LEGISLATIVE SUMMARY SHEET
Tracking No. 0049-16

DATE: February 10, 2016

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY FOR BE GREEN, LLC, TO CONSTRUCT, OPERATE AND MAINTAIN AN ACCESS ROAD INCLUDING UTILITY CORRIDOR LOCATED IN ST. MICHAEL'S CHAPTER VICINITY, NAVAJO NATION (APACHE COUNTY, ARIZONA)

PURPOSE: Approving a Right-of-Way for Be Green, LLC, to Construct, Operate and Maintain an Access Road Including Utility Corridor located in St. Michaels Chapter vicinity, Navajo Nation (Apache County, Arizona). The Terms and Conditions state that the right-of-way will be granted for a 20 year period for consideration of $83,088.00.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: [illegible]
Website Posting Time/Date: 2:37pm 2/11/16
Posting End Date: 2/16/2016
Eligible for Action: 2/17/2016

PROPOSED STANDING COMMITTEE RESOLUTION

23rd NAVAJO NATION COUNCIL -- Second Year, 2016

INTRODUCED BY

Jonathan L Hale

(Prime Sponsor)

TRACKING NO. 0049-16

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY FOR BE GREEN, LLC, TO CONSTRUCT, OPERATE AND MAINTAIN AN ACCESS ROAD INCLUDING UTILITY CORRIDOR LOCATED IN ST. MICHAEL'S CHAPTER VICINITY, NAVAJO NATION (APACHE COUNTY, ARIZONA)

Section One. Standing Committee Powers and Authorities

A. Pursuant to 2 N.N.C. §§ 500, the Resources and Development committee is hereby established as a standing committee of the Navajo Nation Council.

B. Pursuant to 2 N.N.C. §500 B 2 (a), the Resources and Development Committee grants 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 termination.

Section Two. Findings

A. The Be Green, LLC, 32 Kiva Court, Sandia Park, New Mexico 87047, has submitted a right-of-way application for access road and utility corridor located in the St. Michael's Chapter vicinity, on, over and across Navajo Nation Trust Lands, (Apache County, Arizona). The application is attached hereto and incorporated herein as Exhibit "A"; and

B. The proposed right-of-way is 1,116.50 feet long, 225 feet wide, consists of 5.77 acres, more or less, of Navajo Nation Trust Lands located in the northwest quarter (NW ¼) of Section 18, Township 26 North, Range 31 East, G&SRMB, Apache County, Arizona and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit "B"; and

C. In a memorandum dated December 17, 2015, the Navajo Land Department Project Review Section states "[t]he Navajo Nation is the only affected land user and provided the necessary consent from the District 18 Grazing Committee member, Joseph Peshlakai." The December 17, 2015 memorandum is attached hereto and made a part hereof as Exhibit "C"; and

D. The environmental and archaeological studies have been completed and are attached hereto and incorporated herein by this reference.

Section Three. Approval

A. Resources and Development Committee of the Navajo Nation Council hereby approves a Right-of-Way to Be Green, LLC, to construct, operate and maintain an access road and utility corridor on Navajo Nation Trust Lands in the St. Michaels Chapter vicinity, Apache County, Arizona. The location is more particularly described on the map attached hereto as Exhibit "B."

B. The Resources and Development Committee of the Navajo Nation Council hereby approves a right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit "D."

C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute all documents to affect the intent and purpose of this resolution.

EXHIBIT A

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION

COMES NOW THE APPLICANT Be Greene LLC of 32 Kiva Court, Sandia Park, NM 87047 this 20th day of November, 2015, who hereby petition(s) the Bureau of Indian Affairs and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. L 17-25 USC 323) and Departmental Regulations 25 CFR 169, an application of a 20 (twenty) years right-of-way for the following purposes and reasons:

Construction of an access road and utility corridor to a development site on private land.

Across the following described **Navajo Tribal Trust Land** (easement description):

NW/4 Sec. 18, T. 26 N., R. 31 E., G&SRM, Apache County, AZ

Said right-of-way across Tribal Fee Land to be 1,116.50 feet in length, including guys and anchors, 225 feet in width, and 5.77 acres in size, as shown on attached map and plats of definite location, attached hereto, and made a part hereof.

SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:

1. To construct and maintain the right-of-way in a workmanlike manner.

2. To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.

3 To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.

5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.

6. To take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.

7 To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.

10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

11 That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

DATE: November 20, 2015

APPLICANT _____

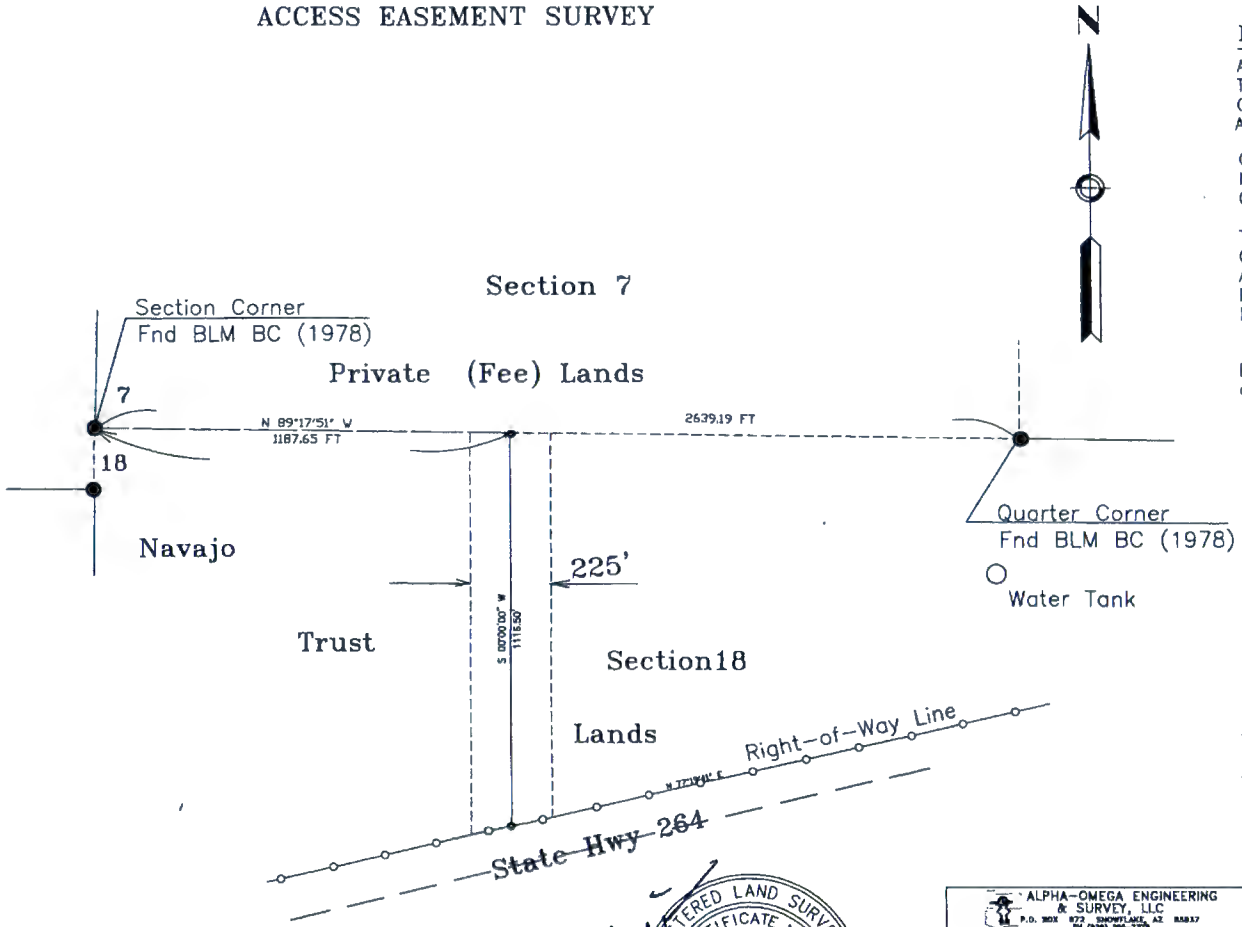
Richard Greene
Managing Member, Re Greene LLC

REQUIRED SUPPORTING DOCUMENTS:

1. ( ) Written consent of landowner (ROW Form 94-7).
2. ( ) Map (plats) of definite location (2 original mylars & 2 copies, See 25 CFR 169.6, 169.7, 169.8, 169.9, 169.10 and 169.11).
3. ( ) Deposit of estimated damages or compensation (See 169.4 and 169.14).
4. ( ) Evidence of Authority of Officers to Execute Papers (ROW Form 94-4)
5. ( ) For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
   - ( ) a. State certified copy of corporate charter or articles of incorporation.
   - ( ) b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.

EXHIBIT B

ACCESS EASEMENT SURVEY



Rev: 07/09/15 Easement line

HOMESITE NO.

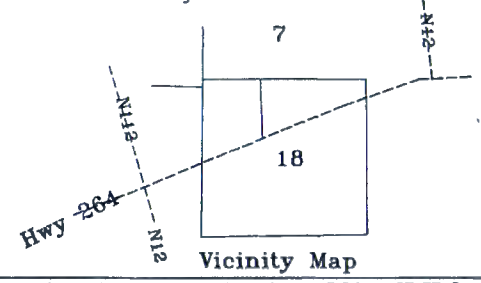
LOT DESCRIPTION:

A PARCEL OF LAND SITUATED WITHIN LAND MANAGEMENT DISTRICT NO. 18 OF THE NAVAJO INDIAN RESERVATION IN THE VICINITY OF WINDOW ROCK, APACHE COUNTY, STATE OF ARIZONA AND IS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 7, TOWNSHIP 26 NORTH, RANGE 31 EAST, OF THE GILA & SALT RIVER MERIDIAN, APACHE COUNTY ARIZONA, BEING A BLM BRASS CAP;

THENCE S89°17'51"E, A DISTANCE OF 1187.65 FEET, TO THE BEGINNING OF AN EASEMENT BEING 225 FEET IN WIDTH, CENTERED ALONG EACH SIDE OF A LINE S00° 00' 00"W, FOR A DISTANCE OF 1116.50 FEET, TO THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 264 AND THE TERMINUS OF THIS EASEMENT, WITH SIDE LINES EXTENDED OR SHORTENED TO MEET SAID RIGHT-OF-WAY LINE.

Being 5.77 acre(s), more or less, in area, and being subject to any and all existing easements for underground utilities located therein.



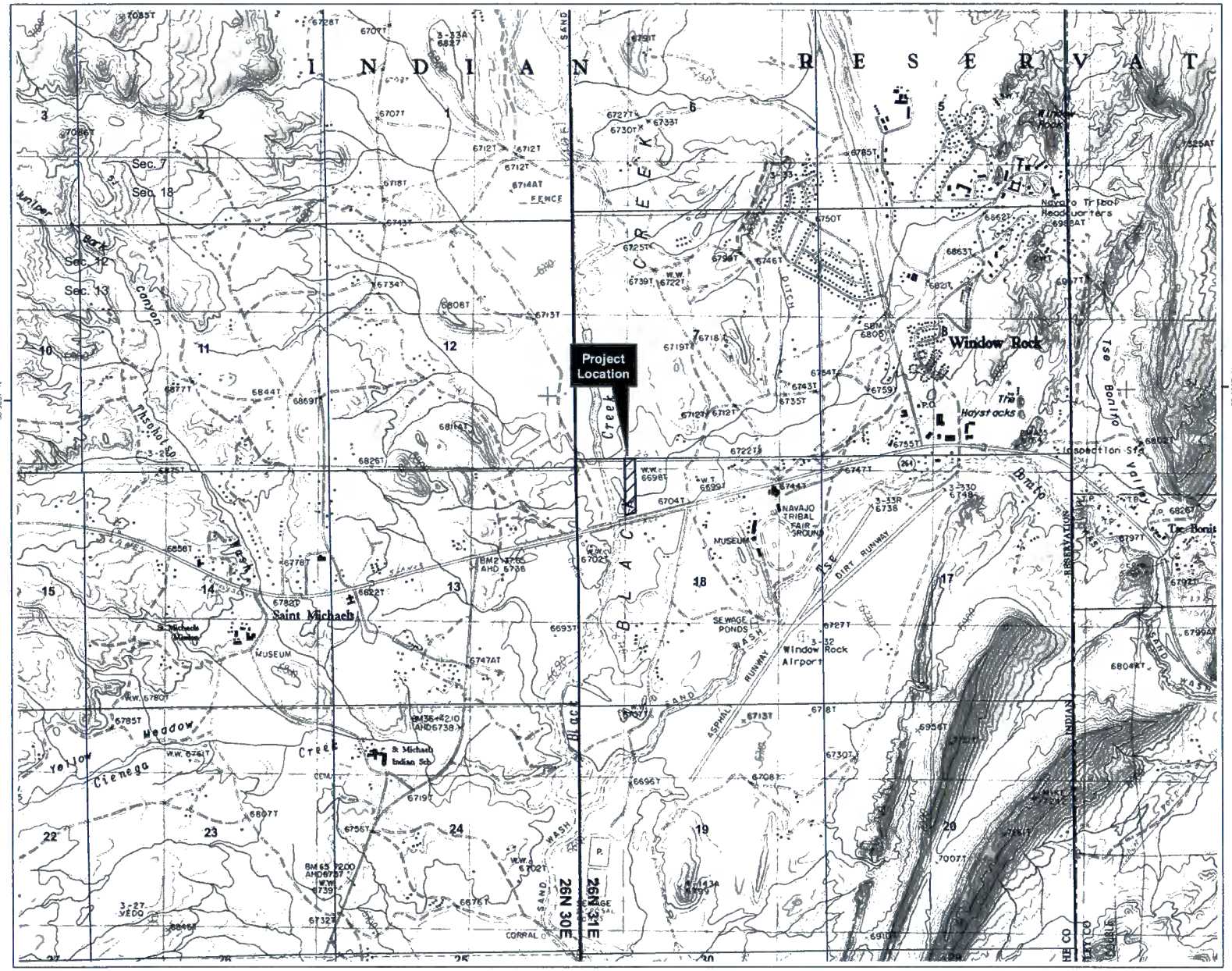
Vicinity Map

NOTES:

1. All bearings shown hereon are derived from ARIZONA STATE PLANE COORDINATE SYSTEM, EAST ZONE and refer to GRID NORTH.
2. Coordinates are converted to the 1983 N.A.D. and 1988 N.A.V.D. in reference to G.P.S.
3. BLM MONUMENTS used as control.
3. All distances around the homesite lot are ground distances.
4. 5/8" Rebar (Set) on all corners of tract, unless indicated otherwise.
5. Scale, other than Lot is 1" = 50'.
6. Underground Utilities Not Located.

REGISTERED LAND SURVEYOR CERTIFICATE NO. 19810 HAROLD BALDWIN Date Signed 07-14-15 ARIZONA, U.S.A.

ALPHA-OMEGA ENGINEERING & SURVEY, LLC P.O. BOX 873 SNOWFLAKE, AZ 85937 PH (928) 206-7378		Be Greene, LLC
SURVEY BY:	HB	5.77 Ac. ±
DRAWN BY:	HB	District 18, Navajo Indian Reservation
APPROVED BY:		Window Rock, Apache County, Arizona
SURVEY DATA NO.:	15-022	
JOB NUMBER:	15-022	
SCALE: 1"=	NTS	



Be Greene LLC

St. Michael's Access Corridor Project Location Map

Section 18, T.26S, R.31E
St. Michael's
Navajo Indian Reservation
Apache County, Arizona

USGS Quad: Window Rock

Proposed Access Corridor

1:24,000

0 0.5 1

Miles

NAD 1983 Arizona State Plane
East Feet

N

PERMITS WEST

Prepared by Permits West, Inc., June 23, 2015
for Be Greene, LLC

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

To: Navajo Land Department Staff
Division of Natural Resources

From: W. Mike Ha'ona, Department Manager III
Navajo Land Department
DIVISION OF NATURAL RESOURCES

Date: December 7, 2015

Subject: NAVAJO LAND DEPARTMENT DELEGATION OF AUTHORITY FOR FY-2016

Please be advised that the personnel listed below will be the delegated in my absence for the Navajo Land Department:

1. I. Harlan Charley, Senior Programs & Project Specialist
2. Everytt Begay, GIS Supervisor
3. Elerina Yazzie, Program Manager I
4. Howard Draper, Programs & Project Specialist

The purpose of the delegated authority serves for these individuals to review, direct and sign administrative documents and supervise staff. Please follow chain of command. However, these individuals will not sign documents that require my individual attention.

Your cooperation is appreciated and expected. If you have any questions please contact me at 928-871-6440, thank you.

ACKNOWLEDGEMENT:

I. Harlan Charley, Sr. Programs & Projects Specialist

Everytt Begay, GIS Supervisor

Elerina Yazzie, Program Manager I

Howard Draper, Programs & Projects Specialist

xc: Bitah Becker, Division Director
DNR Chrono/File

EXHIBIT
C

THE NAVAJO NATION
Navajo Land Department
P.O. Box # 2249 · Window Rock, Arizona 86515 · (928) 871-6401 · FAX: (928) 871-7039

MEMORANDUM

TO : Howard P. Draper, Supervisor
Project Review Section, NLD

FROM : Esther Kee
Esther Kee, R/W Agent
Project Review Section, NLD

DATE : December 17, 2015

SUBJECT: Be Greene St. Michaels Access Corridor

Be Greene LLC, 32 Kiva Court, Sandia Park, New Mexico 87047, has submitted an application for right of way to construct an access road with utility corridor to a development site on private land near St. Michaels Chapter.

The access road and utility corridor will be 1,116.50 feet in length, 225 feet in width, 5.77 acres in area, in NW/4 of Section 18, T. 26 N., R. 31 E., G&SRM, Apache County, Az.

The Navajo Nation is the only affected land user and provided the necessary consent from the District 18 Grazing Committee member, Joseph Peshlakai.

Field clearance complete, land use consent, map and all supporting documents are attached for your information and reference.

cc: Project file

PERMITS WEST, INC.
PROVIDING PERMITS for LAND USERS
37 Verano Loop Santa Fe, NM 87508 (505) 466-8120

December 1, 2015

Esther Kee
Project Review Office
P.O. Box 9000
Window Rock, AZ 86515

Dear Esther:

On behalf of Be Greene LLC., I am requesting a field clearance for the St. Michaels Access Corridor project. The project is marked on the attached map. The legal description of the project is: NW/4 Sec. 18, T. 26 N., R. 31 E., Apache County, AZ.

The proposed right-of-way for the road and utility corridor on Tribal Trust Land is 22 feet in width, 1,116.50 feet in length, and 5.77 acres in size.

Please let me know if you have any questions.

