUA proposes to sublease a portion of the parcel, 500 acres or less, to a subsidiary for the development of 70 MW solar generation and energy storage facility to support the local Navajo community and for sales to Utah Associated Municipal Power Systems (UAMPS) and NTUA.

Through this lease the Navajo Nation will have more jobs, tax revenue, and clean energy within the Navajo Nation.

The lease site is described on the attached plats entitled, "*Tapaha (Red Mesa) Solar Tract and Access Road Project, San Juan County, Utah, NTUA Work Order No. 72-180-0001*".

NTUA understands that under the Navajo Nation General Leasing Act, the Executive Branch will first review the lease and then the Resources and Development Committee will provide final approval. In terms of the lease, NTUA requests a Waiver of Damages, except to those of local improvements such as fences, corrals, homes, crops, animals, and people. NTUA also requests that it be allowed to issue subleases, which would include a portion of the leased land and the right-of-way to its subsidiary to allow for financing of the proposed photovoltaic generation facility as well as a sublease for a field office.

NTUA understands that the Minerals Department will recommend the appropriate lease rate. We will reach out to the Minerals Department to discuss the appropriate lease rate. In addition to the lease rate, the Navajo Nation Energy Policy of 2013 allows for the local community to obtain financial benefits from this renewable energy project. We will also discuss with the Minerals Department how to effectuate this benefit.

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
--	---	--	---	--	---	--	---

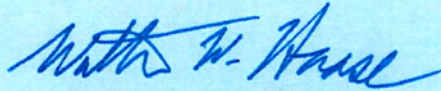
CALL 800-528-5011 OR 928-729-5721 FOR ALL OFFICES.

*This institution is an equal opportunity provider and employer.

Ltr. Honorable President Nez
Page 2
June 10, 2020

Attached are the pertinent application documents for your information and use. If you should have any questions, please contact Ms. JoDonna Johns, Electric System Planning Section, directly at (928) 729-6204.

Sincerely yours,



Walter W. Haase, P.E.
General Manager

WWH/tt

Attachments

Cc: Rowena Cheromiah, MMMinerals Department

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



August 5, 2020

JoDonna Johns, Right-of-Way Agent
NAVAJO TRIBAL UTILITY AUTHORITY
P.O. Box 170
Fort Defiance, Arizona 86504

Re: Navajo Tribal Utility Authority Solar Lease Application submitted to the Navajo Nation

Dear Ms. Johns,

The General Land Development Department (GLDD) received the proposed Solar Lease project for approximately 700.09± acres and a right-of-way application for an access road of approximately 0.06 acres in the vicinity of Red Mesa Chapter, San Juan County, Utah on Friday, July 31, 2020.

At this time, GLDD cannot accept and process your application due to the following reasons:

1. The application has two components: a lease (700 acres) and a right-of-way (0.06 acres) for an access road. Leases and rights-of-way must be requested in separate applications.
2. When applicants apply for a lease, the access road is required on the survey plat and access roads do NOT need a right-of-way.
3. The survey doesn't make clear which road the access road connects to. The survey states that the access road is coming off of County Road 5062, but this road cannot be located; the only road on the south side is County Road 454.
4. If the development of a transmission line includes distribution facilities, water resources, a field office, generation facilities and communications facilities, then the survey plat needs to reflect all of these improvements and/or proposed developments. Regarding communication facilities, if this project includes a cell tower, then a separate application needs to be submitted requesting a telecommunication tower land lease.
5. Subleasing land (500 acres) to a subsidiary to develop solar and energy storage facilities for sales to UAMPS and NTUA. With NTUA collecting revenue and subletting to LLC's that are for-profit, this project will be regarded as commercial and will require the Minerals Department's assessment and the Resource and Development's final approval for commercial operations. In addition, the rates will be separate for the solar, tower, and right-of-way. Furthermore, the Navajo Nation is requesting a list of LLC's and all other subsidiaries that NTUA has established and plans to establish in the future. This information is very important, as it will provide guidance and clarification to the Nation on NTUA's request for a "Memorandum of a Lease" for third parties for proof of recording.
6. Grazing Permittee Consent issue. Need clarification on who is conducting land appraisals on behalf of NTUA. Per an agreement between the Navajo Nation and NTUA, if any land

appraisals are required, NTUA will contact Navajo Land Department for assistance. (See attached memo, dated 2016). The issue is that the "appraised" rate of \$125.00 per acre is high. The Navajo Nation Code establishes a rate of \$10.00 per animal unit. 16 NNC § 1402. Thus, paying two permittee's \$43,750.00 each is irrational. In addition, Permittees must cancel their permits if compensation is provided; this is not stated on the consent forms.

