

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

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF
RIGHT-OF-WAY TO SACRED WIND COMMUNICATIONS, INC. TO CONSTRUCT,
OPERATE AND MAINTAIN FIBER OPTIC CABLE EQUIPMENT WITHIN THE
FASTTRACK COMMUNICATION, INC. AT UPPER FRUITLAND, SAN JUAN
COUNTY, NEW MEXICO

BE IT ENACTED.

Section One. Findings

A. Pursuant to 2 N.N.C. Section 501 (B)(2); the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of rights-of-way, prospecting permits, and other usufructuary interests on Navajo Land in accordance with applicable Federal and Navajo Nation laws; and

B. Pursuant to Agreement dated April 1, 2015 between Public Service Company of New Mexico (PNM) Sacred Wind Communications. The PNM allowed Sacred Winds Communications Inc. to encroach onto PMN's right-of-way, Exhibit "A"; and

C. The Sacred Wind Communications, Inc., P.O. Box 4011, Yatahey, New Mexico 87375 having a principle place of business at 7801 Academy Road NE, Building 2, Room 202, Albuquerque, NM 87109 has submitted a right-of-way (ROW) application to construct, operate and maintain fiber optic equipment on, over and across Navajo Nation Trust Lands, within the underlying PNM right-of-way at Upper Fruitland, San Juan County, New Mexico attached hereto and incorporated herein as Exhibit "B"; and

D. Pursuant to Indefeasible Right to Use (IRU) Agreement dated February 4, 2003, the Tri-State Generation and Transmission Association, Inc. ("Tri-State") and FastTrack Communications, Inc., collectively operate a fiber optic communication system (the "Tri-State System") attached hereto and incorporated herein as Exhibit "C": and

E. The proposed right-of-way is 20 feet wide and 839.68 feet long, consisting of 0.39 acres of Navajo Nation Trust Lands in the Northeast Quarter (NE $\frac{1}{4}$) of Section 23, Township 29 North Range 14 West, NMPM, San Juan County, New Mexico. The location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit "D" and

F. The Project Review Section with the Navajo Land Department has obtained a statement from the district 13 Grazing Committee Member pursuant to Ms. Esther Kee, R/W Agent, Memorandum dated February 18, 2015 who determined that the consent of the affected land users (i.e. grazing permittees) are not necessary because said lands do not have a tally count attached hereto as Exhibit "E"; and

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

Section Two. Approval

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Sacred Wind Communications, Inc. to construct, operate and maintain fiber optic equipment within FastTrack/PNM right-of-way on Navajo Nation Trust Lands at Upper Fruitland vicinity, San Juan County, New Mexico. The location is more particularly described on the map attached hereto and incorporated herein as Exhibit "D".

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

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

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, (Navajo Nation) Arizona, at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstained this 3rd day of November, 2015.



Walter Phelps, Pro Tem Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Leonard Pete
Second: Honorable Benjamin Bennett

PNM ROWT NO. 21131

ENCROACHMENT NO.



A personal commitment
to New Mexico

Alvarado Square, Albuquerque, New Mexico 87158-2101

EASEMENT ENCROACHMENT AGREEMENT

This Easement Encroachment Agreement made this 1st day of April, 2015.

by and between (BUYER/BORROWER/OWNER) Sacred Wind Communication Inc.

whose address is 5901-J Wyoming Blvd. NE #266, Albuquerque, NM 87109

(hereinafter called "First Party"), (his) (her) (their) (its) heirs, successors and assigns, and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico Corporation (hereinafter called "PNM"), and all collectively hereinafter called "Parties."

WITNESSETH:

WHEREAS, PNM is the Grantee of a certain Easement within the hereinafter described property;

WHEREAS, First Party desires to encroach upon the Easement as more particularly specified hereinafter; and

WHEREAS, PNM has agreed to said encroachment;

NOW THEREFORE, for and in valuable consideration, the receipt of which is hereby acknowledged, PNM does hereby grant First Party the right to encroach upon the Easement only to the extent of, and for the purposes set forth below:

PNM ROWT NO. 21131

(Referencing Existing PNM Doc. No. A-2365-E (704_92) and E-NM-99-21)

Encroachment of a fiber optic line and related facilities within a PNM 100 foot wide 345 kV electric transmission line easement and a 25 foot wide fiber optics line easement (located within said 100 foot wide electric transmission line easement) on Navajo Nation trust land situate within Section 12, T. 24N, R.05W, N.M.P.M., San Juan County, New Mexico.

Said encroachment is shown on the drawing attached hereto and made a part hereof as Exhibit "A".

STANDARD ENCROACHMENT GUIDELINES FOR ELECTRIC TRANSMISSION LINES

1. All construction equipment must maintain fifteen (15) feet vertical and horizontal clearance from all wires and structures.
2. First Party shall be solely responsible for obtaining all requisite right of way approvals from the Navajo Nation and BIA for First Party's fiber optic line which is the subject of this encroachment agreement.
3. First Party will provide a complete set of development plans to PNM for review and approval. If changes are made as a result of the review process, a final development plan will be provided by First Party to PNM before final approval is granted.
4. When required, First Party shall install a PNM approved barricade for structures affected and incur all costs associated with the barricade installation.
5. First Party shall comply with National Electrical Safety Code clearance requirements for any developments near power lines.

By granting the aforesaid right to encroach PNM does not waive or relinquish any rights or benefits that it may have, either expressed or implied, under or by reason of the Easement, including, but not limited to, the right to build, rebuild, construct, reconstruct, locate, relocate, change, remove, replace, modify, renew, operate and maintain its electric lines (including underground electric lines) and other electric equipment, fixtures, appurtenances and structures that are now located, or may in the future be located, on, over, beneath, through and across the Easement. First Party, at its sole cost and expense, agrees to remove or relocate its encroachment upon the written request of PNM within 90 days of such written request. First Party appoints PNM as its agent to accomplish said removal or relocation at First Party's expense if First Party fails to remove or relocate such encroachment within such time period.

PNM
REFERENCE
NUMBER

In consideration of PNM granting First Party the right to encroach upon the Easement, First Party hereby agrees to indemnify and hold harmless PNM, its officers, employees or agents, from any and all claims whatsoever when such claims directly or indirectly arise out of the existence, construction, maintenance, operation, repair, condition, use or presence of the encroachment upon the Easement, or are caused by, or arise out of, the acts or omissions of First Party, its officers, employees or agents; **provided**, however, that notwithstanding anything to the contrary in this paragraph, First Party shall not be required to indemnify PNM, its employees or agents against those claims for personal injuries or damages to property caused by or resulting from, in whole or in part, the negligence, act or omission of PNM, its officers, employees or agents.

In consideration of PNM permitting First Party to encroach upon the Easement, First Party agrees that PNM shall not be responsible for any damage caused to facilities, equipment, structures or other property of First Party if damaged by reason of PNM's use of Easement.

First Party shall comply with all applicable laws, ordinances, rules and regulations enacted or promulgated by any federal, state or local governmental body having jurisdiction over First Party's encroachment.

The provisions hereof shall inure to the benefit of and bind the heirs, executors, administrators, personal representatives, mortgagees, lessees, tenants, successors and assigns of the Parties hereto; **provided**, however, that no such heir, executor, administrator, personal representative, mortgagee, lessee, tenant, successor or assign of First Party shall have the right to use, alter or modify the encroachment in a manner which will increase the burden of the encroachment on the Easement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first written above.

FIRST PARTY
John Badal

CEO, Sacred Wind Communication Inc.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By:

Emilie Dohleman, Director, Land Services Department

PNM USE ONLY

STATE OF NEW MEXICO }
COUNTY OF BERNALILLO } SS

This instrument was acknowledged before me on April 1, 2015
on behalf of said corporation, Emilie Dohleman, Director, Land Services Department of the Public Service Company of New Mexico, a New Mexico corporation,

My commission expires: 4-16-18

NOTARY PUBLIC

STATE OF NEW MEXICO

My Commission Expires: 4-16-18

OFFICIAL SEAL

NOTARY PUBLIC

STATE OF NEW MEXICO

My Commission Expires: 4-16-18

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NOTARY PUBLIC

STATE OF NEW MEXICO

My Commission Expires: 4-16-18

OFFICIAL SEAL

NOTARY PUBLIC

STATE OF NEW MEXICO

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____ SS

This instrument was acknowledged before me on _____, 20____.

By _____

My commission expires:
(Seal)

Notary Public

ACKNOWLEDGEMENT FOR CORPORATIONS

STATE OF New Mexico

COUNTY OF Bernalillo SS

This instrument was acknowledged before me on March 31, 2015.

By John W. Badal CEO
(Name of Officer) (Title of Officer)

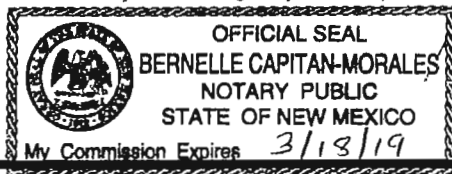
of Sacred Wind Communications Inc.
(Corporation Acknowledgement)

a New Mexico corporation, on behalf of said corporation.
(State of Incorporation)

Said officer acknowledges s/he is the duly authorized signatory of said corporation.

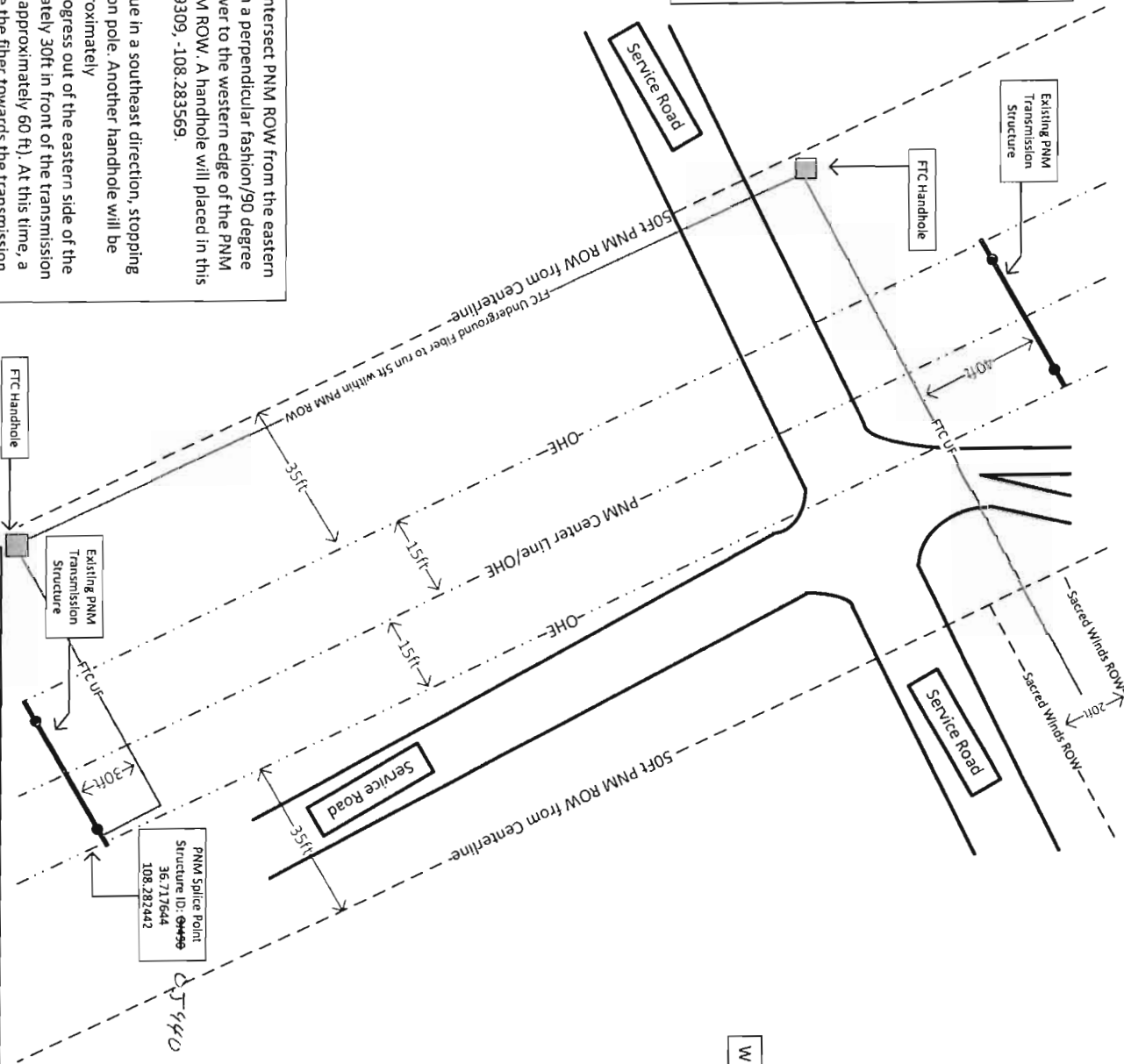
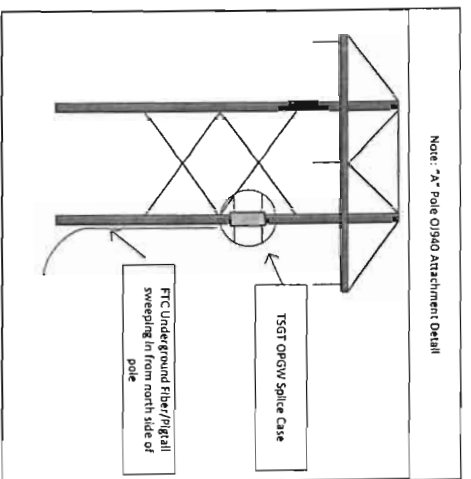
My commission expires:
(Seal)

3/18/19



Notary Public

FastTrack Communications/Sacred Winds Proposed Fiber Build



FastTrack Communications Underground Fiber to intersect PNM ROW from the eastern edge @ approximately 36.719388, -108.283160 in a perpendicular fashion/90 degree angle. The FTC Underground Fiber will continue over to the western edge of the PNM ROW and will stop at 5ft before the edge of the PNM ROW. A handhole will placed in this location @ approximately 36.719309, -108.283569.

From here, the FTC Underground Fiber will continue in a southeast direction, stopping approximately 30ft before the TSGT transmission pole. Another handhole will be introduced here @ approximately 36.717651, -108.282674 and the fiber will then progress out of the eastern side of the handhole. This fiber will continue to run approximately 30ft in front of the transmission poles until it gets close to the eastern most pole (approximately 60 ft). At this time, a sweep 90 degree bend will be introduced to route the fiber towards the transmission pole. Once close to the pole, another sweep 90 degree elbow will be introduced to bring the fiber back to the surface and to the pole. A pigtail will then be attached to the transmission pole to get to the OPGW splice case.

| | | | | | |
|---|--|---|--|--------------|--|
| | | Drawing Title FTC/SW Proposed Fiber Build - DL | | Rev. 01 | |
| Drawing Number FCTSWPropFBUILD - 09202013 - DL | | Date SEP-20-2013 | | Sheet 1 of 1 | |

For Official Use Only



COMMUNICATIONS

P.O. Box 4011
YAYAHEY, NEW MEXICO 87375
Voice: 505-905-6000
Fax: 505-9905-6001



Mr. Mike Halona
Department Manager III / Navajo Nation Land Department
Division of Natural Resources
P.O. Box 2249
Window Rock, Arizona, 86515

October 9, 2014

The Purpose of the project is to install fiber Optic cable with Fast Track Connectivity for broadband network in the community to increase the efficiency of the existing service for the local community. There is a Federal mandate to provide such service to local schools that utilize the broadband service for student testing services.

In order to comply with the Executive Order that President Obama issued on June 14, 2012, which mandate the facilitating of broadband deployment on federal lands, buildings, rights-of-way, federal highways, tribal lands and particularly in underserved communities.

This is a critical backbone link to the telecommunications network for SWC's customers. Any questions may be directed to Tico Charlee at 505 905-60090 or Jon Landstrom at 505 259-2944

Tico Charlee

Field Director
Sacred Wind Communications



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION

COMES NOW THE APPLICANT Sacred Wind. of P.O. Box 4011, Yatahey, New Mexico 87375 this 10 day of October, 20 10, 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. 17; 25 U.S.C. 323-328), and Departmental Regulations 25 CFR 169, an application of a 20 (term of years) right-of-way for the following purposes and reasons: **to Construct, Operate and Maintain a Fiber Line to provide service to All the community of the Upper fruit land and all Community within the area and all schools , for 911 emergency and Broad Band for school testing that us mandated by the state of NM**

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

In the NE1/4 of Section 23, Township 29 N, Range 14 W, South West of NHA Housing in Upper Fruit Land . San Juan County, New Mexico. Latitude 36.717644 Longitude 108.282442 to Latitude 36.717651 Longitude 108.282674

Said right-of-way across Tribal Trust Lands to be approximately 839.68 feet in length, 20 feet in width, and 0.39 in acres, as shown on attached map 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 09/20/14

APPLICANT

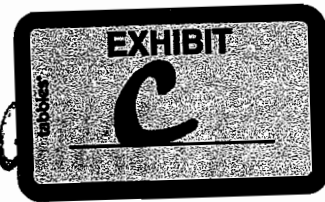


**Tico Charlee, Field Director
Sacred Wind Communications**

REQUIRED SUPPORTING DOCUMENTS:

1. (X) Written consent of landowner (ROW Form 94-7).
2. (X) 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. (X) Evidence of Authority of Officers to Execute Papers (ROW Form 94-4)
5. (X) For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
 - (X) a. State certified copy of corporate charter or articles of incorporation.
 - (X) b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.

ORIGINAL



IRU AGREEMENT FOR FOUR (4) FIBERS

THIS IRU AGREEMENT (this "Agreement") is made and entered into as of Feb 4, 2003 (the "Effective Date") by and between Tri-State Generation and Transmission Association, Inc. ("Tri-State"), a Colorado cooperative corporation, and FastTrack Communications, Inc., a Colorado corporation ("FastTrack"). Tri-State and FastTrack are each referred to herein as "Party" and are collectively referred to herein as the "Parties."

RECITALS

- A. Tri-State owns a fiber optic communications system (the "Tri-State System") that goes into Qwest Central Offices in Durango, Cortez, Montrose, and from the Grand Junction POP to the Qwest Central Office in Grand Junction, identified in Exhibit A, which is attached hereto and incorporated by this reference as the "System Route."
- B. FastTrack desires to be granted the right to use, and Tri-State is willing to grant to FastTrack an Indefeasible Right to Use (IRU) certain dark fibers in the Tri-State System, on the terms and conditions set forth below.
- C. Each defined term shall have the meaning set forth in this Agreement where such term is first used or in the Glossary of Terms attached hereto.

Accordingly, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 GRANT OF IRU

- 1.1 Tri-State hereby grants to FastTrack, and FastTrack hereby accepts from Tri-State an Indefeasible Right to Use (the "IRU")

Four (4) dark fibers on the segment of the Tri-State System from certain regeneration shelters into Qwest Central Offices in Durango, Cortez, Montrose, and from the Grand Junction POP to Qwest Central Office in Grand Junction which will be specifically identified by Tri-State in the Tri-State System, as more particularly described in Exhibit A, attached hereto and incorporated herein, ("FastTrack Fibers.") The specific fibers are identified on Exhibit B, and the lengths associated therewith are set forth on Exhibit C, each of which is attached hereto and incorporated herein.

- 1.2 The IRU is granted on the terms and subject to the covenants and conditions set forth in this Agreement. The IRU shall be exclusive to the FastTrack Fibers. The IRU does not include the right of FastTrack to own, control, maintain, modify or revise the FastTrack Fibers, or the right of physical access to, the right to encumber in any manner, or other use of the Tri-State System or Underlying Rights except as expressly set forth herein. (FastTrack's rights in the FastTrack Fibers are hereunder referred to as the FastTrack System").

- 1.3 FastTrack acknowledges and agrees that, except as provided in Section 5.3, Tri-State is not supplying nor is it obligated to supply to FastTrack any optronics or electronics or optical or electrical equipment or facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of FastTrack, nor is Tri-State responsible for performing any work other than as specified in the Agreement.
- 1.4 Delivery Date shall be _____, 200_.

ARTICLE 2 CONSIDERATION FOR GRANT

- 2.1 In consideration of the grant of the IRU hereunder by Tri-State to FastTrack, FastTrack agrees to pay to Tri-State an IRU fee (the "IRU Fee") which is included in the amount agreed to be paid pursuant to the Asset Sales And Security Agreement entered into between the Parties.
- 2.2 In addition to the amounts payable under Section 2.1, FastTrack shall pay directly or reimburse Tri-State for the costs and expenses described in Articles 5, 6 and 11.
- 2.3 If FastTrack fails to make any payment under this Agreement when due, such amount shall accrue interest from the date such payment is due until paid, including accrued interest compounded monthly, at a monthly rate of 1.5% or, if lower, the highest percentage allowed by law. If a dispute arises concerning the amount due by FastTrack, and it is later determined that the amount is due and owing to Tri-State, such amount shall bear interest from the date when due until paid, at the foregoing rate.

ARTICLE 3 TESTING AND WARRANTY

- 3.1 Tri-State shall test all FastTrack Fibers to verify that the FastTrack Fibers have been installed and are operating properly. Tri-State shall promptly provide FastTrack with a copy of the test results. The Optical Time Domain Reflectory (OTDR) results will be provided in a mutually agreed upon electronic and hard copy format.
- (a) Tri-State will provide FastTrack reasonable advance notice of the date and time of each Fiber Testing so that FastTrack shall have an opportunity to have a representative present to observe the Fiber Testing. If FastTrack fails to notify Tri-State of its acceptance or rejection of the final results with respect to the fiber within fifteen (15) business days after FastTrack's receipt of notice of such test results, FastTrack shall be deemed to have accepted such Segment. The date of such notice of acceptance or (deemed acceptance) of the fiber for such Segment shall be the "Acceptance Date" for such segment. If the Parties are unable to agree on those items that require correction within fifteen (15) business days after

FastTrack's delivery of a good faith rejection, the unresolved matters shall be submitted to dispute resolution in accordance with the provisions of Article 17.

- (b) FastTrack's Fibers will originate and terminate at a point set forth in Exhibit A on the Tri-State System. FastTrack shall provide its own stub cables to the point of origin and from the point of termination to FastTrack's equipment or facilities.

- 3.2 Manufacturer's Warranty. The Parties acknowledge and agree that after the relevant Acceptance Date, FastTrack's sole rights and remedies with respect to any defect in or failure of FastTrack's Fibers and related facilities to perform in accordance with the applicable vendor's or manufacturer's specifications for the FastTrack Fibers and related facilities shall be limited to the particular vendor's or manufacturer's warranty with respect thereto, which warranty, to the extent permitted by the terms thereof shall be assigned to FastTrack upon its request. In the event any maintenance or repairs to the Tri-State System are required as a result of a breach of any warranty made by any manufacturers contractor or vendors, Tri-State shall pursue all remedies against such manufacturer, contractor or vendor on behalf of Tri-State and FastTrack. If Tri-State fails to pursue such remedies, FastTrack may elect to pursue such remedies on its own behalf. FastTrack shall notify Tri-State in writing of its intent to seek such remedies itself prior to pursuing such action. EXCEPT AS SET FORTH IN THIS SECTION, TRI-STATE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE FASTTRACK FIBERS OR OTHER ASSOCIATED MATERIALS FOR THE FASTTRACK FIBERS, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. IN ADDITION, TRI-STATE MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY TYPE CONCERNING THE INTEGRITY OR PERFORMANCE OF THE MATERIALS FURNISHED OR DESIGNATED BY FASTTRACK.

ARTICLE 4 TERM

- 4.1 The grant of the IRU shall become effective on the Acceptance Date and shall extend for a period of twenty (20) years thereafter. In the event that FastTrack notifies Tri-State in writing of its desire to renew this Agreement at least one (1) year prior to the expiration of the term, Tri-State shall negotiate in good faith with FastTrack the conditions of a new agreement and the term. The period of the IRU is herein defined as the "Term."
- 4.2 At the expiration or termination of this Agreement, the IRU shall immediately terminate and all rights of FastTrack to use FastTrack's Fibers, or any other part thereof, shall cease.
- 4.3 If at any time after the Acceptance Date FastTrack determines that, with respect to any Segment, the FastTrack Fibers have reached an end to their useful life (as determined by FastTrack in its sole discretion), or FastTrack otherwise desires not to retain the IRU, FastTrack shall have the right to abandon the IRU by written notice to Tri-State. In the

case of abandonment, this Agreement shall terminate as to such segment, and FastTrack shall not be entitled to a refund of any consideration paid.

- 4.4 It is understood and agreed that Tri-State must and does maintain legal title to the entire Tri-State System as identified in Exhibit A.

ARTICLE 5 FACILITIES

- 5.1 Tri-State shall provide FastTrack access to Tri-State transmission poles or conduits so that FastTrack may connect FastTrack Fibers with stubs owned by FastTrack for interconnection purposes. These Connecting Points are set forth in Exhibit A.
- 5.2 If FastTrack desires additional Connecting Points on the Tri-State System, the Parties will negotiate in good faith the terms and conditions for such additional Connecting Points. All Connecting Points shall be placed at splice points.
- 5.3 If Tri-State makes available to FastTrack additional space that is owned by Tri-State in any of Tri-State's facilities, FastTrack's occupancy shall be governed by the terms of Tri-State's standard form lease agreements, as well as the terms of this Agreement. In addition, the provisions of Section 6.2 shall apply with respect to sharing of costs.
- 5.4 All connections shall be performed by Tri-State, in accordance with Industry Standards applicable specifications and operating procedures. The cost of such connections associated with the handoff of FastTrack fibers shall be borne by FastTrack. It is the responsibility of FastTrack to obtain all governmental and other approvals and consents for the delivery of the cable stubs to the Connecting Points.
- 5.5 FastTrack shall pay Tri-State's costs for each connection within forty-five (45) days of the date of Tri-State's invoice therefor. In order to schedule a connection of this type, FastTrack shall request and coordinate such work not less than thirty (30) days in advance of the date the connection is requested to be completed. Such work will be restricted to a Planned System Work Period, unless otherwise agreed to in writing for specific projects. Subject to all applicable Underlying Rights Requirements, Tri-State shall provide FastTrack with reasonable access to the Connecting Points after Tri-State receives notice from FastTrack. Subject to the Underlying Rights Requirements, neither Tri-State nor FastTrack shall have any limitations on the types of electronics or technologies employed to utilize its fibers, subject to Tri-State's safety procedures and so long as such electronics or technologies do not interfere with Tri-State's electric utility operations or uses by an existing IRU rights holder or the use of or present a risk of damage to any portion of the other Party's system.
- 5.6 Tri-State may route or reroute the FastTrack Fibers through their facilities to accommodate changes in operating requirements. If the changes are required to accommodate Tri-State, Tri-State will bear the costs. If the changes are requested by

FastTrack, FastTrack will bear the costs. Any routing or rerouting of the FastTrack Fibers will be agreed to prior to any realignment of the fibers.

ARTICLE 6
MAINTENANCE AND REPAIR OF THE TRI-STATE SYSTEM

- 6.1 After the Fiber Testing, the maintenance of the Tri-State System shall be provided in accordance with the maintenance requirements and procedures set forth in Exhibit D hereto. FastTrack agrees to pay maintenance fees in accordance with the provisions of Exhibit D.
- 6.2 FastTrack shall pay its share of set-up charges and operating costs incurred by Tri-State in connection with the operation and maintenance of the Connecting Points and splice boxes.