Sincerely,

Jeanette Reisenburg

16-8314
DEC 11 2015
NLD-PROJECT
REVIEW SECTION

PERMITS WEST, INC.
PROVIDING PERMITS for LAND USERS
37 Verano Loop, Santa Fe, New Mexico 87508 (505) 466-8120

Project Fact Sheet

Company Name:	Be Greene LLC
Address:	32 Kiva Court Sandia Park, NM 87047
Project:	St. Michael's Access Corridor
Purpose:	To construct an access road and utility corridor to access a development site on privately-held land.
Tribal Location:	NW/4 Sec 18, T. 16N, R. 31 E, G&SRM, Apache County, AZ
Chapter:	St. Michaels
Surface:	Tribal Trust
Right of Way Width:	225 feet
Line Length:	1,116.50 feet
Total Acreage:	5.77 acres

Agent :

Permits West, Inc.
37 Verano Loop
Santa Fe, NM 87508
505/466-8120 (Fax: 505/466-9682)

TO : Navajo Land Department
Resources & Development, NTC

FROM : Joseph Peshlakai,
District 18 Grazing Committee member

DATE : December 17, 2015

RE : Land Use Consent

Be Greene LLC proposes to construct a road on Navajo Trust lands near St. Michaels to access a business onto private land in NW/4 Section 18, T16N, R31E, Apache County, Az. The location is not permittee for grazing and will not affect any land users. If you should require additional information please contact me at St. Michaels Chapter.

EXHIBIT D

EXHIBIT "D"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS

Be Green, LLC (GRANTEE)

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.

2. Consideration for the right-of-way is assessed at $83,088.00 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within 10 days of approval of and consent to the grant of the right-of-way by the Navajo Nation.

   ~~If consideration has been waived, the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.~~

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing, operating and maintaining an access road with utility corridor. The Grantee may not develop, use or occupy the right-of-way for any other purpose, nor allow others to use or occupy the right-of-way for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

   a. Title 25, Code of Federal Regulations, Part 169; subject to the terms of this right-of-way.

   b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

   c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and

   d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.

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

7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.

8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.

10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of right-of-way by the Grantee.

12. The Grantee shall not assign, convey, transfer or sublet, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or part by the Navajo Nation for any of the following causes:

    a. Failure to comply with any term or condition of the grant or of applicable laws or regulations;
    b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period; and
    c. The use of the land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.
    d. An abandonment of the right-of-way.

14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon.

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

17. By acceptance of the grant of right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.

19. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the right-of-way shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.

20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

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

24. The Navajo Nation reserves the right to grant rights-of-way within the right-of-way referenced herein for utilities, provided that such rights-of-ways do not unreasonably interfere with the Grantee's use of the right-of-way.

United States Department of the Interior
Bureau of Indian Affairs
Navajo Region
P. O. Box 1060
Gallup, New Mexico 87305

TAKE PRIDE IN AMERICA

MC: 620 Division of Environmental, Cultural and Safety Management

Mr. Roy Dempsey
Be Greene, LLC
32 Kiva Ct.
Sandia, New Mexico 87047

DEC 0 2 2015

Dear Mr. Dempsey:

The Environmental Assessment (EA), **EA-16-11192**, received on October 22, 2015 for the Be Greene, LLC proposed St. Michael's Access Road Project located approximately 4 miles west of Navajo Tribal Administration offices in Window Rock, Apache County, Arizona, has been reviewed in the Branch of Environmental Quality Act Compliance & Review, Navajo Regional Office. Be Greene, LLC proposes to develop an access road and utility corridor on Navajo Tribal Trust lands in St. Michaels, Arizona. The access corridor will be 1116.50-feet with 225-feet wide corridor, total acres 5.77-acres of Navajo Tribal Trust land. A Finding of No Significant Impact (FONSI) has been determined for the proposed action. It will not have a significant impact on the quality of the natural and human environment. An environmental impact statement for the proposed project is not required.

If you have questions, you may contact Ms. Harrilene J. Yazzie, Regional NEPA Coordinator, at (505) 863-8287.

Sincerely,

Regional Director, Navajo

Enclosure

FINDING OF NO SIGNIFICANT IMPACT
ST. MICHARLS ACCESS CORRIDOR PROJECT, EA-16-11192

BE GREENS, LLC.

Location: Window Rock, Arizona, Quadrangle, USGS 7.5 Minute Series Map
Sections 18, T26N, R31E, G&SRPM
Window Rock, Apache County, Arizona

The proposed action is approval, by the Bureau of Indian Affairs, for a right-of-way (ROW) grant to develop an access road and utility corridor on Navajo Tribal Trust lands in St. Michaels, Arizona. The access corridor will be 1116.50-feet with 225-feet wide corridor, total acres 5.77-acres of Navajo Tribal Trust land. The project site is located approximately 4 miles west of Navajo Tribal Administration offices in Window Rock, Apache County, Arizona. The project is sponsored by the Be Greens, LLC, 32 Kiva Ct., Sandia Park, New Mexico 87047.

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

The following references, incorporated in the environmental assessment, serve as the bases for this decision:

1. Agency and public involvement was solicited, and environmental issues relative to right-of-way approval for the proposed project were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.

2. The EA disclosed the environmental consequences of the proposed and "no action" alternatives.

3. In compliance with the Endangered Species Act, informal consultation was held with the Navajo Nation Department of Fish and Wildlife (NNDFW), Natural Heritage Program (NHP). According to the NNDFW Biological Resource Land Clearance Policies and Procedures (BRLCPP), the proposed project is located within moderate and low sensitive wildlife resources zone. The NNDFW issued Biological Resources Compliance Form (BRCF), NNDFW Review No.15perm107a indicating approval of the proposed action.

4. Potential impacts to flood plains and wetlands by the proposed project have been evaluated in accordance with Executive Orders 11988 and 11990 respectively. There are no perennial streams or wetlands in the project area and there is no evidence that shows flood within this area based on vegetation and soil (EA, Appendix 3-1-Wildlife Species Report).

5. Water Resources – the proposed project is in the Black Creek floodplain at the base of the Defiance uplift; however, there are no indication of vegetation and soil to have floodplain characteristic. Spilled contaminants will be cleaned up as soon as possible to prevent runoff of contaminants into surface water or infiltration into ground water; and, reseeding will reduce sediment loading by stabilizing the soil. Successful reclamation is expected to take two to three years (EA, Parts 3.15.1&3.15.2.)

6. In compliance with the National Historic Preservation Act of 1966 as amended, Section 106 and 36 CFR 800.9 (b), a cultural resources inventory of the project area was conducted by Complete Archeological Services Associates (CASA). The Navajo Nation Historic Preservation Department (NNHPD) issued Cultural Resources Compliance Form (CRCF) NNHPD No.HPD-15-536 indicating, "No historic properties will be affected"(EA-CRCF).

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.

7. RCRA, Subtitle C, Hazardous Waste and Subtitle D, Non-Hazardous Solid Waste – solid waste materials will be generated as a result of the proposed action. These materials will include typical field waste associated with the construction of an overhead power line. Solid waste will be disposed at an approved off-site landfill (3.14.2.). Generation of hazardous waste is not expected. If hazardous waste is inadvertently generated, the proper authorities shall be consulted regarding disposal of such waste (EA, Part 3.14).

8. Noxious Weeds – there are seventeen species of noxious weeds present in the proposed project area listed by the BIA Navajo Noxious Weed List. The operator shall ensure that noxious weeds do not spread over disturbed areas, and shall consult with the Navajo Nation Department of Agriculture (NNDA) regarding management and control of noxious weeds. The operator shall contact the Navajo Nation Environmental Protection Agency (NNEPA) Pesticide Enforcement and Development Program for a list of approved herbicides and applicators (EA, Part 3.6). The operator shall implement Best Management Practices to prevent the introduction of non-native, invasive plants to the project area.

9. Air Resources – there will be a short-term increase in dust during construction of the proposed action. This impact will subside as disturbed areas are reclaimed. Water shall be sprayed over disturbed areas for dust control if necessary. Surface disturbance and vehicular traffic will be limited; and compliance with the Clean Air Act and all applicable state, tribal and local regulations will occur (EA, Part 3.1).

10. Visual Resources – the proposed action will be constructed in a manner that will minimize its impact on the visual quality of the area. In the general vicinity of the proposed power line route, the natural and undisturbed visual environment is dominant, but utility lines fence lines and dirt roads are also highly visible elements of the landscape. Permanent impacts to visual quality will come from the overhead power line (EA, Part 3.13).

11. Public Health and Safety – short-term risks to the public associated with the construction of the power line would come from increased traffic on public roads. Vehicle traffic will be restricted to approved areas (EA, Part 3.9).

12. Cumulative and secondary effects on soil, water, air, noise, vegetation, cultural resources, and wildlife resources (species and habitat) were considered, and the proposed mitigation measures were found to be acceptable.

13. In accordance with Executive Order 12898 on Environmental Justice, impacts to minority and low-income populations and communities have been considered by the Regional NEPA Coordinator, as have impacts to Indian Trust Resources.

The proposed action will allow the provision of Corridor Access to develop utility and and road.

Tony McCoy

ACTING Regional NEPA Coordinator

11/30/15
Date

ENVIRONMENTAL ASSESSMENT

FOR

Be Greene LLC

BE GREENE LLC
(505) 228-2610

ST. MICHAELS ACCESS CORRIDOR PROJECT

ON NAVAJO TRIBAL TRUST LANDS IN
SECTION 18, TOWNSHIP 26 N., RANGE 31 E.
APACHE COUNTY, ARIZONA

August 10, 2015

PREPARED BY:

PERMITS WEST, INC

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1. Introduction

Be Greene LLC proposes to develop an access road and utility corridor on Navajo Tribal Trust lands in St. Michaels Arizona. The width of the access corridor width is 225 ft. and the length is 1116.50 ft. The 5.77-acre corridor project area is located in the northwest corner of **Section 18, T. 26N, R. 31 E.** of the Window Rock, AZ, 7.5 minute USGS quadrangle map. The Proposed Action consists of installing an access road and utility corridor from the Arizona Highway 264 (AZ 264) right-of-way north to a potential development site on private land in the adjacent Section 7, to the north. The proposed access corridor is located in St. Michaels, Arizona, approximately four miles west of Navajo Tribal Administration offices in Window Rock, Arizona.

This Environmental Assessment (EA) will address the Proposed Action with regards to potential impacts to the surrounding environment.

1.1 Purpose and Need

The purpose of the Proposed Action is to develop an access road and utility corridor to a potential development site on adjacent private land. Approval of the Proposed Action will allow the project proponent to construct the access corridor and provide access to the potential development site on private land to the north of section 18.

1.2 Conformance with Applicable Land Use Plans and Other Environmental Assessments

This EA addresses the potential impacts imposed on surrounding resources by the Proposed Action. Impacts are presented on a site-specific basis as required by the National Environmental Policy Act (NEPA), as amended (NEPA 1969). The proposed project will not be in conflict with any local, county, or state plans. Be Greene will file a right-of-way (ROW) application with the Navajo Nation and Bureau of Indian Affairs (BIA).

1.3 Federal, State, or Local Permits, Licenses, or Other Consultation Requirements

Compliance with Section 106, Responsibilities of the National Historic Preservation Act, are adhered to by following the Bureau of Land Management (BLM) – New Mexico State Historic Preservation Officer (SHPO) protocol agreement, which is authorized by the National Programmatic Agreement between the BLM, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, and other applicable BLM handbooks (NHPA 1966).

The Navajo Nation Department of Fish & Wildlife (NNDFW) Natural Heritage Program has been consulted with respect to species of concern that are known to occur, or that have the potential to occur, within the area of the Proposed Action (Appendix 2). Species of concern listed by the NNDFW will be evaluated in Section 3 of this document and in the Wildlife and Plant Survey Reports attached as Appendices 3 and 4, respectively. Once the reviews of these documents are completed, the Biological Resources Compliance Form will be attached as Appendix 6 to this EA.

Complete Archaeological Service Associates performed a Class III Cultural Resources Inventory of the Proposed Action area. A request for archeological clearance was also submitted to the Navajo Nation Historic Preservation Department (NNHPD). Once the reviews of the survey document and this request are completed, the Cultural Resources Compliance Form will be attached as Appendix 5 to this EA.

Additionally, Be Greene is required to:

- Comply with all applicable federal, state, tribal, and local laws and regulations.
- Obtain the necessary permits for construction of the access road and installation of the utilities (water, sewer, electricity) within the access corridor.

2. Alternatives Including the Proposed Action

2.1 Alternative A - No Action

The BLM NEPA Handbook (H-1790-1) states that in EAs for externally initiated proposed actions, the No Action Alternative generally means that the proposed activity will not take place (USDI BLM 2008). This alternative would deny approval to develop the access corridor and the current land and resource uses would continue to occur in the proposed project area. No mitigation measures would be required.

The No Action Alternative is presented for baseline analysis of resource impacts.

2.2 Alternative B - Proposed Action

Be Greene proposes to install the access corridor on Tribal Trust land from the Arizona Highway 264 (AZ 264) right-of-way north to a potential development site on adjacent private land. The Proposed Action is located in the northwest corner of Section 18, T. 26N, R. 31 E. of the Window Rock, AZ, 7.5 minute USGS quadrangle map, in St. Michaels, Arizona as indicated on the topographic map and plat survey map shown in Appendix 1.

All access along the access corridor route will be from within the corridor ROW only. The total length of the proposed access corridor is 1,116.50 feet and the width is 225 feet, for a total disturbed area of 5.77 acres.

Development of the access corridor would consist of clearing/leveling the ground surface, construction and paving the access road, and installation of utilities (water, sewer, electric power lines). Soil and vegetation would be removed by heavy machinery during the clearing/leveling of the ground surface and construction and paving of the access route. Table 2.1 summarizes the project land use specifications. The estimated duration from start of construction of the access corridor is approximately three months.

Table 2.1: Land Use Specifications Summary

Land Ownership	*Location*	*Corridor Length (feet)*	*Total Area (acres)*
Navajo Tribal Trust	Sec 18, T.26 N., R.31E.	1,116.50	5.77
TOTAL	**n/a**	**1,116.50**	**5.77**

Most of the route crosses open, low-lying flats. Construction will entail driving bulldozers and scrapers along the access corridor, leveling the corridor for a roadway and positive drainage, then surfacing the roadway with asphalt and installing utilities (water, sewer, electric power lines) within the corridor.

Construction will only be performed when the soil is dry enough to adequately support construction equipment and vehicles. When the soil is too wet (ruts more than six inches deep), construction will be postponed until conditions improve. No temporary roadways or use areas will be required and no blading or blasting will be performed as part of the project.

2.3 Reclamation

Disturbed areas along the access road will be restored as closely as possible to their original condition upon completion of construction. Reclamation measures will include ripping compacted and disturbed areas at least 12 inches deep with the contour, harrowing, applying a native seed mix, followed by mulching as prescribed by the BIA or Navajo Nation. Noxious weeds would be controlled in accordance with Navajo Nation Environmental Protection Agency (EPA) requirements.

2.4 Alternatives Considered But Not Analyzed In Detail

One alternative that was considered for this project was to develop a ROW application for access across Tribal Trust lands north of the potential development site located in Section. This alternative route was discarded because: 1) if approved, it would potentially disturb more acreage than the Proposed Action; 2) it would not provide a direct connection to existing utilities in the area; and 3) it would not meet the need for a short, direct access route to the potential development site.

No other significant issues were identified for the present location of the Proposed Action during the following activities:

- on-site inspections;
- Cultural Resources Inventory;
- Threatened, Endangered, and Special Status Species Survey; and the
- review of NNDFW species of concern known to occur or with the potential to occur in the 7.5-minute Window Rock, AZ Quadrangle.

Therefore, no further alternatives other than the No Action Alternative were considered.

3. Description of Affected Environment

This section describes the environment that would be affected by implementation of the alternatives described in Section 2. Aspects of the affected environment described in this section focus on the relevant major resources or issues. Only aspects of the affected environment that are potentially impacted are described.

3.1 Air Resources

The proposed project is located on Navajo Nation Tribal Trust land in Apache County, Arizona. The US Environmental Protection Agency (USEPA), Region IX, and the Navajo Nation Environmental Protection Agency Air Quality Control program are responsible for administering air quality regulations on Navajo Allotted Trust Lands in Arizona. The Navajo Nation Air Quality Control Program (NNAQCP) also is responsible for the implementation and enforcement of the Navajo Air Pollution Prevention and Control Act (NAPPCA) (Navajo Nation Council 2004). In addition, the project area lies within the USEPA's designated Four Corners Interstate Air Quality Control Region (USEPA 1971).

Air resources include air quality and climate. The USEPA has the primary responsibility for regulating air quality, including seven nationally regulated ambient air pollutants. Air quality is determined by atmospheric pollutants and chemistry, dispersion meteorology, and terrain; and also includes applications of noise, smoke management, and visibility. Greenhouse gas (GHG) emissions, such as carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), water vapor, and several trace gases, can affect air quality (USEPA April 2013).

Climate is the composite of generally prevailing weather conditions of a particular region throughout the year, averaged over a series of years. GHGs also affect climate. Through complex interactions on a global scale, GHG emissions may cause a net warming effect of

the atmosphere, primarily by decreasing the amount of heat energy radiated by the earth back into space. Although GHG levels have varied for millennia (along with corresponding variations in climatic conditions), industrialization and burning of fossil carbon sources have caused GHG concentrations to increase measurably, and may contribute to overall climatic changes, typically referred to as global warming (USEPA). GHGs are not regulated by the USEPA, however climate is important to consider because it has the potential to influence renewable and non-renewable resource management

Air Quality

The primary sources of air pollution are dust from blowing wind on disturbed or exposed soil, and exhaust emissions from motorized equipment.

Air quality in the area near the proposed project is generally good and is not located in an area designated by the USEPA as a "non-attainment area" for any listed pollutants regulated under the Clean Air Act (USEPA July 2013).

The USEPA's Inventory of US Greenhouse Gas Emissions and Sinks found that total U.S. GHG emissions were over 6.7 billion metric tons and that total U.S. GHG emissions have increased by 8.4% from 1990 to 2011. Emissions decreased from 2010 to 2011 by 1.6% (108.0 million metric tons CO_2 Eq.). The decrease was due to a decrease in carbon intensity of fuels consumed to generate electricity (due to a substitution of coal use by natural gas and an increase in hydropower use), and relatively mild winter conditions. (USEPA April 2013)

Since 1990, U.S. emissions have increased at an average annual rate of 0.4 percent (USEPA April 2013). It is likely, then, that levels of these GHGs will continue to increase. But, it is hoped that the rate of increase will continue to slow as greater awareness of the potential environmental and economic costs associated with increased levels of GHGs result in behavioral and industrial adaptations.

Other factors that currently affect air quality in the area include dust from livestock and dust from vehicular traffic on disturbed or unpaved surfaces.

Climate

The average global temperature has risen about 1.4°F (0.8°C) from 1880 to 2012. The continued increase in GHG levels in Earth's atmosphere assures a long-term rise in global temperatures. On the current course of GHG increases, scientists expect each successive decade to be warmer than the previous one. (Hansen 2013)

In 2007, the Intergovernmental Panel on Climate Change (IPCC) predicted a warming of about 0.2°C per decade for the next two decades, and then a further warming of about 0.1°C per decade (IPCC 2007). The National Academy of Sciences (NAS) believes that the need for urgent action to address climate change is now indisputable and it has called on the G8+5

nations to seize all opportunities to coordinate their simultaneous work on the climate and economic agendas (NAS 2009).