7. The chapter resolution states that the chapter will be compensated by NTUA; however, chapters do not receive compensation for any proposed projects from any company. The resolution also is missing the required language per the Land Withdrawal Regulations. These regulations can be found online at www.dinehbikeyah.org.
8. All leases drafted by entities that are included in the packet will be subject to review by the Navajo Nation Department of Justice (NNDJ).

For future reference:

- Any Tribal Authorization Access (TAA) application from any tribal entity needs to be dated after June 3, 2020, which is the date that the Resources and Development Committee approved the TAA legislation.
- Environmental Assessments are not a Navajo Nation requirement for TAAs or leases. However, a Biological Resources Compliance Form (BRCF) issued by the Navajo Nation Fish and Wildlife is required, as well as a Cultural Resources Compliance Form (CRCF) issued by the Navajo Nation Historic Preservation Department.
- The Navajo Land Department has a goal of plotting all approved land leases, permits and rights-of-way; we need applicants to submit KML files in lieu of paper maps.
- NTUA mailed this specific solar lease application to Mike Halona, Director for the Navajo Land Department in June. GLDD received it almost two months later on last Friday, July 31, 2020. Mr. Halona provided the paper copy to GLDD. All applications need to be submitted directly to GLDD staff; Ms. Stevie Rae Hudson, Leasing Agent at steviehudson@navajo-nsn.gov.

Once the application is corrected, deemed complete and accurate by GLDD staff, and it is re-submitted to GLDD, the packet will be processed through the tribal executive review process. If you have any questions, contact me at (928) 797-0002 or via email at e_yazzie@navajo-nsn.gov, or Dr. Rudy Shebala, Division Director, Division of Natural Resources, at (928) 871-6592 or via email at rudyshbala@navajo-nsn.gov. Thank you.

Sincerely,



Elerina Yazzie, Department Manager
General Land Development Department
DIVISION OF NATURAL RESOURCES

cc: Dr. Rudy Shebala, Division Director, Division of Natural Resources
GLDD/File

General Land Development Department

Post Office Box 2249 / Window Rock, AZ / 86515 / Telephone: (928) 871-6447 / Fax: (928) 871-7039



NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

August 17, 2020

Ms. Elerina Yazzie, Department Manager
General Land Development Department
Division of Natural Resources
The Navajo Nation
P.O. Box 2249
St. Michaels, Arizona 86511

RE: Navajo Tribal Utility Authority Red Mesa Solar Lease Application

Dear Ms. Yazzie,

NTUA is in receipt of your letter dated August 5, 2020 concerning NTUA's application for a renewable energy lease for the Tapaha Red Mesa Solar Project. We received your letter by e-mail at 4 pm on August 7. We appreciate your review and are submitting the application anew, in accordance with your directions.

The name of this solar project is Tapaha Red Mesa Solar Project. The lease site is in the vicinity of Red Mesa Chapter, San Juan County, Utah. NTUA hereby submits the application for the Tapaha Red Mesa Solar Lease anew and includes the following responses to your August 5 letter in this application, the responses align with the enumerated list in your August 5 letter:

1. This application is for a renewable energy lease as allowed under the Navajo Nation General Leasing Act. The renewable energy lease includes an access road for a total of approximately 700.15± acres.
2. The survey plat for the lease shows the access road.
3. The access road connects to BIA N5062. We have confirmed that with BIA.
4. The application is for a renewable energy lease. The following improvements will be placed on the leased site: a solar facility, small operations and maintenance facility, an electrical substation, and transmission lines for the solar facility. To be clear NTUA will build the field office, an electrical substation, and transmission lines for the solar facility. NTUA Generation-Utah, LLC will build the solar facility.

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

CALL 800-528-5011 OR 928-729-5721 FOR ALL OFFICES.