ARTICLE 7
PERMITS; UNDERLYING RIGHTS; RELOCATION

- 7.1 The IRU is subject to the terms of the Underlying Rights which are the rights allowing the cable containing the fibers to be in place, and subject to the terms under which the right of way is owned or held by Tri-State pursuant to the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages, and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The IRU granted hereunder is further subject and subordinate to the prior right of Tri-State conferred by the Underlying Rights to use the right of way for other business activities, including electrical power transmission, electric power distribution, railroad operations, telecommunications uses, pipeline operations or any other purposes.
- 7.2 If during the term Tri-State is required by the owner of any Underlying Right to relocate any part of the FastTrack System, including any facilities used or required in providing the IRU, Tri-State shall proceed with such relocation; provided that (a) any such relocation shall be constructed and tested to make sure it works properly; (b) the relocation shall be coordinated with FastTrack to minimize any effect on the FastTrack System; and (c) FastTrack's share of the costs shall be based on the number of FastTrack Fibers divided by the total number of fibers in the fiber optic cable.

ARTICLE 8
USE OF THE TRI-STATE SYSTEM

- 8.1 The requirements, restrictions, and/or limitations on FastTrack's right to use the FastTrack Fibers, and safety, operational and other rules and regulations imposed in connection with the Underlying Rights are referred to collectively as the "Underlying Rights Requirements."

- 8.2 FastTrack represents, warrants, and covenants that it will use the FastTrack Fibers in compliance with and subject to the Underlying Rights Requirements and all applicable government codes, ordinances, laws, rules and regulations.
- 8.3 Subject to the limitations set forth in this Agreement, FastTrack may use the FastTrack Fibers for any lawful telecommunications purpose. FastTrack agrees and acknowledges that it has no right to use any fibers that are part of the Tri-State System, other than the FastTrack Fibers. FastTrack shall keep any and all of the Tri-State System, the FastTrack Fibers, the Underlying Rights, and the electric transmission and distribution systems of Tri-State free from any liens, rights or claims of any third party.
- 8.4 Tri-State acknowledges and agrees that it has no right to use the FastTrack Fibers during the Term hereof.
- 8.5 FastTrack and Tri-State shall promptly notify each other of any matters pertaining to, or occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of the Tri-State System that are known to such Party.
- 8.6 FastTrack shall not use its systems in a way that interferes in any way with or adversely affects Tri-State's electric operations or the use of the fibers or cable of any other person using the Tri-State System. The Parties acknowledge that the use of the Tri-State System includes or will include other participants, including but not limited to Tri-State.
- 8.7 FastTrack and Tri-State each agree to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder.

ARTICLE 9 LIABILITY AND INDEMNIFICATION

- 9.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the interconnection, functions, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the interconnection, functions, products and services provided by the other Party, its agents, subcontractors, or others retained by such parties.
- 9.2 Except as otherwise expressly provided herein or in specific appendices, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any loss to a third party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its customers, contractors, or others retained by such parties, in connection with the Indemnifying Party's provision of interconnection, functions, products and services; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to

subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

- 9.3 In the case of any loss alleged or claimed by a customer of either Party, the Party whose customer alleged or claimed such loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such claims or losses by its customer regardless of whether the underlying interconnection, function, product or service giving rise to such claim or loss was provided or provisioned by the Indemnified Party, unless the claim or loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 9.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or loss arising from the Indemnifying Party's use of the FastTrack Fibers, interconnection, functions, products and services provided under this Agreement involving:
- 9.4.1 any claim or loss arising from such Indemnifying Party's use of the FastTrack Fibers, interconnection, functions, products and services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of intellectual property rights arising from the Indemnifying Party's or its customer's use;
 - 9.4.2 any claims or losses arising from disclosure of any customer-specific information associated with either the originating or terminating numbers used to provision interconnection, functions, products or services over the FastTrack Fibers provided hereunder and all other claims arising out of any act or omission of the customer in the course of using any interconnection, functions, products or services with the FastTrack Fibers provided pursuant to this Agreement;
 - 9.4.3 any losses arising from claims for actual or alleged infringement of any intellectual property right of a third party to the extent that such loss arises from an Indemnifying Party's or an Indemnifying Party's customer's use of interconnection, functions, products or services with the FastTrack Fibers provided under this Agreement; and
 - 9.4.4 any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment or services to ensure that such equipment, and services fully comply with CALEA.

9.5 Each Party ("Indemnifying Party") shall reimburse the other Party ("Indemnified Party") for damages to the Indemnified Party's equipment and other property caused by the negligence or willful act of the Indemnifying Party, its agents, subcontractors or customer or resulting from the Indemnifying Party's improper use of such equipment or other property, or due to malfunction of any functions, products, services or equipment provided by any person or entity other than the Indemnified Party. Upon reimbursement for damages, the Indemnified Party will cooperate with the Indemnifying Party in prosecuting a claim against the person causing such damage. The Indemnifying Party shall be subrogated to the right of recovery by the Indemnified Party for the damages to the extent of such payment.

9.6 Indemnification Procedures

9.6.1 Whenever a claim shall arise for indemnification, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

9.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.

9.6.3 Until such time as the Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that the Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

9.6.4 Upon accepting the defense, the Indemnifying Party shall have the exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

9.6.5 At any time, the Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party

against, any cost or liability in excess of such refused compromise or settlement.

- 9.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
 - 9.6.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
 - 9.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 9.7 Each Party (Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party (Indemnified Party) from any and all loss, or any liability whatsoever arising out of an interruption in telecommunications service, service outage, the Indemnifying Party's provision of E911 Service or out of the Indemnifying Party's customers' use of E911 Service, whether suffered, made, instituted or asserted by the Indemnifying Party or its customers or by any other parties or persons, for any personal injury or death of any person or persons, for loss of revenues or profits, or for any loss, damage or destruction of any property, whether owned by the Indemnifying Party, its customers or others.

- 9.8 Except for indemnity obligations and except to the extent (if at all) prohibited by law or public policy, Tri-State' liability to FastTrack for any loss relating to or arising out of Tri-State' performance under this Agreement, including but not limited to any negligent act or omission, whether in contract, tort or otherwise, including but not limited to alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, shall not exceed in total the amount that Tri-State' has charged or would have charged FastTrack for the affected FastTrack Fibers, service(s) or function(s) which were not provisioned or performed or were improperly provisioned or performed.
- 9.9 Neither Party assumes any liability for any act or omission of the other in the furnishing of its service to its customers solely by virtue of entering into this Agreement.
- 9.10 This Section 9 is not intended to exempt any Party from liability under this Agreement, but only to set forth the scope of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the facilities and services hereunder and no different pricing reflecting different costs and different limits of liability was agreed to.
- 9.11 When the lines or services of other companies and telecommunications carriers are used in establishing connections to and/or from points not reached by the FastTrack Fibers, Tri-State shall not be liable for any act or omission of the other companies or telecommunications carriers.
- 9.12 NO CONSEQUENTIAL DAMAGES

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, LOST PROFITS OR OTHER ECONOMIC LOSS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION LIMITS THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED HEREIN.

ARTICLE 10
INSURANCE

- 10.1 At all times during the Term each Party shall procure and maintain in force, at its own expense:
- (a) not less than \$2,000,000 combined single limit liability insurance, on an occurrence basis, for personal injury and property damage, including, without limitation, injury or damage arising from the operation of vehicles or equipment and liability for completed operations;
 - (b) worker's compensation insurance in amounts required by applicable law and employers' liability insurance with a limit of at least \$1,000,000 per occurrence;
 - (c) automobile liability insurance covering death or injury to any person or persons or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$2,000,000 per occurrence; and
 - (d) any other insurance coverages specifically required by Tri-State right-of-way agreements with third parties.
- 10.2 Each Party may self-insure. FastTrack shall provide Tri-State with certification of such self-insured status in a form acceptable to Tri-State.
- 10.3 In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided above, the Party carrying such coverage shall make good-faith efforts to pursue such claim with its carrier.
- 10.4 FastTrack and Tri-State hereby mutually waive their respective rights of recovery against each other and the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of any Party, for any loss arising from any cause covered or that would be covered by fire, extended coverage, All Risks or other insurance required to be carried under this Agreement or now or hereafter existing for the benefits of the respective Party. FastTrack and Tri-State will cause, from time to time, their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies carried in connection with their respective property.

ARTICLE 11
TAXES, FEES AND OTHER GOVERNMENTAL IMPOSITIONS

- 11.1 If it is properly determined by any federal, state, tribal or local governmental authority that the acquisition, license, grant, transfer or disposition, operation, use or ownership of any part or portion of the property or rights herein described to or by FastTrack requires payment of any Imposition (including sales or use tax) (but excluding Tri-State's income

taxes due the IRS or state treasurer), FastTrack shall pay the same, plus penalty or interest thereon directly to the taxing authority.

- 11.2 In addition to Impositions described in section 11.1, FastTrack shall be responsible for and shall pay all Impositions (a) imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to FastTrack with respect to the ownership or use of the FastTrack Fibers; or (b) which have been separately assessed, allocated to, or imposed on the FastTrack Fibers.
- 11.3 To the extent that Impositions are not separately assessed, allocated to or imposed on the FastTrack Fibers, Tri-State will pay all such Impositions. Tri-State shall notify FastTrack of such Impositions, and FastTrack shall promptly reimburse Tri-State for FastTrack's share of all such Impositions. FastTrack's share shall be based on the number of FastTrack Fibers divided by the total number of fibers in the fiber optic cable.
- 11.4 FastTrack shall have the right to protest by appropriate proceedings any Imposition. In such event, FastTrack shall indemnify and hold Tri-State harmless from any expenses, legal action or cost, including reasonable attorney's fees, resulting from FastTrack's exercise of its rights hereunder.
 - (a) The foregoing notwithstanding, Tri-State, at its option and at its own expense, shall have the right to direct and manage any contest regarding an Imposition that relates to the Tri-State System that affects their interests; subject, however, to reasonable and appropriate consultation with FastTrack. FastTrack agrees to cooperate with Tri-State in any such contest.
- 11.5 Tri-State and FastTrack agree to cooperate fully in the preparation of any returns or reports relating to the Impositions.

ARTICLE 12 NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by the United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to FastTrack at:

FastTrack Communications, Inc.
P.O. Box 5012
Durango, CO 81301
Attn: Chairman of the Board
Facsimile Number (970) 247-2426

All notices and other communications shall be given to Tri-State at:

Tri-State Generation and Transmission Association, Inc.
1100 West 116th Avenue
Westminster, Colorado 80234
Attn: Executive Vice President and General Manager
Facsimile Number (303) 254-6007

Any such notice or other communications shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 13 CONFIDENTIALITY

13.1 As used herein, "Confidential Information" shall mean this Agreement and all materials, maps, and other documents that are marked confidential and disclosed by any Party to another in fulfilling the provisions and intent of this Agreement, as well as confidential or proprietary information that is orally disclosed, provided that, for information that is orally disclosed, the disclosing Party indicates to the recipient at the time of disclosure the confidential or proprietary nature of the information and confirms in writing to the recipient within 30 days after such disclosure that such information is confidential. Each Party agrees to hold Confidential Information of the other Parties in confidence. No Party shall divulge or otherwise disclose the provisions of this Agreement to any non-signatory party without the prior written consent of the other Parties, except that any Party may disclose the existence of this Agreement and make disclosure to those required for the implementation of this Agreement, and to customers and prospective customers, purchasers and prospective purchasers, auditors, attorneys, financial advisors, lenders and prospective lenders, investors and prospective investors, and boards of directors of the Parties provided that in each case the recipient agrees in writing to be bound by the confidentiality provisions set forth in this section. In addition, any Party may make disclosure as required by a court order or as otherwise required by law or in any legal or arbitration proceeding relating to this Agreement. If any Party is required by law or by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to disclose the provisions of this Agreement or the design information referred to in this Section, it will provide the other Parties with prompt prior written notice of such request or requirement so that such Parties may seek an appropriate protective order and/or waive compliance with this Section. Each Party whose consent to disclose information is requested shall respond to such request, in writing, within five (5) working days of the request by either authorizing the disclosure or advising of the election to seek protective order, or if such Party fails to respond within the prescribed period, the disclosure shall be deemed approved.

- (a) Nothing herein shall be construed as granting any right or license under any copyrights, inventions, or patents now or hereafter owned or controlled by Tri-State.

- (b) Upon termination of this Agreement for any reason or upon the request of Tri-State or FastTrack, the party in possession of the requested Confidential Information shall return all Confidential Information, together with any copies of same, to the requesting party as applicable. The requirements of confidentiality set forth herein shall survive the return of such Confidential Information.
- (c) FastTrack or Tri-State shall not, without first obtaining the written consent of the other Parties, use any trade mark or trade name of that other Party or refer to the subject matter of this Agreement or the other Parties in any promotional activity or otherwise, nor disclose to others any specific information about the subject matter of the Agreement.
- (d) The provisions of the Article shall survive the expiration or other termination of this Agreement.

ARTICLE 14 DEFAULT

14.1 A default shall be deemed to have occurred under this Agreement if:

- (a) in the case of a failure to pay any amount when due under this Agreement, a Party fails to pay such amount within thirty (30) days after written notice specifying such breach, or
- (b) in the case of any other material breach of this Agreement, a Party fails to cure such within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- (c) FastTrack defaults under the terms of the Asset Sales And Security Agreement entered into between the Parties, which Agreement includes the IRU granted herein.

14.2 A waiver by either Party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

ARTICLE 15 TERMINATION

This Agreement shall automatically terminate on the expiration of the Term or earlier as provided in this Agreement, or upon occurrence of a default as specified in Article 14, taking into account that if there is a cure in progress there is not a default. Upon expiration of the Term

or other termination of this Agreement, the IRU shall immediately terminate and all rights of FastTrack to use the Tri-State System shall cease, all rights to use of the System Route or facilities shall revert to Tri-State, and Tri-State shall owe FastTrack no further duties or consideration. FastTrack shall promptly remove all of its electronics, equipment or other property from the System Route and at any related Tri-State' facilities or Facility Locations at its sole cost and under the supervision of Tri-State. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.

ARTICLE 16 FORCE MAJEURE

No Party shall be liable to another Party, and each Party's performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay; act of God; fire; flood; Cable, or other material failures, shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefor; lack of or delay in transportation; government codes or regulations or restrictions (collectively, "Regulations"); war or civil disorder; strikes or other labor disputes; inability of Tri-State to obtain access to the Tri-State System; or any other cause beyond the reasonable control of such Party. The Party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

ARTICLE 17 DISPUTE RESOLUTION

- 17.1 Application. Any claim, controversy or dispute, whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whenever brought and whether between Parties to this Agreement or between one of the Parties to this Agreement and the employees, agents or affiliated businesses of the other Party, shall be resolved by arbitration as prescribed in this section. The Colorado Uniform Arbitration Act of 1975, Colo. Rev. Stat. §§ 13-22-201 to -223, not federal law, shall govern the arbitrability of all claims.
- 17.2 Arbitrator. Three arbitrators engaged in the practice of law who are knowledgeable about the subject matter of this Agreement shall conduct the arbitration under the current rules of the American Arbitration Association (the "AAA"). Tri-State shall select an arbitrator, FastTrack shall select an arbitrator and the selected arbitrators shall select a third arbitrator from a list of qualified people maintained by the AAA. The arbitration shall be conducted in a mutually-agreeable location in the Denver, Colorado area, and all expedited procedures prescribed by the AAA rules shall apply.

- 17.3 Discovery. Discovery shall be conducted in accordance with the Federal Rules of Civil Procedure. Each Party shall bear its own costs and attorney's fees, and the Parties shall share equally the fees and expenses of the arbitrators. The arbitrators' decision shall be final and binding, and judgment on the award rendered by the arbitrators' may be entered in any court having jurisdiction thereof.
- 17.4 Enforcement. If any Party files judicial or administrative action asserting claims subject to arbitration as prescribed herein, and another Party successfully stays such action or compels arbitration of said claims, the Party filing said action shall pay the other Party's costs and expenses incurred in seeking or compelling arbitration, including reasonable attorney's fees.

ARTICLE 18

ASSIGNMENT AND CUSTOMER FIBER TRANSFERS

- 18.1 Assignment of the IRU Agreement. Neither party shall transfer or assign all or any part of its interest in this Agreement in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of the other party, not to be unreasonably withheld.
- (a) A transfer or assignment in violation of this Article shall constitute a material breach of this Agreement.
 - (b) If any such consent is given, the assigning party nevertheless shall remain fully and primarily liable for all obligations under this Agreement.
 - (c) Nothing in this section shall be construed to restrict the sale of the telecommunications circuits or capacity.
- 18.2 Exceptions.

The foregoing notwithstanding, FastTrack may, without prior consent of, but on notice to Tri-State, assign this Agreement, or assign or lease all or part of the FastTrack Fibers, to an affiliate of FastTrack, or a parent of FastTrack or to any company into which FastTrack may be merged or consolidated, or that acquires substantially all of the assets of FastTrack. An "affiliate" of FastTrack shall mean any corporation which directly or indirectly, controls or is controlled by or is under common control with FastTrack, or a successor corporation to FastTrack by merger, consolidation, or nonbankruptcy reorganization. For purpose of the definition of "affiliate," the word "control" (including "controlled by" and "under common control with") means with respect to any corporation, partnership, or association, possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a particular corporation, partnership or association, whether through ownership of the voting securities or by contract or otherwise. Tri-State may encumber this Agreement or its rights hereunder, the Underlying Rights, the Tri-State System, or use the Agreement as collateral. Each Party shall have the right at any time to mortgage, create or provide for a security interest

in, or convey in trust all or part of its interest in this Agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without the need for consent of the other Parties, provided however, the assigning party shall remain liable for all of its obligations hereunder.

ARTICLE 19
REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

19.1 Each Party represents and warrants that:

- (a) it has the full right and authority to enter into, exercise, deliver and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditor's rights and general equitable principles; and
- (c) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body.

19.2 Tri-State represents and warrants to FastTrack that:

- (a) Tri-State will obtain all permits and other governmental and third-party approvals required for the installation of the Tri-State System and the performance of its obligations under this agreement.
- (b) In its ownership, operation and maintenance of the Tri-State System, Tri-State will comply with all applicable local, municipal, state or federal laws, orders and regulations.

ARTICLE 20
GENERAL

20.1 Binding Effect. This Agreement and each of the Parties' respective rights and obligations under this Agreement, shall be binding on and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

20.2 Waiver. The failure of any Party hereto to enforce any provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part or any such provision, but the same shall nevertheless be and remain in full force and effect.

- 20.3 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Colorado, without reference to its choice of law principles. Any arbitration or litigation based hereon, or arising out of or in connection with a default by any Party in the performance of its obligations hereunder, shall be brought and maintained exclusively in the Colorado District Courts for the State of Colorado, and each Party hereby irrevocably submits to the jurisdiction of such court for the purpose of any such litigation and irrevocably agrees to be bound by any judgment rendered thereby in connection with such litigation.
- 20.4 Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require.
- (a) Unless expressly defined herein, words having well known technical or trade meanings shall so be construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
 - (b) Except as set forth to the contrary herein, any right or remedy of FastTrack or Tri-State shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
 - (c) With the exception of Section 20.6 hereto, nothing in this Agreement is intended to provide any legal rights to any one not executing this Agreement.
 - (d) This Agreement has been fully negotiated between and jointly drafted by the Parties.
 - (e) All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.
- 20.5 Entire Agreement. This Agreement constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall prevail. This Agreement may only be modified or supplemented by an

instrument in writing executed by each Party and delivered to the Party relying on the writing.

- 20.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be enforceable only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Article and shall be entitled to enforce the obligations of this Article.
- 20.7 Relationship of the Parties. The relationship between FastTrack and Tri-State shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose, including, but not limited to federal income tax purposes. FastTrack and Tri-State, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.
- 20.8 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 20.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

In confirmation of their consent and agreement to the terms and conditions contained in this IRU Agreement and intending to be legally bound hereby, the Parties have executed this IRU Agreement as of the date first above written.

"Tri-State"

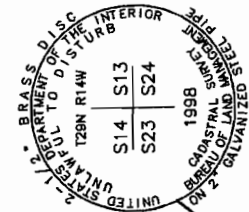
Tri-State Generation and Transmission Association, Inc.

By: Frank R. Knutson
Name: Frank R. Knutson
Title: Exec VP & Gen Mgr

"FastTrack"

FastTrack Communications, Inc.

By: Davin Moya
Name: Davin Moya
Title: Chairman of the Board



SURVEY SITE

| | | |
|----|----|----|
| 15 | 14 | 13 |
| 22 | 23 | 24 |
| 22 | 23 | 24 |
| 27 | 26 | 25 |

T29N, R14W
LOCATION MAP
NOT TO SCALE

DESCRIPTION:

Beginning at the Northeast Corner of said Section 23, T29N, R14W, with a bearing of S 89°56'45\"/>

Thence S 77°04'32\"/>

Subject to any and all easements and servitutum public or private, of whatsoever kind of nature, in existence at the date hereof.

CERTIFICATION

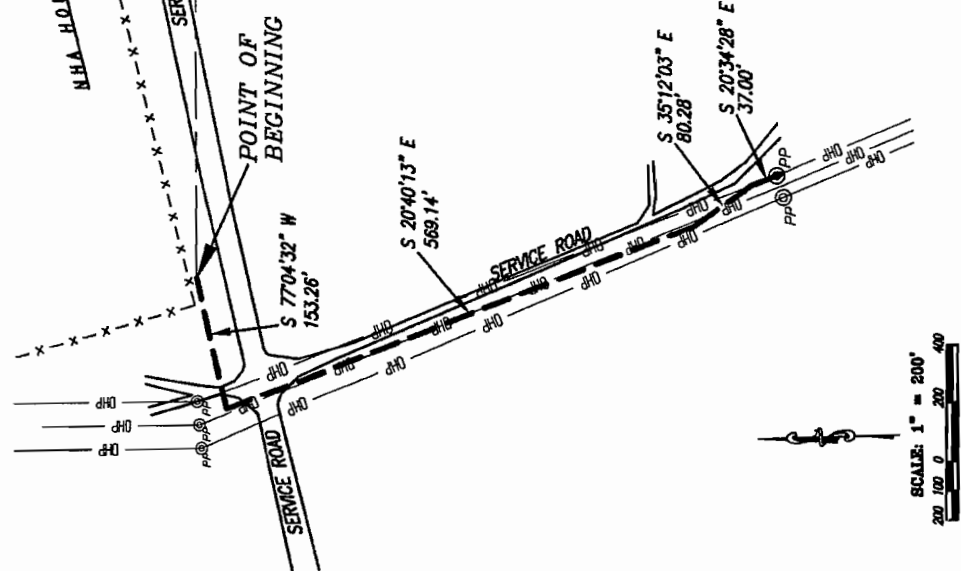
I, JOHN D. WAYNE, A REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT WAS PREPARED AT THE DIRECTION OF THE OWNER'S FROM FIELD NOTE OF AN ACTUAL SURVEY MEETING THE REQUIREMENTS OF THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT IT IS NOT A LAND DIVISION OR SUB DIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT.

DATE 8/1/14
JOHN D. WAYNE
NEW MEXICO REG. NO. 9673



(NOT A BOUNDARY SURVEY)

FAST TRACK COMMUNICATIONS /
SACRED WIND PROPOSED FIBER BUILD
UPPER FRUITLAND,
SAN JUAN COUNTY, NEW MEXICO



SCALE: 1" = 200'
200 100 0 200 400

PLAT TYPE _____ LEGAL DESCRIPTION _____

DATE OF FIELD WORK 07/26/2014

CAD FILE NAME: UpperFruitland-SacredWind_FastTrack.rvt.dwg

DATE OF FIELD WORK 07/26/2014

CAD FILE NAME: UpperFruitland-SacredWind_FastTrack.rvt.dwg

100 100 0 200 400

BASIN SURVEYING, INC.

100 100 0 200 400



THE NAVAJO NATION



| BEN SHELLY
PRESIDENT

| REX LEE JIM
VICE-PRESIDENT

MEMORANDUM

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

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

Date : February 18, 2015

SUBJECT: Sacred Wind Upper Fruitland Buried Fiber Optic Project

Sacred Wind Communications, Post Office Box 4022, Yatahey, New Mexico 87375, submitted an application for right of way to construct, operate and maintain a buried Fiber Optic cable across Navajo Trust Lands within an existing right of way for PNM near Upper Fruitland Chapter.

The right of way will be 839.68 feet in length, 20 feet in width, 0.39 acres, in NE/4 of Section 23, Township 29 North, Range 14 West, NMPM.

The Navajo Nation is the only affected land user and provided the necessary consent from the District 13 Grazing Committee Member, Laurence Bekise.

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

cc: Project file

The Navajo Nation
Upper Fruitland Chapter
PO BOX 1257
Fruitland, New Mexico 87416
(505) 960-5032/9811
Fax (505) 960-5033



LoRenzo Bates, Council Delegate
Hubert Harwood, President
Lenora Williams, Vice-President
Faye BlueEyes, Secretary/Treasurer
Robert Harris, Farm Board
Laurence Bekise, Grazing Representative

February 18, 2015

TO: Navajo Nation Land Dept.
Project Review Office
Land Use Consent

Sacred Wind Communication Yatahey, New Mexico propose to construct buried fiber optic cable, in section 23 township 29 N, range 14 W. Near Upper Fruitland NHA Housing.

The propose site is located in Upper Fruitland Grazing # .0634 which is permitted to Harold Benally. Land user will not be affected because tally count is not up to date. So I Laurence Bekise recommend approval on the propose project.

Again, your assistance in our efforts is greatly appreciated. If you have any questions, please feel free to contact me Laurence Bekise @ (505)793-1031 or (505)960-5032. Thank you for your time and consideration in our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laurence Bekise".

Laurence Bekise
Grazing Representative
Upper Fruitland Chapter

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION

COMES NOW THE APPLICANT Sacred Wind. of P.O. Box 4011, Yatahey, New Mexico 87375 this 10 day of October, 20 10, 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. 17; 25 U.S.C. 323-328), and Departmental Regulations 25 CFR 169, an application of a 20 (term of years) right-of-way for the following purposes and reasons: **to Construct, Operate and Maintain a Fiber Line to provide service to All the community of the Upper fruit land and all Community within the area and all schools , for 911 emergency and Broad Band for school testing that us mandated by the state of NM**

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

In the NE1/4 of Section 23, Township 29 N, Range 14 W, South West of NHA Housing in Upper Fruit Land . San Juan County, New Mexico. Latitude 36.717644 Longitude 108.282442 to Latitude 36.717651 Longitude 108.282674

Said right-of-way across Tribal Trust Lands to be approximately 839.68 feet in length, 20 feet in width, and 0.39 in acres, as shown on attached map 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.

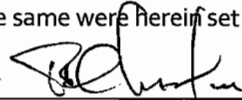
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, 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 09/20/14

APPLICANT



**Tico Charlee, Field Director
Sacred Wind Communications**

REQUIRED SUPPORTING DOCUMENTS:

1. (X) Written consent of landowner (ROW Form 94-7).
2. (X) 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. (X) Evidence of Authority of Officers to Execute Papers (ROW Form 94-4)
5. (X) For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
 - (X) a. State certified copy of corporate charter or articles of incorporation.
 - (X) b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.

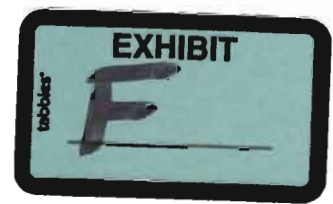


EXHIBIT "F"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS

SACRED WIND COMMUNICATIONS, INC. (GRANTEE)

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of the Interior or when Public Service Company of New Mexico 345kV Line (PNM ROW T NO. 21131) expires, whichever occurs earlier.
2. Consideration for the right-of-way is assessed at \$4,830.00 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, with 10 days of approval of and consents to the grant of the right-of-way by the Navajo Nation.
3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing, operating and maintaining fiber optic cable equipment. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all 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 archeological 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 Preference Law, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq.. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be prepared with the assistance of the Navajo Nation Environmental Protection Agency, or its successors (NNEPA), and shall be submitted to and must be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection be can 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 or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, 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 terms and conditions of the grant or of applicable laws or regulations;
 - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period; 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.
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 to the land subject to the right-of-way or to any improvements located thereon.