A report on climate change by the U.S. Government Accountability Office (USGAO) found that, "federal land and water resources are vulnerable to a wide range of effects from climate change, some of which are already occurring. These effects include, among others: 1) physical effects such as droughts, floods, glacial melting, and sea level rise; 2) biological effects, such as increases in insect and disease infestations, shifts in species distribution, and changes in the timing of natural events; and 3) economic and social effects, such as adverse impacts on tourism, infrastructure, fishing, and other resource uses" (USGAO 2007). It is not, however, possible to predict with any certainty regional or site-specific effects on climate relative to the Proposed Action and subsequent actions.

3.1.1 No Action Alternative

3.1.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to air resources would occur.

3.1.2 Proposed Action

3.1.2.1 Direct and Indirect Effects

Air Quality

1. There will be a short-term (approximately one month) increase in dust during construction of the Proposed Action. This impact would subside as disturbed areas are reclaimed.
2. There will be a minor, short-term increase (approximately one month) in local combustive emissions from operating vehicles and earth moving equipment.
3. There will be a minor long-term impact to air quality from motorized vehicles performing periodic maintenance of the access corridor.
4. There will be minor and sporadic, long-term fugitive dust creation during maintenance of the access road.

Climate

No quantifiable impacts to the climate are anticipated as a result of the Proposed Action.

3.1.2.2 Mitigation

1. Be Greene will apply water for dust control, if necessary.
2. Surface disturbance and vehicular traffic will be limited to the approved locations to reduce combustive emissions and dust.
3. Be Greene will comply with the NAPPCA, USEPA's Clean Air Act, and all applicable state and local regulations.

3.2 Cultural Resources

Complete Archaeological Service Associates performed a Class III archaeological survey in the project area. A determination of "no historic properties affected" was made. The Cultural Resources Compliance Form is attached as Appendix 5.

3.2.1 No Action Alternative

3.2.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to cultural resources would occur.

3.2.2 Proposed Action

3.2.2.1 Direct and Indirect Effects

The potential exists to impact undiscovered or improperly inventoried cultural resources that may be discovered during construction of the Proposed Action.

3.2.2.2 Mitigation

Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered during the Proposed Action by Be Greene, or any person working on their behalf, will be immediately reported to the NNHPD at (928) 871-7148, and to any other necessary agencies. Be Greene will suspend all operations in the immediate area of such discovery until approval to proceed is issued by the NNHPD. An evaluation of the discovery will be made by the NNHPD archaeologist to determine appropriate action to prevent the loss of significant cultural or scientific values.

3.3 Environmental Justice

Executive Order 12898 requires federal agencies to assess projects to ensure there are no disproportionately high or adverse environmental, health, or safety effects on minority and low-income populations (1994). Minorities comprise a high percentage of the population residing in Apache County (USCB 2015).

3.3.1 No Action Alternative

3.3.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to environmental justice would occur.

3.3.2 Proposed Action

3.3.2.1 Direct and Indirect Effects

The purpose of the Proposed Action is to construct an access road and utility corridor to a potential mixed residential and commercial development site on adjacent private land to the north. Private residences in the area located on Navajo lands are likely considered a minority and could potentially represent low-income populations. A positive direct effect of the project will be access to additional utility hook-ups and roads for these residences.

The Proposed Action is not located on public lands and the area is not used for wood gathering or hunting. If there are any grazing permits in the area, the permitees will be contacted. Negative direct effects to minority or low-income populations include a slight increase in activity and noise disturbance as the project is constructed.

3.3.2.2 Mitigation

Regarding an increase in noise disturbance, see Section 3.8 Noise, below.

3.4 Floodplains

Impacts on floodplains typically occur when the topography within a floodplain is substantially modified either by placement or removal of materials within the floodplain. The Proposed Action is located in an area that has not been delineated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map for the 100-year floodplain (USDHS FEMA 2010). The proposed project area is located in the Black Creek

floodplain at the base of the Defiance uplift (DuBois 1958). Black Creek, a dry sandy wash, is located approximately 750 west of the proposed project corridor's centerline. The centerline of the project corridor also runs through or parallels a low-lying area that once held water and supported large cottonwoods (*Populus fremontii*) and peachleaf willow (*Salix amygdaloides*).

3.4.1 No Action Alternative

3.4.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to floodplains would occur.

3.4.2 Proposed Action

3.4.2.1 Direct and Indirect Effects

1. A direct effect to the natural topography will result from accessing and installing a new access road and new utilities within the access corridor.
2. The indirect effect of surface disturbance and loss to soil will result from installing the access road and new utilities.

3.4.2.2 Mitigation

1. Surface disturbance and vehicular traffic will be limited to approved locations within the access corridor to reduce the area of disturbance and to limit the movement of materials within the corridor.
2. Disturbed areas will be reclaimed pursuant to Section 2.3. Reseeding will help prevent soil loss and seed bank disturbance/loss. Successful reclamation will take two to three years.
3. Use of BMPs listed in Section 2.2.

3.5 General Topography/Surface Geology

The Proposed Action area is located in St. Michaels, Arizona. The landscape in the project area is a gently sloping plain. The elevation of the project area ranges from approximately 6698 feet at the southeast end of the corridor near AZ 264 to 6720 feet at the north end of the corridor. Drainage in the project area varies, but ultimately all surface sheet flows drain through unnamed ephemeral drainages to Black Creek, which empties into the Rio Puerco at Houck, Arizona, south of the proposed access corridor. There are no significant outcroppings or geologic formations in the immediate area of the access corridor.

Disturbances in the project area include: grazing by cattle and horses; gravel, dirt, and two-track roads; residences and businesses north and east of the corridor; and an existing power line that runs east-west along AZ 264 at the south end of the access corridor.

Table 2.1: Land Use Specifications Summary, above, outlines the project's affected area.

3.5.1 No Action Alternative

3.5.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to general topography and surface geology would occur.

3.5.2 Proposed Action

3.5.2.1 Direct and Indirect Effects

4. A direct effect to the natural topography will result from accessing and installing a new access road and new utilities.
5. The indirect effect of surface disturbance and loss to soil and seed banks will result from installing the access road and new utilities.

3.5.2.2 Mitigation

6. Surface disturbance and vehicular traffic will be limited to approved locations to reduce the area of disturbance.
7. Disturbed areas will be reclaimed pursuant to Section 2.3. Reseeding will help prevent soil loss and seed bank disturbance/loss. Successful reclamation will take two to three years.
8. Use of BMPs listed in Section 2.2.

3.6 Invasive, Non-native Species

There are seventeen species listed on the BIA Navajo Noxious Weed List (USDI OSM 1999). Two noxious plant species, Russian knapweed (*Acroptilon repens*) and Scottish thistle (*Onopordum acanthium*), identified by the Bureau of Indian Affairs (BIA) Navajo Area Office (OSM 1999), and by the State of Arizona (2005), were observed at the south end of the proposed corridor near AZ 264 during the plant survey conducted on June 30, 2015

No Action Alternative

3.6.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to invasive, non-native species would occur.

3.6.2 Proposed Action

3.6.2.1 Direct and Indirect Effects

Noxious weeds may become established or spread in disturbed areas within the Proposed Action area.

3.6.2.2 Mitigation

1. Any disturbed areas will be seeded with an approved seed mix.
2. Be Greene will make every effort to ensure that noxious weeds do not spread over disturbed areas. If noxious weeds become established within the Proposed Action area, Be Greene will contact the Navajo Nation EPA Pesticides Program for a list of approved herbicides and applicators.

3.7 Land Use

The Proposed Action is located on Navajo Tribal Trust land. Current land uses include livestock grazing and residential development. There are no farmlands in the Proposed Action area, nor is it used for the extraction of mineral resources

3.7.1 No Action Alternative

3.7.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to current land uses would occur.

3.7.3 Proposed Action

3.7.3.1 Direct and Indirect Effects

1. The Proposed Action will affect 5.77 acres of Navajo Tribal Trust lands.
2. Short-term impacts will come from minimal land clearing for the installation of an access road and new utilities.

3.7.3.2 Mitigation

1. Reclamation of the Proposed Action as stated in Section 2.3 will replace, and may even enhance, vegetative cover along the access corridor. Successful reclamation is expected to take two to three years.
2. If grazing permits are identified in the project area, the permittees will be contacted to gain written permission for Be Greene's proposed use of the land as part of this project.

3.8 Noise

Noise is not currently regulated or managed by the Navajo Nation. The Proposed Action is in a rural location and is not in any BLM-designated Noise Sensitive Area. The next nearest residence is approximately 0.4 miles to the east of the proposed access corridor. Low level noises are also currently emitted from traffic on AZ 264 and undeveloped dirt roads. The most likely receptors of noise generated from the Proposed Action will be those traveling to the area for work activities.

3.8.1 No Action Alternative

3.8.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect noise impacts would occur.

3.8.1.2 Direct and Indirect Effects

1. Noise will be generated as part of construction activities associated with the Proposed Action. Noise will occur for a period of approximately one month.
2. Occasional maintenance and/or monitoring vehicles will travel to and within the project area during normal operations.

3.8.1.3 Mitigation

1. Construction will be conducted during daylight hours and will be limited to approved locations within the access corridor.
2. Vehicular traffic will be restricted to approved areas and will not exceed what is necessary for the construction and maintenance of the Proposed Action.
3. Noise associated with construction activities will cease after approximately one month. Once construction is complete and operation begins, noise will return to background levels.

3.9 Public Health and Safety

The only resident in the project area is located approximately 0.4 miles east of the proposed access corridor. Be Greene employees and equipment operators/contractors are the most likely persons to be in the vicinity of the Proposed Action.

3.9.1 No Action Alternative

3.9.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to public health and safety would occur.

3.9.2 Proposed Action

3.9.2.1 Direct and Indirect Effects

Risks to the public associated with the construction of an access road and installation of utilities include: wildfire; increased traffic on public roads; fire and explosion; spills of vehicular fluids or water; and potential air emissions.

3.9.2.2 Mitigation

1. Only approved areas will be used during construction to minimize hazards to workers and the general public.
2. All applicable laws, regulations, and policies will be followed during construction and maintenance activities, or while responding to any emergency.
3. BMPs and appropriate Occupational Safety and Health Administration standards and guidelines will be implemented to minimize negative effects to public health and safety.

3.10 Soils

Soils in the project area consist of deep alluvial and eolian dunal deposits of the Sparank-San Mateo-Zia complex, 0 to 3 percent slopes (NRCS Web Soil Survey 2015). This complex is derived from Chinle sandstone and shale and Wingate sandstone. Sparank soils consist of loamy fine sand (o to 3 inches), fine sandy loams (3 to 16 inches), silty clay (16 to 53 inches), and loamy fine sands at depth (53 to 80 inches). San Mateo soils consist of sandy clay loams (0 to 2 inches), and interbedded layers of silt loam, loamy sand, and fine sandy loam. Zia soils also consist of loamy fine sand (0 to 3 inches), loamy fine sand (3 to 15 inches), fine sandy loam (15 to 25 inches), loamy fine sand (25 to 30 inches), and fine sandy loam at depth (30 to 70 inches).

3.10.1 No Action Alternative

3.10.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to soils would occur.

3.10.2 Proposed Action

3.10.2.1 Direct and Indirect Effects

1. Soils will be structurally reduced and mixed, exposed to the elements of wind and water erosion, and compacted.
2. Due to wind and water, the soils will be subject to an undetermined amount of erosion until vegetation is established.

3.10.2.2 Mitigation

1. Successful reclamation of the Proposed Action outlined in Section 2.3 will reduce long-term negative impacts to soils. Re-seeding will reduce sediment loading by stabilizing the soil. Successful reclamation is expected to take two to three years.
2. Use of BMPs as outlined in Section 2.2 will reduce impacts to soils.

3.11 Threatened, Endangered, and Special Status Species

On June 30, 2015, a wildlife biologist conducted a pedestrian wildlife survey of the project area to inspect for the potential presence of threatened, endangered, or special status species.

No federally or Navajo listed threatened, endangered, or special status species were observed during the wildlife survey.

Although suitable nesting habitats were not observed during the survey, both the golden eagle (*Aquila chrysaetos*) and peregrine falcon (*Falco peregrinus*), may occur within the project area as transients. Ferruginous hawks *(Buteo regalis*) may also occasionally pass through the project area. These are Navajo Nation Endangered Species, and the golden eagle and ferruginous hawk are also protected by the Migratory Bird Treaty Act (MBTA). Since all of these species may only occasionally forage in or occur in the project area, they should not be adversely impacted by the proposed project. The full Threatened, Endangered, and Special Status Wildlife Species Report is attached as Appendix 3.

Twelve migratory bird species were observed during wildlife survey. These include the turkey vulture (Cathartes aura), common raven (*Corvus corax*), Cassin's kingbird (*Tyrannis vodiferans*), Say's phoebe (*Sayornis saya*), Ash-throated flycatcher (*Myiarchus cinerascens*), Blue-gray gnatcatcher (*Polioptila caerulea*), Brewer's sparrow (*Spizella breweri*), blue grosbeak (*Passerina caerulea*), Lazuli bunting (*Passerina amoena*), spotted towhee (*Pipilo maculatus*), Bullock's oriole (*Icterus bullockii*), and house finch (*Carpodacus mexicanus*). Because there project corridor is sparsely vegetated, no take of nesting birds is anticipated from the project.

No threatened, endangered, or special status plant species of concern to the Navajo Natural Heritage Program or the United States Fish and Wildlife Service occur in the Proposed Action area. The full Plant Survey Report is attached as Appendix 4.

3.11.1 No Action Alternative

3.11.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to threatened, endangered, or special status species would occur.

3.11.2 Proposed Action

3.11.2.1 Direct and Indirect Effects

1. No direct or indirect effects to threatened, endangered, or special status species is anticipated.

3.11.2.3 Mitigation

1. Any power lines being constructed in association with the development of the access corridor must be built raptor safe according to the Navajo Nation Raptor Electrocution Prevention Regulations (NNHP, 2008) or the Avian Power Line Interaction Committee guidelines (APLIC, 2006).
2. During construction, it is recommended that no trenches or pits be left open overnight, or an escape ramp should be constructed from excavations to prevent entrapment of small mammals and reptiles.
3. Environmental contaminants associated with construction should be properly contained and any spills should immediately and thoroughly be cleaned up to prevent exposure to wildlife.

3.12 Vegetation, Forestry

The landscape in the project area consists of a gently sloping plain. The plant community is predominantly a greasewood (*Sarcobatus vermiculatus*) and rabbitbrush (*Ericameria nauseosus*) plant community with an understory of weedy forbs such as summer cypress (*Kochia cristata*), Russian thistle (*Salsola tragus*) and golden crownbeard (*Verbesina encelioides*). Black Creek, a dry sandy wash, is located approximately 750 west of the proposed project corridor's centerline. The centerline of the project corridor also runs through or parallels a low-lying area that once held water and supported large cottonwoods (*Populus fremontii*) and peachleaf willow (*Salix amygdaloides*). A small stand of Baltic rush (*Juncus arcticus*) was observed growing along the western edge of this shallow, low-lying area; indicating the project area's continued capacity to hold water on a seasonal basis.

There are no forestry resources in the project area. A complete inventory of plant species can be found in Appendix 4.

3.12.1 No Action Alternative

3.12.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to vegetation or forestry would occur.

3.12.2 Proposed Action

3.12.2.1 Direct and Indirect Effects

1. Vegetation will be disturbed and removed through scraping and clearing as the access road and new utilities are installed. The Proposed Action will affect 5.77 acres of Navajo Tribal Trust land.

3.12.2.2 Mitigation

Reclamation, as outlined in Section 2.3, will mitigate impacts to vegetation from the construction of the Proposed Action. Reseeding will replace vegetation removed or damaged during construction. Successful reclamation is expected to take two to three years.

3.13 Visual Resources

Visual resources are not currently inventoried or managed by the Navajo Nation. However, the BLM has developed a Visual Resource Management (VRM) classification system designed to maintain or enhance visual qualities and describe different degrees of modification to the landscape. There are four VRM classes (Classes I through IV), which identify suggested degrees of allowed human modification to a landscape. Class I allows the least modification and Class IV allows the most (USDI BLM 2003).

The Proposed Action is in an area that the BLM designates as VRM Class II. Projects constructed in Class II areas must retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape. (USDI BLM 2003).

3.13.1 No Action Alternative

3.13.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to visual resources would occur.

3.13.3 Proposed Action

3.13.3.1 Direct and Indirect Effects

1. Short-term impacts to visual resources could come from dust, truck traffic, and placement of heavy equipment during construction.
2. The power line will interrupt the line of sight and introduce vertical elements to the landscape.

3.13.3.2 Mitigation

Short-term impacts to visual resources from construction will cease after approximately one month.

3.14 Wastes, Hazardous and Solid

As a result of the construction of the Proposed Action, solid waste materials will be generated. These materials may include typical field waste such as charts and plats, excess asphalt, pipes, conductor wire, bent anchors, anchor line spools, broken insulators, damaged bolts and fittings, broken poles and cross arms, scrap lumber, laths, stakes, flagging, nylon rope, lunch trash, and cardboard. Generation of hazardous waste is not expected. If hazardous waste were inadvertently generated, the proper authorities would be consulted regarding the disposal of such waste.

3.14.1 No Action Alternative

3.14.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts from wastes, hazardous or solid, would occur.

3.14.2 Proposed Action

3.14.2.1 Direct and Indirect Effects

Trash and unwanted materials will be generated by construction.

3.14.2.2 Mitigation

All trash will be placed in a portable trash cage and hauled to an approved landfill. There will be no burial or burning of trash. Human waste will be

disposed of in chemical toilets and hauled to an approved dump station off of the reservation.

3.15 Water Resources

The project is located in the Black Creek floodplain at the base of the Defiance uplift (DuBois 1958). The Coconino-De Chelly aquifer is the main aquifer in this area (Robson and Banta, 1995). The Coconino-De Chelly Aquifer contains high concentrations of dissolved minerals; chiefly dissolved halite, much like that of Dakota-Glen Canyon aquifer, but less concentrated. (Allen 2011). Drainage in the project area varies, but ultimately all flows drain through unnamed ephemeral drainages to Black Creek, which empties into the Rio Puerco at Houck, Arizona, south of the proposed access corridor. The project area receives approximately 8.78 inches of annual precipitation (WRCC 2012).

The plant survey report indicated no wetlands (USFWS 2015) or riparian areas in the Proposed Action area (Appendix 4).

3.15.1 No Action Alternative

3.15.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to surface or ground water resources would occur.

3.15.2 Proposed Action

3.15.2.1 Direct and Indirect Effects

1. A direct effect is the increased sediment loading to the adjacent surface drainages through runoff of disturbed soils.
2. Natural drainage patterns may be slightly disrupted by construction of the Proposed Action.
3. Although no hazardous substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act will be used, and no Resources Conservation and Recovery Act-defined hazardous wastes will be generated during construction or operation, construction equipment could experience a spill of on-board fluids and/or materials that could potentially get into the surface or groundwater system.