Letter to Ms. Elerina Yazzie, Navajo Nation General Land Development Department

RE: NTUA Red Mesa Solar Lease Application

August 17, 2020

Page 2 of 3

5. NTUA will sublease no more than 550 acres to NTUA Generation-Utah, LLC for the construction of the solar facility. There is no other LLC involved in this project. NTUA has been and will continue to be in communication with the Minerals Department regarding the land lease rental rate. After executive branch review, NTUA will submit this lease to the Resources and Development Committee of the Navajo Nation Council for its final approval.
6. Concerning the compensation to the grazing permittees, NTUA did not conduct a land appraisal. NTUA's Right-of-Way Agent Esther Yazzie consulted with Howard Draper concerning the appropriate compensation rate for the grazing permittees. Mr. Draper informed Ms. Yazzie that the appropriate rate for grazing permittee compensation was \$150 per acres. Due to the lack of vegetation in this area, NTUA reduced the rate to \$125 per acre. This is the same process that was utilized for the Kayenta Solar site. As to the cancellation of the grazing permittees, this is the first that NTUA has been informed that the consent forms must include cancellation of grazing permits. NTUA's understanding is that when land is taken out of grazing status for a long term lease, the BIA must reevaluate the carrying capacity for the grazing district. BIA is then responsible for updating or cancelling permits as necessary based on the carrying capacity of the district.
7. The Red Mesa Chapter Resolution, RMC-07-041519, states that NTUA fully supports that the Red Mesa Chapter should be compensated from proceeds of the Lease Agreement between NTUA and the Navajo Nation because NTUA supports the Navajo Nation Energy Policy of 2013 (Act). The Act provides an avenue for communities impacted by energy development to provide input and support and "share in a portion of the financial benefits of such projects." As this is an energy project for export, NTUA believes the Chapter should benefit from the financial benefits of the land lease as required by the Navajo Nation Council. The relevant and cited language is found at section 8, §802, of the Act, Resolution CO-50-13. The language required for Chapter Resolutions concerning Land Withdrawal Designations is not included in the Chapter Resolution because NTUA is not seeking a Land Withdrawal Designation. NTUA is processing this and other renewable energy leases consistent with tower leases on the Navajo Nation. This renewable energy lease follows the same process. We confirmed with Mr. Halona that a Land Withdrawal Designation is not required in order to obtain a lease. As we understand, it is because the same process is followed for obtaining a land lease as obtaining a Land Withdrawal Designation.
8. NTUA acknowledges the lease is subject to review with the Navajo Nation Department of Justice (NNDOJ). NTUA will likely submit the draft lease to NNDOJ for a pre-review.

Letter to Ms. Elerina Yazzie, Navajo Nation General Land Development Department

RE: NTUA Red Mesa Solar Lease Application

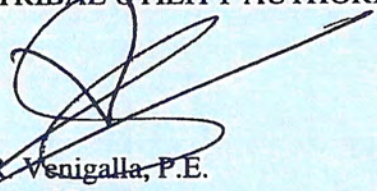
August 17, 2020

Page 3 of 3

Thank you for your kind attention to this matter. If you have any questions, please contact our office at 928-729-6281.

Sincerely yours,

NAVAJO TRIBAL UTILITY AUTHORITY

A handwritten signature in black ink, appearing to be 'Srinivasa R. Venigalla', written over the printed name.

Srinivasa R. Venigalla, P.E.
Deputy General Manager
Electric & Information Systems Division

CC: Bidtah Becker, Associate Attorney, NTUA
Srinivasa R. Venigalla, Electric & Information Systems Division, NTUA
Lester Lee, Electric Systems Division, NTUA
Mike Halona, Navajo Land Department

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

THIRD YEAR 2021

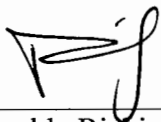
ROLL CALL
VOTE TALLY SHEET

LEGISLATION # 0056-21: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE RED MESA TAPAHA SOLAR PROJECT LEASE FOR THE NAVAJO TRIBAL UTILITY AUTHORITY TO CONSTRUCT AND OPERATE A SOLAR GENERATION FOR RED MESA TAPAHA SOLAR PROJECT, RED MESA CHAPTER VICINITY, NAVAJO NATION (SAN JUAN COUNTY, UTAH). *Sponsor: Honorable Charlaine Tso; Co-Sponsor: Honorable Seth Damon.*

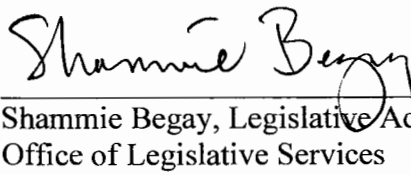
Date: March 31, 2021 – Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

Motion: Thomas Walker, Jr. S: Kee Allen Begay, Jr. 4-0-1 (CNV)
In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay, Jr., and Thomas Walker, Jr.
Excuse: Herman M. Daniels
Not Voting: Presiding Chairperson Rickie Nez



Honorable Rickie Nez, Presiding Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services