16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located therein.
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 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 applicant will record all water zones encountered during the drilling by depth, case and property seal to prevent any cross contamination of aquifers or loss of water on the surface due to artesian flow.
25. The applicant will provide all such information to the Navajo Nation Department of Water Resources.



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: December 1, 2014

SUBJECT: 164 EOR 002980 Sacred Wind Communications Fiber Optics Upper
Fruitland

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed¹ and recommends **approval** for the proposed telecommunications project as stated in EOR 002980 pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904. Sacred Wind Communications (SWC) LLC is proposing to bury a fiber optic line to increase the broadband network service for the local community within a right-of-way (ROW) area measuring 20 feet wide and approximately 839.68 feet in total length. SWC is proposing to add to the existing fiber optic broadband network in the community to increase the efficiency of the existing service. Before any construction commences, always call 811 before you start any digging project.

The proposed action will not have a significant impact on the quality of natural and human environment. If there are any questions you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: Sacred Wind Communications, PO Box 4011, Yatahey, New Mexico 87375
NNEPA Administration, Water Quality, Air Quality

11 iina' ba' Environmental Assessment Report Sacred Wind Communications, Inc. Proposed Fiber Optic Project Upper Fruitland San Juan County New Mexico. September 2014.

164 EOR 002980 Sacred Winds Communications Upper Fruitland fiber optics

Page 1 of 1

12/1/2014



THE NAVAJO NATION

Navajo Land Department

P.O. Box # 2249 · Window Rock, Arizona 86515 · (928) 871-6401 · FAX: (928) 871-7039

February 24, 2015

Mr. Tico Charley
Sacred Wind
P.O. Box 4011
Yatahey, New Mexico 87375

Mr. Charley:

The Navajo Nation technical reviewing departments have partially reviewed your right-of-way application (Doc#002980). The Navajo Nation departments refuse to make any recommendation due to the lack of a signed agreement between Sacred Winds and Public Service Company of New Mexico (PNM). I request that you produce the requested agreement which has been verbally transmitted to you since 12/5/2014 via our Program (see attached notes).

Our Program will continue to route your application but you should realized that without the requested information (which other companies provide or clarify) you are essentially asking for service based on less than all the facts. It has been emphasized that transparency is a major concern within the Legislative and Office of the President/Vice President Branches. Please provide the requested information as soon as possible in order to continue processing your application.

If any questions please contact Mr. Howard P. Draper, Program and Project Specialist, at (928) 871-6447 or 6490 for further information or assistance. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard P. Draper", with a long, sweeping horizontal line extending to the right.

Howard P. Draper, Program & Project Specialist
Navajo Land Department

ATTACHMENTS

cc: project file



**THE
NAVAJO
NATION**

MINERALS DEPARTMENT

Post Office Box 1910

Window Rock, Arizona 86515

Phone: (928) 871-6587 • Fax: (928) 871-7095

12/5/14
4:20pm

Howard

① Incomplete Application
Need to include the agreement
between PNM & Sacred Wind

② Any agreement / approval of this
policy would have to
be done RDC. Where
it ^{proposed} the resolution

Ran



**THE
NAVAJO
NATION**

MINERALS DEPARTMENT

Post Office Box 1910

Window Rock, Arizona 86515

Phone: (928) 871-6587 • Fax: (928) 871-7095

Ben Shelly
President

Rex Lee Jim
Vice-President

164 #2980

HOWARD

2-24-2015

There needs to be a signed
agreement between PNM &
Sacred Winds or a letter from
~~that can~~ PNM stating that they
have no objection to the use
of their Row by Sacred Wind.

Ram



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

IN REPLY REFER TO:
Real Estate Services/2N420

JUL 23 2014

Mr. Tico Charlee, Field Director
Sacred Wind Communications
P. O. Box 4011
Yatahey, New Mexico 87375

Dear Mr. Charlee:

Your request, on behalf of Fast Track Communications, for permission to conduct walk-on surface survey on proposed Fiber Optic route within Fruitland Chapter, San Juan County, New Mexico is hereby granted

Permission to survey includes surveys for mapping, archaeological, archeological, ethnographic surveys and studies. Permission to survey is subject to the terms and conditions contained in the letter from Program and Project Specialist, Navajo Land Department dated July 10, 2014.

Approval of right-of-way is not implied. An application for right-of-way must be filed with Shiprock Agency.

Sincerely,

Paul Chamberlain
Acting Regional Director, Navajo Region

Enclosures

THE NAVAJO NATION



~~project file cc~~
BEN SHELLY
REX LEE JIM VICE PRESIDENT

July 10, 2014

Mary Lujan, Realty Specialist
Bureau of Indian Affairs
Shiprock Navajo Agency
P.O. Box 3538
Shiprock, New Mexico 87420

Dear Miss Lujan:

The Sacred Winds Communications, P.O. Box 4011, Yatahey, New Mexico 87375, has submitted a permission to survey request to conduct a walk-on survey for maps, archaeological, environmental and ethnographic surveys and studies for *proposed Fiber Optic Site/right-of-way* on Navajo Nation Trust Lands in the Upper Fruitland Chapter vicinity, San Juan County, New Mexico. The proposed survey is more particularly described on the attached survey map.

The request for Sacred Wind is hereby granted, subject to the following terms and conditions:

1. The rights of local Navajo people will be respected and protected.
2. Personnel with the Division of Natural Resources (DNR) will retain the right to monitor the field survey.
3. The field survey will be conducted at your own risk. The Navajo Nation will not be held liable for any personal injury or property damage that might occur during the course of the field survey.
4. Vehicles will be kept on existing roads and trails. Surface disturbance will be kept to an absolute minimum while conducting the field survey.

Letter to Mary Lujan
July 10, 2014
Page two

5. The Permittee will comply with all applicable Tribal and Federal laws and regulations.
6. Approval of right-of-way, business site lease or any actual construction is not implied.

Sincerely,



Howard Phillip Draper, Program &
Specialist
Navajo Land Department, DNR

Hpd

ATTACHMENTS

Xc: 

Upper Fruitland Chapter

Sacred Wind Communications, Inc.
Proposed Fiber Optic Project
NAVAJO NATION INDIAN RESERVATION
Upper Fruitland, San Juan County, New Mexico





FRUI2007-06-01

Upper Fruitland Chapter

The Navajo Nation

PO BOX 1257 • Fruitland, New Mexico • 87416 • (505) 598-5032 • Fax (505) 598-0614

Calvin F. Lee
President

Alice L. Mason
Vice-President

LaVerta Mason
Secretary/Treasurer

LoRenzo Bates
Council Delegate

RESOLUTION OF THE UPPER FRUITLAND CHAPTER SUPPORTING THE DEVELOPMENT OF TELECOMMUNICATIONS INFRASTRUCTURE BY SACRED WIND COMMUNICATIONS FOR THE PROVISION OF TELEPHONE AND INTERNET SERVICES FOR THE CHAPTER POPULATION

WHEREAS,

1. The Upper Fruitland Chapter is a recognized governing entity of the Navajo Nation located with the boundaries of the Navajo Nation. It is endowed with perennial responsibilities to advocate for its citizens and community within the Navajo Nation: and
2. The Upper Fruitland Chapter is aware of the dire need for telecommunications services for community homes that are not served and upgraded services for those that are served. It is also aware of the need of a 9-1-1 system for any sudden occurrences of emergencies: and
3. The Upper Fruitland Chapter supports the designation of Sacred Wind Communications as the Incumbent Local Exchange Carrier (ILEC) by the New Mexico Public Regulation Commission and Sacred Wind Communication's acquisition of telephone territory from Qwest Corporation to provide needed telephone and Internet services to the community. Sacred Wind Communications will use Fixed Wireless Local Loop (FWLL) technology as a major component of their telephone system development that will provide services without the utilization of underground and above-ground copper wire installation, by using fixed wireless meet points and service lines that will provide overhead wireless and wire connectivity into the community: and
4. Furthermore, the Upper Fruitland Chapter genuinely believes those communities within Navajo Nation will not only benefit the people, but also public business, health care facilities, educational institution, fire districts, emergency rescue personnel and police district.

NOW THEREFOR BE IT RESOLVED,

1. The Chapter hereby provides consent for the development of telecommunications infrastructure on chapter land locations specified and requested by Sacred Wind Communications. The Chapter and its community membership supports and acknowledges Sacred Wind Communications and its request for use of Chapter lands to meet the needs of the people that will provide a better quality of life and provide needed opportunities: and
2. The Chapter hereby requests the Navajo Nation Land Department, the Navajo Nation Telecommunication Regulatory Commission, the Bureau of Indian Affairs to acknowledge the need for services for the community and

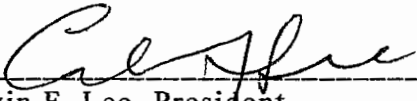
necessitate the approvals to meet its obligations to the Chapter and its community members;

CERTIFICATION

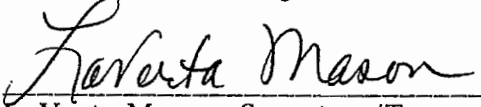
I hereby certify that the forgoing resolution was duly considered by the Upper Fruitland Chapter at a duly called meeting at Upper Fruitland, Navajo Nation (Arizona/New Mexico), at which a quorum was present and that the same was passed by a vote of 29 in favor, 0 opposed and 2 abstained, this 20th day of June 2007.

Motioned by: Laurence Bekis

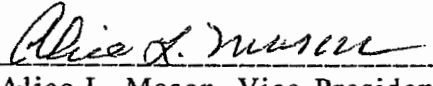
Seconded by: Lucy Bekis



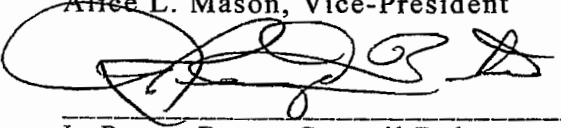
Calvin F. Lee, President



LaVerta Mason, Secretary/Treasurer



Alice L. Mason, Vice-President



LoRenzo Bates, Council Delegate

The Navajo Nation
Upper Fruitland Chapter
PO BOX 1257
Fruitland, New Mexico 87416
(505) 960-5032/9811
Fax (505) 960-0614



www.navajochapters.org

Lorenzo Bates
Council Delegate
Leroy Lee
President
Robert Allen
Vice-President
Hilda M. Soce
Secretary/Treasurer
Robert Harris
Farm Board
Laurence Bekise
Grazing Representative

FRUI-2010-04-01

Resolution of the Upper Fruitland Chapter of the Navajo Nation supporting the placement of new telecommunications Fiber Optic Cable by Sacred Wind Communications for the provision of telecommunications service to the people of Upper Fruitland Chapter

WHEREAS:

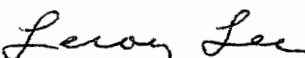
1. Pursuant to 26 N.N.C. §3(A), the Upper Fruitland Chapter is a certified Chapter of the Navajo Nation as listed under 11 N.N.C., Part 1, §10; and
2. Pursuant to 26 N.N.C., §1(B), the Upper Fruitland chapter is delegated the governmental authority to make decisions over local matters consistent with Navajo Law, Custom and Tradition; and under 11 N.N.C. Part, §10 and also delegated authority to make local decisions in the best interest and welfare of the community members; and
3. The majority of the members of the Upper Fruitland Chapter of the Navajo Nation does not have available basic home-based telecommunications services, nor access neither to 911 emergency services, nor to Internet services as do over 90% of the American public; and
4. The absence of reliable telecommunications services to the home poses a security and health risk, and creates an educational and economic disadvantage, for many members of Upper Fruitland Chapter, and
5. Sacred Wind Communications has developed plans to deliver telecommunications service to the people of Upper Fruitland Chapter, basic telephone services as well as advanced internet services, and
6. The Fiber Optic will be used to transmit telephone signals, Internet communications, and cable television signals. Fiber Optics will be installed on NTUA power lines poles and provide reliable telecommunication systems that is most beneficial to the Navajo Nation; and
7. Sacred Wind Communications is duly licensed to provide telecommunications services within its territory and currently owns and operates the telecommunications infrastructure within Upper Fruitland Chapter that was once owned by Qwest Corporation; and

NOW THEREFORE BE IT RESOLVED THAT:

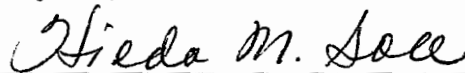
1. The people of Upper Fruitland Chapter support Sacred Wind's plans to extend very necessary telecommunications services to the homes within Upper Fruitland Chapter, and
2. The Upper Fruitland Chapter of the Navajo Nation hereby requests that the Navajo Nation and NTUA (Navajo Tribal Utility Authority) and BIA (Bureau of Indian Affairs) to approve Sacred Wind Communications' placement of the new Fiber Optic telecommunications system and their associated electronic equipment, and also support Sacred Wind use of NTUA (Navajo Tribal Utility Authority) power poles to facilities and serve the people of Upper Fruitland Chapter and other members of the Navajo Nation.

CERTIFICATION


WE HEREBY CERTIFY that the foregoing resolution was duly considered by the Upper Fruitland Chapter at a duly called meeting at Upper Fruitland, New Mexico (Navajo Nation). A motion was made by Martha Curtis and a second by Ted Decker and the same was passed by a vote of 40 in favor, 0 opposed and 1 abstained, on this 21st day of April, 2010.



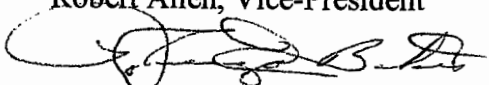
Leroy Lee, President



Hilda M. Soce, Secretary/Treasurer



Robert Allen, Vice-President



LoRenzo Bates, Council Delegate

AMENDMENT 1 TO DARK FIBER AGREEMENT # F03-003
Between Tri-State Generation and Transmission Association, Inc.
and FastTrack Communications, Inc.

WHEREAS, Tri-State Generation and Transmission Association, Inc. ("Tri-State") and FastTrack Communications, Inc. ("FastTrack") are each individually a Party (and collectively, the "Parties") to an existing "IRU AGREEMENT FOR FOUR (4) FIBERS" having an effective date of February 4, 2003 and identified as Tri-State contract number F03-003 (the "Agreement") pursuant to which Tri-State has granted to FastTrack an Indefeasible Right to Use ("IRU") certain plurality of dark fibers in Tri-State's fiber optic communications system (the "Tri-State System"); and

WHEREAS, FastTrack desires to be granted the right to use, and Tri-State is willing to grant to FastTrack an IRU with respect to certain additional dark fibers for various terms of use as defined under this Amendment 1.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, promises and agreements contained herein set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The IRU Agreement for Four (4) Fibers is amended to be named and known as the "Dark Fiber IRU Agreement" and referred to as the "Agreement".
2. Section 1.1 of the Agreement is amended to add a last sentence, which shall read: The "FastTrack Fibers" shall also include (i) four (4) dark fibers between the Farmington Regeneration Equipment Hut and the OJ902 splice point (the "NAPI Service Fibers"); and (ii) two (2) dark fibers between the Tri-State Albuquerque POP and the Albuquerque Qwest downtown central office (the "Albuquerque Interconnect Spur Fibers"), as more particularly described in Exhibit B attached hereto and incorporated herein.
3. Section 1.4 of the Agreement is revised in its entirety to read: All FastTrack Fibers herein described are acknowledged and agreed as delivered and accepted, except for the FastTrack Fibers added pursuant to this Amendment 1, which, shall have a Delivery Date for availability at the designated respective Connecting Point(s) of (i) thirty (30) calendar days following the Amendment 1 Effective Date for the Albuquerque Interconnect Spur Fibers; and (ii) thirty (30) days following the Amendment 1 Effective Date for the NAPI Service Fibers.
4. Section 2.1 of the Agreement is amended to add a last sentence, which shall read: Notwithstanding anything to the contrary in the foregoing, the consideration for grant of the IRU hereunder by Tri-State to FastTrack shall be (i) an IRU Fee of [REDACTED] for the NAPI Service Fibers; plus (ii) an IRU Fee of \$ [REDACTED] for the Albuquerque Interconnect Spur fibers; and each of the foregoing IRU Fee(s) is due and payable on the respective Acceptance Date of the fiber route segment.

5. Section 3.1(b) of the Agreement is revised and replaced in its entirety to read: FastTrack's Fibers will originate and terminate at the Connecting Point(s) set forth in Exhibits B and C. FastTrack shall be responsible for constructing or otherwise providing, operating, maintaining and repairing stub cables or other interconnection facilities and equipment, including obtaining and maintaining necessary Underlying Rights attendant thereto, for connection to the FastTrack Fibers at the Connecting Point(s).

6. Section 4.1 of the Agreement is amended to add a last sentence, which shall read: Notwithstanding anything to the contrary in the foregoing, the Term of IRU granted for each fiber route Segment shall commence on its respective Acceptance Date and conclude (i) five (5) years from its Acceptance Date for the NAPI Service Fibers; (ii) five (5) years from its Acceptance Date for the Albuquerque Interconnect Spur Fibers.

7. Section 4.4 of the Agreement is amended to revise and replace the single sentence thereof in its entirety to read: It is understood and agreed that Tri-State may not have legal title to the entire Tri-State System, but will obtain and main Underlying Rights therefor pursuant to Article 7 of the Agreement. Notwithstanding anything contained herein to the contrary, FastTrack shall, at its sole expense, be responsible for constructing, operating and maintaining interconnection facilities for connecting with Connecting Point(s), and for obtaining and maintaining all necessary Underlying Rights attendant thereto.

8. Section 5.1 of the Agreement is amended to revise the exhibit reference therein from Exhibit A and add a new last sentence to read: These Connecting Point(s) are set forth in Exhibits B and C.

9. The last sentence of Section 5.2 and each of the applicable Glossary definitions of the Agreement is revised to read: Connecting Point(s) shall be placed at splice points, fiber termination patch panels, or such other locations mutually agreed upon by the Parties, as set forth in an exhibit to this Agreement.

10. Exhibit A of the Agreement is amended to revise and replace with the "Amendment 1 to Exhibit A" attached hereto and incorporated in the Agreement by virtue of this Amendment 1, to include portions of the System Route located in New Mexico not previously depicted.

11. Separate Exhibit B and Exhibit C of the Agreement are each amended and combined to revise and replace them with one "Amendment 1 to Exhibit B & C", attached hereto and incorporated in the Agreement by virtue of this Amendment 1, to include the subject dark fibers as additional FastTrack Fibers.

12. Exhibit D of the Agreement is amended to add a final sentence to the "Scheduled Maintenance Fees" section thereof to read: Notwithstanding anything in the foregoing to the contrary, for the NAPI Service Fibers, the Albuquerque Interconnect Spur Fibers, the annual scheduled maintenance fee shall be \$387.50 per route mile, due and payable on the respective Acceptance Date for the applicable fiber route segment and thereafter on

the annual anniversary thereof, with an annual inflation adjustment not to exceed four percent (4%).

13. Other Provisions Remain Unaltered. Unless otherwise expressly modified or amended by this Amendment 1, all other provisions, terms, conditions, rights, obligations, exhibits, annexes and attachments of the Agreement, and prior amendments thereto, if any, including but not limited to the Acceptance Dates and Terms of prior existing IRUs for FastTrack Fibers, are unaltered and shall remain in full force and effect.

14. Amendment and Integration. The Parties intend, acknowledge and agree that this writing, including all Exhibits A, B, C and D, as amended, constitutes a written amendment, as Amendment 1, pursuant to Section 20.5 of the Agreement, and that it is hereby integrated within the Agreement with binding effect pursuant to Section 20.1 of the Agreement. Amended Exhibits A, and combined Exhibit B and C, dated April 27, 2009, are attached hereto, and amended Exhibit D although not attached, are all incorporated in the Agreement by virtue of this Amendment 1.

15. Counterparts. This Amendment 1, including its incorporated exhibits and attachments, may be executed in any number of counterparts, including a printed output from a receiving facsimile machine, scanner, photocopier, or computer printer, each of which shall be deemed an original, all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives having binding authority, have caused this Amendment 1 to the Dark Fiber IRU Agreement, Tri-State contract # F03-003, between Tri-State Generation and Transmission, Inc. and FastTrack Communications, Inc. to be executed and made effective subject to the foregoing terms and conditions, upon the Tri-State signature date, as the latest, appearing in the signature block below (the "Amendment 1 Effective Date").

FastTrack Communications, Inc.

By: 

Name: STEVEN DARR

Title: CEO

Date: 4-28-2009

Tri-State Generation and Transmission Association, Inc.

By: 

Name: Kenneth V. Reif

Title: SVP/General Counsel

Date: 5-6-2009
(Amendment 1 Effective Date)

| | | | | | | |
|--------------------------|----------|---|--------------------------------------|--------------------------------------|---|---|
| | | | | | St.; Suite 210; Grand Junction, CO | manhole adjacent to Qwest GJct central office at |
| NAPI Service Fibers | Four (4) | 7.35 miles south along the System Route | To be determined by mutual agreement | To be determined by mutual agreement | Fiber Term Panel in Farmington Regen Hut at 98 CR 6100; Farmington, NM | Splice Point Case at PNM T Line Twr Structure OJ902 |
| Albuquerque Interconnect | Two (2) | 0.513 | To be determined by mutual agreement | To be determined by mutual agreement | Fiber Term Panel in ABQ POP at 505 Marquette NW, Suite 805; Albuquerque, NM | Point of Interconnect (POI) splice manhole adjacent to Qwest ABQ central office at 111 3 rd St. NW |



United States Department of the Interior
Navajo Region
P.O. Box 1060
Gallup, NM 87305



MC:620/Division of Environmental, Cultural, & Safety Management

OCT 08 2014

Mr. John R. Isham, CPG
Environmental Manager
iiná bá, Inc.
4801 North Butler, Suite 1101
Farmington, New Mexico 87401

Dear Mr. Isham:

The environmental assessment (EA-14-128) prepared for the Sacred Wind Communications, Inc., Upper Fruitland, San Juan County, New Mexico, to address impacts from the proposed Fiber Optic Project has been reviewed in the Division of Environmental, Cultural and Safety Management, Navajo Regional Office. The purpose of the proposed action is to add to the existing fiber optic broadband network in the community to increase the efficiency of the existing service. The increase in efficiency is in response to a federal mandate to provide such services to local schools that utilize the broadband service for student testing services. 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.

Should you require additional information, you may contact Ms. Harrilene J. Yazzie, Navajo Regional NEPA Coordinator, at (505) 863-8287.

Sincerely,

Regional Director, Navajo Region

Enclosure

FINDING OF NO SIGNIFICANT IMPACT

SACRED WIND COMMUNICATIONS', INC., PROPOSED FIBER OPTIC PROJECT, EA-14-128

SACRED WIND COMMUNICATIONS, INC.

**Location: Kirkland, NM, Quadrangle, USGS 7.5 Minute Series Map
Section 14 & 23, T29N, R14W, NMPM
Upper Fruitland Chapter, Navajo Nation, San Juan County, New Mexico**

The Proposed Project requires approval for grant of right-of-way (ROW) by the Bureau of Indian Affairs, Navajo Region for Sacred Wind Communications, Inc., to construct, operate, and maintain a fiber optic line within a ROW that is 20 feet wide and approximately 839.68 feet in total length for the Upper Fruitland Chapter, San Juan County, New Mexico. The project is sponsored by iiná bá, Inc., 4801 North Butler, Suite 1101, Farmington, New Mexico, 87401.

The environmental assessment was reviewed in the Division of Environmental, Cultural & 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 basis for this decision:

1. The environmental assessment disclosed the environmental consequences of the proposed action, and the "no action" alternatives.
2. Geology/Soils – The Proposed Project will result in negligible, short-term impacts to shallow subsurface soils during the trenching/boring activities over a two-day installation period. Mitigation, including site restoration, procedures/practices will lessen potential effects (EA, Section 4.2.)
3. Hydrology – The Proposed Project will have no long term deleterious effects on surface water quality. There are no surface water features present along the ROW (EA, Section 4.2.1).
4. Groundwater – Depth to groundwater in the area is greater than six (6) feet and the proposed cable is less than six (6) feet below the land surface; therefore, there is limited potential for groundwater impacts (EA, Section 4.3.2).
5. Air Quality – The Proposed Project is anticipated to be completed within a two-day period. Although fossil fuel burning equipment will be used during the construction, the use of the equipment will not result in lingering or long-term impacts to air quality (EA, Section 4.4).
6. Biological Resources – Impacts to vegetation will be minor with the applications of Best Management Practices, including timely restoration to minimize proliferation of noxious weeds (EA, Section 4.5.1).
7. Endangered Species Act Compliance – Navajo Nation Department of Fish and Wildlife issued a Biological Resources Compliance Form (BRCF, NNDFW Review No. 14DOEL-02) with no mitigation measures. The project is an Area 3 location which indicates that the project is an area that is highly disturbed (EA, Appendix A).
8. Socio-Economic Resources – The Proposed Project will result in beneficial impacts by improving the efficiency of the broadband network for the rural community (EA, Section 4.7).
9. Solid Waste – Solid waste such as trash/garbage generated as a result from the construction activities will be collected and transported by NTUA to designated disposal locations. Salvage materials will be returned to NTUA warehouse yard. As a result, there will be negligible to minor short-term impacts (EA, Section 5.0 (C) (1)).
10. Water Resources – There are no wetlands or surface water observed near Proposed Action locations (EA, Section 3.0 (H)). Although the project will impact approximately 68 acres of land, the poles are spanned and aligned for transmission lines, so impacts are not associated with the whole 68 acres of land directly (EA, Section 3.0 (H)).

11. The following resources will not be impacted (directly, indirectly, or cumulatively) by the Proposed Project due to absence of resource and/or lack of direct/indirect impacts resulting from action: Hunting, Fishing & Gathering; Agricultural; Transportation Networks; Public Health and Safety; Hazardous Materials; and Noise and Visual. Floodplains – The proposed undertaking will not impact flood plains (EA, Section 3.0 (H)).
12. In compliance with the National Historic Preservation Act of 1966, as amended, Section 106 consultation, and 36CFR 800.9 (b), cultural resources surveys were completed on May 20, 2014, by Linda Laughing, Navajo Nation Archaeology Department. The Navajo Nation Historic Preservation Department (NNHPD) issued a letter dated May 23, 2014, indicating that the survey resulted in no cultural resources and that NNHPD recommends that the proposed undertaking be authorized to proceed (EA, Appendix B).

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 Navajo Nation Historic Preservation Department must be notified.

The Proposed Action will result in the construction, operation, and maintenance of the proposed fiber optic line in Upper Fruitland Chapter.



Regional NEPA Coordinator

10/7/2014

Date

ENVIRONMENTAL ASSESSMENT REPORT
Sacred Wind Communications, Inc.
Proposed Fiber Optic Project
NAVAJO NATION INDIAN RESERVATION
Upper Fruitland, San Juan County, New Mexico



September 2014
Prepared by

John R. Isham, CPG
Environmental Manager



iiná bá, Inc.
A Native American Firm
4801 N. Butler, Suite 1101
Farmington, New Mexico 87401



iiná bá, Inc. Project No.: SACREDW-00001

Sacred Wind Purchase Order No. BCM - 10754

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CHAPTER 1.0 - PURPOSE OF AND NEED FOR ACTION

1.1 INTRODUCTION

This Environmental Assessment (EA) was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 USC. 4321 et seq., the regulations therein, (40 CFR Part 1500 et seq.), 516 DM 1-15 and the Indian Affairs Manual (IAM) part 59, Chapter 3. Sacred Wind Communications, LLC (SWC) proposes to direct bury a fiber optic line to increase the broadband network service for the local community within a right-of-way (ROW) area measuring 20 feet wide and approximately 839.68 feet in total length (hereinafter referred to as Proposed Project).