3.15.2.3 Mitigation

1. BMPs in Section 2.2 will be implemented to prevent erosion and off-site migration of soils and other materials, and to reduce impacts to the floodplain, watershed and hydrology.
2. Construction of the access corridor will be conducted when soils are dry to reduce erosion.
3. Any spilled contaminants will be cleaned up as soon as possible to prevent run-off of contaminants into surface hydrology or infiltration into groundwater.
4. The Proposed Action will be reclaimed as outlined in Section 2.3. Re-seeding will reduce sediment loading by stabilizing the soil. Successful reclamation is expected to take two to three years.

3.16 Wildlife

Wildlife occurring in the area is typical of arid grasslands and shrublands of the Great Basin Desert. This includes the common raven (*Corvus corax*) and passerines such as Cassin's kingbird (*Tyrannis vociferans*) and Say's phoebe (*Sayornis saya*) as well as jackrabbits (*Lepus spp.*), and coyotes (*Canis latrans).* A complete inventory of observed species is included in Appendix 3.

3.16.1 No Action Alternative

3.16.1.1 Direct and Indirect Effects

Under the No Action Alternative, the project would not be approved or constructed and no direct or indirect impacts to wildlife would occur.

3.16.2 Proposed Action

3.16.2.1 Direct and Indirect Effects

The wildlife that uses the site may die or be displaced during construction. Removal of or damage to vegetation during construction of the Proposed Action may reduce wildlife forage and cover in the area.

3.16.2.2 Mitigation

1. Reclamation of the Proposed Action as outlined in Section 2.3 will reduce the long-term impacts to wildlife that use the area. Reseeding disturbed areas will replace vegetation removed during construction. In some instances, there may be a benefit from successful reclamation due to an increase in vegetative cover and wildlife forage. Successful reclamation is expected to take two to three years.
2. Vehicles will be restricted to the proposed access road corridor to reduce impacts to ground dwelling wildlife at the project site.

3.17 Cumulative Effects

3.17.1 No Action Alternative

Under the No Action Alternative, this project would not be approved or constructed.

3.17.2 Proposed Action

The Proposed Action will affect 5.77 acres on Navajo Tribal Trust lands. Reasonably foreseeable future development may include additional utilities and roads installed in the vicinity of the Proposed Action for other residences currently without utilities or access. These would expand the local networks of roads as well as electric and water/sewer utility grids and would add to the cumulative disturbance in the area.

4. Consultation/Coordination

This section identifies the interdisciplinary team that participated in the development of this document.

Table 4.1: Interdisciplinary Project Team

Member	Title	Organization	Onsite Inspection	Date of Inspection
Liz Berdugo	Consultant/Author	Permits West, Inc.	no	n/a
Mike Deutsch	Project Coordinator	Permits West, Inc.	yes	7/10/12
Charles Black	Wildlife Biologist	Permits West, Inc.	yes	2/6/13
Marian Rohman	Field Botanist	Permits West, Inc.	yes	5/6/13
Denise R.E. Copeland	Principal Archaeologist	Capital Improvement Office	yes	10/10/12

5. Contact Information

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Fax: 505-466-9682

Richard Greene
Be Greene, LLC
505-228-2610

6. References

Allen, Erin. "Colorado Plateaus Aquifers." 2011. Web. July 2015.

Avian Power Line Interaction Committee (APLIC). 2006. *Suggested Practices for Avian Protection on Power Lines: State of the Art in 2006.* Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.

Executive Order 12898, 59 *Federal Register*, 11 Feb. 1994.

Hansen, J.E., R. Ruedy, M. Sato, and K. Lo. *NASA GISS Surface Temperature (GISTEMP) Analysis. In Trends: A Compendium of Data on Global Change.* Carbon Dioxide Information Analysis Center, Oak Ridge National Laboratory, U.S. Department of Energy, Oak Ridge, 2013. Web. July 2015.

Intergovernmental Panel on Climate Change. *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. Geneva, Switzerland, 2007. 104 pp.

National Academy of Sciences. *G8+5 Academies' Joint Statement: Climate Change and the Transformation of Energy Technologies for a Low Carbon Future.* May 2009. Web. July 2015.

National Environmental Policy Act. Public Law 91-90, 42 *USC* 4321 et seq., 1969.

National Historic Preservation Act. Public Law 39-665, 16 *USC* 470 et seq., 1966.

National Pollutant Discharge Elimination System. *Federal Register*, Vol. 71, pp 33628 -33640. 2006.

Navajo Nation Council. Navajo Nation Air Pollution Prevention and Control Act. Fort Defiance, AZ, 22 Apr. 2004.

Navajo Nation Department of Fish and Wildlife. 2008. Navajo Endangered Species List (NESL).No. RCS-41-08. Window Rock, Arizona. Web. July 2015.

Navajo Nation Department of Fish and Wildlife-Navajo Natural Heritage Program (NNDFW-NNHP). 2008. Navajo Nation Raptor Electrocution Prevention Regulations No. RCS-43-08. Window Rock, AZ. Web. July 2015.

New Mexico Bureau of Geology and Mineral Resources (NMBGMR). *Geologic Map of New Mexico*. 1:500,000. 2003.

Robson, S.G., and E. R. Banta. *Watershed Condition Assessment for the Jicarilla Ranger District, Carson National Forest.* 1995.

U.S. Census Bureau (USCB). 2015 QuickFacts Beta. Apache County, Arizona. Web August 3, 2015.

U.S. Environmental Protection Agency. *Currently Designated Nonattainment Areas for All Criteria Pollutants.* Web. 31 Jul. 2013.

U.S. Environmental Protection Agency. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2011.* Washington, D.C., Apr. 2013.

U.S. Environmental Protection Agency. *EPA Designates Four Corners Interstate Air Quality Region Boundaries.* EPA press release: 9 Feb. 1971. Web. July 2015.

U.S. Environmental Protection Agency. "Causes of Climate Change." 9 Sep. 2013. Web. July 2015.

U.S. Department of Homeland Security. Federal Emergency Management Agency, Map Service Center. *Map Service Center Flood Maps*. 2010. Web. July 2015.

U.S. Department of the Interior. Bureau of Land Management, Farmington Field Office. *Farmington Proposed Resource Management Plan and Final Environmental Impact Statement.* Farmington, NM, Mar. 2003.

U.S. Department of the Interior. Bureau of Land Management. NEPA Handbook (H-1790-1). Jan. 2008.

U.S. Department of the Interior. Office of Surface Mining (OSM). *A Guide to Noxious Weeds of the Navajo Reservation.* U.S. Department of the Interior, 1999.

U.S. Government Accountability Office. *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water* Resources (GAO-07-863). 7 Aug. 2007.

Western Regional Climate Center (WRCC). "St Johns Industrial Airpark and Airport, Arizona. "Period of Record Monthly Climate Summary; Period of Record: 5/1/1909 to 12/31/2008". 2011. Web. July 2015.

Be Greene LLC

St. Michael's Access Corridor Project Location Map

Section 18, T.26S, R.31E
St. Michael's
Navajo Indian Reservation
Apache County, Arizona

USGS Quad: Window Rock

Proposed Access Corridor

1:24,000

0 0.5 1

Miles

NAD 1983 Arizona State Plane
East Feet

N

PERMITS WEST

Prepared by Permits West, Inc., June 23, 2015
for Be Greene, LLC

NNHP
Navajo Natural Heritage Program

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15perm107

30-June-2015

Mike Deutsch
Permits West, Inc.
37 Verano Loop
Santa Fe, NM 87508

SUBJECT: Be Greene LLC Access Road Project

Mike Deutsch,

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

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

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

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

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these species during surveys and inform the NNDFW of observations. Reported observations of these species and documenting them in project planning and management is important for conservation and may contribute to ensuring they will not be up listed in the future.

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

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

Species

AQCH = Aquila chrysaetos / Golden Eagle NESL G3
ATCU = Athene cunicularia / Burrowing Owl NESL G4
FAPE = Falco peregrinus / Peregrine Falcon NESL G4

2. Potential Species

Species

AQCH = Aquila chrysaetos / Golden Eagle NESL G3
ATCU = Athene cunicularia / Burrowing Owl NESL G4
CHMO = Charadrius montanus / Mountain Plover NESL G4
CYPAPU = Cypripedium parviflorum var. pubescens / Yellow Lady's Slipper NESL G4
EMTREX = Empidonax traillii extimus / Southwestern Willow Flycatcher NESL G2 FE
ERLASA = Eriogonum lachnogynum var. sarahiae / Sarah's Buckwheat NESL G4
ERRH = Erigeron rhizomatus / Rhizome Fleabane/zuni Fleabane NESL G2 FT
FAPE = Falco peregrinus / Peregrine Falcon NESL G4
LENA = Lesquerella navajoensis / Navajo Bladderpod NESL G3
MUNI = Mustela nigripes / Black-footed Ferret NESL G2 FE

3. Quadrangles (7.5 Minute)

Quadrangles

Window Rock (35109-F1) / AZ, NM

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

SITE	EO1MI	EO3MI	QUAD	MSO	POTS	AREAS
Access Corridor	None	AQCH, ATCU, FAPE	Window Rock (35109-F1) / AZ, NM	None	MUNI, FAPE, EMTREX, CHMO, ATCU, AQCH, LENA, ERRH, ERLASA, CYPAPU	Area 3, Area 4

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

A. **Biological Resource Land Use Clearance Policies and Procedures (RCP)** - The purpose of the RCP is to assist the Navajo Nation government and chapters ensure compliance with federal and Navajo laws which protect, wildlife resources, including plants, and their habitat resulting in an expedited land use clearance process. After years of research and study, the NNDFW has identified and mapped wildlife habitat and sensitive areas that cover the entire Navajo Nation.
The following is a brief summary of six (6) wildlife areas:
1.***Highly Sensitive Area*** – recommended no development with few exceptions.
2.***Moderately Sensitive Area*** – moderate restrictions on development to avoid sensitive species/habitats.
3.***Less Sensitive Area*** – fewest restrictions on development.
4.***Community Development Area*** – areas in and around towns with few or no restrictions on development.
5.***Biological Preserve*** – no development unless compatible with the purpose of this area.
6.***Recreation Area*** – no development unless compatible with the purpose of this area.
None - outside the boundaries of the Navajo Nation
This is not intended to be a full description of the RCP please refer to the our website for additional information at http://www.nndfw.org/clup.htm.

B. **Raptors** – If raptors are known to occur within 1 mile of project location: Contact Chad Smith at 871-7070 regarding your evaluation of potential impacts and mitigation.
o **Golden and Bald Eagles**- If Golden or Bald Eagle are known to occur within 1 mile of the project, decision makers need to ensure that they are not in violation of the Golden and Bald Eagle Nest Protection Regulations found at http://nnhp.nndfw.org/docs_reps/gben.pdf.
o **Ferruginous Hawks** – Refer to "Navajo Nation Department of Fish and Wildlife's Ferruginous Hawk Management Guidelines for Nest Protection" http://nnhp.nndfw.org/docs_reps.htm for relevant information on avoiding impacts to Ferruginous Hawks within 1 mile of project location.
o **Mexican Spotted Owl** - Please refer to the Navajo Nation Mexican Spotted Owl Management Plan http://nnhp.nndfw.org/docs_reps.htm for relevant information on proper project planning near/within spotted owl protected activity centers and habitat.

C. **Surveys** – Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts http://nnhp.nndfw.org/sp_account.htm. Surveyors on the Navajo Nation must be permitted by the Director, NNDFW. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NNDFW Zoologist (Chad Smith) for animals at 871-7070, and Botanist (Andrea Hazelton) for plants at (928)523-3221. Questions regarding biological evaluation should be directed to Jeff Cole at 871-7068.

D. **Oil/Gas Lease Sales** – Any settling or evaporation pits that could hold contaminants should be lined and covered. Covering pits, with a net or other material, will deter waterfowl and other migratory bird use. Lining pits will protect ground water quality.

E. **Power line Projects** – These projects need to ensure that they do not violate the regulations set forth in the Navajo Nation Raptor Electrocution Prevention Regulations found at http://nnhp.nndfw.org/docs_reps/repr.pdf.

F. **Guy Wires** – Does the project design include guy wires for structural support? If so, and if bird species may occur in relatively high concentrations in the project area, then guy wires should be equipped with highly visual markers to reduce the potential mortality due to bird-guy wire collisions. Examples of visual markers include aviation balls and bird flight diverters. Birds can be expected to occur in relatively high concentrations along migration routes (e.g., rivers, ridges or other distinctive linear topographic features) or where important habitat for breeding, feeding, roosting, etc. occurs. The U.S. Fish and Wildlife Service recommends marking guy wires with at least one marker per 100 meters of wire.

G. **San Juan River** – On 21 March 1994 (Federal Register, Vol. 59, No. 54), the U.S. Fish and Wildlife Service designated portions of the San Juan River (SJR) as critical habitat for Ptychocheilus lucius (Colorado pikeminnow) and Xyrauchen texanus (Razorback sucker). Colorado pikeminnow critical habitat includes the SJR and its 100-year floodplain from the State Route 371 Bridge in T29N, R13W, sec. 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian) up to the full pool elevation. Razorback sucker critical habitat includes the SJR and its 100-year floodplain from the Hogback Diversion in T29N, R16W, sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian). All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of critical habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.

H. **Little Colorado River** - On 21 March 1994 (Federal Register, Vol. 59, No. 54) the U.S. Fish and Wildlife Service designated Critical Habitat along portions of the Colorado and Little Colorado Rivers (LCR) for Gila cypha (humpback chub). Within or adjacent to the Navajo Nation this critical habitat includes the LCR and its 100-year floodplain from river mile 8 in T32N R6E, sec. 12 (Salt and Gila River Meridian) to its confluence with the Colorado River in T32N R5E sec. 1 (S&GRM) and the Colorado River and 100-year floodplain from Nautuloid Canyon (River Mile 34) T36N R5E sec 35 (S&GRM) to its confluence with the LCR. All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of Critical Habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.

I. **Wetlands** – In Arizona and New Mexico, potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the Navajo Natural Heritage Program (NNHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NNHP). The NNHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation. In Utah, the U.S. Fish & Wildlife Service's National Wetlands Inventory maps are not yet available for the Utah portion of the Navajo Nation, therefore, field surveys should be completed to determine whether wetlands are located close enough to the project site(s) to be impacted. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. For more information contact the Navajo Environmental Protection Agency's Water Quality Program.

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

K. **Ground Water Pumping** - Projects involving the ground water pumping for mining operations, agricultural projects or commercial wells (including municipal wells) will have to provide an analysis on the effects to surface water and address potential impacts on all aquatic and/or wetlands species listed below. NESL Species potentially impacted by ground water pumping: Carex specuicola (Navajo Sedge), Cirsium rydbergii (Rydberg's Thistle), Primula specuicola (Cave Primrose), Platanthera zothecina (Alcove Bog Orchid), Puccinellia parishii (Parish Alkali Grass), Zigadenus vaginatus (Alcove Death Camas), Perityle specuicola (Alcove Rock Daisy), Symphyotrichum welshii (Welsh's American-aster), Coccyzus americanus (Yellow-billed Cuckoo), Empidonax traillii extimus (Southwestern Willow Flycatcher), Rana pipiens (Northern Leopard Frog), Gila cypha (Humpback Chub), Gila robusta (Roundtail Chub), Ptychocheilus lucius (Colorado Pikeminnow), Xyrauchen texanus (Razorback Sucker), Cinclus mexicanus (American Dipper), Speyeria nokomis (Western Seep Fritillary), Aechmophorus clarkia (Clark's Grebe), Ceryle alcyon (Belted Kingfisher), Dendroica petechia (Yellow Warbler), Porzana carolina (Sora), Catostomus discobolus (Bluehead Sucker), Cottus bairdi (Mottled Sculpin), Oxyloma kanabense (Kanab Ambersnail)

6. Personnel Contacts

Wildlife Manager
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Vacant

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7. Resources

National Environmental Policy Act

Navajo Endangered Species List:
http://nnhp.nndfw.org/endangered.htm

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

Biological Investigation Permit Application
http://nnhp.nndfw.org/study_permit.htm

Navajo Nation Sensitive Species List
http://nnhp.nndfw.org/study_permit.htm

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

Consultant List
(Coming Soon)

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

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

xc: file/chrono

Appendix 2-7

PERMITS WEST INC.
PROVIDING PERMITS for LAND USERS
37 Verano Loop Santa Fe NM 87508 (505) 466 8120

WILDLIFE SURVEY REPORT

FOR THE PROPOSED

BE GREENE LLC

ST. MICHAEL'S ACCESS CORRIDOR

SECTION 18, T. 26 SOUTH, R. 31 EAST
APACHE COUNTY, ARIZONA

1.0 INTRODUCTION

Threatened, endangered and special status wildlife surveys were conducted June 30, 2015 at the location for a proposed access corridor in St. Michael's, Apache County, Arizona. The project is located approximately 4 miles west of Window Rock, Arizona in the northwest quarter of Section 18, T. 26 South, R. 31. The proposed access corridor would be approximately 225 feet wide by 1,116.50 foot long (5.77 acres) and constructed on Navajo Tribal Trust Land from the Right-of-Way of AZ 264, north to private land in Section 7, T. 26 South, R. 31. The purpose of the proposed access would be to provide a ROW corridor for a potential development site north of the project area.

2.0 METHODS

Prior to the field survey, a data request was submitted to the Navajo Department of Fish and Wildlife's Navajo Natural Heritage Program (NNDFW-NNHP) for an analysis of species of concern as well as RCP Biologically Sensitive Areas that have potential to occur within or near the project area. In response, NNDFW-NNHP provided information on listed species (threatened or endangered), and other species of concern (e.g. candidate, rare, or otherwise sensitive) that are known or have potential to occur within the 7.5 minute Window Rock, AZ/NM quadrangle map (Detsoi, 2015, 15perm107). The data request response includes those species listed under the Navajo Endangered Species List (NESL), the federal Endangered Species Act (ESA), the Bald and Golden Eagle Protection Act (EPA), and the Migratory Bird Treaty Act (MBTA). Additionally, NNDFW-NNHP indicated that the proposed project area is within an Area 3 (less sensitive) and Area 4 (community development zone) as designated by the Navajo Nation Biological Resource Land Policies and Procedures (Detsoi, 2015, 15perm107; NNDFW, 2008).

Permits West, Inc. biologist, Celia Cook conducted a pedestrian survey of the Proposed Action area June 30, 2015. The purpose of the survey was to evaluate existing habitat at the project site and inspect for the potential presence of NNDFW and U.S. Fish and Wildlife (USFWS) listed wildlife species.

Weather during surveys was sunny with scattered clouds and temperatures in the mid-80s (°F). Winds were at 3-5 miles per hour.

The surveyed area consisted of the approximate 5.77 acre parcel designated for the Proposed Action, plus surrounding habitat including riparian vegetation along a large wash (Black Creek) just west of the project area and the floodplain of that wash which overlaps the project area. A 0.5-mile radius around the project area was surveyed with binoculars, and in some areas on foot, for structures or land formations that would support raptor nests and other unique habitat elements that would benefit listed species and wildlife in general.

3.0 DESCRIPTION OF EXISTING HABITAT

The project area is situated within the floodplain of Black Creek, a significant ephemeral wash draining the Defiance Plateau to the west and northwest. Recent flows in the wash were evident during the survey. The floodplain of Black Creek primarily supports dense stands of greasewood (*Sarcobatus vermiculatus*), however a few remnant, large cottonwoods (*Populus sp.*), were present within the project area as well as and strips of Russian olive (*Eleagnus angustifolia*) and salt cedar (*Tamarix sp.*) along the banks of Black Creek. Much of the Russian olive was dead, indicating a recent herbicide treatment. Other vegetation in the project area included rabbit brush (*Chrysothamnus sp.*), Russian thistle (*Salsola kali*), Kochia (*Kochia sp.*) and western wheat grass (*Psedoroegneria spicata*). Within the project area, channels and playas have formed in low lying areas and have held water in the recent past. These areas uniquely supported grasses and rushes, as well as an occasional willow (*Salix sp.*).

Land use surrounding the project area includes grazing, dirt two tracks and roads, fencing and cross-fencing, power lines, AZ 264 travel corridor, homes, and businesses. Trash piles, old corrals and other debris are scattered throughout the project area indicating long term presence of human activity. The project area may have been used historically for farming as indicated by structured mounds and associated weedy vegetation.

Due to its location within a floodplain, the project area is relatively flat with surrounding low foothills and mesas. Elevation within the proposed project area is approximately 6697 feet.

4.0 WILDLIFE SPECIES OF CONCERN

According to the June 30, 2015 correspondence from the Navajo Natural Heritage Program, the species indicated in Table 1 have the potential to occur in or near the project area.

Table 1. Species of Concern with Potential to occur in the Project Area.

Species	Status*	Habitat	Presence**
Golden eagle *Aquila chrysaetos*	NESL Group 3, MBTA, EPA	A wide variety of open habitats, typically nests in steep cliffs typically > 30 meters in height.	NP. May occur as transient. No nest habitat within 1 mile.
Mountain plover *Charadrius montanus*	NESL Group 4, MBTA	Disturbed grasslands , semi-desert or badland areas with sparse vegetation and barren areas.	NP. No disturbed upland barren areas.
Southwestern willow flycatcher *Empidonax traillii extimus*	NESL Group 2, MBTA; E	Dense cottonwood-willow or tamarisk-Russian olive habitats along streams and rivers, wetlands and marshes	NP. No wetlands or suitable riparian areas.
Peregrine falcon *Falco peregrinus*	NESL Group 4; MBTA	Open landscapes with cliffs; along coasts, lakes, and rivers.	NP. No suitable nesting habitat within 1 mile, may occur as transient.
Burrowing owl *Athene cunicularia*	NESL Group 4; MBTA	Disturbed grasslands and shrublands; often associated with prairie dog colonies.	NP. No prairie dogs.
Black-footed ferret *Mustela nigripes*	NESL Group 2 E	Large, open grasslands and prairies with large prairie dog colonies.	NP. No prairie dog towns

Status*
Federal Status: E = Endangered; T= Threatened; C= Candidate; EPA = Eagle Protection Act; MBTA= Migratory Bird Treaty Act
Tribal Status: NESL = Navajo Endangered Species List Group 1-4 *(NNHP, 2008)*
Presence**
K= Known, documented observation within project area.
S =Habitat suitable and species suspected to occur within or near the project area.
NS= Habitat suitable but species is not suspected to occur within the project area.
NP= Habitat not present and species unlikely to occur within the project area.

5.0 RESULTS

No federal or Navajo listed threatened, endangered, or special status species or their habitats were observed during the June 30, 2015 wildlife surveys.

Migratory Birds:

Migratory birds are protected under the Migratory Bird Treaty Act. Birds protected under the Act include all common songbirds, waterfowl, shorebirds, hawks, owls, eagles, ravens, crows, native does and pigeons, swifts, martins, swallows and others, including their body parts (feathers, plumes etc.), nests, and eggs. The Act

protects migratory birds from a "take". Take is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or any attempt to carry out these activities". A "take" does not include habitat destruction or alteration, as long as these is not a direct taking of birds, nests, eggs, or parts thereof.

Twelve migratory bird species were observed during the survey. They are listed in Section 6.0 below. Nesting activity of several pairs of migratory birds was noted within the project boundaries.

6.0 SPECIES OBSERVED DURING THE SURVEY

Within the boundaries of the Proposed Action area, there is no suitable habitat for any threatened or endangered species. Cottonwood trees, Russian olive, as well as greasewood and other vegetation within the boundaries of the project area provide suitable nesting habitat for migratory birds. During the survey, several pairs of nesting migratory birds were observed, including a pair of blue grosbeaks (*Passerina caerulea*), a pair of Lazuli buntings (*Passerina amoena*), and a raven (*Corvus corax*) family with recent fledglings.

Avian species observed:

Turkey vulture	*Cathartes aura*
Common raven	*Corvus corax*
Cassin's kingbird	*Tyrannis vociferans*
Say's phoebe	*Sayornis saya*
Ash-throated flycatcher	*Myiarchus cinerascens*
Blue-gray gnatcatcher	*Polioptila caerulea*
Brewer's sparrow	*Spizella breweri*
Blue grosbeak	*Passerina caerulea*
Lazuli bunting	*Passerina amoena*
Spotted towhee	*Pipilo maculatus*
Bullock's oriole	*Icterus bullockii*
House finch	*Carpodacus mexicana*

Mammalian species observed:

American badger	*Taxidea taxus*
Domestic dog	*Canis familiaris*
Coyote	*Canis latrans*
Desert cottontail	*Sylvilagus audubonni*
Black-tailed jackrabbit	*Lepus californicus*

7.0 RECOMMENDATIONS

The purpose of the proposed access would be to provide a ROW corridor for a potential future housing development north of the project area.

There will be some loss of wildlife habitat and perhaps loss of individual wildlife during development of the access corridor. In addition, some wildlife will be

temporarily or permanently displaced during construction of a road in the corridor due to the presence of human activity and machinery. Recommendations to protect wildlife include the following:

- Any power lines being constructed in association with the development of the access corridor must be built raptor safe according to the Navajo Nation Raptor Electrocution Prevention Regulations (NNHP, 2008) or the Avian Power Line Interaction Committee guidelines (APLIC, 2006).
- During construction, it is recommended that no trenches or pits be left open overnight, or an escape ramp should be constructed from excavations to prevent entrapment of small mammals and reptiles.
- Environmental contaminants associated with construction should be properly contained and any spills should immediately and thoroughly be cleaned up to prevent exposure to wildlife.

8.0 REFERENCES

Avian Power Line Interaction Committee (APLIC). 2006. *Suggested Practices for Avian Protection on Power Lines: State of the Art in 2006.* Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.

Detsoi, Sonya. June 30, 2015. Navajo Endangered Species List (NESL) information for Be Greene Access Road Project (15perm107). Navajo Department of Fish and Wildlife, Navajo Natural Heritage Program. P. O. Box 1480, Window Rock, AZ.

Navajo Department of Fish and Wildlife. 2008. Biological Resource Land-Use Clearance Policies and Procedures (RCP), No. RCS-44-08. Window Rock, Arizona.

Navajo Department of Fish and Wildlife. 2008. Navajo Endangered Species List (NESL). No. RCS-41-08. Window Rock, Arizona.

Navajo Department of Fish and Wildlife-Navajo Natural Heritage Program (NNDFW-NNHP). 2008. Navajo Nation Raptor Electrocution Prevention Regulations No. RCS-43-08. Window Rock, AZ.

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Be Greene LLC
Proposed Access Corridor in St. Michaels, Arizona
NW/4 Section 18, T. 26 S., R. 31 E., (Window Rock, AZ, USGS quad) Apache County, Arizona

Plant Survey Report
Prepared by Robyn W. Tierney, Permits West, Inc., Santa Fe, New Mexico
July 6, 2015

This report discusses the potential for disturbance to Navajo Natural Heritage Program (NNHP) and federally listed plant species of concern that have the potential to occur within the proposed project area located on the Window Rock, AZ, 7.5 minute quadrangle. The potential for disturbance to Zuni fleabane (*Erigeron rhizomatous*) listed as Group 2 by the NNHP (2008) and Threatened by the U.S. Fish and Wildlife Service (IPaC 2015) was evaluated. The potential for disturbance to Navajo bladderpod (*Lesquerella navajoensis*), listed as NESL Group 3, and to Yellow Lady's Slipper (*Cypripedium parviflorum* var. *pubescens*) and Sarah's buckwheat (*Eriogonum lachnogynum* var. *sarahiae*); both listed as NESL Group 4 (NNHP 2008), was also evaluated in this survey. In addition, the potential presence/absence of Parish's alkali grass *(Puccinellia parishii*), also a NESL Group 4 species, and its habitats of wetlands or seasonally wet areas containing white alkaline conditions was evaluated; though the Navajo Natural Heritage Program (NNHP) currently does not have sufficient information to support this species being listed as endangered (NNHP, 2008).

Project Description
The proposed project consists of establishing and constructing a 1,116.50 foot long access corridor on Navajo Tribal Trust lands from the Arizona Highway 264 (AZ 264) right-of-way north to a potential development site in Section 7, T. 26S, R. 31E. The proposed access corridor would be approximately 225 feet wide and is located on Navajo Tribal Trust lands in St. Michaels, Arizona, approximately four miles west of Navajo Tribal Administration offices in Window Rock, Arizona.

The proposed project area is located in the Black Creek floodplain at the base of the Defiance uplift (DuBois 1958). The area is dominated by greasewood (*Sarcobatus vermiculatus*) and rabbitbrush (*Ericameria nauseosus*) plant community with an understory of weedy forbs such as summer cypress (*Kochia cristata*), Russian thistle (*Salsola tragus*) and golden crownbeard (*Verbesina encelioides*). Black Creek, a dry sandy wash, is located approximately 750 west of the proposed project corridor's centerline. The centerline of the project corridor also runs through or parallels a low-lying area that once held water and supported large cottonwoods (*Populus fremontii*) and peachleaf willow (*Salix*

amygdaloides). A small stand of Baltic rush (*Juncus arcticus*) was observed growing along the western edge of this shallow, low-lying area; indicating the project area's continued capacity to hold water on a seasonal basis.

Soils in the project area consist of deep alluvial and eolian dunal deposits on sandstone, with species such as bur ragweed (*Ambrosia acanthicarpa*), and cocklebur (*Xanthium strumarium*) evidencing past grazing and farming practices in this portion of the Black Creek floodplain. Soils throughout the proposed access corridor are composed of the Sparank-San Mateo-Zia complex, 0 to 3 percent slopes (NRCS 2015). This complex consists of eolian deposits and stream alluvium derived from Chinle sandstone and shale and Wingate sandstone. Sparank soils consist of loamy fine sand (o to 3 inches), fine sandy loams (3 to 16 inches), silty clay (16 to 53 inches), and loamy fine sands at depth (53 to 80 inches). San Mateo soils consist of sandy clay loams (0 to 2 inches), and interbedded layers of silt loam, loamy sand, and fine sandy loam. Zia soils also consist of loamy fine sand (0 to 3 inches), loamy fine sand (3 to 15 inches), fine sandy loam (15 to 25 inches), loamy fine sand (25 to 30 inches), and fine sandy loam at depth (30 to 70 inches).

The elevation of the project area ranges from approximately 6698 feet at the southeast end of the corridor near AZ 264 to 6720 feet at the north end of the corridor. The project corridor is located in Area 3 (Low Sensitivity Wildlife Resources) which has a low, fragmented concentration of species of concern and Area 4 (Community Development Area) which includes areas in and around towns with few or no restrictions on development (Detsoi 2015, NESL 15perm 107). Other disturbances in the project area include: fences along the north edge of Section 18, dirt trails, a corral and other structural material in the middle of the project area, a two-track dirt road, a domestic trash pile located on the western edge of the project area, and extensive grazing by horses and cattle.

METHODOLOGY

Prior to the survey, a data request was made to the Navajo Natural Heritage Program (NNHP) for Navajo Nation endangered species known to occur, or with the potential to occur, on the 7.5-Minute *Gallup East*, NM Quadrangle. A reply (Detsoi 2015) to the request was received by Permits West on June 30, 2015.

The proposed access corridor was surveyed on June 30, 2015, by botanist Robyn Tierney. Weather during the survey was sunny, with high temperatures in the upper 70s - low 80s °F. The pedestrian survey was conducted as a zigzag transect along each side of the corridor's centerline, covering both the 225-foot width of the corridor and an additional buffer zone of 200 feet on each side of the corridor. The purpose of the survey was to inspect for and identify species of concern. Sensitive plant species listed by the Navajo Natural Heritage Program (NNHP, NESL 15perm107), the U.S. Fish and Wildlife Service (IPAC 2015), and those identified in Table 1 were the focus of the survey, although all species encountered were examined (NNHP 2008). All plants observed in the project area were identified in order to provide a more complete description of the project area environment. A list of the plants observed in the project area is included at the end of this report (Table 2).

SURVEY RESULTS

Species of Interest to the Navajo Natural Heritage Program (NNHP) and the U.S. Fish and Wildlife Service (USFWS): This report discusses the potential for disturbance to the plant species of concern identified by the NNHP and the USFWS as having the potential to occur in the project area (Detsoi 2015, IPaC 2015). Details of the status, habitat, and the potential to occur in the project area for each of these species are presented in the following table.

Table 1. Status, habitat, and potential to occur in the project area.

SPECIES STATUS	HABITAT	POTENTIAL TO OCCUR IN THE PROJECT AREA*
Cypripedium parviflorum var. pubescens Yellow Lady's Slipper NESL Group 4	In moderate shade along streambanks, mountain meadows and mesic places in Ponderosa pine, mixed conifer and aspen forest communities. On the Navajo Nation known from above 7000 ft. (NNHP 2008, Roth 2008).	**No appropriate habitat**: there are no streambanks, mountain meadows, and mesic places in Ponderosa pine, mixed conifer and aspen forest communities within the project area. (NP)
Erigeron rhizomatus Zuni fleabane USFWS Threatened NESL Group 2	Species is found on nearly barren detrital clay hillsides with soils derived from shales of the Chinle or Baca formations (often seleniferous); most often on north or east-facing slopes in open piñon-juniper woodlands at 7,300-8,000 ft. (NMRPTC 1999 (revised 2015), Sivinski and Lightfoot 1991, Knight 1988, Sivinski and Tonne 2004, Christie 2004, USFWS 2007, NNHP 2008, Roth 2001).	**No appropriate habitat**: there are no barren detrital clay hillsides with soils derived from Chinle or Baca shale formations within the project area. (NP)
Eriogonum lachnogynum var. *sarahiae* Sarah's Buckwheat NESL Group 4	Found on windswept mesa tops in pinon-juniper communities and is endemic to the Todilto Limestone topped Owl Rock Member of the Chinle formation; 5900 – 7500 ft. (NNHP 2008, NMRPTC 1999, revised 2015)	**No appropriate habitat**: there is no Chinle formation in the project area. (NP)

SPECIES STATUS	HABITAT	POTENTIAL TO OCCUR IN THE PROJECT AREA*
Lesquerella navajoensis Navajo bladderpod NESL Group 3	Mesa rims of Todilto limestone and Chinle in sparse piñon-juniper woodland; 7,200-7,600 ft. (NMRPTC 1999, revised 2015).	**No appropriate habitat**: there are no mesa rims of Todilto limestone or Chinle sandstones in the project area. The project area is somewhat below the known elevation range of the species. (NP)
Puccinellia parishii Parish's alkali grass NESL Group 4	The species requires continuously damp soils during its late winter to spring growing period and is found near white-crusted alkaline springs, seeps, and seasonally wet areas that occur at the heads of drainages or on gentle slopes at 2,600-7,200 ft. range-wide (NMRPTC 1999, revised 2015).	**No appropriate habitat**: there are no white-crusted alkaline springs, or seeps in the project area. (NP)

Status USFWS – U.S Fish and Wildlife Service (IPAC, 2015)

Endangered – An animal or plant species in danger of extinction throughout all or a significant portion of its range.

Threatened – An animal or plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

NESL – Navajo Endangered Species List (NNHP, 2008)

Group 2 (G2) and Group 3 (G3) – Endangered: A species or subspecies whose prospects of survival or recruitment within the Navajo Nation are in jeopardy or are likely within the foreseeable future to become so.

Group 4 – Any species or subspecies for which the Navajo Nation Department of Fish and Wildlife (NNDFWL) does not currently have sufficient information to support their being listed in G2 or G3 but has reason to consider them.

Potential to Occur

K – Known, documented observation within project area.

S – Habitat suitable and species suspected to occur within the project area.

NS – Habitat suitable but species is not suspected to occur within the project area.

NP – Habitat not present and species unlikely to occur within the project area

NMRPTC - New Mexico Rare Plant Technical Council (NMRPTC 1999, updated April 20, 2015)

No federally listed or Navajo Natural Heritage Program (NNHP) plant species of concern were observed in the project area during June 30, 2015 plant survey.

No wetlands were identified from the USFWS Wetlands Inventory Database (USFWS 2015). However, the proposed access corridor is located in a low-lying area that occasionally collects water and the area was evaluated for wetland conditions containing the seasonally wet, white alkaline crusts favored by

Parish's alkali grass *(Puccinellia parishii)*. No Parish's alkali grass or suitable habitat consisting of white alkaline conditions, were observed in the area.

Two noxious plant species, identified by the Bureau of Indian Affairs (BIA) Navajo Area Office (OSM 1999), and by the State of Arizona (2005) were observed at the south end of the proposed corridor near AZ 264. These include:

Russian knapweed

A stand of Russian knapweed (*Acroptilon repens*) approximately 50 feet long x 30 feet wide, was observed growing along the right-of-way fence on the north side of AZ 264. The plants are dense within the stand and appear to be spreading both east and west along AZ 264 from the intersection of Davis Road and AZ 264. Russian knapweed is classified as a prohibited and restricted noxious weed species by the Arizona Department of Agriculture (2005). Once established, this allelopathic species is hard to control.

Scottish thistle

A small stand of Scottish thistle (*Onopordum acanthium*) consisting of approximately 25 to 30 plants was observed on the west bank of Black Creek at the intersection of David Road and the north side of AZ 264. Scottish thistle is classified as a prohibited and a restricted noxious weed species by the Arizona Department of Agriculture (2005) and is best controlled using an herbicide.

Plant species that were observed are listed in Table 2.

DISCUSSION

No federally listed or plant species of concern to the Navajo Natural Heritage Program or the U.S. Fish and Wildlife Service will be impacted by the proposed project.

Although the project area does not appear to contain any wetlands (USFWS 2015), the proposed access corridor is located in a low-lying area that occasionally collects water on a seasonal basis. Therefore it is recommended that construction of the access corridor be conducted when soils are dry to reduce erosion.

Robyn W. Tierney

Signature of Author: _____ **July 6, 2015**
Robyn W. Tierney

Table 2. Plants observed in the vicinity of the proposed Be Greene project corridor.

Scientific names according to USDA Plants Database. Identifications based on Ivey 2008, Heil et al, 2013, and Weber and Wittman 2012.