1.2 PURPOSE AND NEED

The purpose of the undertaking is to add to the existing fiber optic broadband network in the community to increase the efficiency of the existing service for the local community. There is a federal mandate to provide such services to local schools that utilize the broadband service for student testing services.

1.3 PROJECT LOCATION

The Proposed Project is located in the Upper Fruitland community off an unpaved service road west of the intersection of Navajo Service Route 363. The project is located within San Juan County on the Navajo Indian Reservation in Sections 14 and 23, Township 29 North, Range 14 West New Mexico Principle Meridian (NMPM). See Project Location Map, Boundary Survey Map, and legal survey for the proposed project on following pages.

A site visit was conducted on July 28, 2014 to gather information regarding the current condition and status of the Proposed Project area and surrounding areas. Photographs were taken during this visit and are included in **Appendix D**. As evidenced by the photographs, the property is currently open desert land with limited desert scrub brush. A housing community is located immediately adjacent to the property to the northeast. An unpaved service road bisects the Proposed Project ROW. Two (2) NTUA water service lines and one telecommunication line are present near or crosses the Proposed Project ROW. An overhead transmission line owned by PNM parallels the proposed ROW and contain some of the new installation when completed. Small homesites are located to the east and west of the Proposed Project area. Sandstone cliffs are located to the south-southeast of the project area.

1.4 DECISIONS TO BE MADE

After consideration and review of the information presented in this EA and public review, the BIA will determine if the proposed action is a major action which may significantly affect the quality of the human environment.

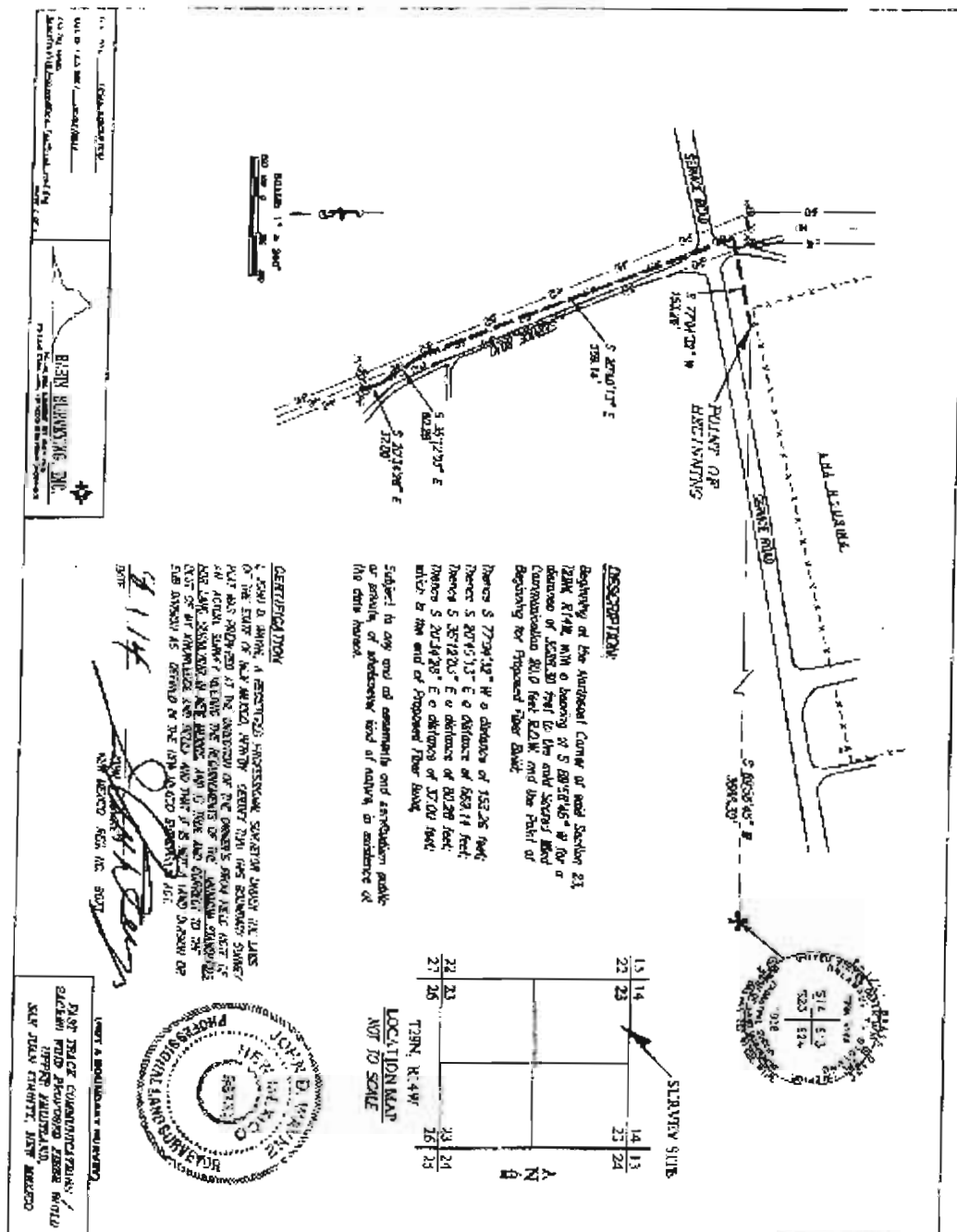
**Project Location Map
Proposed Fiber Optic Line
Upper Fruitland Chapter of the Navajo Nation
San Juan County, New Mexico**



**Kirtland, NM
Provisional 1995
Contour Interval = 20 feet**

**Project Boundary Map (Google Earth Image, November 2013)
Proposed Fiber Optic Line
Upper Fruitland Chapter of the Navajo Nation
San Juan County, New Mexico**





1.5 NECESSARY PERMITS/LICENSES AND REGULATORY COMPLIANCE

Prior to the start of any construction activities, the BIA must be in possession of all the necessary federal, tribal, and state permits or licenses from the respective and appropriate entities (i.e., Navajo Nation, BIA, United States Environmental Protection Agency, Army Corps of Engineers, NMDOT, etc.).

Regulatory compliance issues/procedures relevant to the Proposed Project and any appurtenant permits/certifications are as follows:

- **Clean Water Act §402 National Pollutant Discharge Elimination System (NPDES) Permit** - As of March 2003, construction activities that disturb one acre or more are now regulated under the NPDES storm water program. The United States Environmental Protection Agency (EPA) Construction General Permit (CGP) regulation states that construction sites must develop and implement storm water pollution prevention plans (SWPPP) and obtain permit coverage from the primacy agency if more than one acre of land is disturbed.

Additional federal regulations and laws include the Migratory Bird Treaty Act; Eagle Protection Act; Clean Air Act; Clean Water Act; National Historic Preservation Act of 1966, as amended; Native American Graves Protection and Repatriation Act of 1990; and Executive Order 12898 of 1994 (Environmental Justice) and Endangered Species Act.

CHAPTER 2.0 - ALTERNATIVES

2.1 INTRODUCTION

This chapter describes the proposed action and the alternatives to that action. These alternatives and/or potential environmental consequences herein were derived through discussions and consideration of local recommendations, minimizing impacts (cultural and traditional) and costs. The considered alternatives to the Proposed Project, listed in reverse order of viability, are as follows:

- No Action
- Construction (proposed alternative)

2.2 DESCRIPTION OF ALTERNATIVES

2.2.1 No Action Alternative

The No Action Alternative would change nothing and no site improvements would be constructed.

2.2.2 Proposed Action Alternative (Construction of a New Student Housing and Ancillary Structures)

The purpose of the proposed project is to install additional fiber optic cable to increase the existing broadband network for the local community. By expanding the current system, there will be an improvement in the overall reliability and strength of the current network that will allow additional services that rely on the network to expand and keep up with the changes in the community and local needs. The Proposed Project would be completed in no more than two (2) days of onsite activity.

CHAPTER 3.0 - AFFECTED ENVIRONMENT

3.1 INTRODUCTION

Chapter 3.0 discusses the area in which the proposed action would occur and those aspects that may be impacted. Additionally, the site can be described as an arid, high desert environment lying within the Colorado Plateau physiographic province of the North American Cordillera of the southwestern United States. The topography across the entire Proposed Project site is relatively flat. Some isolated outcroppings of sandstone are present on property to the south-southwest. The current use of the subject property is vacant with an existing high-voltage overhead power line system owned by Public New Mexico (PNM).

The climate of the site is characterized by a four-season climate with moderate temperatures. The air is normally clear with low humidity. The majority of the annual precipitation occurs in the form of summer thunderstorms that are usually of short duration resulting from convective and/or orographic lifting of the air masses. Relevant resource components of the existing environment are presented.

3.2 GEOLOGY/SOILS

The local geology is characterized by the Crevasse Canyon Formation (Kcc) of the Cretaceous Period. The predominant lithologies consist of shale, siltstone, and sandstone, with secondary coal deposits common. Sandstone outcroppings can be seen south-southwest of the subject property. Shallow bedrock may be present within the limits of the subject property.

According to the United States Department of Agriculture (USDA) Custom Soil Resource Report for the Proposed Project site, the entire property is covered by Stumble-Fruitland (SW) association soils on 0 to 8 percent slope. This soil type forms as dunes and alluvial fans (eolian) derived from sandstone and shale. The soil type is well-drained to excessively well drained and the frequency of flooding is none. The typical profile is 0 to 7 inches of a sandy loam to loamy sand with a gravelly loamy sand at 29 to 60 inches. The depth to the water table is more than 80 inches. A copy of the Custom Soil Resource Report for the subject property is included in **Appendix C**.

3.3 HYDROLOGY

The proposed project is located within the Little Colorado River drainage which is part of the Lower Colorado River Basin. Surface water is short-lived and occurs primarily as spring runoff from snowmelt and summer and fall thunderstorms.

3.4 AIR QUALITY

San Juan County, New Mexico, as is most of the State of New Mexico, is designated as an attainment area with the National Ambient Air Quality Standards (NAAQS) (www.epa.gov/region9/air/maps) for six air pollutants: ozone, airborne particulates, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead as established as amended under the Clean Air Act of 1970. Air quality in the area is generally good. Vehicular exhaust, roadway dust, or wood-burning smoke contributes to the airborne particulate matter within the general area.

3.5 BIOLOGICAL RESOURCES

Due to the site being located within a Low Sensitivity Area 3, as designated by the Navajo Nation Department of Fish and Wildlife (NNDFW), a biological evaluation of the Proposed Project area was conducted on Monday, July 8, 2014 by Mr. John Dodge of Dodge Environmental, L.L.C. As a component of this evaluation, a Request for Threatened & Endangered Information letter was issued by Dodge Environmental, L.L.C. on July 30, 2014 to the Navajo Nation Fish & Wildlife Department (NNFWD). A copy of this letter is included in **Appendix A**. From this list of species, the site walk on the designated day was used to determine if any of the species on the list were observed within the Proposed Project site.

On September 15, 2014, Ms. Gloria Tom, Director of the NNDFW approved the subject project by the issuance of a Biological Resources Compliance Form (14DOEL-02). A copy of the form is included in **Appendix A**. Based on this compliance, the project may proceed as long as it 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.

3.5.1 Flora and Fauna of Kirtland, New Mexico Quadrangle

The vegetation in the proposed project area and general vicinity consists of Great Basin desert scrub and conifer woodland (i.e., Juniper Savannah) biome community (Brown 1994 and Dick-Peddie 1994). The present distribution and composition of vegetation communities in the project area has been affected by significant clearing and grubbing activities. The two major vegetation communities found within the proposed project are discussed below. No riparian vegetation occurs within the proposed project area. Overall, vegetation cover was visually estimated at 5-30 percent.

Great Basin desert scrub (sagebrush series)

The majority of the proposed project would be located within a sagebrush series. The current vegetation is dominated by woody species such as big sagebrush (*Artemisia tridentata*), standing about 1-3 feet high. In general, a sparse to moderate layer of herbaceous and woody species were observed and consisted of blue grama (*Bouteloua gracilis*), sand dropseed (*Sporobolus cryptandrus*), muhly grass (*Muhlenbergia* sp.) mixed with scattered shrubs to include four-winged saltbush (*Atriplex canescens*), viscid rabbitbrush (*Chrysothamnus viscidiflorus*), common horsebrush (*Tetradymia canescens*) and rubber rabbitbrush (*Chrysothamnus nauseosus*). The vegetative community throughout the southern and eastern portion of the proposed project area shows considerable evidence of previously wild land fire disturbance. Vegetation in this previous disturbance has regenerated to sparse and limited distribution of annual and perennial species such as red pigweed (*Amaranthus retroflexus*),

pinnate tansymustard (*Descurainia pinnata*), Russian thistle (*Salsola tragus*), and broom snakeweed (*Gutierrezia sarothrae*).

Juniper Savannah woodland

Great Basin desert scrub and juniper savannah habitats support a variety of wildlife. Based on the habitat within the proposed project area and general vicinity, the area could support a variety of large to small mammals, birds, amphibians, and reptiles.

Wildlife species that can be observed or otherwise detected through tracks, burrows, scat, or other sign include the desert cotton tail (*Sylvilagus audubonii*), and black-tailed jackrabbit (*Lepus californicus*). No active and dormant gopher (*Thomomys* spp.) and prairie dog (*Cynomys* spp.) mounds were observed within the proposed project area during the site visit conducted on March 20, 2014.

The surrounding upland terrain provides potential foraging and nesting habitat for a variety of raptors including red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), and other species such as common raven (*Corvus corax*). Similarly power-line structures could be utilized as perches for a variety of species. Ravens were the most abundant bird species observed in the project area. No nests were observed in the proposed project area or in the immediate vicinity of the proposed project area. No raptors or waterfowl species were observed during the site visit conducted on March 20, 2014.

Resource Conservation Plan

In regard to the NNDFW Biological Resource Policy and Procedures, the Proposed Project is located within a "Less Sensitive Area" (Area 3), as identified by the NNDFW and described in the Biological Resources Land Clearance Policies and Procedures (RCP) RCS-44-08, approved September 10, 2008 (NNDFW 2008a). The RCP is aimed to assist the Navajo Nation government and Chapters to stay in compliance with federal and tribal laws that protect plant and animal species of concern, including their habitats, resulting in expedited land use approvals.

In Area 3, the NNDFW has determined that the area has a low, fragmented concentration of species of concern. Species in this area may be locally abundant on "islands" of habitat, but islands are relatively small, limited in number and well-spaced across the area. The Department recognizes that lands within Area 3 may not be completely surveyed for the potential occurrence of sensitive species or habitat. Therefore a request for Threatened & Endangered Species (T&E) is recommended. If the results of the data request indicate no known or potential species of concern are located in the area, the performance of a BE survey is not required.

Species addressed in this EA are based on a list of federally threatened, endangered, and candidate species for San Juan County, New Mexico compiled from the USFWS in March 2012 (USFWS 2012). A copy of this list is included in **Appendix B**.

According to the USFWS, there are three (3) birds, four (4) fish, three (3) flowering plants, and one (1) mammal either designated as Candidate, Endangered, or Proposed Threatened within San Juan County. A copy of this list is included in **Appendix B**.

Species of concern include NNHP and federally protected candidate species and other rare or otherwise sensitive species (e.g., Eagle Protection Act [EPA]; Migratory Bird Treaty Act [MBTA]; and species of economic and cultural significance).

3.5.2 FEDERAL ESA AND NESL DATA RESPONSE LISTING

Federal agencies are required to consult with the United States Fish and Wildlife Service (USFWS) on any proposed action which may affect federally listed threatened or endangered species or species proposed for listing. The NNDFW NHP *Navajo Nation Endangered Species List Species Account Book* (NNDF&W, 2008) was reviewed. The following sections address the potential for federally listed and other special status species to occur near the project area.

3.5.2.1 Golden Eagle *Aquila chrysaetos*

Status: NESL Group 3, protected under Bald and Golden Eagle Protection Act (BGEPA) and Migratory Bird Treaty Act (MBTA)

Distribution and habitat:

Golden eagles occur primarily in mountainous canyon land, rimrock terrain of open desert and grassland areas of western U.S. (Kochert et al. 2002). In Arizona, golden eagles prefer desert grassland and chaparral habitats (Millsap 1981). On the Navajo Nation, golden eagle nests most often occur on steep cliff ledges, usually greater than 100 feet in height; although shorter cliffs may also be used (Mikesic and Roth 2008). In other parts of its range, golden eagles may nest in large trees, manmade structures, but rarely on the ground. Nest sites are adjacent to open habitats that support preferred prey species (e.g., black-tailed jackrabbits, cottontails, and prairie dogs).

Potential to occur on the site:

The general conditions and topography in the Proposed Project area provide potential foraging, and perching habitat for golden eagles. There is no suitable nesting habitat in the project area. However, sandstone cliffs, with steep ledges that rise above the project area, outlying in the south and southwestern region offer potential nesting and perching habitat for area raptors. No golden eagles or sign of consistent raptor use (e.g., whitewash or nests) were observed in the project area or action area during the site visit conducted on July 28, 2014. The occurrence of golden eagles in the project area and vicinity would be limited to individuals flying over the site during foraging trips.

3.5.2.2 Black Bear

Status: Species of cultural and economic significance

Distribution and habitat:

Black bears are found throughout most of North America north of central Mexico, except the desert region of the southwestern U.S. In Arizona, black bears are found in elevations ranging from 4,000 to 10,000 feet in most woodland habitats, including piñon-juniper, oak woodland, coniferous forest, and chaparral. On average, black bears move within territories of 5-50 square miles. During periods of drought, the black bear will move long distances to find food (AGFD

2012).

Potential to occur on the site:

The proposed project and action areas are located within a Great Desert scrub intermixed with scatter juniper trees. The current vegetation is dominated by woody species such as big sagebrush. Black bears could occur as transients through the action area. No fruit-bearing shrubs were observed in the proposed project and action area. No direct sightings of black bear or indirect evidence of black bear activities were observed in the proposed project area during the site visit conducted March 20, 2014.

3.5.2.3 Mule Deer

Status: Species of cultural and economic significance

Distribution and habitat:

Mule deer range throughout western North America. In the mountains of the Southwestern U.S., mule deer are found in lower elevation shrublands (Snyder 1991). In Arizona, they are found statewide except for in the extreme southwestern corner of the state at elevations ranging between 100 to 10,000 feet. Mule deer are not limited to a particular habitat type and can be found on sparsely vegetated low deserts to high forested mountains. Typically, mule deer prefer more rugged terrain (AGFD 2012). Mule deer have adapted well to people and will often venture into suburban backyards to feed (Wassink 1993).

Potential to occur on the site:

The vegetation communities and general conditions in the project and action area provide habitat for this species. Mule deer are known to browse on sagebrush, which is found in the project and action area. Shrub cover in the proposed project area is limited for sufficient browse for mule deer. No direct sighting of mule deer or indirect evidence of mule deer activities were identified in the proposed project and action area during both the site visit conducted on March 20, 2014.

3.5.2.4 Wild Turkey

Status: Species of cultural and economic significance

Distribution and habitat:

Wild turkeys are native to the eastern and southwestern U.S., Mexico and southern Ontario. They have been extirpated or reduced in much of their former range but have also been introduced widely within and outside of their former range. Habitat preferences include forest and open woodland, scrub oak and deciduous or mixed deciduous-coniferous areas, especially in mountainous regions. In Arizona, wild turkeys can be found not only in ponderosa pine forests, but also other types of vegetation communities in elevations ranging from 3,500 to 10,000 feet. Wild turkeys need mature, open forests interspersed with grassy openings for traveling and seeing predators (Snyder 1992).

Potential to occur on the site:

The wild turkey is considered to be secure in the Navajo Nation, being common, widespread, and abundant (Mikesic 2008). The vegetation communities in the general vicinity of the project area provide habitat for this species. Wild turkeys range from 5-30 square miles and are likely to wander into the action and project area. No direct sightings of wild turkey or indirect evidence of wild turkey activities were observed in the proposed project area during the site visit conducted on March 20, 2014.

3.6 ANALYSIS AND DETERMINATION OF EFFECTS

As required in the guidelines for preparation of BEs issued by the NNDFW, the following sections discuss impacts to federally listed species, NESL species of concern, and avian species protected under the MBTA.

3.6.1 Federally Listed Species

Specialized habitat requirements such as site-specific habitats and site-specific geographic locations for San Juan County, New Mexico federally listed species listed above comprise the preferred habitat regimes for these federally listed species. The federally listed threatened, endangered, proposed and candidate species for the San Juan County, New Mexico area are unlikely to occur due to the lack of suitable habitat. Further, none of these federally listed species have been previously documented to occur within the proposed project area. No designated critical habitat occurs within the proposed project area or action area.

Based on information above, a determination of “no effect” is expected for all federally listed threatened, endangered, proposed and candidate species with potential to occur in San Juan County, New Mexico.

3.6.2 NESL Species of Concern

The proposed project and action area contains potential habitat for four NESL listed species of concern; golden eagle, black bear, mule deer, and wild turkey. Impacts to NESL listed species potentially occurring in the project area or action area are discussed in detail below.

3.6.2.1 Potential Impacts to Golden Eagle

No suitable golden eagle nesting habitat would be directly impacted by the proposed project. No nests or signs of consistent raptor use were observed within the project or action area. The proposed project is located on and near existing infrastructure, thereby reducing the quality of adjacent habitat. Direct impacts to golden eagles would include a minor loss of foraging habitat and avoidance of the proposed project during construction activities from increased traffic, human activity, and noise related to construction activities. Impacts may include minor habitat loss (approximately 8-acres) due to implementation of the proposed project, which would be low and long-term. Loss of potential habitat would be low and long-term; while avoidance would be low to moderate and short-term during construction, and low and long-term during business operation. Impacts to raptor species are minimized by development of the proposed action adjacent to existing infrastructure disturbance. If a golden eagle nest were discovered in the vicinity of the proposed action during construction, NNDFW shall be contact immediately to determine the best course of action.

3.6.2.2 Potential Impacts to Black Bear

The proposed project and action areas represent marginal habitat for black bears. No records exist of black bears utilizing the proposed project area or general vicinity on a regular basis. Black bears could potentially travel through the project area during foraging trips. No direct or indirect sightings of black bear use were observed during the biological survey. The Proposed Project would result in the temporary disturbance of marginal, unoccupied habitat for this species, resulting in minor direct and indirect impacts. Noise and human activity during construction of the proposed project would result in short-term impacts to black bear from temporary avoidance of the area and long-term avoidance during business operation.

3.6.2.3 Potential Impacts to Mule Deer

Potential mule deer habitat occurs in the action area. The Proposed Project would result in the temporary disturbance of the mule deer. This impact is minimized by development of the proposed project on adjacent to existing infrastructure disturbance. Increased human presence, equipment operation, vehicle traffic, and increased noise levels related to the proposed project construction could cause mule deer to avoid the general area. These impacts would be low and short-term. Habitat loss or modification would be minor and long-term during business operation, given the degree of existing disturbance and human habitation.

3.6.2.4 Potential Impacts to Wild Turkey

The wild turkey is considered to be secure in the Navajo Nation, being common, widespread, and abundant. Suitable nesting, foraging, and roosting habitats occur in the action area of the proposed project area. No wild turkeys or sign were observed in the proposed project and action area. Direct impacts to this species would include avoidance of the area during construction and business operation construction of the proposed project and an increase in human presence, traffic, and associated noise. Impacts to the wild turkey would be low and long-term resulting from habitat loss and avoidance.

3.6.2.5 Species Protected Under the MBTA

The MBTA ensures that all migratory birds and their parts (e.g., eggs, nests, and feathers) are protected from (i.e., taking, killing, capture, transport, sale, or purchase). The Great Basin desert scrub and piñon-juniper woodland habitats support an array of bird species. The New Mexico Partners in Flight (PIF) identified 24 priority bird species within these two habitat types for the State of New Mexico. The provided table in **Appendix A** includes species listed by New Mexico PIF to support all of the priority bird species. None of these listed migratory birds was observed within the project area during the site visit conducted on July 28, 2014.

3.7 CULTURAL RESOURCES

A Cultural Inventory Report (CIR) was prepared for the Proposed Project by the Navajo Nation Archaeology Department (NNAD) on May 21, 2014 for an area of effect of 0.39 acres. The area surveyed by the Department of 2.31 acres. The results of the CIR indicated that no historic properties would be affected by the Proposed Project. A copy of this report and associated documentation is included in **Appendix B**. As of the date of this report, a receipt of the Cultural Resource Compliance Form (CRCF) had not occurred from the NNHPD and the BIA.

3.8 SOCIO-ECONOMIC RESOURCES

The Navajo Nation is a semi-autonomous Native American homeland covering approximately 26,000 square miles and encompasses approximately 17 million acres of land. The Navajo Nation occupies all of northeastern Arizona, the southeastern portion of Utah and northwestern New Mexico. It is the largest land area within the United States assigned to a Native American jurisdiction. The unemployment level fluctuates between 40 and 45 percent, but in some communities it can be as high as 85 percent or as low as 15 percent. These rates could be due to the remoteness of a majority of the communities and the lack of employment opportunities on the reservation, thus mandating residents to travel many miles to seek employment. The Navajo Nation Division of Economic Development (DED) has completed various developments through their development plan. Additional economic opportunities include cattle, tourism and recreation within the Reservation. The population of the Navajo Nation within its recognized boundaries is approximately 180, 500 residents according to the U.S. Census Bureau – Census 2000. The median household income is approximately \$22,400.00.

3.9 RESOURCE USE PATTERNS

3.9.1 Hunting, Fishing, and Gathering

The Proposed Project area provides limited conditions for hunting and is located in close proximity to a residential area and congested roadway. Hunting within the property is not likely to occur within the close confines of the community. There are no significant water bodies within the property to support the activity of fishing. Therefore, these resource uses would not be affected by the loss of the subject property to the Proposed Action.

3.9.2 Agriculture

There are no significant agricultural activities in the project area.

3.9.3 Transportation Networks

The Proposed Project area is accessed from an unpaved service road that also serves the adjacent housing community. The Proposed Action would not change any of the existing transportation networks. Once the Proposed Action is completed, the area will look essentially identical to before the action took place.

3.10 PUBLIC HEALTH AND SAFETY

The Proposed Action would not create any unacceptable public health or safety issues as the project would be completed within no more than two (2) days.

3.11 HAZARDOUS MATERIALS

A preliminary initial site assessment (PISA) was conducted within the project area and no hazardous wastes were observed during the site visit conducted on July 28, 2014. If suspected hazardous waste is encountered during construction, cessation of work activities will occur and the BIA/NRO will be contacted to coordinate the proper treatment, transport and disposal of those materials.

3.12 OTHER RESOURCES

3.12.1 Visual Resources

The general scenery in the project vicinity is indicative of desert scrubland with sandstone ridges and cliffs. There is also a small housing community located to the north-northeast of the Proposed Project area. Since the action will be the direct burial of a fiber optic cable, no visual changes to the landscape after site restoration activities are completed will occur. All connections of the new fiber optic line will be made to existing aboveground features that are currently fitted with fiber optics.

3.12.2 Noise

The noise environment in the vicinity of the Proposed Project is typical of rural developed areas, consisting primarily of traffic noise generated from vehicle traffic. Additionally, noise in the proximity is generated by the wind, wildlife, and occasional aircraft flyovers. The subject project will not change the existing noise environment for the area after completion. Minimal noise of equipment will occur during the limited two-day installation period.

CHAPTER 4.0 - ENVIRONMENTAL CONSEQUENCES

4.1 INTRODUCTION

The potential for consequences of the No Action and Proposed Action alternatives on selected environmental resources are described in this chapter. This EA discusses impacts and related feasible mitigation measures under the same headings and in the same order as found in Chapter 3. Under the No Action Alternative the overall topography would remain undisturbed. Under the Proposed Action Alternative temporary disturbances around the construction areas may exist during the project activities due to the necessity for the construction of the proposed facilities and construction yard. Therefore, the Proposed Action Alternative will pose topographical changes due to construction of the student housing and proposed ancillary improvements.