Trees	
Eleagnus angustifolia	Russian olive
Populus fremontii	Cottonwood
Salix amydaloides	Peachleaf willow
Tamarix sp.	Saltcedar species
Shrubs and Subshrubs	
Atriplex canescens	Fourwing saltbush
Atriplex wrightii	Wright's saltbush
Baccharis salicina	Willow baccharis
Ericameria nauseosa var. *bigelovii*	Bigelow's rabbitbrush
Gutierrezia sarothrae	Broom snakeweed
Sarcobatus vermiculatus	Greasewood
Grasses and Grass-like Plants	
Achnatherum hymenoides	Indian ricegrass
Achnatherum robustum	Sleepy grass
Aristida purpurea	Purple threeawn
Bouteloua gracilis	Blue grama
Distichlis spicata	Saltgrass
Elymus elymoides	Bottlebrush squirreltail
Hordeum jubatum	Foxtail barley
Juncus arcticus	Baltic rush
Munroa squarrosa	False buffalograss
Pascopyrum smithii	Western wheatgrass

Grasses and Grass-like Plants (continued)

Psedoroegneria spicata	Bluebunch wheatgrass
Sporobolus airoides	Alkali sacaton
Sporobolus cryptandrus	Sand dropseed

Forbs

Achillea millefolium	Yarrow
Acroptilon repens	Russian knapweed
Amaranthus alba	Tumble pigweed
Ambrosia acanthicarpa	Bur ragweed
Ambrosia psilostachya	Cuman ragweed
Astragalus sp.	Milkvetch species
Atriplex argentea	Silver saltbush
Atriplex wrightii	Wright's saltbush
Bassia scoparia	Ragweed
Chamaesyce micromeris	Desert spurge
Chenopodium album	Lambsquarters
Cleome serrulata	Rocky Mountain beeplant
Convolvulus arvensis	Field bindweed
Conyza canadensis	Horseweed
Cryptantha sp. (prob. *C. crassisepala*)	Green cat-eye
Dimorphocarpa sp.	Spectacle-pod
Erigeron sp.	Daisy fleabane
Eriogonum sp.	Buckwheat
Erodium cicutarium	Filaree
Grindelia squarosa	Curly cup gumweed

Forbs (continued)

Helianthus annuus	Common sunflower
Heterotheca villosa	Hairy goldenaster
Machaeranthera bigelovii	Hoary tansyaster
Monarda menthaefolia	Bergamot mint
Mentzelia sp.	Desert blazingstar
Oenothera albicaulis	Whitestem evening primrose
Onopordum acanthium	Scottish thistle
Portulaca oleracea	Common purslane
Ratibida columnifera	Prairie coneflower (Mexican hat)
Rumex sp.	Dock
Salsola tragus	Russian-thistle
Sisymbrium altissimum	Tall tumblemustard
Thelesperma megapotamicum	Greenthread
Tradescantia occidentalis	Prairie spiderwort
Tragopogon sp.	Salsify
Tripterocalyx micrantha	Small-flowered sand verbena
Verbesina enceliodes	Golden crownbeard
Xanthium strumarium	Common cocklebur

REFERENCES

Arizona Department of Agriculture. Plant Services Division. 2005. Prohibited, regulated and restricted noxious weeds (1 May 2006).

Arizona Department of Transportation (ADOT). 2010. ADOT Invasive and Noxious Plant Species List for Construction Projects. List compiled by E. Leroy Brady, ADOT Roadway Roadside Development. Available at: http://azdot.gov/docs/business/adot-invasive-noxious-plant-species-list-for-construction-projects.pdf?sfvrsn=0, accessed July 6, 2015.

Christy, K. 2004. Erigeron rhizomatus – Survey and Status Report. Unpublished report prepared for the Navajo Nation. http://nnhp.nndfw.org/docs_reps.htm, accessed June 29, 2015.

Detsoi, Sonja. 2015. Navajo Endangered Species List (NESL) Information for: B. Greene LLC Access Road Project. Located in St. Michaels, Arizona in Legal Description: NW/4 Section 18, T. 26 S., R. 31 E., (Window Rock, AZ, USGS quad) Apache County, Arizona; UTM Coordinates (NAD) start at the centerline at south boundary of project corridor, 35.659583, 109.077987; Wildlife Technician, Navajo Natural Heritage Program, Department of Fish and Wildlife. Letter of June 30, 2015 (File 15perm107) to Mike Deutsch, Permits West, Inc., Santa Fe, NM.

Du Bois, R. L. 1958. Some Geologic Features of the St. Michaels Area, Arizona. 1958. pp. 191 – 193, In: Black Mesa Basin (Northeastern Arizona), Anderson, R. Y.; Harshbarger, J. W. (eds.), New Mexico Geological Society 9th Annual Fall Field Conference Guidebook. Available at: http://nmgs.nmt.edu/publications/guidebooks/9 , accessed July 1, 2015.

Heil, Kenneth D., Steve L. O'Kane, Jr., Linda Mary Reeves, Arnold Clifford. 2013. *Flora of the Four Corners Region: Vascular Plants of the San Juan River Drainage, Arizona, Colorado, New Mexico, and Utah.* Missouri Botanical Garden Press, St. Louis, Missouri.

Information, Planning, and Conservation System (IPAC), U.S. Fish and Wildlife Service, U.S. Department of the Interior, Listed and Sensitive Species. 2015. https://ecos.fws.gov/ipac/wizard/trustResourceList!prepare.action, accessed June 29, and July 6, 2015.

Ivey, Robert DeWitt. 2008. *Flowering Plants of New Mexico, fifth edition*. R. D. & V. Ivey, Publishers. Albuquerque, NM

Knight, P. 1988. Recovery plan for Zuni fleabane (*Erigeron rhizomatus* Cronquist). Submitted to U.S. Fish & Wildlife Service, Region 2, Albuquerque, NM

Mikesic, D., J. Nystedt and D. Roth. 2005. Navajo Nation endangered species list: Species accounts, Version 2.05. Navajo Fish & Wildlife Department, Window Rock, AZ.

Navajo Natural Heritage Program, Navajo Nation Department of Fish and Wildlife (NNHP). 2008. *Navajo Endangered Species List*. Resources Committee Resolution No. RCS-41-08. http://nnhp.nndfw.org/nnhp_nesl.pdf, accessed June 29 and July 6, 2015.

Daniella Roth. 2008. Taxon report for *Cypripedium parviflorum*, Yellow lady's slippers. http://www.nndfw.org/nnhp/Plants/cypapu.pdf

Daniela Roth. 2001. Species account for *Erigeron rhizomatus*, Zuni fleabane. http://www.nndfw.org/nnhp/Plants/errh.pdf

Daniela Roth. 2008. Species account for *Eriogonum lachnogynum* var. *sarahiae*, Sarah's buckwheat. http://www.nndfw.org/nnhp/Plants/erlasa.pdf

Daniela Roth. 2008. Species account for *Lesquerella navajoensis*, Navajo bladderpod. http://www.nndfw.org/nnhp/Plants/lena.pdf

New Mexico Rare Plant Technical Council. 1999. New Mexico Rare Plants. Albuquerque, NM: New Mexico Rare Plants Home Page. http://nmrareplants.unm.edu (Latest update: 20 April 2015), accessed June 29, 2015.

Charlie McDonald. 1999 (last updated 2006). Taxon report for *Erigeron rhizomatus*, Zuni fleabane http://nmrareplants.unm.edu/rarelist_single.php?SpeciesID=75
Robert Sivinski. 2007. Taxon report for Eriogonum lachnogynum var. sarahiae, Sarah's buckwheat http://nmrareplants.unm.edu/rarelist_single.php?SpeciesID=218

Robert Sivinski. 2000 (last updated 2006). Taxon report for *Physaria (Lesquerella) navajoensis*, Navajo bladderpod http://nmrareplants.unm.edu/rarelist_single.php?SpeciesID=112

Office of Surface Mining (OSM), U.S. Department of the Interior. 1999. *A Guide to Noxious Weeds of the Navajo Reservation.*

Sivinski, R. and K. Lightfoot. 1991. Field survey for Zuni fleabane (*Erigeron rhizomatus*), Datil and Sawtooth Mountains, Cibola National Forest. Submitted to The Nature Conservancy, New Mexico Natural Heritage Program, Albuquerque, NM.

Sivinski, R. and P. Tonne. 1999. Section 6 progress report: Zuni fleabane (*Erigeron rhizomatus*). Submitted to U.S. Fish & Wildlife Service, Region 2, Albuquerque, NM.

Sivinski, R. and P. Tonne. 2004. Section 6 progress report: Zuni fleabane (*Erigeron rhizomatus*). Submitted to U.S. Fish & Wildlife Service, Region 2, Albuquerque, NM.

U.S. Fish and Wildlife Service (USFWS), New Mexico Ecological Services Field Office. 2007. Zuni Fleabane (*Erigeron rhizomatus*) 5-Year Review: Summary and Evaluation. Albuquerque, New Mexico

U.S. Fish and Wildlife Service (USFWS), 2015. Naional Wetlands Inventory Database. https://ecos.fws.gov/ipac/project/WG4EQ3BUNFDHXIKVFA25DPFJ24/resources, accessed June 29 2015.

U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS). 2015. The PLANTS Database http://plants.usda.gov, Accessed: June 29 and July 6, 2015. National Plant Data Team, Greensboro, NC 27401-4901 USA.

U.S. Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS). 2015. Web Soil Survey. http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx, accessed July 1, 2015.

Weber, W. A. and Ronald C. Wittman. 2012. *Colorado Flora*: *Western Slope.* 4th edition. University Press of Colorado. Boulder.

THE NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCE COMPLIANCE FORM

ROUTE COPIES TO:
☑ CASA

NNHPD NO.: HPD-15-536
OTHER PROJECT NO.: CASA 15-27

PROJECT TITLE: Cultural Resource Inventory, Be Greene, LLC's St. Michaels Access Corridor Project, Apache County, Arizona

LEAD AGENCY: BIA/NR

SPONSOR: Brian Wood, Permits West, 37 Verano Loop, Santa Fe, New Mexico 87508

PROJECT DESCRIPTION: The undertaking consists of developing an access corridor to a potential development site measuring 1,116.50-ft with a 225-ft width for a total area of effect of 5.77-acres. Ground disturbing activities will be intensive and extensive with the use of heavy equipment.

LAND STATUS: Navajo Tribal Trust
CHAPTER: St. Michaels
LOCATION: *T.* 26 *N., R.* 31 *E.* **Sec.** 18; Window Rock Quadrangle, Apache County, Arizona G&SRPM

PROJECT ARCHAEOLOGIST: Mary Errickson
NAVAJO ANTIQUITIES PERMIT NO.: B15241
DATE INSPECTED: 06/24/2015
DATE OF REPORT: 07/20/2015
TOTAL ACREAGE INSPECTED: 8.35 - ac.
METHOD OF INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND: **None**
LIST OF ELIGIBLE PROPERTIES: **None**
LIST OF NON-ELIGIBLE PROPERTIES: **None**
LIST OF ARCHAEOLOGICAL RESOURCES: **None**

EFFECT/CONDITIONS OF COMPLIANCE: No historic properties affected.

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

FORM PREPARED BY: Tamara Billie
FINALIZED: September 23, 2015

Notification to Proceed Recommended ☑ Yes ☐ No
Conditions: ☐ Yes ☑ No
The Navajo Nation Historic Preservation Office — Date: 9/28/15

Navajo Region Approval ☑ Yes ☐ No
BIA – Navajo Regional Office — Date: 10/6/15

TLM 10-5-15 **Appendix 5-1**

NNDFW Review No 15perm107a

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. St. Michaels Access Corridor for Be Green LLC.

DESCRIPTION: Be Green LLC proposes to construct an access road and utility corridor to a development site. The access road would be 1,116.50 ft. in length with a 225-ft. wide corridor. Total disturbance for the project 5.77 acres.

LOCATION: NW ¼ of Sec.18, T26N, R31E, G&SRM, St. Michaels Chapter, Apache County, Arizona

REPRESENTATIVE: Permits West, Inc for Be Green LLC

ACTION AGENCY. Navajo Nation and Bureau of Indian Affairs

B.R. REPORT TITLE DATE PREPARER: EA-St.Michaels Acces Corridor, Appendices 3 & 4 10 AUG 2015/Permits West

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3 & 4. Raptor Sensitive Area (RSA) onsite.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE MITIGATION MEASURES: [1] The NNDFW concurs with the mitigation recommendations outlined in the Environmental Assessment, Section 7.0.

CONDITIONS OF COMPLIANCE*. [1] Proposed power line extensions to the development site shall comply with the Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent collisions within the RSA

FORM PREPARED BY DATE: Pamela A Kyselka/28 AUG 2015; amended on 16 SEP 2015

COPIES TO: (add categories as necessary)

☒ BIA _____ _____ ☐ _____ _____

2 NTC § 164 Recommendation:	Signature	Date 9/16/15
☐Approval		
☒Conditional Approval (with memo)		
☐Disapproval (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	
☐Categorical Exclusion (with request letter)		
☐None (with memo)		

C:\old_pc2010\My Documents\NNHP\BRCF 2015 15perm107.doc

NNDFW BRCF FORM REVISED 12 NOV 2009

Appendix 6-1

*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

Appendix 6-2

PRESIDENT
RUSSELL BEGAYE
VICE PRESIDENT
JONATHAN NEZ

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

16 September 2015 15perm-107a

Mike Deutsch, Project Director
Permits West, Inc.
37 Verano Loop
Santa Fe, New Mexico 87508

Dear Mike,
The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the Environmental Assessment for Be Green LLC's proposed **St. Michaels Access Corridor** project. The purpose of this letter is to inform you that we are granting the proposed project a Conditional Approval. The project is approved with the condition that proposed power line extensions to the development site shall comply with the Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent collisions within the RSA.

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

Sincerely,

Pamela A. Kyselka, Wildlife Biologist
Navajo Natural Heritage Program
Department of Fish and Wildlife

CONCURRENCE

Gloria Tom, Director
Department of Fish and Wildlife

9/16/15
Date

xc CONS-100-15
BIA

Appendix 6-3

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

TO : Jeffrey Cole, Wildlife Manager
Department of Fish and Wildlife

FROM : _____
Gloria M. Tom, Director
Department of Fish and Wildlife

DATE : September 15, 2015

SUBJECT : **DELEGATION OF AUTHORITY**

I will be on travel beginning Wednesday through Friday, September 16-18, 2015. I am hereby delegating you to act in the capacity of the Director, Department of Fish and Wildlife, effective 8:00 a.m. on Wednesday, September 16, 2015. This delegation shall end at 5:00 p.m. on Friday, September 18, 2015.

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

ACKNOWLEDGEMENT

_____
Jeffrey Cole, Wildlife Manager
Department of Fish and Wildlife

Appendix 6-4

THE NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCE COMPLIANCE FORM

ROUTE COPIES TO:
☑ CASA

NNHPD NO.: HPD-15-536
OTHER PROJECT NO.: CASA 15-27

PROJECT TITLE: Cultural Resource Inventory, Be Greene, LLC's St. Michaels Access Corridor Project, Apache County, Arizona

LEAD AGENCY: BIA/NR

SPONSOR: Brian Wood, Permits West, 37 Verano Loop, Santa Fe, New Mexico 87508

PROJECT DESCRIPTION: The undertaking consists of developing an access corridor to a potential development site measuring 1,116.50-ft with a 225-ft width for a total area of effect of 5.77-acres. Ground disturbing activities will be intensive and extensive with the use of heavy equipment.

LAND STATUS:	Navajo Tribal Trust								
CHAPTER:	St. Michaels								
LOCATION:	*T.* 26 *N.,*	*R.* 31 *E.*	*Sec.* 18;	Window Rock Quadrangle,	Apache County,	Arizona	G&SRPM		

PROJECT ARCHAEOLOGIST:	Mary Errickson
NAVAJO ANTIQUITIES PERMIT NO.:	B15241
DATE INSPECTED:	06/24/2015
DATE OF REPORT:	07/20/2015
TOTAL ACREAGE INSPECTED:	8.35 - ac.
METHOD OF INVESTIGATION:	Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND:	**None**
LIST OF ELIGIBLE PROPERTIES:	**None**
LIST OF NON-ELIGIBLE PROPERTIES:	**None**
LIST OF ARCHAEOLOGICAL RESOURCES:	**None**

EFFECT/CONDITIONS OF COMPLIANCE: No historic properties affected.

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

FORM PREPARED BY: Tamara Billie
FINALIZED: September 23, 2015

Notification to Proceed ☑ Yes ☐ No
Recommended Conditions: ☐ Yes ☑ No

The Navajo Nation Historic Preservation Office — Date: 9/28/15

Navajo Region Approval ☑ Yes ☐ No

BIA – Navajo Regional Office — Date: 10/6/15

TLM 10.5.15

ARCHAEOLOGICAL INVENTORY REPORT DOCUMENTATION PAGE (HPD JAN/91)

1. **HPD REPORT NO.** 2. **(FOR HPD USE ONLY)** 3. **RECIPIENTS ACCESSION NO.**

4. **TITLE OF REPORT:** Cultural Resource Inventory, Be Greene, LLC's St. Michaels Access Corridor Project, Apache County, Arizona

5. **FIELDWORK DATES** 06/24/15

Author(s): Mary Errickson

6. **REPORT DATE** 07/20/15

7. **CONSULTANT NAME AND ADDRESS:**
Gen'l Charge: Mary Errickson
Org. Name: Complete Archaeological Service Associates
Org. Address: P.O. Box 1777, Cortez CO 81321
Phone: (970) 565-9229

8. **PERMIT NO.** B15241

9. **CONSULTANT REPORT NO.** CASA 15-27

10. **SPONSOR NAME AND ADDRESS:**
Ind. Responsible: Brian Wood, agent for Be Greene, LLC
Org. Name: Permits West
Org. Address: 37 Verano Loop, Santa Fe, NM 87508
Phone: 505-466-8120

11. **SPONSOR PROJECT NO.** n/a

12. **AREA OF EFFECT:** 5.77 ac
AREA SURVEYED: 8.35 ac

13. **LOCATION** (MAP ATTACHED):
a. Chapter: St. Michaels
b. Agency: Fort Defiance
c. County: Apache
d. State: Arizona
e. Land Status: Tribal Trust
f. UTM Center: BOL Centerline: 12,673962mE/3947906mN
EOL Centerline: 12,673970mE/3948253mN
g. Area: T26N, R 31E, Sec.18, E1/2 of NW1/4 of NW1/4 G&SR PM&B
h. 7.5' Map Name(s): Window Rock, ARIZ-N. MEX 1983
i. Lead Agency: BIA

14. **REPORT /X/ OR SUMMARY (REPORT ATTACHED) //** OR **PRELIMINARY REPORT //**
a. Description of Undertaking: Be Greene, LLC proposes to develop an access corridor to a potential development site located north of State Road 264 in Window Rock, Arizona (Figures 1 and 2). The access corridor measures 1,116.50 feet in length by 225 feet in width for a total area of effect of 5.77 acres. A total of 8.35 acres, including a 50 foot-wide buffer zone, was inventoried for the project. Ground disturbance will be intensive and extensive using heavy machinery for clearing/levelling of the ground surface and construction and paving of the access route.
b. Existing Data Review: 06/24/15 at NNHPD in Window Rock. See continuation sheet
c. Area Environmental & Cultural Setting: See continuation sheet.
d. Field Methods: A Class III inventory was conducted by Mary Errickson walking multiple, parallel transects spaced no more than 15 m apart. A 325 foot-wide (99.06 m) corridor was surveyed for a 225 foot-wide (68.58 m) ROW along 1,116.50 feet of the proposed access route.

15. **CULTURAL RESOURCE FINDINGS:**
a. Location/Identification of Each Resource: none
b. Evaluation of Significance of Each Resource (above): n/a

16. **MANAGEMENT SUMMARY** (RECOMMENDATIONS): A determination of "no historic properties affected" is recommended with no stipulations for Be Greene, LLC's St. Michaels Access Corridor at the location described in this report.

17. **CERTIFICATION:**
SIGNATURE: Mary Errickson DATE:07/20/15
General Charge Name: Mary Errickson
SIGNATURE: Mary Errickson DATE:07/20/15
Direct Charge Name: Mary Errickson

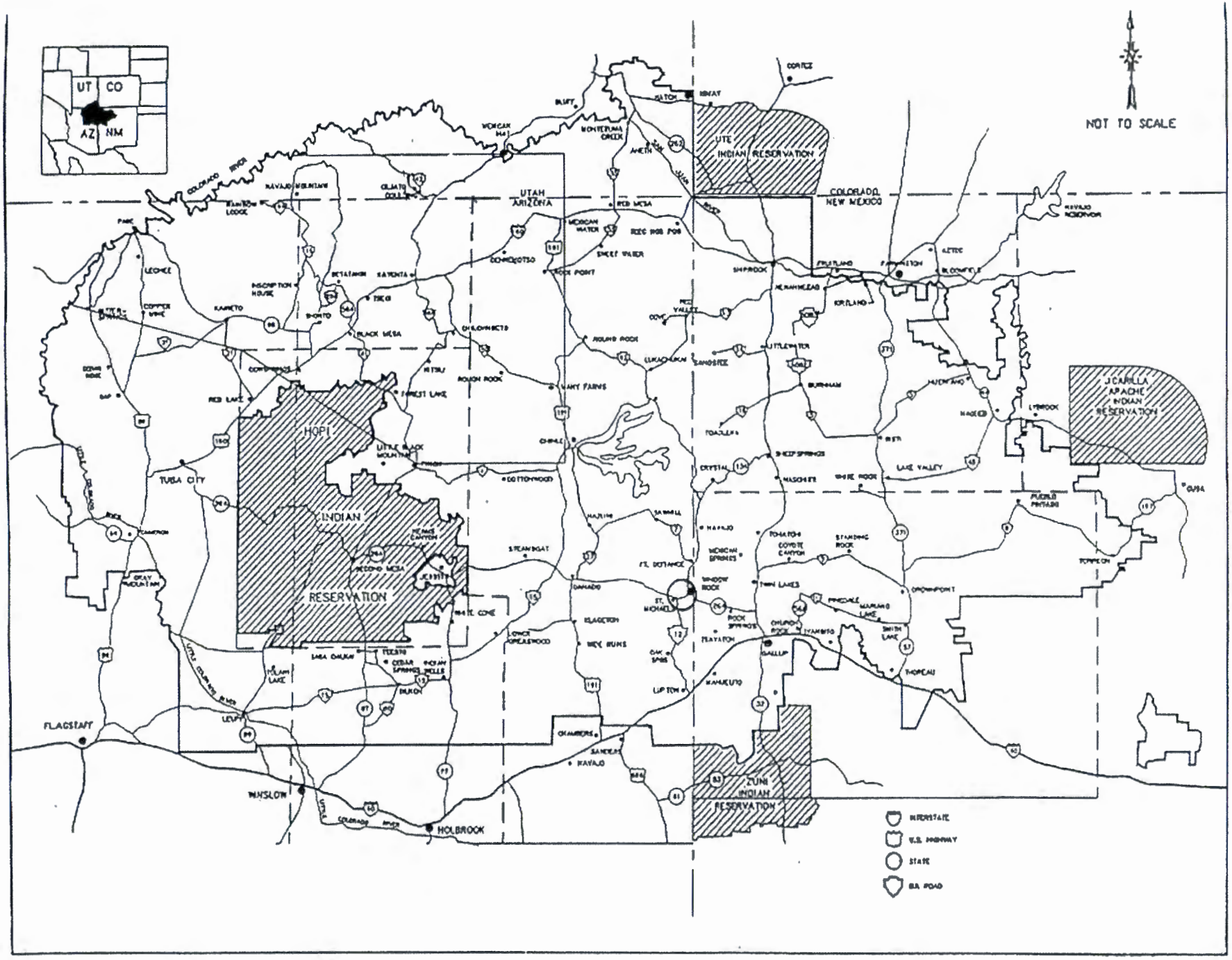

Figure 1. Location map, general project area in northeastern Arizona.

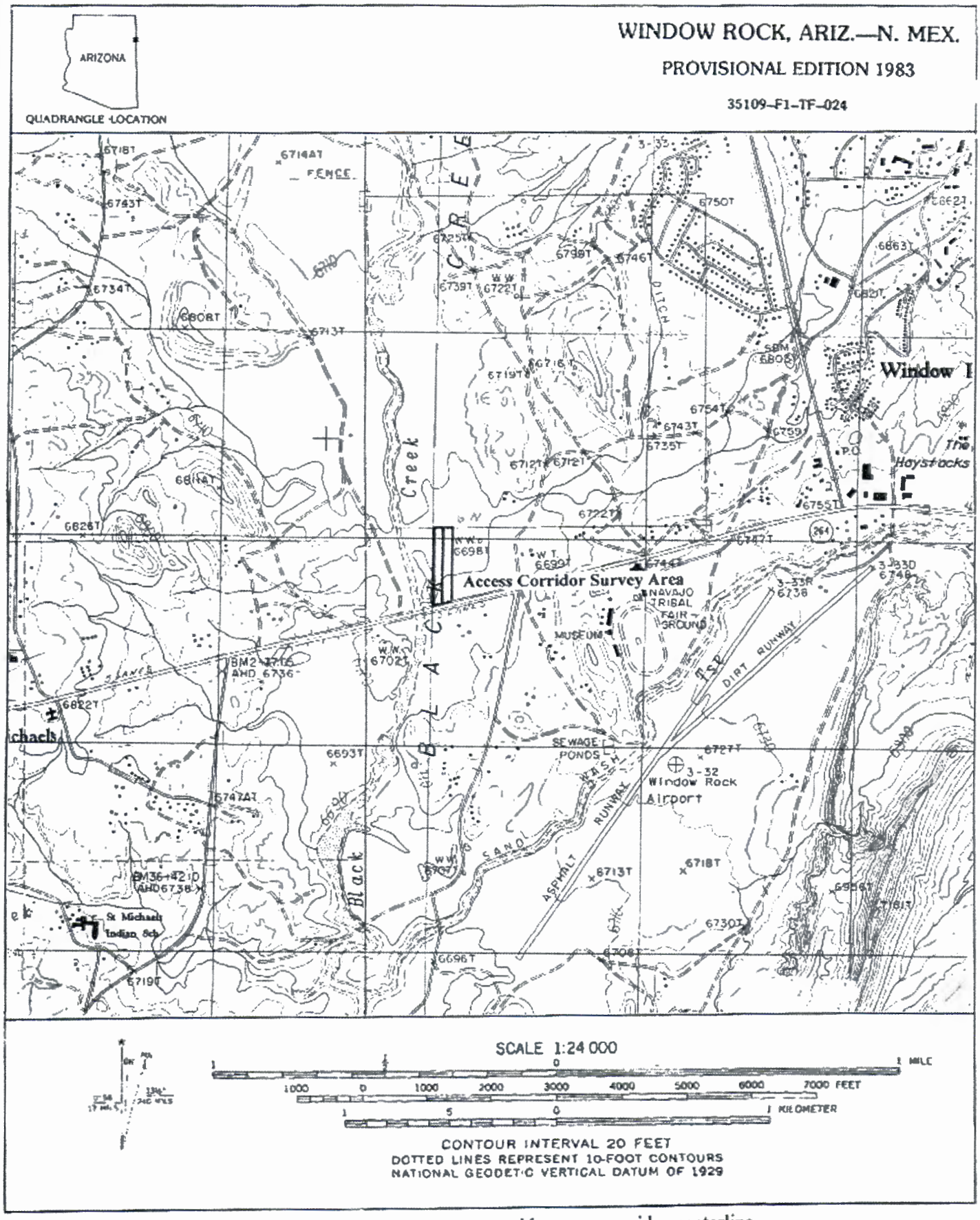

Figure 2. Location map, archaeological survey area with access corridor centerline.

14b. Existing Data Review. A record search was conducted at the offices of the Navajo Nation Historic Preservation Department (NNHPD) on June 24, 2015. No previously recorded sites are located within 100 m of project areas. The Traditional Cultural Property (TCP) Department has identified two TCPs within the buffer zone of the project area. *Ni#chi'i Tsoh Be'etiin* / Great Wind Trail / Black Creek (#385) lies approximately 175 feet to the west. *Tsohotso* / Yellow Meadow (#992) is located 1.0 mile to the west. The TCP Department has determined that there will be no adverse impacts to these TCP as a result of this undertaking (Attachment A).

Officials at the St. Michaels Chapter House and family members of the grazing permittee were interviewed concerning TCPs, graves, or other concerns about the proposed project. The Chapter President, Mr. Curran Hannon, and the Community Coordinator, Ms. Donna Whitehair, stated that the Chapter had no concerns about the project and did not know of any graves, TCPs, etc., within the area. They stated that the project was discussed at a public Chapter Meeting with representatives of Be Greene, LLC, and a Chapter Resolution had been passed in support of the project.

Armetta Yazzie and two sons, who are the closest residents to the project area and relatives of the grazing permittee, Darlene Lee, were interviewed. The interviewees stated that the family and the grazing permittee had been contacted by Be Greene, LLC and Chapter Officials and that they had no objections to the project at this time. They stated that there were no family TCPs, graves, or old/proposed residences, camps etc. in the project area.

14c. Area Environmental and Cultural Setting. The project area lies within the general physiographic province of the Colorado Plateau along the southwestern slopes of the Defiance Plateau. The Defiance Plateau is an uplifted oval area characterized by rolling-to-flat topography, with rock outcrops and steep canyons along the periphery of the plateau. This portion of the Plateau is comprised primarily of De Chelly Sandstone. Soils, predominantly sandy and sandy clay loams, are derived from the underlying sandstone. Vegetation zones include pine forest, pinyon-juniper woodland, shrubland, and grassland. Black Creek Valley, a major tributary, cuts through Chinle shales and averages 3.0 km in width and ranges between 6700 and 7100 feet in elevation. Soils in the valley include sand, sandy loam, and clays derived primarily from exposed sedimentary formations. An overview of the environment and physical setting of the general project area is provided in Fehr and others (1982).

The project is located in Window Rock, Arizona, 1.1 miles east of the St. Michaels Chapter House and 1.25 miles west of the junction of State Road 264 and Navajo Route 12. The access corridor begins at the northern State Road 264 highway ROW fence and proceeds northward to end at the Section 7/18 boundary line (Attachment B). Most of the project area is characterized by low-lying flats within the broad Black Creek Valley. The area is crossed by numerous shallow washes and feeder channels draining southward into a tributary of Black Creek. Black Creek flows into the Rio Puerco at Houck, Arizona. An eroding, rodent-disturbed, north-south trending sand dune is present along the western edge of the project area. Soils vary from alluvial clays and silts to aeolian sands. Vegetation consists of a moderately dense cover of greasewood, rabbitbrush, beeweed, russian thistle, and annual weeds. A few dead cottonwood trees have fallen into the main wash. An older, east-west powerline crosses the southern portion of the project area and an NTUA waterline and access road parallel the State Road 264 fenceline. Elevation is approximately 6700 feet.

A synthesis of the archaeological investigation, culture history, and ethnohistory of the general area can be found in Amsden (1992). Background information on the prehistory of the Black Creek Valley has been summarized in Fehr and others (1982) and to a lesser extent by Andrews (1980). There have been numerous archaeological investigations in the Window Rock and Middle Black Creek areas associated with waterline, road, powerline, homesite, and economic development projects. The results of these studies indicate that the area was occupied from the Basketmaker III period through the present, with a notable increase in prehistoric population during the Pueblo III period.

REFERENCES

Amsden, Charles W.
1992 *Across the Colorado Plateau: Anthropological Studies for the Transwestern Pipeline Expansion Project.* Office of Contract Archaeology, UNM, Albuquerque.

Andrews, Michael
1980 *St Michaels Pueblo: Pueblo III subsistence and adaptation in Black Creek Valley, Arizona.* Arizona Archaeological Society, Tucson.

Fehr, Russell T., Klara B. Kelley, and Laurie Warner
1982 Prehistoric and Historic Occupation in Black Creek Valley, Navajo Nation. *Navajo Nation Papers in Anthropology* No. 7. Navajo Nation Cultural Resource Management Program, Window Rock.

FILE COPY M 10/16/15

THE NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCE COMPLIANCE FORM

ROUTE COPIES TO:	NNHPD NO.: HPD-15-536
☑ CASA	OTHER PROJECT NO.: CASA 15-27

PROJECT TITLE: Cultural Resource Inventory, Be Greene, LLC's St. Michaels Access Corridor Project, Apache County, Arizona

LEAD AGENCY: BIA/NR

SPONSOR: Brian Wood, Permits West, 37 Verano Loop, Santa Fe, New Mexico 87508

PROJECT DESCRIPTION: The undertaking consists of developing an access corridor to a potential development site measuring 1,116.50-ft with a 225-ft width for a total area of effect of 5.77-acres. Ground disturbing activities will be intensive and extensive with the use of heavy equipment.

LAND STATUS:	Navajo Tribal Trust						
CHAPTER:	St. Michaels						
LOCATION:	*T.* 26 *N.,*	*R.* 31 *E.*	*Sec.* 18;	Window Rock Quadrangle,	Apache County,	Arizona	G&SRPM

PROJECT ARCHAEOLOGIST:	Mary Errickson
NAVAJO ANTIQUITIES PERMIT NO.:	B15241
DATE INSPECTED:	06/24/2015
DATE OF REPORT:	07/20/2015
TOTAL ACREAGE INSPECTED:	8.35 - ac.
METHOD OF INVESTIGATION:	Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND:	**None**
LIST OF ELIGIBLE PROPERTIES:	**None**
LIST OF NON-ELIGIBLE PROPERTIES:	**None**
LIST OF ARCHAEOLOGICAL RESOURCES:	**None**

EFFECT/CONDITIONS OF COMPLIANCE: No historic properties affected.

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FORM PREPARED BY: Tamara Billie
FINALIZED: September 23, 2015

Notification to Proceed ☑ Yes ☐ No
Recommended Conditions: ☐ Yes ☑ No

The Navajo Nation Historic Preservation Office — Date: 9/28/15

Navajo Region Approval ☑ Yes ☐ No

BIA – Navajo Regional Office — Date: 10/16/15

TLM 10.5.15

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION
OFFICE OF ENVIRONMENTAL REVIEW
PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/871-7996
Website: www.navajonationepa.org

M E M O R A N D U M

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

FROM: _____
Rita Whitehorse-Larsen, Senior Environmental Specialist
Office of Environmental Review
Office of the Executive Director/Administration
NNEPA

DATE: January 22, 2016

SUBJECT: 164 EOR 005186 Be Greene LLC ROW Access Road St Michaels AZ

The Be Green LLC, 32 Kiva Court, Sandia Park, New Mexico, 87047, submitted a right-of-way (ROW) for access road and utility corridor located in St. Michaels, Apache County, Arizona. The proposed ROW is 1,116.50 feet long, 225 feet wide, consisting of 5.77 acres, more or less.

The Navajo Nation Environmental Protection Agency (NNEPA) Office of Environmental Review (OER) reviewed[1] and recommends ***conditional approval*** for the proposed access road and utility corridor as stated in EOR 005186 pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904. Conditional approval is recommended for the proposed action based on the following:

1. ***Navajo Nation Clean Water Act (CWA):***
   a. Avoid any physical disturbance within the ordinary high water mark (OHW) of the Black Creek. If any physical surface disturbance is required within the OHW, Clean Water Act (CWA) Section 401 and 404 permits will be required before construction activities commences.

1 Permits West, Inc. Environmental Assessment for Be Greene LLC St Michaels Access Corridor Project. August 2015.

b. CWA 402 –Land surface disturbance in excess of 1.0 acre will require compliance with the federal General Construction Permit requirements for storm water discharges. The project will disturb 5.77 acres of Trust land. Best Management Practices is highly recommended to be implemented to control sediment runoff.

2. ***Navajo Nation Safe Drinking Water Act:***
   a. Make sure there are no existing drinking waterlines and/or domestic waste waterlines located within the premises of the proposed site to avoid significant impacts to the St. Michaels and surrounding communities' safe drinking water resources before trenching and/or digging.
3. ***Navajo Nation Air Pollution Prevention and Control Act:***
   a. The proposed action is not located in an attainment area.
   b. Visibility is good to excellent.
   c. Dust suppression must be implemented in the Best Management Practice.
   d. The Air Quality Control Program: Activity Application must be completed and submitted to NNEPA Operating Permit Program for the road construction activities.
4. ***Navajo Nation Pesticide Act:***
   a. Be Greene LLC is required to monitor and prevent invasive and noxious weeds either by manual or chemical control.
   b. Before applying any chemicals, contact the NNEPA Pesticide Program at 928/871-7815/7810/7892 to ensure the product is in compliance and appropriately applied by a certified and licensed applicator.
   c. Pesticide staff will also may need to be onsite to monitor during pesticide/herbicide application.
5. ***Navajo Nation Solid Waste Act:***
   a. Solid waste generated from the construction and operation activities will be collected and transported by contractor to a designated trash bins to minimize significant impacts to human and wildlife resources.
   b. If a sub-contractor will be hired to transport waste, ensure the contractors are certified and licensed with the Navajo Nation Business Regulatory Office.
   c. The contractor must submit a copy of the landfill receipt/ticket to guarantee the construction waste has been properly disposed.
   d. Do not allow public to take construction and operation waste. Cumulatively NNEPA receives complaints and reports on illegal trash dumpings on rural areas and in the waters of the US and Navajo Nation.
   e. All illegal waste currently on the proposed site is the responsibility of the land user.
6. ***Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act (NNCERCLA)***
   a. Approved by the Navajo Nation Council, CF-07-08, February 26, 2008, the NN CERCLA includes petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas)) unlike the US CERCLA or the Superfund Law and mandates petroleum, operator and guarantor to report petroleum release $\geq$ 25 gallons at the site and/or during transport immediately to the Navajo Nation Department of Emergency Management within the Navajo Nation Division of Public Safety.
7. ***Navajo Nation Storage Tank Act:***
   a. Amended and approved by the Navajo Nation Council, CJA-09-12, February 2012, the aboveground tanks are included to be regulated.
   b. No underground (UST) or aboveground (AST) storage tank greater than 100 gallons is expected to be at the proposed site.

c. If there will be any plans to install an UST or AST, NNEPA Storage Tank Program must be informed. The design specifications must meet the requirements listed in the Storage Tank Act. Mr. Warren Roan or Tanya Yazzie can be reached at 928/871-7993.