4.2 GEOLOGY/SOILS

No Action Alternative

Under the No Action Alternative, there would be no changes to the existing conditions and the geologic conditions would remain the same.

Proposed Action Alternative

Under the Proposed Action Alternative, the construction of the fiber optic line would cause localized changes to the shallow subsurface soils during the trenching/boring activities over the two-day installation period. Mitigation or site restoration procedures will lessen potential effects.

4.3 HYDROLOGY

4.3.1 Surface Water

No Action Alternative

This alternative would not change the current conditions related to water quality in the vicinity of the project area.

Proposed Action Alternative

This alternative will have no long term deleterious effects on surface water quality. Limited ground disturbance during the installation of the fiber optic cable over the short duration of installation (2 days) would not create any surface water impacts. Furthermore, there are no surface water feature or drainage features present along the Proposed Project ROW.

4.3.2 Ground Water

No Action Alternative

Under this alternative there would be no change in current conditions.

Proposed Action Alternative

Based on the Soil Survey Report, the depth to the shallow water table at this location is greater than 80 inches (6 feet). The typical burial depth of a cable is less than six (6) feet below land surface. There is little to no potential for groundwater impact as a result of the Proposed Action.

4.4 AIR QUALITY

No Action Alternative

Under this alternative there would be no change in current conditions.

Proposed Action Alternative

Limited, short-lived changes to air quality would result during the Proposed Project implementation. Some equipment use running on fossil fuels would be utilized during the two-day event. However, this use of equipment will not result in lingering or long-term changes in air quality within the Proposed Project area. The project is not expected to contribute such significant negative quantities that result in the degradation of the general air quality in the surrounding area or to require air permitting from EPA Region IX.

4.5 BIOLOGICAL RESOURCES

4.5.1 Vegetation

No Action Alternative

Under this alternative, vegetation would remain as is.

Proposed Action Alternative

Direct impacts resulting from the proposed activities would be kept at a minimum through the use of Best Management Practices (BMPs). Timely site restoration of the loss of vegetation under this alternative would reduce the proliferation of noxious weeds over the disturbed area and reseeded disturbed areas would limit the invasion of invader species or noxious weeds. Residual impacts to vegetation would be reduced or eliminated through the use of BMPs, and the re-establishment of vegetation. All appurtenant clearing and grubbing will be in accordance with recognized methodologies and protocol.

4.5.2 Wildlife

No Action Alternative

Under this alternative, there would be no impact to wildlife.

Proposed Action Alternative

Under this alternative construction activities may disturb wildlife in the very short-term due to increased human activity and by the variable noise and dust. Since construction activities are normally limited to a small area and during daylight hours when animals are less active, the

impacts would be minimal. Abnormal noise disturbances resulting from the project may contribute to wildlife avoidance of the immediate area of activity, but would be short lived and have little, if any, effect on wildlife. Short-term removal of nesting habitat for shrub and ground nesting birds may occur, however, only a minimal amount of vegetative habitat would be permanently removed. No residual impacts are anticipated after implementation of operating procedures and the proposed environmental protection measures, including mitigation to revegetate the project area with native grass species where possible.

4.5.3 Threatened and Endangered Species

The presence of threatened and endangered species is not likely within the project area due to being positioned within a designated Lower Sensitivity 3 region. However, the NNDFW does highly recommend that project activities avoid the Migratory Bird breeding season of March 1-August 15 or requires surveys prior to construction activity if unavoidable.

4.6 CULTURAL RESOURCES

No Action Alternative

Under this alternative, there would be no impact to cultural resources.

Proposed Action Alternative

No cultural artifacts, cultural features or cultural sites have been identified as present within the project area based on a previous Cultural Survey. The Navajo Nation Historic Preservation Department (NNHPD) has reported that there are no known cultural sites in the vicinity and that NNHPD has no concerns with the project. Therefore, there will be no impacts to cultural resources as a result of the proposed project.

4.7 SOCIO-ECONOMIC RESOURCES

No Action Alternative

Under this alternative, there would be no temporary construction jobs and no monetary benefit to the local economy. Over the long-term, potential impacts to the communication infrastructure within the community would result of the need is not met. The community's quality of life and economy would not improve. The existing facilities would remain unchanged.

Proposed Action Alternative

It is anticipated that socioeconomic impacts from the performance of the proposed action alternative should be positive in nature due to the potential for improving the broadband network for the rural community.

ENVIRONMENTAL JUSTICE

Relating to environmental justice, Executive Order 12898 (published in the Federal Register on February 11, 1994) requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on

minority populations and low income populations. This being a Navajo Nation construction project, no adverse effects are expected.

4.8 RESOURCE USE PATTERNS

4.8.1 Hunting, Fishing and Gathering

No Action Alternative

There will be no impact under this alternative.

Proposed Action Alternative

The proposed student housing construction will have no impacts to the resource use patterns. Some temporary disruption of these use patterns could occur during construction on adjacent lands to the south and southwest, but the conditions will be restored after completion of construction. Furthermore, due to these outlying areas being surrounding by various inhabited areas within the Upper Fruitland community, it is actually unlikely that any resource use patterns would be disturbed during or after the completion of the project.

4.8.2 Agriculture

No Action Alternative

There will be no impact under this alternative.

Proposed Action Alternative

No agricultural lands will be impacted by the proposed project.

4.8.3 Transportation Networks

No Action Alternative

There will be no impact under this alternative.

Proposed Action Alternative

The construction of the proposed fiber optic cable will not change any of the existing conditions that govern the current transportation network. All installations will be below ground after completion that will not change any roadway system or access to and from the project area.

4.9 PUBLIC HEALTH AND SAFETY

No Action Alternative

There would be no impact under this alternative.

Proposed Action Alternative

The short-term activity at the Proposed Project site would not create any unacceptable risk to public health or safety. The use of proper construction signage and warnings would be in place during any ROW work that is in close proximity to the public during the two-day installation event.

4.10 HAZARDOUS MATERIALS

No Action Alternative

There will be no impact under this alternative.

Proposed Action Alternative

Hazardous wastes will not be generated during construction activities. Vehicle maintenance, other than routine lubrication and fueling operations, will be performed off-site at a temporary locked and secured equipment yard to prevent accidental releases of petroleum by-products or other potentially hazardous materials.

4.11 OTHER RESOURCES

4.11.1 Visual

No Action Alternative

There would be no changes to current visual characteristics under this alternative.

Proposed Action Alternative

The proposed project will have no change in the visual appearance of the area upon final burial and restoration of the land surface. There will be limited surface features visible after the completion of the Proposed Project and some of the installations will be on existing power poles that currently have similar installations.

4.11.2 Noise

No Action Alternative

There would be no changes to current noise levels under this alternative.

Proposed Action Alternative

Under this alternative construction activities may disturb wildlife in the very short-term due to increased human activity and by the variable noise and dust. Since construction activities are normally limited to a small area and during daylight hours when animals are less mobile, the impacts would be minimal. Abnormal noise disturbances resulting from the project may contribute to wildlife avoidance of the immediate area of activity, but would be short lived and have little, if any, effect on wildlife. Of note the wildlife in the area are most likely accustomed to the ambient noise of the adjacent roadway and housing community. Any construction noise

generated would occur during normal working daylight hour and not on weekends. Once construction is completed, the resulting development will not result in any increase in noise that otherwise already exists.

CHAPTER 5.0 - MITIGATION MEASURES

Mitigation measures to be implemented during the design and construction of this project to reduce potential negative environmental impacts include the following actions:

- No travel, parking, or other construction activities shall be allowed outside the construction Right-of-Way.
- The Contractor shall advise all project personnel that archaeological materials, human remains, and other heritage resources may occur hidden by dirt or vegetation in the project area and inform them that they should be alert for these resources. The Contractor shall inform all personnel of the requirement to not collect or disturb any archaeological or cultural remains. Any archaeological artifacts or other heritage resources discovered during construction shall be left intact and undisturbed, all work in the area shall stop immediately, and the Navajo Nation Historic Preservation Department (NNHPD) shall be notified immediately [(928) 871-7148]. Commencement of operations shall be allowed upon clearance by the NNHPD.
- If during construction operations any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; Stat. 3048; 25 U.S.C. 3001) are discovered, the Contractor shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Navajo Nation Historic Preservation Department (NNHPD) of the discovery by telephone [(928) 871-7148] with written confirmation. The Contractor shall continue to protect the immediate area of the discovery until notified by the NNHPD that operations may resume.
- Hazardous wastes will not be generated during construction activities. Vehicle maintenance, other than routine lubrication and fueling operations, will be performed off-site at a temporary locked and secured equipment yard to prevent accidental releases of petroleum by-products or other potentially hazardous materials.
- The Navajo Nation Department of Fish and Wildlife (NNDFW) highly recommend that project activities avoid the Migratory Bird breeding season of March 1-August 15 or surveys will precede construction activity.

CHAPTER 6.0 - AGENCY CONSULTATION AND COORDINATION

6.1 Agencies and/or Individuals Consulted

The following individuals and agencies were contacted in the preparation and completion of this EA. The EA will be provided to the BIA Navajo Regional Office located in Gallup, New Mexico. The BIA will circulate the report to the appropriate agencies and affected communities for comments.

Ms. Gloria Tom, Director
Navajo Nation
Department of Fish and Wildlife
Post Office Box 1480
Window Rock, Arizona 86515-1480

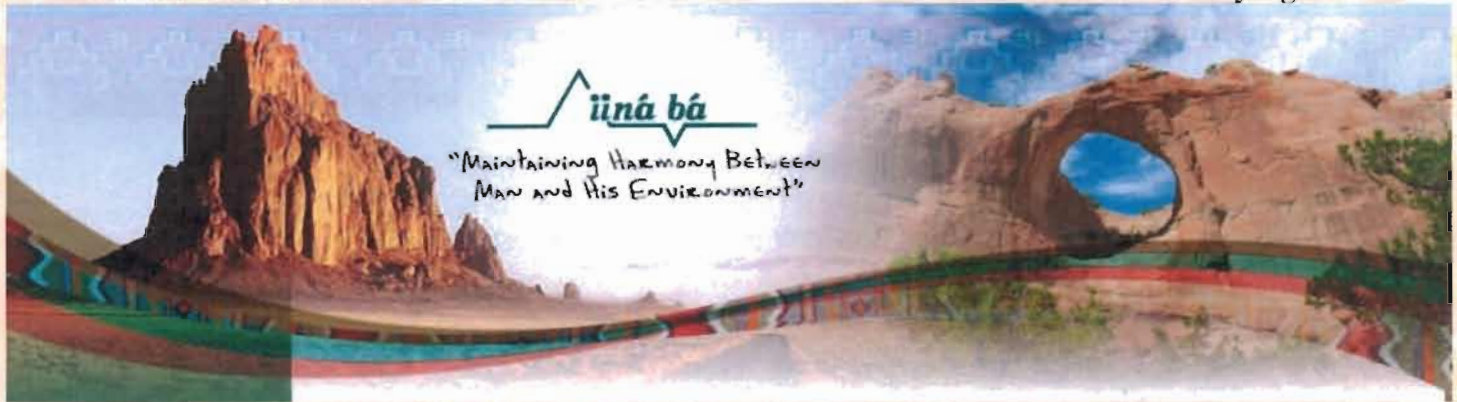
Mr. Ronald Maldonado, Acting Tribal Historic Preservation Officer
Historic Preservation Department
Navajo Nation
Post Office Box 4950
Window Rock, Arizona 86515

CHAPTER 7.0 - REFERENCES AND APPENDICES

7.1 References

- U.S. Army Corps of Engineers, Albuquerque District (<http://www.spa.usace.army.mil/>) - §401 and §404 Permits and Wetlands Issues.
- EPA Office of Wastewater Management -NPDES Construction General Permit.
(http://cfpub.epa.gov/npdes/home.cfm?program_id=6)
- U.S Geological Survey (USGS) web site (<http://nwis.waterdata.usgs.gov>- peak stream flow data for the Nation and Calendar year Stream flow Statistics for the Nation
- U.S. Department of the Interior, Bureau of Indian Affairs, 1993. NEPA Handbook, BAIM Release 9303.
- United States Fish and Wildlife Service (USFWS) web site (<http://wetlandsfws.er.usgs.gov>) National Wetlands Inventory Wetlands Digital Data Internet database.
- United States Environmental Protection Agency (USEPA) web site
(www.epa.gov/region9/air/maps) National Ambient Air Quality Standards (NAAQS)
- Western Regional Climate Center (WRCC) web site
(www.wrcc.dtr.edu/summary/climsmnm.html)
- Crownpoint, New Mexico. USGS 7.5 minute series* (Topographic)
- United States Department of Agriculture, Natural Resources Conservation Service, *Custom Soil Resource Report for San Juan County, New Mexico, Eastern Part*, August 8, 2014, 15 pp.
- U.S. Department of Transportation, Federal Highway Administration, 2003 *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP-03*.
- U.S. Department of Transportation, Federal Highway Administration, 1982 *Government Noise Standards*.
- U.S. Department of Labor, Bureau of Labor Statistics, 2000 *Geographic Profile of Employment and Unemployment*
- U.S. Census Bureau, Census 2000

Appendix A



**APPENDIX A — BIOLOGICAL SURVEY REPORT/NNDFW CONCURRENCE
ENVIRONMENTAL ASSESSMENT REPORT
PROPOSED FIBER OPTIC PROJECT
UPPER FRUITLAND, SAN JUAN COUNTY, NEW MEXICO**



**PREPARED FOR:
SACRED WIND COMMUNICATIONS, INC.
5901-J WYOMING BLVD NE
ALBUQUERQUE, NM 87109**

**PREPARED BY:
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SEPTEMBER 2014**

**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.: Sacred Wind Fiber-Optic Line

DESCRIPTION: SWC propose to construct, operate, and maintain a new subsurface fiber-optic line. The fiber-optic line would measure 839.68 ft. in length w/ a 20-ft. wide ROW. Total permitted fiber-optic ROW would be 0.39 acres.

LOCATION: Sections 14 & 23, T29N, R14W, NMPM, Upper Fruitland, San Juan County, New Mexico

REPRESENTATIVE: John E. Dodge, Dodge Environmental, LLC. for Sacred Wind Communications, Inc.

ACTION AGENCY: Navajo Land Department & Bureau of Indian Affairs - Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: Proposed Sacred Wind Fiber-Optic Built Project/SEP 2014/Dodge Environmental, LLC.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3. Project is located in a highly disturbed area and within the existing PNM transmission ROW.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA


AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/15 SEP 2014

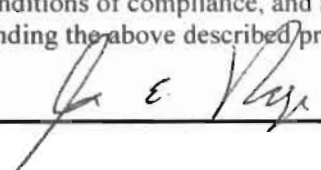
COPIES TO: (add categories as necessary)

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| 2 NTC § 164 Recommendation: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Conditional Approval (with memo) <input type="checkbox"/> Disapproval (with memo) <input type="checkbox"/> Categorical Exclusion (with request letter) <input type="checkbox"/> None (with memo) | Signature  Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife | Date 9/15/14 |
|--|---|------------------------|

*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 9-16-2014

Biological Evaluation

Proposed Sacred Wind Fiber-Optic Built Project San Juan County, New Mexico



Project Applicant:

Sacred Wind Communications, Inc.
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Prepared For:

Navajo Nation Department of Fish and Wildlife
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September 2014

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ACRONYMS

| | |
|-------|---|
| BE | Biological Evaluation |
| BMP | best management practice |
| ESA | Endangered Species Act |
| MBTA | Migratory Bird Treaty Act |
| NMPM | New Mexico Principal Meridian |
| NNDFW | Navajo Nation Department of Fish and Wildlife |
| NNHP | Navajo Natural Heritage Program |
| PIF | New Mexico Partners in Flight |
| PNM | Public New Mexico |
| RCP | Biological Resources Land Clearance Policies and Procedures |
| ROW | right-of-way |
| SWC | Sacred Wind Communication, Inc. |
| U.S. | United States |
| USFWS | U.S. Fish and Wildlife Service |
| USGS | U.S. Geological Survey |

1. INTRODUCTION

The Sacred Wind Communications, Inc. (SWC) is proposing the construction, operation, and maintenance of a new subsurface fiber-optic cable line that measures approximately 839 feet located in Sections 14 and 23, Township 29 North, Range 14 West, New Mexico Principal Meridian (NMPM), in the northwestern portion of the Navajo Nation in San Juan County, New Mexico. A 20-foot right-of-way (ROW) easement would result in impact 0.39 acres of tribal land. The purpose of the proposed project is to provide adequate broadband network services for the rural residences and commercial of the Upper Fruitland Chapter area in support of emergency safety services, advance learning opportunities, economic development opportunities, and communication needs for the Navajo Nation.

iiná bá, Inc. retained Dodge Environmental, LLC, in cooperation with SWC, to conduct a biological inventory, including threatened and endangered species survey, and prepare this Biological Evaluation (BE) report as part of environmental permitting process for the proposed project.

The purpose of this BE is to analyze the effects of the proposed project pursuant to the Endangered Species Act (ESA) of 1973, as amended (16 USC 1531 et seq.), and to the Navajo Endangered Species Act pursuant to the Navajo Nation Code (17 NNC §507), as administered by the Navajo Natural Heritage Program (NNHP) of the Navajo Nation Department of Fish and Wildlife (NNDFW). This BE has been prepared in accordance with the Navajo Nation Biological Evaluation Guidelines (NNDFW 1997). As such, the objectives of this BE are as follows:

- To ensure that proposed action does not contribute to the loss of viability of any U.S. Fish and Wildlife Service (USFWS) federally listed threatened, endangered, proposed or candidate species and to ensure that the action does not lead toward federal listing of any Navajo species of concern (Mikesic and Roth 2008).
- To ensure compliance with requirements of the ESA, such that the proposed action would not adversely modify critical habitat of USFWS federally listed threatened, proposed or endangered species.
- To compile a list of USFWS federally listed threatened, endangered, proposed and candidate species and to consult with the NNDFW for Navajo species of concern with the potential to occur in the project area.
- To provide a physical and biological description of the proposed project area.

To ensure that any concerns for USFWS federally listed threatened, endangered, proposed or candidate species (or critical habitats thereof) and the Navajo species of concern receive full consideration and are incorporated into the decision-making process; thereby, reducing negative impacts to species and enhancing opportunities for mitigation and recovery.

2. PROJECT DESCRIPTION

2.1 Location

The proposed project would be located in the northwestern portion of the Navajo Nation on Tribal Trust lands in San Juan County, New Mexico. The proposed project is located south of Navajo Route N36 Highway, approximately 2.5 miles southwest of Farmington, New Mexico (Attachment A). Photographs of the proposed project location are provided in Attachment B.

| Project Components | Coordinates ¹ | |
|--|--------------------------|----------|
| | Easting | Northing |
| Proposed fiber-optic line – begin line | 0742641 | 4067188 |
| Proposed fiber-optic line – end line | 0742715 | 4066995 |

¹ Universal Transverse Mercator coordinates in North American Datum 1983 (NAD 83), 12 South, as recorded in the field using a hand-held Global Positioning System (GPS) unit

The proposed project can be found on the Kirtland, New Mexico United States Geological Survey (USGS) 7.5-minute quadrangle map. The legal description of the proposed project is Section 14 and 23, Township 29 North, Range 14 West, NMPM, San Juan County, New Mexico.

2.2 Proposed Action

The proposed action consists of construction, operation, and maintenance of a new subsurface fiber-optic line would be installed within the existing Public New Mexico (PNM) transmission ROW. SWC has analyzed service requirements and determined that the proposed action would successfully provide service for rural communities within the Upper Fruitland Chapter area. The facility and infrastructure for the proposed action would be designed, constructed, and operated in accordance with applicable laws, ordinances, regulations, and standards. A brief description of the proposed project is provided below.

The proposed alignment would originate at an existing SWC substation, and would proceed west and then turn to a southerly direction and then easterly, and then southerly directions to terminated at the existing SWC fiber-optic cable ROW.

New Fiber-Optic Line: The total length of the proposed fiber-optic line would measures 839.68 feet with a ROW width of 20-feet. The total permitted fiber-optic ROW would be 0.39 acres.

The new fiber-optic line with a protective sheathing, encased in an approximately 1.0-inch conduit, and would be completely dielectric, no noise, or electric magnetic fields. The project would include underground cable splice vault located at designated area. The vault would composed of concert foundation, completed buried, would be marked for maintenance, repairs, and would be limited to foot-traffic.

The conduit would be laid at a depth of approximately 36 inches with a cable plowing (a vibrating plow bladed to split the ground). The trench width would be approximately 2 feet in existing ROW and in accordance with Occupational Safety and Health Administration specifications. At the time of backfilling,

a colored warning marker would be buried about the fiber line system to indicate a buried fiber-optic line and alert future third party excavators.

Access: No new access road would be required or constructed for the proposed project. The proposed project would be accessed from existing PNM services road via Navajo Route N36 Highway. Existing access road condition is good. Therefore, the SWC has no plans to clear, grade, widen, or improve the existing access road route.

No temporary use areas outside of the project area boundary would be required. During construction, traffic to the proposed project area would consist of various construction equipment and vehicles. Construction is tentatively scheduled to begin in the winter of 2014. Construction activities would have approximately 2 to 4 personnel and would take approximately 1 week to complete. Construction hours would adhere to the Navajo Nation requirements. Typical construction hours are Monday through Friday from 8:00 a.m. to 5:00 p.m.

The proposed project would be constructed pursuant to N.N.C.§164(A)(4), Legislation No. 0551-08 with terms and conditions of the Relating to Resources; the Navajo Nation Raptor Electrocution Prevention Regulations, as approved by the Navajo Nation Council and signed September 4, 2008. The proposed project would be constructed using Navajo Nation Raptor Electrocution Prevention Regulations (NNHP 2008).

3. AFFECTED ENVIRONMENT

3.1 Navajo Nation Department of Fish and Wildlife Land Use

The proposed project sites would be located within a “low sensitivity area” (Area 3), as identified by the NNDFW and described in the Biological Resources Land Clearance Policies and Procedures (RCP) RCS-44-08 that was approved September 10, 2008 (NNDFW 2008). Area 3 has low, fragmented concentration of species of concern.

The NNDFW consultation letter, dated August 19, 2014, is provided in Attachment C.

3.2 Physical Resources

The proposed project lies on the southern, upper alluvial valley of the San Juan River corridor. The topography at the project area is relatively flat with northerly aspect at 0 to 1 degree. Elevation at the project area is near 5,280 feet.

The proposed project is located in the San Juan Basin of the Colorado Plateau physiographic region. Geologically, the proposed project lies on the Farmington Sandstone Member of the Kirtland Shale from the Upper Cretaceous Period (Ward 1990). No prominent geological features such as caves, cliffs, large outcrops or slickrock occur in the project area. The most prominent topographical feature in the immediate vicinity of the proposed project area is terrace mesa that rises about 250 feet above the area, is located about 0.5 to 1 miles to the south of the project area.

Soils in the project area are variable and range from loamy sandy to sandy loam. No biological soil crusts were present in the project areas. No deep alluvial sandy dune terrain in the project area.

The proposed project would be located in the Upper Colorado River Hydrologic Region and is part of the middle San Juan sub-watershed. The nearest perennial water source is the San Juan River located about 0.7 miles to the north.

There is an unnamed tributary drainage to the San Juan River located approximately 200 to 400 feet west of the project area. This tributary drainage has no defined ordinary high water mark, but is shown as a defined drainage on the USGS National Hydrography Dataset. There are no perennial water resources in the form of rivers, lakes, ponds, or streams within the proposed project area and no wetlands or aquatic vegetation occur within the proposed project area or immediate vicinity.

3.3 Biological Resources

The natural vegetation type in the project area is described as open Great Basin desert scrub (Dick-Peddie 1993). The present distribution and composition of the vegetation community in portion of the project area has been affected by grazing activities. The current vegetation is dominated by annual herbaceous species, such as prickly Russian thistle (*Salsola tragus*) and western tansymustard (*Descurainia pinnata*); and woody species, such as broom snakeweed (*Gutierrezia sarothrae*). Overall, the vegetation cover was visually estimated to range from 10 to 20 percent. No trees occur within the proposed project area; or riparian vegetation occurs within the project area or the immediate vicinity. A complete list of plant species observed in the survey area is provided in Attachment D.

There were no noxious weeds (i.e., seedlings or dead stalks) listed by the Bureau of Indian Affairs Navajo Region identified in the project area during the biological field survey.

Wildlife that may be in the general vicinity includes a variety of mammals, birds, and reptiles common to the Colorado Plateau. Much of the natural wildlife habitat has been modified by human habitation and activities associated with established residential development and existing highway. This level of development has reduced the suitability of the area for wildlife. There were signs of domestic livestock observed in the immediate vicinity of the proposed project area that included sheep (*Ovis aries*), goats and (*Capra hircus*). Inactive prairie dog (*Cynomys* sp.) mounds were observed in the proposed project area and immediate vicinity during the biological survey on July 28, 2014. Majority of the prairie dog burrows show sign of excavating disturbances, possibly from domestic dogs. No raptors or signs of consistent raptor use were observed during the field survey on July 28, 2014.

A complete list of wildlife observed in the proposed project area and immediate vicinity is provided in Attachment D.

4. SURVEY METHOD

4.1 Pre-Field Survey/Data Review

A list of USFWS federally listed threatened, endangered, proposed, and candidate species with potential to occur in San Juan County, New Mexico and is provide as Table 4-1. According to the USFWS, there

are nine federally listed threatened, endangered, candidate, or proposed species with the potential to occur in San Juan County, New Mexico (USFWS 2014). The potential of each species to occur in the proposed project area was evaluated based upon project-specific habitat analyses and the habitat associations of each species. The action area is defined as a 1/3-mile radius around the project area.

Table 4-1 includes the USFWS, their conservation status, habitat associations, and potential to occur in the proposed project or action area.

Table 4-1. USFWS federally listed species with potential to occur in the project area

| SPECIES | STATUS | HABITAT ASSOCIATION ³ | POTENTIAL TO OCCUR IN THE PROJECT AREA |
|---|--------------------|---|--|
| | USFWS ¹ | | |
| BIRDS | | | |
| Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>) | E | Breeds in dense, shrubby riparian habitats, usually in close proximity to surface water or saturated soil. | Unlikely, no dense riparian habitat, standing water or moist soils occur in the project and action areas. |
| Sprague's pipit (<i>Anthus spragueii</i>) | C | Breeds in relatively large, flat expanses of native grassland with grass height between 4 and 12 inches or greater. Winters in New Mexico. | Unlikely, no expanses grassland habitats occur in project or action. |
| Western yellow-billed cuckoo (<i>Coccyzus americanus occidentalis</i>) | PT | Large blocks of riparian woodlands (cottonwood galleries with willow or tamarisk) ≥ 20 acres for nesting. | Unlikely, no riparian habitat or riparian woodlands occur in project area or action areas. |
| FISHES | | | |
| Colorado pikeminnow (<i>Ptychocheilus lucius</i>) | E | Large rivers with strong currents, deep pools, and quiet backwaters. | Unlikely, no perennial streams occur in project and action areas. |
| Razorback sucker (<i>Xyrauchen texanus</i>) | E | Medium to large rivers with silty to rocky substrates. Prefers strong currents and deep pools. | Unlikely, no perennial streams occur in project and action areas. |
| Zuni bluehead sucker (<i>Catostomus discobolus yarrowi</i>) | PE | Most frequently occurs in stream reaches with cobble and bedrock substrates with slow- to moderate-velocity water. In New Mexico, the sucker currently is limited to the headwaters of the Zuni River drainage. | Unlikely, no perennial streams occur in project and action areas. |
| PLANTS | | | |
| Knowlton's cactus (<i>Pediocactus knowltonii</i>) | E | Alluvial deposits that form rolling, gravelly hills in piñon-juniper and sagebrush communities (6,200-6,400 feet). A type locality of the Los Piños River area. | Unlikely, no suitable habitat occurs in the project and action areas. The project area is located outside known range of this species. |
| Mancos milkvetch (<i>Astragalus humillimus</i>) | E | Cracks of Point Lookout Sandstone of the Mesaverde series (5,000-6,000 feet). | Unlikely, the project and vicinity geology is not derived from Point Lookout Sandstone. There is no |

| SPECIES | STATUS | HABITAT ASSOCIATION ³ | POTENTIAL TO OCCUR IN THE PROJECT AREA |
|--|--------------------|---|---|
| | USFWS ¹ | | |
| | | | known occurrence of this species in the project area. |
| Mesa Verde cactus (<i>Sclerocactus mesae-verdae</i>) | T | Highly alkaline soils in sparse shale or adobe clay badlands of the Mancos and Fruitland Formations (4,000-5,550 feet). | Unlikely, the project and vicinity geology is not derived from the Mancos and Fruitland Formations. |

¹ Source: USFWS. 2014.

In addition to USFWS federally listed species, a list of Navajo species of concern was obtained through consultation with the NNDFW (Table 4-2). The NNDFW consultation letter is provided in Attachment C. Navajo species of concern include those listed on the NNHP (Mikesic and Roth 2008) including USFWS federally protected species and other rare or otherwise sensitive species such as those protected under the Eagle Protection Act and the Migratory Bird Treaty Act (MBTA), or species of economic and cultural significance. The species listed by the NNDFW are map quadrangle-specific rather than project-site specific. Therefore, project-specific habitat analyses were conducted to determine the potential for each species listed by the NNDFW to occur in the project area.

The NNDFW lists the mottled sculpin (*Cottus bairdi*) (a Group 4 Navajo species of concern) as known to occur one mile from the project area; and the San Juan milkweed (*Asclepias sanjuansensis*) (a Group 4 Navajo species of concern) as known to occur three miles from the project area. In addition, the NNDFW lists 23 Navajo species of concern with potential to occur on the Kirtland, New Mexico USGS 7.5-minute quadrangle map (Attachment C).

The NNHP consultation letter mentions that the potential for Parish's alkali grass (*Puccinellia parishii*) should be evaluated if wetland conditions exist in the project area. No wetland areas occur in the proposed project or action area; therefore, this species will not be evaluated further.

Table 4-2 lists the Navajo species, their conservation status, habitat associations, and potential to occur in the project and/or action area. Some of the species listed in Table 4-2 are dually listed in Table 4-1. Species that have the potential to occur in the project and/or action areas (within 1/3-mile radius of the project area) are in bold text.

Table 4-2. Navajo species of concern with potential to occur in the proposed project area

| Species | Navajo Species of Concern Status ^{1 2} | Habitat Association ³ | Potential to Occur in the Project and Action Areas |
|---|---|--|---|
| Mammals | | | |
| Black-footed ferret (<i>Mustela nigripes</i>) | Group 2 | Open grasslands with prairie dog colonies at least 198 acres in size with ≥8 burrows/acre. | Prairie dog population in the project and action areas are too small to support a black-footed ferret population. |

| Species | Navajo Species of Concern Status ^{1 2} | Habitat Association ³ | Potential to Occur in the Project and Action Areas |
|---|---|--|---|
| Kit fox (<i>Vulpes macrotis</i>) | | Dens excavated in desert scrub or desert grasslands with soft, alluvial or silty clay soils. | May occur as a transient in project and action areas. |
| Birds | | | |
| Bald eagle (<i>Haliaeetus leucocephalus</i>) | Group 2 | Occur near seacoasts, rivers, large lakes, and other large areas of open water. They prefer to nest, perch, and roost primarily in old-growth and mature stands of conifers or hardwoods. | Preferred habitat does not occur in project or action area. San Juan River is located 0.7 miles north of project area, may occur as migrants during the winter months . |
| Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>) | Group 2 | Breeds in dense, shrubby riparian habitats, usually in close proximity to surface water or saturated soil. | No dense riparian habitat, standing water or moist soils occur in the project and action areas. |
| Western yellow-billed cuckoo (<i>Coccyzus americanus occidentalis</i>) | Group 2 | Large blocks of riparian woodlands (cottonwood galleries with willow or tamarisk) ≥ 20 acres for nesting. | No riparian habitat or riparian woodlands occur in project area or action areas. |
| America dipper (<i>Cinclus mexicanus</i>) | Group 3 | Nests near clear, unpolluted streams usually ≤45 feet in width and 6 feet in depth, with a variety of riffles, pools, and waterfalls with substrate of rocks, sand, and boulders. | No clear streams in the project or action area; no occurrence. |
| Ferruginous hawk (<i>Buteo regalis</i>) | Group 3 | Flat or rolling terrain in grasslands, shrub-steppes, and deserts; badlands. Prefers elevated nest sites (e.g., buttes, utility poles, trees and on the ground. | May occur infrequently for foraging and perching in project and action area |
| Golden Eagle (<i>Aquila chrysaetos</i>) | Group 3 | In the West, mostly in open habitats in mountainous, canyon terrain. Nests primarily on cliffs and trees. | May occur infrequently for foraging and perching in project and action area |
| Belted kingfisher (<i>Ceryle alcyon</i>) | Group 4 | Nests in burrows in earthen banks usually near a major water source (e.g., stream, river, pond and lake). Clear water, riffles and lack of overgrown vegetation are important components of habitat. | Preferred habitat does not occur in project or action area; known populations in Tsailie and Asaayi Creek, AZ, Morgan Lake, NM, and the Little Colorado River on the Navajo Nation. |
| Burrowing owl (<i>Athene cunicularia</i>) | Group 4 | Rarely dig their own burrows and are typically associated with prairie dog colonies. Found in dry, open, short-grass, treeless plains. Use areas that include shrubs such as four-wing saltbush and rabbit-brush. Also inhabit human-modified landscapes, such as golf courses and | No individuals observed during the biological field survey. The project and action area provides potential habitat. |

| Species | Navajo Species of Concern Status ^{1 2} | Habitat Association ³ | Potential to Occur in the Project and Action Areas |
|--|---|--|---|
| | | parking lots. | |
| Mountain plover (<i>Charadrius montanus</i>) | Group 4 | Typically nests in flat to slightly rolling grasslands, semi-desert areas, or badlands; prefers areas with short, sparse vegetation and large bare areas that are typically disturbed. | Preferred habitat does not occur in project or action area; height of vegetation exceeds that preferred by this species for nesting. Additionally, residential development and possibly domestic feral cats and dogs deter this species from nesting in the project or action area. |
| Peregrine falcon (<i>Falcon peregrinus</i>) | Group 4 | Rugged terrain with rocky cliffs and canyons (30-1000+ feet high), adjacent to rivers, lakes or streams. Urban areas with towers and buildings also inhabited. | No rugged terrain with rocky cliffs or canyons adjacent to perennial streams; no occurrence in project or action area. |
| Peregrine falcon (<i>Falco peregrinus</i>) | Group 4 | Preferred nest is generally a vertical cliff rise, 100 to 300 feet, above adjacent landscape. Habitats include meadows and large open parks, river bottoms, marshes, lakes, cropland, and other features that attract abundant bird life. | Preferred habitat does not occur in project or action area; no rivers, lakes, or streams occur near cliffs. |
| Sora (<i>Porzana carolina</i>) | Group 4 | Mostly freshwater wetland with stands of cattails, sedges, bur-reeds, and bulrushes and other tall wetland plants. | No fresh water wetland in the project or action area; no occurrence. |
| Yellow warbler (<i>Dendroica petechia</i>) | Group 4 | Nests in wet, deciduous thickets, especially those dominated by willows, and in disturbed and early successional habitats. Migration habitats are semi-open scrub or shrublands and second-growth forests, often associated with wetlands. | No dense willow thickets or wetland habitat in the project area or action. NNDFW has no current breeding records for Navajo Nation. |
| FISH | | | |
| Colorado pikeminnow (<i>Ptychocheilus lucius</i>) | Group 2 | Large rivers with strong currents, deep pools, and quiet backwaters. | No perennial streams occur in project and action area.. |
| Razorback sucker (<i>Xyrauchen texanus</i>) | Group 2 | Medium to large rivers with silty to rocky substrates. Prefers strong currents and deep pools. | No perennial streams occur in project and action area. |
| Roundtail chub (<i>Gila robusta</i>) | Group 2 | Cool to warm waters of rivers and streams, often occupy the deepest pools and eddies of large streams. | No perennial streams occur in project and action area. |

| Species | Navajo Species of Concern Status ^{1 2} | Habitat Association ³ | Potential to Occur in the Project and Action Areas |
|--|---|--|--|
| Bluehead sucker (<i>Catostomus discobolus</i>) | Group 4 | Wide range of water conditions within river/stream habitats, including variable water temperatures and stream volumes; often occupy the swift-water areas in mountain streams. | No perennial streams occur in project and action area. |
| Mottled sculpin (<i>Cottus bairdii</i>) | Group 4 | Prefers stream sections with coarse gravel and rock substrates (usually riffle areas). Adults rarely use areas with slow current and silt substrate; young typically use areas with little or no current, and may hide within silt of slow-water shorelines. | No perennial streams occur in project and action area. According to the NNDFW consultation letter, this species is known to occur one miles of the project area. |
| AMPHIBIANS | | | |
| Northern leopard frog (<i>Lithobates pipiens</i>) | Group 2 | Occurs on the banks and shallows of marshes, ponds, lakes, reservoirs, beaver ponds, and other permanent bodies of water, especially those that support aquatic vegetation. | No aquatic and wet meadow habitat; no occurrence in project and action area. |
| Plants | | | |
| Mancos milkvetch (<i>Astragalus humillimus</i>) | Group 2 | Cracks of Point Lookout Sandstone of the Mesaverde series (5,000 to 6,000 feet). | Unlikely, project area and vicinity geology is not derived from Point Lookout sandstone. No occurrence of this species. |
| Mesa Verde cactus (<i>Sclerocactus mesae-verdae</i>) | Group 2 | Highly alkaline soils in sparse shale or adobe clay badlands of the Mancos and Fruitland formations (4,000 to 5,550 feet). | No suitable habitat in the project area. The proposed project is located outside of known habitat |
| Aztec gila (<i>Alicella formosa</i>) | Group 4 | Salt desert scrub communities in soils of the Nacimiento Formation (5,000-6,000 feet). | Project and action areas do not contain appropriate geologic substrate for this species. |
| Brack Hardwall cactus (<i>Sclerocactus cloveriae</i> ssp. <i>brackii</i>) | Group 4 | Sandy clay of the Nacimiento Formation in sparse shadscale scrub (5,000-6,000 feet). | Project and action areas do not contain appropriate geologic substrate for this species. |
| Parish's alkali grass (<i>Puccinellia parishii</i>) | Group 4 | Alkaline seeps, springs, and seasonally wet areas such as washes. Restricted to alkaline or salty moist soils with a white crusts. Species occur at 5,000 to 7,000 feet. | No suitable habitats and no edaphic conditions to support this species in the project area or site action areas. |
| San Juan milk weed (<i>Asclepias sanjuanensis</i>) | Group 4 | Sandy soils in piñon-juniper woodlands and Great Basin grasslands at elevations from 5,000 to 6,200 feet. Often in disturbed | Project area does not contain suitable soil substrate for this species. |

| Species | Navajo Species of Concern Status ^{1 2} | Habitat Association ³ | Potential to Occur in the Project and Action Areas |
|---------|---|----------------------------------|---|
| | | sites. | According to the NNDFW consultation letter, this species is known to occur three miles of the project area. |

¹ NNDFW Data Request for Navajo Species of Concern (see Attachment C).

² Navajo species of concern definitions include: Group 1 = species or subspecies no longer occur on the Navajo Nation; Group 2 = endangered and includes species whose prospects of survival or recruitment are in jeopardy; Group 3 = endangered and includes species whose prospects of survival and recruitment are likely to be in jeopardy in the foreseeable future; Group 4 = candidates and includes species that may be endangered, but for which the NNHP lacks sufficient information to support being listed.

³ Sources: Mikesic and Roth 2008.

4.2 Field Survey

Pedestrian biological field survey of the proposed project was conducted by John Dodge principle biologist from Dodge Environmental, LLC on July 28, 2014. The survey was conducted under the 2014 NNDFW Special Permit #762. Weather during the survey was generally sunny and clear with ambient temperatures near 85° Fahrenheit. The field survey consisted of slow, systematic parallel pedestrian transects spaced approximately 10-feet apart over the entire project area as well as a 25-foot buffer zone surrounding the proposed project area.

The habitat was evaluated for all federally listed species and Navajo species of concern with the potential to occur in the project area (Table 4-1 and Table 4-2). A list of plants and wildlife observed during the field survey is included as Attachment D.

5. USFWS FEDERALLY LIST SPECIES

5.1 USFWS Eliminated from Detailed Evaluation

Based upon the evaluation of habitat associations (Table 4-1) and biological field survey, none of the nine USFWS federally listed threatened, endangered, proposed or candidate species for San Juan County, New Mexico has the potential to occur in the project or action area.

The project and action areas do not contain potential habitat for any of the nine USFWS federally listed species for San Juan County, New Mexico; therefore, they are eliminated from further evaluation in this BE.

6. NAVAJO SPECIES OF CONCERN

6.1 Navajo Species of Concern Eliminated from Detailed Evaluation

Based upon the evaluation of habitat associations (Table 4-2) and field survey, 18 of the 25 Navajo species of concern can be eliminated from further evaluation in this BE document.

6.2 Navajo Species of Concern Warranting Detailed Evaluation

Seven Navajo species of concern have the potential to occur in the project or action area: Kit fox (*Vulpes macrotis*), bald eagle (*Haliaeetus leucocephalus*), ferruginous hawk (*Buteo regalis*), golden eagle (*Aquila chrysaetos*), burrowing owl (*Athene cunicularia*), mottled sculpin (*Cottus bairdi*), and San Juan milkweed (*Asclepias sanjuansensis*).

6.2.1 Kit Fox

Status: Navajo Group 4

Distribution and habitat: This species occurs in open desert scrub or desert grasslands where it excavates dens in soft, alluvial, or silty clay soils. Home ranges typically vary from 642 to 1,285 acres but can be as large as 2,866 acres during times of prey scarcity. Common prey species for kit fox are typically nocturnal rodent or lagomorph species (e.g., rabbit, kangaroo rat) that are relatively abundant in the area, while opportunistic prey species also include birds, reptiles, and insects. Kit fox are distributed throughout most of northern Mexico, southern Idaho and Oregon, and the southwestern U.S. including Arizona, Colorado, California, Utah, and New Mexico. On the Navajo Nation, kit foxes are known to occur east of Chuska Mountain and Chinle Valley in Arizona and Utah. There is potential for this species to occur in all desert lands on the Navajo Nation (Mikesic and Roth 2008).

Potential to occur: The proposed project and action area provided potential habitat for this species. The flat, open desert scrub terrain and soft alluvium soils provide a potential burrowing habitat. Prairie dogs and domestic animals observed in the action area offer a prey base for kit fox. No kit foxes, nor any signs of their presence, were observed during the biological field survey conducted on July 28, 2014. No kit fox burrows or active prairie dog burrows were identified in the project area.

6.2.2 Bald Eagle

Status: Navajo Group 2, protected under the Bald and Golden Eagle Protection Act, and the MBTA

Distribution and habitat: The bald eagle breeds across the North America; roosts and nests in large trees usually within a few miles of large lakes or rivers with adequate prey base (e.g., water flows and fishes) rarely uses cliff faces adjacent to large body of water (Mikesic and Roth 2008). There are no nesting records on the Navajo Nation, but migrants are known to use various lakes on the Navajo Nation. Wintering eagles occur along the San Juan and Colorado rivers (Mikesic and Roth 2008).

Potential to occur: The San Juan River corridor is located approximately 0.7 miles north of the project area and provides potential wintering habitat for bald eagles. The proposed project and action area do

provide potential perching, due to the presence of utility poles within the project and action area. The occurrence of bald eagle in the project or action area likely pertains to individuals flying over the project area for foraging trips.

6.2.3 Ferruginous Hawk

Status: NESL Group 3, protected under MBTA

Distribution and habitat: Ferruginous hawks have a breeding range that extends from North Dakota and southern Canada to northern Texas, and west to Washington and Nevada, including northern New Mexico and Arizona. Their winter range extends south from Colorado into Mexico and west into northern California. Ferruginous hawks use the Navajo Nation year-round. Most breed in northwestern New Mexico, but also occur in Chinle Valley and the Dilkon area (Mikesic and Roth 2008). Ferruginous hawks prefer open grasslands, plains, badlands, and shrub steppe communities. Nest site selection depends upon available substrate and surrounding land use (e.g., proximity to intensive agriculture or high human disturbance). Most nests found on the Navajo Nation are on clay or rock pinnacles, small buttes, or short cliffs (less than 90 feet in height). It is reported that ferruginous hawks avoid human disturbance when selecting nest sites and that they are particularly sensitive to disturbance during courtship, egg laying, and incubation (Bechard et al. 1990). Nest sites that are adjacent to habitat surrounding a nest site must support populations of the preferred prey items of cottontails and jackrabbits, prairie dogs, ground squirrels (*Spermophilus* sp.) and gophers (*Thomomys* sp.) (Mikesic and Roth 2008).

Potential to occur: The general conditions and topography in the action area provide potential habitat for ferruginous hawks. However, specific nesting features such as high cliffs, rock pinnacles, small buttes, or trees are not found in the project or action area. The proposed project is in close proximity to residential areas, and roadways that result in a moderate level of human activity. Ferruginous hawks are easily disturbed during the breeding season (White and Thurow 1985, Bechard et al. 1990). The occurrence of ferruginous hawks in the action area would likely be limited to individuals flying over the site during foraging trips. No ferruginous hawks, nor signs of consistent raptor use (e.g., whitewash or nests), were observed in the project or action area during the biological surveys conducted on July 28, 2014.

6.2.4 Golden Eagle

Status: Navajo Group 3, protected under the Bald and Golden Eagle Protection Act and the MBTA.

Distribution and habitat: The golden eagle is widespread throughout western North America, occurring primarily in mountainous canyon areas in open desert and grasslands that provide foraging habitat and cliff substrate with nesting sites. (Kochert et al. 2002). On the Navajo Nation, the golden eagle occurs at nearly all elevations and on all cliff substrates (Mikesic and Roth 2008). Golden eagles typically nest on cliffs at least 30 feet in height, but may use shorter cliffs if quality foraging habitat is adjacent. Foraging habitat consists of desert grasslands or shrublands that provide cover for preferred prey species, mostly consisting of black-tailed jackrabbit (*Lepus californicus*), prairie dogs (*Cynomys* spp.), and cottontails (*Sylvilagus* spp.). Golden eagles may be sensitive to large-scale habitat changes, such as fires, that may remove prey base habitat (Kochert et al 2002). Golden eagle territories in the west typically range from 12 to 20 square miles (Kochert et al. 2002). There is some anecdotal evidence that human disturbance near nesting areas may cause breeding failures or nest abandonment; as such, the Navajo Nation requires using

the “Golden and Bald Eagle Nest Protection Policy” and establishing seasonal timing and spatial buffers to protect golden eagle nests (Mikesic and Roth 2008).

Potential to occur: The general conditions and topography in the action area provide potential foraging habitat for golden eagles. However, the specific nesting features such as high cliffs with steep ledges are not found in the project or action area. The occurrence of golden eagles in the project and action area would be limited to individuals flying over the site during foraging trips. No golden eagles, or signs of consistent raptor use (e.g., whitewash or nests), were observed in the project or action area during the biological survey conducted on July 28, 2014.

6.2.5 Burrowing Owl

Status: Navajo Group 4, protected under MBTA

Distribution and habitat: Western burrowing owl breeding range covers a wide distribution across western North America. Western burrowing owl winter range includes most of Texas and southern portions of New Mexico, Arizona, and California (Mikesic and Roth 2008). The burrowing owl is a small, migratory, ground-dwelling owl that occupies prairie dog colonies on dry open grassland or desert scrub habitats. On the Navajo Nation, potential habitat includes low elevation desert land and sparse juniper habitats with grassland understory (Mikesic and Roth 2008).

Potential to occur: The project and action area offer potential habitat for this species, where scattered active and inactive prairie dog burrows occur. No burrowing owls, or signs (i.e., whitewash, feathers, or dried pellets), were not observed in the proposed area during the biological field survey conducted on July 28, 2014.

6.2.6 Mottled Sculpin

Status: NESL Group 4; not listed under the ESA

Distribution and habitat: The mottled sculpin range includes most of eastern United States and Canada, and northwestern United States and few tributaries of Colorado River (Mikesic and Roth 2008). The mottled sculpin is native to the San Juan River basin including the Piñon, Navajo, Animas, and San Juan Rivers upstream from Shiprock, New Mexico (Sublette et al. 1990). On the Navajo Nation, known only from New Mexico reach of San Juan River; but there is potential also in Utah-reach and the perennial tributaries of San Juan River (Mikesic and Roth 2008). Prefers streams with coarse gravel and small to large rock substrates.

Potential to occur: According to NNDFW consultation letter, mottled sculpin is known to occur one mile from the project site. The proposed project and action area do not provide potential habitat for mottled sculpin; due to no perennial streams occur in project and action area. All construction activities would take place within the designated ROW. No activities are proposed to occur in the river channel.

6.2.7 San Juan Milkweed

Status: NESL group 4

Distribution and habitat: The occurrence of San Juan milkweed is documented only in San Juan County, New Mexico. It is a perennial forb that occurs mostly in sandy or sandy loam soils in piñon-juniper woodland and Great Basin grassland at elevations of 5,000 to 6,000 feet, and in disturbed areas (Mikesic and Roth 2008). This species is known to occur in Quaternary age eolian-deposited sand sheets, sand dunes, and river terrace gravels.

Potential to occur: According to NNDFW consultation letter, San Juan milkweed is known to occur three mile from the project site. The proposed project area does not provide suitable habitat due to the lack of associated soil characteristics (i.e., deep sandy loamy texture). No San Juan milkweed or sign of dried up follicles were observed during the biological field survey conducted on July 28, 2014.

7. ANALYSIS AND DETERMINATION OF EFFECTS

As required in the guidelines for preparation of BEs issued by the NNDFW, the following sections discuss impacts to USFWS federally listed species, Navajo species of concern, and avian species protected under the MBTA.

7.1 USFWS Federally Listed Species

Specialized habitat requirements (such as site-specific habitats and site-specific geographic formations) for the USFWS federally listed species mentioned in this BE do not occur in the project or action area. No designated critical habitats occur within the proposed project or action area. Further, none of these USFWS federally listed species is likely to occur due to the lack of suitable habitat and none has been previously documented to occur in project or action area.

Based on information above, a determination of “no effect” is expected for all nine USFWS federally species with potential to occur in San Juan County, New Mexico.

7.2 Navajo Species of Concern

The absence of large prairie dog colonies in the propose project and action area preclude the possible occurrence of black-footed ferret (*Mustela nigripes*). Therefore, no direct or indirect effects to this species are expected of the proposed action.

The proposed project and action area don not contain suitable nesting, foraging, migratory, or roosting habitat for southwestern willow flycatcher (*Empidonax traillii extimus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), American dipper (*Cinclus mexicanus*), Belted kingfisher (*Ceryle alcyon*), yellow warbler (*Dendroica petechia*), peregrine falcon (*Falcon peregrinus*), sora, and peregrine falcon (*Falco peregrinus*); therefore, no direct or indirect effects to these species are expected.

No aquatic habitat or perennial water resources exits in the proposed project and action area; therefore, the proposed project would have no direct or indirect effects to to bluehead sucker (*Catostomus*

discobolus), roundtail chub (*Gila robusta*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), and northern leopard frog (*Lithobates pipiens*).

Finally, due the absence of suitable habitat for Parish's alkali grass (*Puccinellia parishii*), and absence of appropriate geologic substrate for Mancos milkvetch (*Astragalus humillimus*), Mesa Verde cactus (*Sclerocactus mesae-verdae*), Aztec gilia (*Alicella formosa*), and Brack hardwall cactus (*Sclerocactus cloveriae* ssp. *brackii*); therefore, no direct or indirect effect to these species would occur as a result of the proposed action.

The proposed project and action areas contain potential to none habitat for seven Navajo-listed species of concern: kit fox, bald eagle, ferruginous hawk, golden eagle, burrowing owl, mottled sculpin, and San Juan milkweed. Impacts to Navajo species of concern potentially occurring in the project sites or their action areas are discussed in detail below.

7.2.1 Potential Impacts to Kit Fox

Potential habitat for kit fox occurs within the propose project and action area; however this species was not observed in the area. The proposed action area represents marginal habitat and there are no records of kit fox utilizing the proposed project or general vicinity on a regular basis. Kit fox could potentially travel through the project area during foraging trips. No direct or indirect signs of kit fox use were observed during the biological survey. Impacts to kit fox would include avoidance of the proposed project area during construction and operation due to increased traffic, noise, and human activity. The proposed project would result in the loss or modification of 0.39 acres of marginal habitat, but unoccupied habitat for this species resulting in negligible impacts.

7.2.2 Potential Impacts to Bald Eagle

Bald eagles are known to winter along the San Juan River corridor. No records exist of bald eagles utilizing the proposed project on a regular basis. Bald eagles could potentially travel over the project area during foraging trips during the winter months. No habitat loss or modification would occur. Bald eagles incidentally occurring in the project or action area during construction activities may temporarily avoid the area or modify their movement patterns. No impacts to bald eagle are expected as a result of the proposed action.

7.2.3 Potential Impacts to Ferruginous Hawk and Golden Eagle

No suitable ferruginous hawk or golden eagle nesting habitat would be directly impacted by the proposed project. No nests or signs of consistent raptor use were observed within the project or action area. The proposed project is located on and near existing infrastructure, thereby reducing the quality of adjacent habitat. Ferruginous hawks and golden eagles could potentially travel over the project area during foraging trips. No habitat loss or modification would occur. Impacts are minimized by development the proposed action on adjacent to existing infrastructure disturbance within PNM ROW, highway, and residence development. Ferruginous hawks and golden eagles incidentally occurring in the project area during construction activities may temporarily avoid the area or modify their movement patterns. These

impacts would be low and short-term for the duration of construction activities. No other impacts to golden eagles and ferruginous hawks are expected as a result of the proposed action.

7.2.4 Potential Impacts to Burrowing Owl

Potential habitat occurs in the proposed project and action area. No records exist of burrowing owls utilizing the proposed project area or general vicinity on a regular basis. No direct or indirect sightings of burrowing owl use were observed during the biological survey. The proposed project would result in the loss or modification of 0.39 acres of potential, but unoccupied habitat for this species resulting in negligible impacts.

7.2.5 Potential Impacts to Mottled Sculpin

According to NNDFW consultation letter, mottled sculpin is known to occur one mile from the project site. There is no suitable habitat within the proposed project or action area for mottled sculpin. Potential habitat for mottled sculpin is located approximately 0.7 mile north of the proposed project area. Given the distance to potential habitat, development of the proposed project site not expected to result in any direct, indirect, or cumulative effects to mottled sculpin. No impacts to mottled sculpin are expected to occur from the proposed project.

7.2.6 Potential Impacts to San Juan Milkweed

According to NNDFW consultation letter, San Juan milkweed is known to occur three mile from the project site. Habitat suitable for the San Juan milkweed does not occur at the proposed project area and none were observed. No impacts to San Juan milkweed are expected to occur from the proposed project.

7.3 Species Protected Under the MBTA

The MBTA ensures that all migratory birds and their parts (e.g., eggs, nests, and feathers) are protected from taking, killing, capture, transport, sale, or purchase. The Great Basin desert scrub habitat found in the project area could support an array of bird species. The New Mexico Partners in Flight (PIF) identified 11 priority bird species within this habitat type for the State of New Mexico. Table 7-1 includes species listed by New Mexico PIF as priority bird species that could occur in the area. None of these listed priority birds were observed within the project area during the biological survey conducted on July 28, 2014.