8. ***Others:***

a. Be Greene LLC will comply with the vegetative reclamation per Navajo Agriculture Department's recommended seed mix within the disturbed areas of the ROW corridors. Ms. Judy Willeto is the contact person for the vegetation seeding reclamation activities. She can be reached at 928/871-6592/6593.

b. Jack Utter or staff at the Department of Water Resources, Water Code Administration can be contacted for water permit. They can be reached at 928-729-4147. Any imported water will be reported to the Water Code Administration.

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

Cc: Be Greene LLC, 32 Kiva Court, Sandia Park, New Mexico, 87047
Permits West, Inc., 37 Verano Loop, Santa Fe, New Mexico, 87508
NNEPA Water Quality, PWSSP; Air Quality, OPP; Pesticides; Superfund; RCRP; Storage Tank Program; Administration chrono file
Contact person: Permits West, Inc., 505-466-8120

1. WHITE - PAYOR
2. YELLOW - CASHIER OFFICE
3. PINK - REMAIN IN BOOK

THE NAVAJO NATION

WINDOW ROCK ARIZ. 86515

DATE 6/9/2015 RECEIPT NO. 1006199 (39-45)

BOOK NO. 20082 (33-38) VENDOR NO. _____ (17-21)

RECEIVED FROM NAME Richard M. Greene (22-32)

ADDRESS 32 Kira Court
Sandia Park, NM 87047

Five Hundred AND/ 00/100 DOLLARS ($ 500.00)

REMITTANCE, IF NOT IN CASH, IS ACCEPTED, SUBJECT TO COLLECTION.

DESCRIPTION	ACCOUNT NO. (49-55)	AMOUNT (58-66)
ROW for 300	107003.1162	$500.00
acres- for jobs,		
Economic Development		
Rental & Housing		
St. Michaels		
Chapter.		
	TOTAL ▶	$ 500.00

CASH	CHECK NUMBER	OTHER
—	1031	—

SIGNATURE OF COLLECTING EMPLOYEE

ofc. spec.
POSITION TITLE

#13 Navajo Land Dept.
DEPARTMENT

RECEIPT NO. 1006199

5-5429

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

EVIDENCE OF AUTHORITY OF OFFICERS TO EXECUTE PAPERS

I, Gary Berner, solemnly swear that Richard Greene was on the 20th day of Nov, 2015, duly qualified and acting as Managing member of Be Greene LLC, on which day he executed a Right-of-Way Application for and in behalf of said corporation, covering certain Navajo Tribal Trust Indian lands in the State of Arizona; that he was fully empowered to execute said instrument and all papers in connection therewith, and that here action in executing the same binds the said corporation to full performance of all obligations thereunder.

This 20th day of November, 2015

Name:

Title: Managing Member

Subscribed and sworn to before me this 20th day of November, 2015

(Signed)

Notary
(Title)

OFFICIAL SEAL
JACQUE TOKATCH
NOTARY PUBLIC STATE OF NEW MEXICO
My Commission Expires 8/27/2019

[NOTARY SEAL]

PERMITS WEST, INC.
PROVIDING PERMITS for LAND USERS
37 Verano Loop, Santa Fe, New Mexico 87508 (505) 466-8120

November 19, 2015

Howard Draper
Project Review Office
Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

Dear Howard:

Enclosed is a Right of Way application for the Be Greene LLC St. Michael's Access Corridor project. The application packet includes:

Right of Way Application
Project Description
Project Map/Survey
Field Clearance Request
Environmental Assessment
Archeological Report/Clearance

Also included is a copy of the receipt for the application fee that was paid on June 9, 2015. Please let me know if you have any questions.

Sincerely,

Jeanette Reisenburg
Consultant

16-8314
DEC 11 2015
NLD-PROJECT
REVIEW SECTION

Document No. 005186 Date Issued: 12/21/2015

EXECUTIVE OFFICIAL REVIEW

Title of Document: BE GREENE LLC, ROW for Access Road Contact Name: DRAPER, HOWARD

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net Phone Number: 928/871-6447

			Sufficient	Insufficient
☐ **Business Site Lease**				
1. Division:		Date:	☐	☐
2. Office of the Controller:		Date:	☐	☐
(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)				
3. Office of the Attorney General:		Date:	☐	☐
☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**				
1. Division:		Date:	☐	☐
2. Office of the Attorney General:		Date:	☐	☐
☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**				
1. Office of Management and Budget:		Date:	☐	☐
2. Office of the Controller:		Date:	☐	☐
3. Office of the Attorney General:		Date:	☐	☐
☐ **Navajo Housing Authority Request for Release of Funds**				
1. NNEPA:		Date:	☐	☐
2. Office of the Attorney General:		Date:	☐	☐
☐ **Lease Purchase Agreements**				
1. Office of the Controller: (recommendation only)		Date:	☐	☐
2. Office of the Attorney General:		Date:	☐	☐
☐ **Grant Applications**				
1. Office of Management and Budget:		Date:	☐	☐
2. Office of the Controller:		Date:	☐	☐
3. Office of the Attorney General:		Date:	☐	☐
☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**				
1. Division:		Date:	☐	☐
2. Office of the Attorney General:		Date:	☐	☐
☐ **Relinquishment of Navajo Membership**				
1. Land Department:		Date:	☐	☐
2. Elections:		Date:	☐	☐
3. Office of the Attorney General:		Date:	☐	☐

Pursuant to 2 N.N.C. § 164 and Executive Order Number 07-2013

EOR# 005186

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

			Sufficient	Insufficient
1. Division:		Date:	☐	☐
2. Office of the Attorney General:		Date:	☐	☐

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

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

☐ **Rights of Way**

1. NLD		Date:	☐	☐
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: 12-21-15	☑	☐
2. F&W See Ltr of 9/16/15		Date: 12/28/15	☑	☐
3. HPD		Date: 1/11/16	☒	☐
4. Minerals Subject to change		Date: 1/12/16	☒	☐
5. NNEPA		Date: 1-22-2016	☒	☐
6. DNR		Date: 1-29-2016	☒	☐
7. DOJ -(ic)		Date: 2/2/16	☒	☐
8. OPVP		Date: 2-4-16	☒	☐

☐ **OTHER:**

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

Pursuant to 2 N.N.C. § 164 and Executive Order Number 07-2013

NAVAJO NATION DEPARTMENT OF JUSTICE

☐ RESUBMITTAL

DOCUMENT REVIEW REQUEST FORM

RECEIVED JAN 29 2016 DEPARTMENT OF JUSTICE RECEPTIONIST DESK

DOJ
01-29-16 832am
DATE / TIME
☐ 7 Day Deadline
DOC #: 005186
SAS #:
UNIT: NRU

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

CLIENT TO COMPLETE

DATE OF REQUEST:	12/21/2015	DIVISION:	Natural Resources (DNR)
CONTACT NAME:	Howard P Draper, Kayla Bia,	DEPARTMENT:	Navajo Land Dept (NLD)
PHONE NUMBER:	X-6447, 6401, 6490,	E-MAIL:	howarddraper@frontiernet.net; klbia@ frontier.com; verashurley@frontiernet.

TITLE OF DOCUMENT: *Approving a Right-of-Way for Be Green, LLC to construct, operate and maintain an access road and utility cooridor located in St. Michaels Chapter vicinity, Apache County, Arizona*

DOJ SECRETARY TO COMPLETE

RECEIVED JAN 2 2016 DEPARTMENT OF JUSTICE NATURAL RESOURCES UNIT

DATE/TIME IN UNIT: 01.29.16 9am REVIEWING ATTORNEY/ADVOCATE: Irene Chee 2.9.16

DATE TIME OUT OF UNIT: 02/02/16 4:52pm SB

DOJ ATTORNEY / ADVOCATE COMMENTS

-Document is legally sufficient.

REVIEWED BY: (*Print*)	Date / Time	SURNAMED BY: (*Print*)	Date / Time
Irene Chee	2-1-16	Veronica Blackhat	2/2/16 3:45pm

DOJ Secretary Called: Howard Draper for Document Pick Up on 02/02/16 at 4:32pm By: SB

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

NNDOJ/DRRF-July 2013

Draft 10-9-2012

RIGHT-OF-WAY CHECK LIST

Doc ~~SRS~~ NO. 005186

1. Terms & Conditions: (a) General
   (b) BIA Roads
   (c) IHS/PHS

Check to see if ROW terms and conditions form contains standard provisions.

EXAMPLES:
(a) compliance with Navajo and federal laws
(b) no waiver of sovereign immunity
(c) consent to Navajo Nation jurisdiction

Note! NTUA rights-of-way do not generally require compensation to the Navajo Nation unless it serves a commercial purpose. If the terms and conditions provide for compensation make sure that the grantee provides the BIA with a copy (proof) of any payment to the Navajo Nation within at least five days of payment.

2. Term -- twenty (20) years or less.

EXCEPTIONS:

(a) IHS P.L. 86-121 projects can be perpetual
(b) BIA roads 75 years
(c) N.M./AZ State roads can be perpetual ie. as long as it is used for state highway
(d) If an applicant is seeking longer than a twenty (20) year term, the applicant must explain why in writing in order that the Navajo Nation can make an informed decision whether to recommend it, unless a longer term is preauthorized.

3. Variation on standard terms and conditions.

(a) other roads – Maintain access road & utility corridor
(b) electric transmission
(c) gas pipeline
(d) other

4. Resources and Development Committee Resolution.

Resources and Development Committee has final approval authority -- Naa bik iyati

Resolution not necessary where right-of-way is sought by another governmental entity.

EXCEPTIONS:

(a) IHS P.L. 86-121 rights-of way do not need a Resources and Development Committee Resolution - see Resolution RCF-41-95. NLD can give consent if terms similar to approved form

(b) NTUA rights-of-way do not need Resources and Development Committee approval The NLD has been delegated the authority to consent on behalf of the Navajo Nation provided that the right-of-way terms and conditions are consistent with the approved **standard form** and the application is supported by:

1. Letter of application
2. Legal description
3. Right-of-way location maps
4. Biological Resources Compliance Form
5. Cultural Resources Compliance form
6. Field Clearance Documents
7. Chapter Resolution
8. Environmental Assessment (EA) and/or Addendum
9. Other pertinent documents if required

See RCD-104-10

☑ 5. Check exhibits for land user/permittee consent * St. Michael Chapter DGC member identified NO land users & stated "the location is not permitted for grazing & will not affect any land users.

(a) trust land needs grazing permittees' consents
(b) fee land does not
(c) If some permittees consent and others do not then this must be explained in the resolution/legislation
(d) check to see if surface damages, if sought, has been placed in an escrow account
(e) grazing official sign off if trust land
(f) NAPI consent if the proposed right-of-way is within NAPI lands

☑ 6. Check to see if all required Divisions, Departments, etc., have reviewed and surnamed the SAS package.

YES — (a) Project Review Office/Navajo Land Department
" — (b) Fish & Wildlife Department
" — (c) Historic Preservation Department
" — (d) Navajo Environmental Protection Agency
" — (e) Minerals

YES — (e) Division of Natural Resources

☑ 7. If additional terms and conditions are suggested by NNEPA, Fish & Wildlife Department or others, try to determine if they are necessary. The concerns may already be covered by the general terms and conditions, BIA required stipulations or 25 C.F.R. § 169.

— None

☑ 8. Check the content of proposed resolution or legislation to ensure it expressly incorporates in a Resolved Clause the right-of-way terms and conditions.

— Yes, it does.

☑ 9. Check to see if there is a legal description and whether it appears to be accurate.

10. Check to see if all documents are attached:

☑ (a) Environmental Assessment (EA) unless categorical exclusion applies (IHS projects)

☑ (b) Archaeological Clearance / Inventory Report

☑ (c) Cultural Resources Compliance Form

☑ (d) Threatened and Endangered Species/Biological Survey

☐ (e) Letter from the Fish & Wildlife Department or an EA indicating that a biological survey is not necessary i.e. (the project will not have a significant impact).

☑ (f) Biological Resources Compliance Form

2-1-16
Date

Reviewed by

AA/10-9-2012

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable LoRenzo Bates
Speaker
Navajo Nation Council

MEMORANDUM

TO: Honorable Jonathan Hale
Oak Springs and St. Michael's Chapters

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

DATE: February 10, 2016

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY FOR BE GREEN, LLC, TO CONSTRUCT, OPERATE AND MAINTAIN AN ACCESS ROAD INCLUDING UTILITY CORRIDOR LOCATED IN ST. MICHAEL'S CHAPTER VICINITY, NAVAJO NATION (APACHE COUNTY, ARIZONA)

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

I suggest that you ask your agent to supply a clean version of Exhibit D which is the Terms and Conditions of the proposed right-of-way.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0049-16__ **SPONSOR: Jonathan L. Hale**

TITLE: An Action Relating To Resources And Development; Approving The Right-Of-Way For Be Green, LLC, To Construct, Operate And Maintain An Access Road Including Utility Corridor Located In St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona)

***Date posted*: February 11, 2016 at 2:37PM**

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

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

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

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

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0049-16

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating To Resources And Development; Approving The Right-Of-Way For Be Green, LLC, To Construct, Operate And Maintain An Access Road Including Utility Corridor Located In St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona).

Posted: February 11, 2016 at 2:37PM

5 DAY Comment Period Ended: February 16, 2016

Digital Comments received: ***No comments received.***

Latanya Bobtail
Policy Analyst
Office of Legislative Services

2/17/16 8:22am
Date/Time

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0049-16

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating To Resources And Development; Approving The Right-Of-Way For Be Green, LLC, To Construct, Operate And Maintain An Access Road Including Utility Corridor Located In St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona).

Posted: February 11, 2016 at 2:37PM

5 DAY Comment Period Ended: February 16, 2016

Digital Comments received:

Comments Supporting	**1. Michelle Spencer; Executive Director, St. Michaels Association for Special Education.**
Comments Opposing	***None***
Inclusive Comments	***None***

Executive Director
Office of Legislative Services

2/17/2016 - 4:10 pm

Date/Time

St. Michaels Association for Special Education

P. O. Drawer 100 • Mustang Road
St. Michaels, AZ 86511

School & Home Since 1970

February 12, 2016

Navajo Nation Council
Office of the Speaker
P.O. Box 3390
Window Rock, AZ 86515

RE: Legislation No. 0049-16

Esteemed 23rd Navajo Nation Council Delegation:

St. Michaels Association for Special Education, Inc. (SMASE) respectfully submits this letter of support for the proposed Navajo Nation legislation known as Legislation No. 0049-16, An Action Relating To Resources And Development; Approving The Right-Of-Way For Be Greene, LLC, To Construct, Operate And Maintain An Access Road Including Utility Corridor Located In St Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona); sponsored by the honorable Navajo Nation Council Delegate Jonathan Hale and the honorable Navajo Nation Council Delegate Benjamin L. Bennett.

Each year SMASE endures hazardous road conditions which pose great risk for the transportation of Navajo students to and from its facility. The extremely poor road is the result of inferior road construction and the lack of routine road maintenance. The proposed Right Of Way will permit development of a standard paved or all weather access road that will significantly reduce the risks associated with transporting our students to and from our school facility and will enhance accessibility for emergency services vehicles to our school when needed.

Therefore, respectfully, SMASE and the Navajo people it serves, earnestly petition your favorable consideration and approval of this legislation.

Sincerely,

Michelle Spencer
Executive Director

Business Administration (928) 871.2801 Fax 871.4873 • Education Department (928) 871.2812 Fax 871.2837 • Residential Department (928) 871.4872 Fax 871.2827

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

SECOND YEAR 2016

COMMITTEE REPORT

Mr. Speaker,

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

Legislation # 0049-16: An Action Relating to Resources; Approving the Right-of-Way for Be Green, LLC, to Construct, Operate and Maintain An Access Road Including Utility Corridor Located in St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona) *Prime Sponsor: Honorable Jonathan L. Hale and Co-Sponsor: Benjamin Bennett*

Has had it under consideration and reports the same was TABLED for 60 days for the sponsors and agent to address the jurisdictional issues as raised during the discussion of the matter and also address & coordinate the mineral valuation of the proposed ROW as requested by the agents.

Respectfully submitted,

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

Date: March 1, 2016
Main Motion: Honorable Walter Phelps
Second: Honorable Benjamin Bennett
Vote:

Motion to Table:
Motion: Honorable Leonard Tsosie
Second: Honorable Leonard Pete
Vote: 4-0-1 (CNV)

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

SECOND YEAR 2016

COMMITTEE REPORT

Mr. Speaker,

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

> **Legislation # 0049-16:** An Action Relating to Resources and Development and Naabik'Iyati Committee; Approving the Right-of-Way For Be Green, LLC, to Construct, Operate and Maintain An Access Road Including Utility Corridor Located in St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona). *Sponsor: Honorable Jonathan L. Hale; Co-Sponsor: Benjamin Bennett*

Has had it under consideration and report the same with one amendment as follow: Exhibit D, page 3 of 3, paragraph 17, at the end of the sentence insert ", including the fee land site where the business activities will occur." **(M: Leonard Tsosie S: Davis Filfred V: 4-1-1 (CNV))**

and thereafter the Sponsor and his agents stated because of the passage of the amendment, they will withdraw their legislation.

Respectfully submitted,

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

Date: May 17, 2016
Motion: Walter Phelps
Second: Leonard Pete
Vote: 5-0-1 (CNV)

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

SECOND YEAR 2016

COMMITTEE REPORT

Mr. Speaker,

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

Legislation # 0049-16: An Action Relating to Resources; Approving the Right-of-Way for Be Green, LLC, to Construct, Operate and Maintain An Access Road Including Utility Corridor Located in St. Michael's Chapter Vicinity, Navajo Nation (Apache County, Arizona) *Prime Sponsor: Honorable Jonathan L. Hale and Co-Sponsor: Benjamin Bennett*

Has had it under consideration and reports the amendments incorporated in Exhibit D, Paragraph 27, was rescinded **(M: Benjamin Bennett; S: Walter Phelps; V: 5-0-1 (CNV))**,

And thereafter the final vote of the legislation the matter failed with a vote of 2 in favor and 3 opposed and 1 abstention (CNV). The sponsor was instructed to work with Office of Legislative Counsel to separate the two initiatives (Access Road and Utility Corridor ROWs) and resubmit legislations if he so wishes.

Respectfully submitted,

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

Date: July 26, 2016
Main Motion: Honorable Walter Phelps
Second: Honorable Benjamin Bennett
Vote: 2-3-1 (CNV) **(FAILED)**
Motion to Rescind Amendment incorporated on 5/17/17 (Benjamin Bennett/Walter Phelps/5-0-1

May 17, 2016 – Motion to Recall – Walter Phelps/Leonard Pete/5-0-1
Amendment # 1 Ex. D, Paragraph 27 insert language. M: Leonard Tsosie S: Davis Filfred V: 4-0-1 (CNV)

March 3, 2016 - Motion to Table
Motion: Honorable Leonard Tsosie
Second: Honorable Leonard Pete
Vote: 4-0-1 (CNV)