Table 7-1. Priority bird species listed by New Mexico PIF for great Basin scrub habitat associated with the proposed action

| COMMON NAME | SCIENTIFIC NAME | HABITAT TYPE |
|------------------------|-----------------------------|-------------------|
| Bendire's thrasher | <i>Toxostoma bendirei</i> | Great Basin scrub |
| Black-throated sparrow | <i>Amphispiza bilineata</i> | Great Basin scrub |
| Ferruginous hawk | <i>Buteo regalis</i> | Great Basin scrub |
| Gray vireo | <i>Vireo vicinior</i> | Great Basin scrub |
| Loggerhead shrike | <i>Lanius ludovicianus</i> | Great Basin scrub |

| COMMON NAME | SCIENTIFIC NAME | HABITAT TYPE |
|-------------------|-----------------------------|-------------------|
| Mountain bluebird | <i>Sialia currucoides</i> | Great Basin scrub |
| Sage sparrow | <i>Amphispiza belli</i> | Great Basin scrub |
| Sage thrasher | <i>Oreoscoptes montanus</i> | Great Basin scrub |
| Scaled quail | <i>Callipepla squamata</i> | Great Basin scrub |
| Swainson's hawk | <i>Buteo swainsoni</i> | Great Basin scrub |
| Vesper sparrow | <i>Pooecetes gramineus</i> | Great Basin scrub |

Source: USFWS 2002 and NMPIF 2007

Removal of vegetation would result in a loss of habitat for a variety of ground-nesting birds protected under the Migratory Bird Treaty Act (MBTA). No nests were identified in the proposed project area during the biological survey; however, detailed nest surveys were not conducted. Direct impacts would include the disturbance and modification of up to 0.39 acres of annual herbaceous species that are dominated by prickly Russian thistle, and western tansymustard. No trees would be removed; however, broom snake would be the only woody shrub species would be removed by the proposed action. Activities within the proposed project would be short term. Project activities would not substantially affect the occurrence of migratory birds since human activity is currently ongoing. Impacts would likely result in migratory bird species being displaced to habitat in the surrounding area during construction and operation. The potential for these impacts would be low, based on the current level of human activities.

7.4 Cumulative Effects

Cumulative effects include the incremental impacts of an action when added to other past, present, and reasonably foreseeable future actions.

The cumulative effect of development within the project area would result in a small decrease of available forage and habitat for livestock and wildlife. Other development near the proposed project area includes a utility corridor (i.e., overhead power line and subsurface water line), paved highway, dirt roads, and residential development. Existing development has reduced the long-term suitability of much of the wildlife habitat in the proposed project area.

The proposed project would disturb wildlife that currently utilizes the area. Small wildlife species in the proposed project area could be displaced or killed during construction operations. The potential for the introduction and spread of invasive plant species is increased by the proposed action. There would be short-term increases in noise and activity in the area that have the potential to adversely affect wildlife adjacent to the project area. Cumulative impacts to birds protected under the MBTA would include a minor loss of foraging habitat and possible long-term avoidance of the area.

The lands immediately adjacent to the proposed project area are highly impacted by residential housing and development with associated utilities infrastructure and roads. Provided that the proposed action is constructed in accordance with the project description, the proposed action is not expected to result in cumulative impacts to the general region or any specific resources located in the project area. The proposed project's contribution to the regional loss or degradation of biological resources is limited due to the extent of available habitat near the project area and the minor disturbance from the proposed project.

No potential habitat for any USFWS federally listed species occurs within the action area. No designated critical habitat for any listed species occurs within the action area. The proposed action would have no cumulative impact to federally listed species.

For the Navajo species of concern in detail in this BE, the proposed action would result in no cumulative impact to a minor reduction in potential habitat for kit fox, bald eagle, ferruginous hawk, golden eagle, burrowing owl, mottled sculpin, and San Juan milkweed. Therefore, the proposed action is not expected to contribute appreciably to impact to Navajo species of concern when added to impacts from past, present, and reasonably foreseeable activities.

8. MITIGATION

General mitigation measures for the project would include confining construction activities to the proposed project area to prevent any unnecessary or additional habitat destruction. Portable toilets shall be furnished and located only in the staging area; portable toilets shall be maintained once a week. Trash and food shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic wildlife. Wildfire shall be prevented or minimized by exercising fire hazard care, such as parking vehicles away from dry vegetation. Upon completion of the proposed project, all unused material and equipment shall be removed from the project site.

In addition, regular maintenance activities will include control of weedy and invasive species that may become established within the project area. The Navajo Nation Environmental Protection Agency will be consulted on acceptable weed control methods. The construction contractor would implement best management practices (BMPs) to prevent the introduction of other non-native, invasive plants to the project area. The construction contractor will implement soil management and equipment cleaning, which will reduce the potential for invasive species to establish.

Construction equipment would be routinely inspected for leaks and other deficiencies that could cause spillage of petroleum products onto the ground. Fueling of construction equipment will only occur at designated areas. Substantial leaks would be promptly corrected. Solid wastes that would result from the proposed action will be disposed in a safe manner and would be properly containerized into a secure dumpster specifically for the solid waste. Any solid waste produced during the operation of the proposed action will be appropriately disposed in permitted landfill. BMPs will be implemented where feasible to control sedimentation, erosion, and wind deposition.

The proposed electric power line will be designed and constructed utilizing "raptor-safe" design. The proposed project would be constructed using Navajo Nation Raptor Electrocution Prevention Regulations (NNHP 2008).

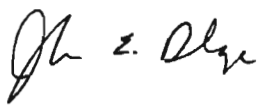
Potential impacts to migratory bird could be minimized by scheduling construction activities outside the breeding season of most migratory birds, from April 15 through August 15. For construction activities occurring during the breeding season, pre-construction clearance surveys for nesting migratory bird are recommended to avoid incidental take under the MBTA. If any migratory bird nest were discovered within the proposed project area, it would be reported to a NNDFW zoologist for appropriate mitigation.

Project equipment and personnel shall remain in the project area and avoid disturbance to the surrounding vegetation within the proposed project.

No specific mitigation measures are recommended for federally listed or Navajo species of concern.

9. CERTIFICATION

Dodge Environmental, LLC believes that the proposed action would not violate any of the provisions of the Endangered Species Act of 1973, as amended, or Navajo Nation code requirements for endangered species (17 NNC §507). Conclusions of this report are based on actual field examinations and are correct to the best of my knowledge. I certify that I have conducted field surveys for the proposed Sacred Wind fiber-optic built project.



Date: 9-2-2014

John E. Dodge, Project Biologist

10. PERSONNEL

John Dodge, President/Biologist
Dodge Environmental, LLC
P.O. Box 75
Fruitland, NM 87416
Phone: (505) 330-1361

11. CONSULTATION AND COORDINATION

Sonja Detsoi, Wildlife Technician
The Navajo Nation
Department of Fish and Wildlife
P.O. Box 1480
Window Rock, Arizona 86515

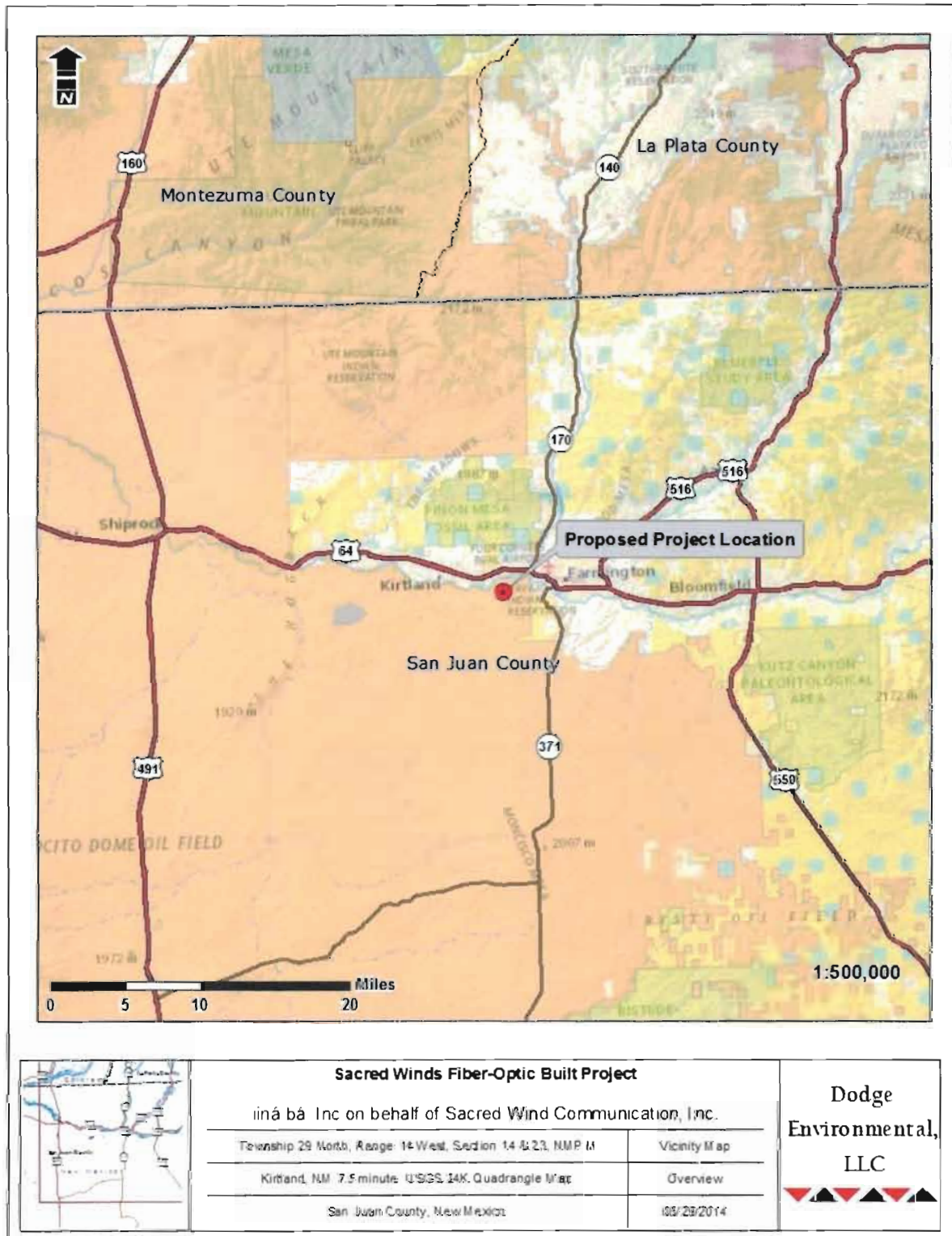
Tico Charlee
Sacred Wind Communications, Inc.
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John R. Isham, CPG
iiná bá, Inc.
4801 N. Butler, Ave., Suite 1101
Farmington, New Mexico 87401

12. REFERENCES AND LITERATURE CITED

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Attachment A—Maps



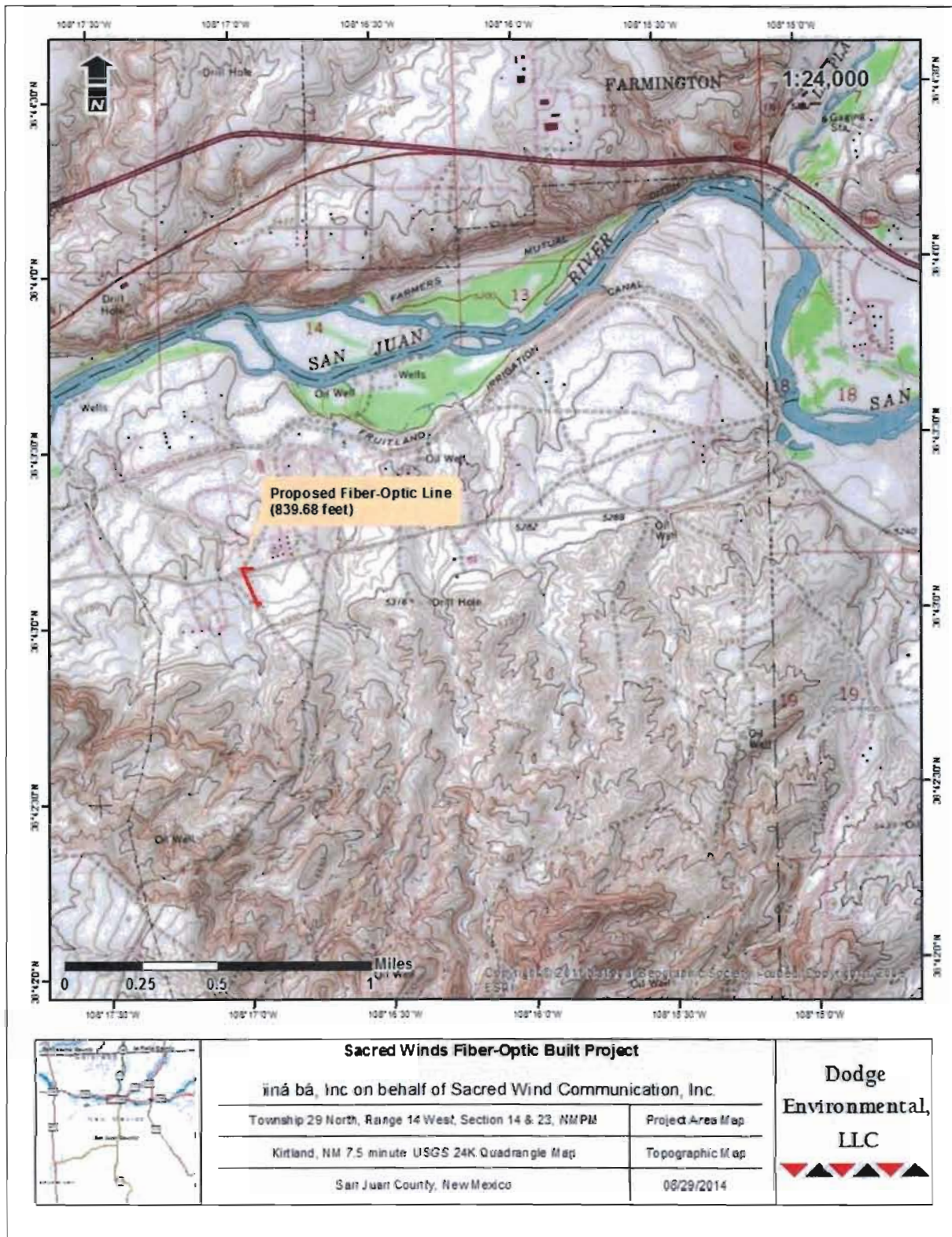


Figure 2: Proposed Sacred Wind Fiber-Optic Built Project—Topographic Map

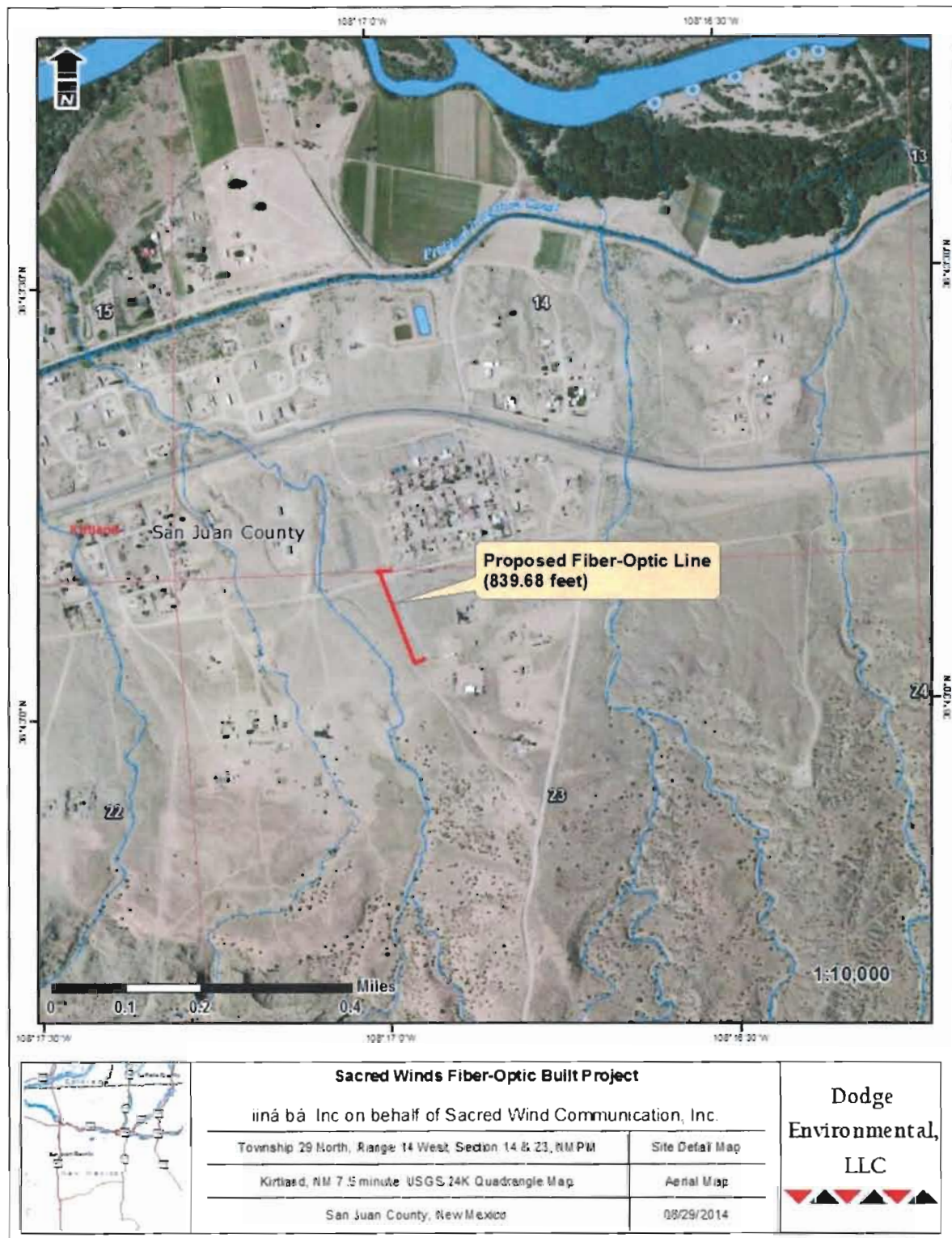


Figure 3: Proposed Sacred Wind Fiber-Optic Built Project—Aerial Map

Attachment B—Photos



Photograph 1: Proposed project looking south at beginning of fiber-optic line (7/28/2014).



Photograph 2: Proposed project looking north at end of fiber-optic line (7/28/2014).

Attachment C—NNDFW Data Request for Navajo Species of Concern

Dodge Environmental, LLC.



July 30, 2014

From Dodge Environmental, LLC
John Dodge, President/Biologist
P.O. Box 75
Fruitland, NM 87416
Phone: (505) 330-1361
Fax: (505) 327-9546
Email: dodgeenvironmental@yahoo.com

Subject: Request for Threatened & Endangered Information

Project Name: Sacred Winds Fiber Build Project

Location: Upper Fruitland, Navajo Nation, San Juan County, New Mexico;
Legal description Section 14 and 23, Township 29 North, Range 14 West, NMPM;
UTM in NAD27: Beginning of Line: 12S 0742704E and 4066985N;
End of Line: 12S 0742778E and 4066792N.

Summary Description Project: Sacred Winds Communication, Inc. (SWC) is proposing the construction, operation, and maintain of a new underground fiber-optic cable in conduit that measures approximately 839.68 feet in length with a right-of-way (ROW) width of 20-feet, to anchor from nearby SWC fiber-optic ROW. The purposed of the proposed action is to provide adequate broadband network service for the rural residences of the Upper Fruitland Chapter.

The proposed project area would be installed within the existing Public New Mexico (PNM) overhead transmission line corridor, and crosses two Navajo Tribal Utility Authority (NTUA) water lines ROW. During construction, traffic to the proposed project would consist of various construction equipment and vehicles. No new access road would be required for this project, access to the project area would be from existing PNM services road from Navajo Route N-36 Highway.

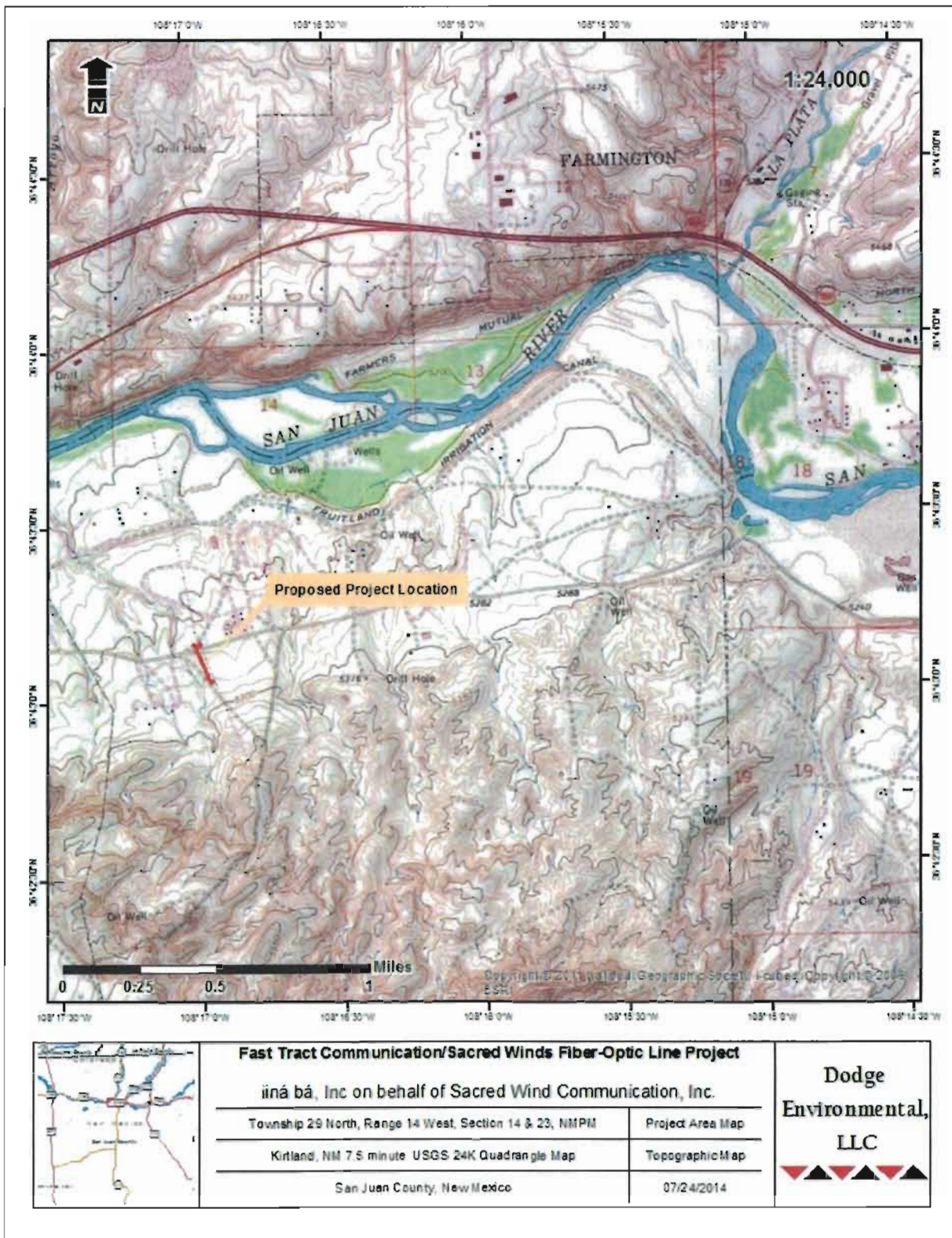
Map Name: Kirtland, New Mexico United States Geological Survey 7.5-minute quadrangle map.

If you have any question, please feel free to contact me at your convenience at (505) 330-1361.

Sincerely,

John E. Dodge,
Biologist/President

Cc: Tico Charlee, Sacred Winds Communication, Inc. (electronic)
John R. Isham, iiná bá (electronic)





NAVAJO NATION
Department of Fish & Wildlife
Navajo Natural Heritage Program
P.O. Box 1480
Window Rock, AZ 86515



Phone: 928.871.6472 • Fax: 928.871.7603 • <http://nnhp.nndfw.org>

Ben Shelly, President

Rex Lee Jim, Vice-President

19 August 2014

File#14DOEL-02

John Dodge, President/Biologist
Dodge Environmental, LLC
P.O. Box 75
Fruitland, NM 87416

NAVAJO ENDANGERED SPECIES LIST (NESL) INFORMATION FOR:

PROJECT: SACRED WINDS FIBER BUILD PROJECT
LEGAL DESCRIPTION SEC. 14 & 23, T29N, R14W, NMPM
UTM COORDINATES: BOL 742704E, 4066985N
EOL 742778E, 4066792N

Mr. Dodge:

The following information on species of concern¹ is provided in response to your 30 July 2014 request concerning the subject project, which consists of the Sacred Winds Communications, Inc., (SWC) proposed construction, operation, and maintenance of a new underground fiber-optic cable in conduit that measures approximately 839.8 feet in length with a right-of-way (ROW) width of 20-feet, to anchor from nearby SWC fiber-optic ROW. The proposed project is to provide adequate broadband network service for the rural residences of the Upper Fruitland Chapter. The proposed project area would be installed within the existing Public New Mexico (PNM) overhead transmission line corridor, and crosses two Navajo Tribal Utility Authority (NTUA) water lines ROW. During construction, traffic to the proposed project would consist of various construction equipment and vehicles. No new access road would be required for this project, access to the project area would be from existing PNM services road Navajo Route N-36 Highway.

Known to occur within one mile of the project site:

1. *Cottus bairdi*

All or parts of this project currently are within areas protected by the Raptor Electrocution Prevention Regulations; consult with NNDFW Zoologist and/or EA Reviewer for more information and

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

recommendations.

Known to occur within three miles of the project site:

1. *Asclepias sanjuansensis*

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

| | SCIENTIFIC NAME | COMMON NAME | NESL STATUS | FEDERAL STATUS AND/OR *MBTA |
|-----|-----------------------------------|--------------------------------|-------------|--------------------------------|
| 1. | <i>Aliciella formosa</i> | Aztec Gila | G4 | |
| 2. | <i>Aquila chrysaetos</i> | Golden Eagle | G3 | MBTA |
| 3. | <i>Asclepias sanjuansensis</i> | San Juan Milkweed | G4 | |
| 4. | <i>Astragalus humillimus</i> | Mancos Milk-vetch | G2 | ESA Endangered |
| 5. | <i>Athene cunicularia</i> | Burrowing Owl | G4 | MBTA |
| 6. | <i>Buteo regalis</i> | Ferruginous Hawk | G3 | MBTA |
| 7. | <i>Catostomus discobolus</i> | Bluehead Sucker | G4 | |
| 8. | <i>Ceryle alcyon</i> | Belted Kingfisher | G4 | MBTA |
| 9. | <i>Charadrius montanus</i> | Mountain Plover | G4 | ESA Proposed Threatened; MBTA. |
| 10. | <i>Cinclus mexicanus</i> | American Dipper | G3 | MBTA |
| 11. | <i>Coccyzus americanus</i> | Yellow-billed Cuckoo | G2 | ESA Candidate species; MBTA. |
| 12. | <i>Cottus bairdi</i> | Mottled Sculpin | G4 | |
| 13. | <i>Dendroica petechia</i> | Yellow Warbler | G4 | MBTA |
| 14. | <i>Empidonax traillii extimus</i> | Southwestern Willow Flycatcher | G2 | ESA Endangered; MBTA. |
| 15. | <i>Falco peregrinus</i> | Peregrine Falcon | G4 | MBTA |
| 16. | <i>Gila robusta</i> | Roundtail Chub | G2 | ESA Candidate Species |
| 17. | <i>Haliaeetus leucocephalus</i> | Bald Eagle | G2 | MBTA |
| 18. | <i>Mustela nigripes</i> | Black-footed Ferret | G2 | ESA Endangered |
| 19. | <i>Porzana carolina</i> | Sora | G4 | MBTA |
| 20. | <i>Ptychocheilus lucius</i> | Colorado Pikeminnow | G2 | ESA Endangered |
| 21. | <i>Lithobates pipiens</i> | Northern Leopard Frog | G2 | |

| | | | | |
|-----|---|-----------------------|----|----------------|
| 22. | <i>Sclerocactus cloveriae</i> ssp. <i>brackii</i> | Brack Hardwall Cactus | G4 | |
| 23. | <i>Sclerocactus mesae-verdae</i> | Mesa Verde Cactus | G2 | ESA Threatened |
| 24. | <i>Vulpes macrotis</i> | Kit Fox | G4 | |
| 25. | <i>Xyrauchen texanus</i> | Razorback Sucker | G2 | ESA Endangered |

*MBTA - Migratory Bird Treaty Act

AREA 3 of The Biological Resource Land Clearance Policies & Procedures

Area 3-Low Sensitivity Wildlife Resources: This area has a low, fragmented concentration of species of concern. Species in this area may be locally abundant on 'islands' of habitat, but islands are relatively small, limited in number and well spaced across the landscape. (For detailed information regarding "Area 3" please refer to our website at nndfw.org).

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

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

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.⁴ Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (928) 871-6595 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (Chad Smith) for animals at 871-7070 and Botanist (Andrea Hazelton) for plants at (928) 523-3221. Questions regarding biological evaluations should be directed to Pamela Kyselka (Acting Environmental Reviewer) at 871-7065.

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

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

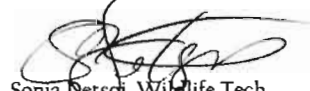
⁴ Available free of charge on our website at <http://nnhp.navajofishandwildlife.org/>

response is only wholly appropriate for its respective request.

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

An invoice for this information is attached.

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



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

CONCURRENCE



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

xc: file/chrono

Attachment D—Plant and Wildlife Observed in the Proposed Project Area

Grasses

Bromus tectorum
Hilaria jamesii

cheatgrass
galleta

Herbaceous Forbs

Descurainia pinnata
Erodium cicutarium
Cryptantha crassisejala
Descurainia pinnata
Lappula occidentalis
Plantago patagonica
Salsola iberica

tansy mustard
redstem stork's bill
thicksepal cryptantha
western tansy mustard
flatspine stickseed
woolly plantain
Russian thistle, tumbleweed

Shrubs

Gutierrezia sarothrae

broom snakeweed

Cacti and Yucca

Opuntia polyacantha

prickly pear cactus

Mammals

None

Birds

Corvus corax

common raven

| Group | Name | Population | Status | Lead Office | Recovery Plan Name | Recovery Plan Stage |
|------------------|---------------------------------|---------------------------------|-------------------------------|---------------------------------|-------------------------------|---------------------|
| Birds | Yellow-billed Cuckoo (Coccyzus) | Western U.S. DPS | Proposed Threatened | Sacramento Fish And Wildlife | | |
| Birds | Southwestern willow flycatcher | Entire | Endangered | Arizona Ecological Services | Final Recovery Plan for the | Final |
| Birds | Sprague's pipit (Anthus) | | Candidate | North Dakota Ecological | | |
| Fishes | Colorado pikeminnow | except Salt and Verde R. | Endangered | Upper Colorado River | Colorado Pikeminnow | Final Revision 2 |
| Fishes | Colorado pikeminnow | Salt and Verde R. drainages, AZ | Experimental Population, Non- | Office Of The Regional Director | | |
| Fishes | Razorback sucker (Xyrauchen) | Entire | Endangered | Upper Colorado River | Razorback Sucker - Recovery | Final Revision 1 |
| Fishes | Zuni bluehead Sucker | | Endangered | New Mexico Ecological Services | | |
| Flowering Plants | Mancos milk-veitch (Astragalus) | | Endangered | New Mexico Ecological Services | Mancos Milk-veitch | Final |
| Flowering Plants | Knowlton's cactus (Pediocactus) | | Endangered | New Mexico Ecological Services | Knowlton's (=Hedgehog) Cactus | Final |
| Flowering Plants | Mesa Verde cactus | | Threatened | New Mexico Ecological Services | Mesa Verde Cactus | Final |
| Mammals | Canada Lynx (Lynx canadensis) | NM population | Proposed Threatened | Montana Ecological Services | | |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|-----------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Abert's Towhee | 5 | 5 | 5 | 3 | 3 | 4 | 4 | 1 | 4 | 3 | 17 | BC1 |
| Acorn Woodpecker | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 12 | |
| American Avocet | 2 | 3 | 3 | 3 | 4 | 2 | 4 | 2 | 2 | 2 | 13 | |
| American Bittern | 2 | 3 | 3 | | | 4 | 4 | 1 | 3 | 4 | 15 | BC1 |
| American Coot | 1 | 1 | 1 | | | 2 | 2 | 1 | 3 | 3 | 10 | |
| American Crow | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 6 | |
| American Dipper | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 3 | 3 | 13 | |
| American Goldfinch | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 3 | 8 | |
| American Kestrel | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 4 | 11 | |
| American Pipit | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 9 | |
| American Robin | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 6 | |
| American Wigeon | 2 | 2 | 2 | | | 2 | 2 | 1 | 3 | 2 | 10 | |
| Aplomado Falcon | 1 | 1 | 1 | 3 | 2 | 5 | 5 | 1 | 4 | 3 | 14 | BC1 |
| Arizona Grasshopper Sparrow | | | 5 | | | 4 | 4 | 3 | 3 | 5 | 20 | SC1 |
| Arizona Woodpecker | 5 | 5 | 5 | 3 | 3 | 3 | 3 | 1 | 4 | 3 | 16 | BC2 |
| Ash-throated Flycatcher | 2 | 3 | 3 | 2 | 2 | 1 | 2 | 3 | 2 | 1 | 11 | |
| Baird's Sparrow (Winter) | 4 | 5 | 5 | 4 | 4 | 4 | 4 | 1 | 3 | 5 | 18 | BC1 |
| Bald Eagle | 2 | 1 | 2 | 3 | 3 | 3 | 3 | 1 | 4 | 2 | 12 | BC2 |
| Band-tailed Pigeon | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 4 | 15 | SC2 |
| Bank Swallow | 1 | 1 | 1 | 2 | 2 | 5 | 5 | 1 | 2 | 4 | 13 | BC1 |
| Barn Owl | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 3 | 3 | 10 | |
| Barn Swallow | 1 | 1 | 1 | 2 | 2 | 1 | 2 | 1 | 1 | 2 | 7 | |
| Bell's Vireo | 3 | 5 | 5 | 4 | 3 | 4 | 4 | 2 | 3 | 3 | 17 | SC1 |
| Belted Kingfisher | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 1 | 3 | 4 | 12 | BC2 |
| Bendire's Thrasher | 5 | 5 | 5 | 3 | 3 | 3 | 3 | 5 | 4 | 4 | 21 | SC1 |
| Bewick's Wren | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 2 | 2 | 11 | |
| Black Phoebe | 2 | 2 | 2 | 3 | 2 | 1 | 3 | 2 | 3 | 2 | 12 | |
| Black Swift | 3 | 4 | 4 | 3 | 2 | 4 | 4 | 1 | 4 | 2 | 15 | BC1 |
| Black-billed Magpie | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 3 | 2 | 11 | |
| Black-capped Chickadee | 1 | 1 | 1 | 2 | 1 | 2 | 2 | 1 | 2 | 3 | 9 | |
| Black-chinned Hummingbird | 3 | 5 | 5 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 15 | SC2 |
| Black-chinned Sparrow | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 3 | 4 | 3 | 17 | SC1 |
| Black-crowned Night-Heron | 2 | 3 | 3 | 3 | 3 | 2 | 3 | 1 | 3 | 3 | 13 | |
| Black-headed Grosbeak | 2 | 4 | 4 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 14 | |
| Black-necked Stilt | 1 | 2 | 2 | 3 | 2 | 2 | 3 | 1 | 3 | 2 | 11 | |
| Black-tailed Gnatcatcher | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 2 | 3 | 2 | 13 | |
| Black-throated Gray Warbler | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 2 | 3 | 4 | 16 | SC2 |
| Black-throated Sparrow | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 5 | 14 | SC2 |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|--------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Blue Grosbeak | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 10 | |
| Blue Grouse | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 13 | BC2 |
| Blue Jay | 1 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 8 | |
| Blue-gray Gnatcatcher | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 8 | |
| Blue-winged Teal | 2 | 2 | 2 | | | 2 | 2 | 1 | 2 | 3 | 10 | |
| Bobolink | 2 | 2 | 2 | 3 | 3 | 4 | 4 | 1 | 2 | 3 | 12 | BC1 |
| Boreal Owl | 1 | 1 | 1 | 3 | 2 | 4 | 4 | 1 | 3 | 3 | 12 | BC1 |
| Botteri's Sparrow | 4 | 4 | 4 | 3 | 2 | 5 | 5 | 1 | 3 | 2 | 15 | BC1 |
| Brewer's Blackbird | 2 | 1 | 2 | 2 | 1 | 1 | 2 | 1 | 2 | 4 | 11 | |
| Brewer's Sparrow | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 2 | 2 | 3 | 13 | |
| Bridled Titmouse | 4 | 4 | 4 | 3 | 2 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Broad-billed Hummingbird | 4 | 4 | 4 | 2 | 2 | 3 | 3 | 1 | 3 | 2 | 13 | BC2 |
| Broad-tailed Hummingbird | 3 | 5 | 5 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 15 | SC2 |
| Bronzed Cowbird | 3 | 3 | 3 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 9 | |
| Brown Creeper | 1 | 1 | 1 | 3 | 2 | 3 | 3 | 2 | 2 | 3 | 11 | |
| Brown Thrasher | 1 | 3 | 3 | 3 | 2 | 1 | 3 | 1 | 2 | 3 | 12 | |
| Brown-capped Rosy-Finch | 5 | 5 | 5 | 3 | 2 | 3 | 3 | 1 | 5 | 3 | 17 | BC2 |
| Brown-crested Flycatcher | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 1 | 2 | 2 | 9 | |
| Brown-headed Cowbird | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 2 | 7 | |
| Bullock's Oriole | 1 | 4 | 4 | 2 | 2 | 2 | 2 | 2 | 3 | 4 | 15 | SC2 |
| Burrowing Owl | 1 | 2 | 2 | 4 | 3 | 3 | 4 | 2 | 3 | 2 | 13 | |
| Bushtit | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 12 | |
| Cactus Wren | 3 | 3 | 3 | 2 | 2 | 1 | 2 | 2 | 2 | 2 | 11 | |
| Canada Goose | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 7 | |
| Canvasback | 3 | 3 | 3 | | | 2 | 2 | 1 | 3 | 3 | 12 | |
| Canyon Towhee | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 11 | |
| Canyon Wren | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 4 | 13 | |
| Cassin's Finch | 3 | 2 | 3 | 3 | 2 | 2 | 3 | 1 | 3 | 3 | 13 | |
| Cassin's Kingbird | 3 | 4 | 4 | 2 | 2 | 2 | 2 | 4 | 3 | 2 | 15 | SC2 |
| Cassin's Sparrow | 3 | 4 | 4 | 3 | 3 | 2 | 3 | 3 | 2 | 2 | 14 | |
| Cattle Egret | 1 | 1 | 1 | | | 2 | 2 | 1 | 3 | 2 | 9 | |
| Cave Swallow | 4 | 5 | 5 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 12 | |
| Chihuahuan Raven | 3 | 3 | 3 | 2 | 1 | 1 | 2 | 4 | 3 | 2 | 14 | |
| Chimney Swift | 1 | 3 | 3 | 3 | 3 | 2 | 3 | 1 | 2 | 3 | 12 | |
| Chipping Sparrow | 1 | 2 | 2 | 1 | 2 | 2 | 2 | 1 | 1 | 4 | 10 | |
| Cinnamon Teal | 1 | 1 | 1 | | | 2 | 2 | 1 | 4 | 4 | 12 | |
| Clark's Grebe | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 3 | 14 | SC2 |
| Clark's Nutcracker | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 13 | |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|--------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Cliff Swallow | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 4 | 10 | |
| Common Black-Hawk | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 1 | 3 | 2 | 13 | BC1 |
| Common Grackle | 1 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 7 | |
| Common Ground-Dove | 1 | 1 | 1 | 3 | 3 | 5 | 5 | 1 | 3 | 3 | 13 | BC1 |
| Common Merganser | 1 | 1 | 1 | | | 2 | 2 | 1 | 3 | 2 | 9 | |
| Common Moorhen | 1 | 1 | 1 | | | 2 | 2 | 1 | 3 | 3 | 10 | |
| Common Nighthawk | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 3 | 2 | 4 | 13 | |
| Common Poorwill | 2 | 3 | 3 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 13 | |
| Common Raven | 1 | 1 | 1 | 2 | 1 | 1 | 2 | 1 | 2 | 1 | 7 | |
| Common Yellowthroat | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 9 | |
| Cooper's Hawk | 1 | 1 | 1 | 2 | 3 | 2 | 3 | 2 | 3 | 3 | 12 | |
| Cordilleran Flycatcher | 3 | 4 | 4 | 3 | 2 | 2 | 3 | 3 | 3 | 2 | 15 | SC2 |
| Costa's Hummingbird | 5 | 5 | 5 | 3 | 2 | 3 | 3 | 1 | 3 | 3 | 15 | BC2 |
| Crissal Thrasher | 4 | 4 | 4 | 3 | 3 | 2 | 3 | 3 | 4 | 2 | 16 | SC2 |
| Curve-billed Thrasher | 3 | 3 | 3 | 2 | 2 | 1 | 2 | 2 | 3 | 2 | 12 | |
| Dark-eyed Junco | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 7 | |
| Dickcissel | 2 | 4 | 4 | 3 | 4 | 3 | 4 | 1 | 2 | 3 | 14 | BC2 |
| Double-crested Cormorant | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 1 | 2 | 3 | 11 | |
| Downy Woodpecker | 1 | 1 | 1 | 2 | 1 | 2 | 2 | 1 | 2 | 2 | 8 | |
| Dusky Flycatcher | 3 | 4 | 4 | 2 | 2 | 2 | 2 | 1 | 3 | 2 | 12 | |
| Dusky-capped Flycatcher | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 8 | |
| Eared Grebe | 2 | 3 | 3 | 2 | 4 | 3 | 4 | 2 | 1 | 4 | 14 | SC2 |
| Eastern Bluebird | 1 | 2 | 2 | 2 | 2 | 3 | 3 | 1 | 2 | 2 | 10 | |
| Eastern Kingbird | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 10 | |
| Eastern Meadowlark | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 2 | 2 | 5 | 13 | |
| Eastern Phoebe | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 9 | |
| Elegant Trogon | 3 | 3 | 3 | 3 | 3 | 5 | 5 | 1 | 4 | 3 | 16 | BC1 |
| Elf Owl | 4 | 5 | 5 | 3 | 3 | 2 | 3 | 2 | 4 | 2 | 16 | SC2 |
| Eurasian Collared-Dove | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 5 | |
| European Starling | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 2 | 7 | |
| Evening Grosbeak | 2 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 10 | |
| Ferruginous Hawk | 2 | 3 | 3 | 4 | 3 | 3 | 4 | 2 | 5 | 3 | 17 | SC1 |
| Flammulated Owl | 3 | 4 | 4 | 3 | 3 | 2 | 3 | 3 | 5 | 2 | 17 | SC1 |
| Gadwall | 1 | 2 | 2 | | | 2 | 2 | 1 | 3 | 2 | 10 | |
| Gambel's Quail | 4 | 4 | 4 | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 13 | |
| Gila Woodpecker | 4 | 4 | 4 | 2 | 2 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Golden Eagle | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 1 | 4 | 3 | 12 | BC2 |
| Golden-crowned Kinglet | 2 | 1 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 10 | |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|--------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Grace's Warbler | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 4 | 3 | 5 | 19 | SC1 |
| Grasshopper Sparrow | 1 | 2 | 2 | 3 | 3 | 3 | 3 | 1 | 2 | 4 | 12 | BC2 |
| Gray Catbird | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 10 | |
| Gray Flycatcher | 4 | 4 | 4 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 14 | |
| Gray Jay | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 9 | |
| Gray Vireo | 4 | 5 | 5 | 4 | 4 | 3 | 4 | 2 | 4 | 3 | 18 | SC1 |
| Great Blue Heron | 2 | 3 | 3 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 10 | |
| Great Egret | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 9 | |
| Great Horned Owl | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 7 | |
| Greater Pewee | 4 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Greater Roadrunner | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 11 | |
| Great-tailed Grackle | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 7 | |
| Green Heron | 2 | 4 | 4 | 2 | 3 | 2 | 3 | 1 | 3 | 3 | 14 | |
| Green-tailed Towhee | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 13 | |
| Green-winged Teal | 2 | 2 | 2 | | | 2 | 2 | 1 | 2 | 3 | 10 | |
| Hairy Woodpecker | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 9 | |
| Hammond's Flycatcher | 3 | 4 | 4 | 3 | 2 | 2 | 3 | 1 | 2 | 3 | 13 | |
| Harris's Hawk | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 1 | 4 | 3 | 12 | |
| Hepatic Tanager | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 3 | 4 | 1 | 12 | |
| Hermit Thrush | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 8 | |
| Hooded Merganser | 2 | 2 | 2 | | | 2 | 2 | 1 | 4 | 3 | 12 | |
| Hooded Oriole | 3 | 4 | 4 | 2 | 2 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Horned Lark | 1 | 1 | 1 | 2 | 2 | 1 | 2 | 2 | 1 | 5 | 11 | |
| House Finch | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 8 | |
| House Sparrow | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 5 | |
| House Wren | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 1 | 2 | 4 | 10 | |
| Hutton's Vireo | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 1 | 3 | 2 | 12 | |
| Inca Dove | 3 | 3 | 3 | 2 | 2 | 1 | 2 | 1 | 3 | 2 | 11 | |
| Indigo Bunting | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 1 | 2 | 4 | 12 | |
| Juniper Titmouse | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 5 | 19 | SC1 |
| Killdeer | 1 | 2 | 2 | 3 | 3 | 2 | 3 | 1 | 1 | 4 | 11 | |
| Ladder-backed Woodpecker | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 11 | |
| Lark Bunting | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 1 | 2 | 3 | 12 | |
| Lark Sparrow | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 10 | |
| Lazuli Bunting | 2 | 5 | 5 | 3 | 2 | 2 | 3 | 2 | 3 | 3 | 16 | SC2 |
| Least Bittern | 1 | 2 | 2 | | | 3 | 3 | 1 | 3 | 3 | 12 | BC2 |
| Least Tern | 3 | 2 | 3 | 5 | 4 | 3 | 5 | 1 | 2 | 2 | 13 | BC2 |
| Lesser Goldfinch | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 11 | |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|-------------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Lesser Nighthawk | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 9 | |
| Lesser Prairie-Chicken | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 25 | SC1 |
| Lewis' Woodpecker | 3 | 4 | 4 | 4 | 3 | 3 | 4 | 3 | 4 | 3 | 18 | SC1 |
| Lincoln's Sparrow | 1 | 2 | 2 | 2 | 2 | 3 | 3 | 1 | 2 | 3 | 11 | |
| Little Blue Heron | 2 | 2 | 2 | 4 | 4 | 2 | 4 | 1 | 2 | 3 | 12 | |
| Loggerhead Shrike | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 2 | 3 | 5 | 14 | SC2 |
| Long-billed Curlew | 3 | 3 | 3 | 4 | 4 | 3 | 4 | 2 | 5 | 3 | 17 | SC1 |
| Long-eared Owl | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 2 | 4 | 3 | 13 | |
| Lucifer Hummingbird | 5 | 5 | 5 | 2 | 2 | 4 | 4 | 1 | 4 | 3 | 17 | BC1 |
| Lucy's Warbler | 5 | 5 | 5 | 4 | 3 | 3 | 4 | 2 | 3 | 3 | 17 | SC1 |
| MacGillivray's Warbler | 3 | 3 | 3 | 2 | 2 | 3 | 3 | 2 | 2 | 3 | 13 | |
| Magnificent Hummingbird | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 13 | BC2 |
| Mallard | 1 | 1 | 1 | | | 2 | 2 | 1 | 2 | 2 | 8 | |
| Marsh Wren | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 1 | 2 | 3 | 11 | |
| McCown's Longspur (Winter) | 5 | 5 | 5 | 3 | 2 | 2 | 3 | 3 | 3 | 3 | 17 | SC1 |
| Mexican Chickadee | 4 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Mexican Jay | 4 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Mississippi Kite | 3 | 3 | 3 | 2 | 3 | 2 | 3 | 2 | 4 | 3 | 15 | SC2 |
| Montezuma Quail | 4 | 4 | 4 | 3 | 3 | 4 | 4 | 2 | 3 | 3 | 16 | SC2 |
| Mountain Bluebird | 2 | 3 | 3 | 2 | 2 | 2 | 2 | 3 | 2 | 5 | 15 | SC2 |
| Mountain Chickadee | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 5 | 13 | |
| Mountain Plover | 5 | 4 | 5 | 4 | 4 | 3 | 4 | 3 | 5 | 3 | 20 | SC1 |
| Mourning Dove | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 2 | 7 | |
| Neotropic Cormorant | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 4 | 15 | BC2 |
| Northern Beardless-Tyrannulet | 3 | 3 | 3 | 2 | 2 | 4 | 4 | 1 | 3 | 2 | 13 | BC1 |
| Northern Bobwhite | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 1 | 2 | 2 | 10 | |
| Northern Cardinal | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 1 | 1 | 2 | 7 | |
| Northern Flicker | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 5 | 12 | |
| Northern Goshawk | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 1 | 4 | 2 | 11 | |
| Northern Harrier | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 1 | 3 | 4 | 12 | BC2 |
| Northern Mockingbird | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 9 | |
| Northern Pintail | 1 | 1 | 1 | | | 2 | 2 | 1 | 2 | 5 | 11 | |
| Northern Pygmy-Owl | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 2 | 4 | 3 | 14 | SC2 |
| Northern Rough-winged Swallow | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 11 | |
| Northern Saw-whet Owl | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 12 | |
| Northern Shoveler | 1 | 2 | 2 | | | 2 | 2 | 1 | 3 | 2 | 10 | |
| Olive Warbler | 4 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Olive-sided Flycatcher | 1 | 2 | 2 | 3 | 4 | 3 | 4 | 1 | 3 | 3 | 13 | BC2 |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|---------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Orange-crowned Warbler | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 8 | |
| Orchard Oriole | 2 | 3 | 3 | 3 | 2 | 2 | 3 | 1 | 3 | 2 | 12 | |
| Osprey | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 1 | 4 | 1 | 10 | |
| Painted Bunting | 4 | 3 | 4 | 3 | 4 | 4 | 4 | 1 | 3 | 2 | 14 | BC1 |
| Painted Redstart | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 14 | BC2 |
| Peregrine Falcon | 1 | 1 | 1 | 3 | 3 | 4 | 4 | 1 | 3 | 2 | 11 | BC1 |
| Phainopepla | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 13 | |
| Pied-billed Grebe | 1 | 1 | 1 | | | 2 | 2 | 2 | 3 | 3 | 11 | |
| Pine Grosbeak | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 3 | 3 | 10 | |
| Pine Siskin | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 4 | 11 | |
| Pinyon Jay | 3 | 3 | 3 | 4 | 3 | 4 | 4 | 4 | 3 | 5 | 19 | SC1 |
| Plumbeous Vireo | 2 | 4 | 4 | 3 | 2 | 2 | 3 | 4 | 3 | 1 | 15 | SC2 |
| Prairie Falcon | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 5 | 3 | 15 | SC2 |
| Purple Martin | 1 | 1 | 1 | 2 | 3 | 2 | 3 | 1 | 2 | 2 | 9 | |
| Pygmy Nuthatch | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 14 | |
| Pyrrhuloxia | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 2 | 2 | 2 | 12 | |
| Red Crossbill | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 1 | 2 | 3 | 10 | |
| Red-breasted Nuthatch | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 8 | |
| Red-faced Warbler | 5 | 5 | 5 | 3 | 3 | 3 | 3 | 3 | 4 | 3 | 18 | SC1 |
| Redhead | 3 | 3 | 3 | | | 2 | 2 | 1 | 3 | 3 | 12 | |
| Red-headed Woodpecker | 2 | 2 | 2 | 3 | 3 | 4 | 4 | 1 | 3 | 3 | 13 | BC1 |
| Red-naped Sapsucker | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 3 | 3 | 14 | SC2 |
| Red-tailed Hawk | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 1 | 9 | |
| Red-winged Blackbird | 1 | 1 | 1 | 2 | 2 | 1 | 2 | 1 | 1 | 2 | 7 | |
| Ring-necked Pheasant | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 1 | 2 | 8 | |
| Rock Pigeon | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 6 | |
| Rock Wren | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 4 | 13 | |
| Ruby-crowned Kinglet | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 3 | 9 | |
| Ruddy Duck | 2 | 2 | 2 | | | 2 | 2 | 1 | 3 | 2 | 10 | |
| Rufous-crowned Sparrow | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 12 | |
| Sage Sparrow | 3 | 4 | 4 | 4 | 3 | 3 | 4 | 2 | 3 | 3 | 16 | SC2 |
| Sage Thrasher | 3 | 3 | 3 | 3 | 2 | 3 | 3 | 1 | 2 | 4 | 13 | BC2 |
| Savannah Sparrow | 1 | 2 | 2 | 2 | 2 | 3 | 3 | 1 | 1 | 3 | 10 | |
| Say's Phoebe | 1 | 3 | 3 | 2 | 2 | 1 | 2 | 2 | 3 | 3 | 13 | |
| Scaled Quail | 3 | 3 | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 2 | 15 | SC2 |
| Scissor-tailed Flycatcher | 4 | 5 | 5 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 13 | |
| Scott's Oriole | 3 | 4 | 4 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 14 | |
| Sharp-shinned Hawk | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 3 | 3 | 10 | |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|--------------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| Snowy Egret | 3 | 4 | 4 | 4 | 3 | 3 | 4 | 1 | 3 | 2 | 14 | BC2 |
| Snowy Plover | 3 | 4 | 4 | 4 | 4 | 3 | 4 | 2 | 5 | 2 | 17 | SC1 |
| Song Sparrow | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 1 | 3 | 8 | |
| Sora | 2 | 2 | 2 | | | 2 | 2 | 1 | 3 | 3 | 11 | |
| Southwestern Willow Flycatcher | | | 5 | | | 4 | 4 | 5 | 3 | 4 | 21 | SC1 |
| Spotted Owl | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 4 | 5 | 4 | 20 | SC1 |
| Spotted Sandpiper | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 3 | 3 | 10 | |
| Spotted Towhee | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 10 | |
| Sprague's Pipit (Winter) | 4 | 3 | 4 | 4 | 4 | 4 | 4 | 1 | 3 | 5 | 17 | BC1 |
| Steller's Jay | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 12 | |
| Summer Tanager | 2 | 2 | 2 | 3 | 2 | 3 | 3 | 1 | 3 | 3 | 12 | BC2 |
| Swainson's Hawk | 2 | 3 | 3 | 3 | 4 | 2 | 4 | 2 | 4 | 2 | 15 | SC2 |
| Swainson's Thrush | 1 | 2 | 2 | 3 | 3 | 2 | 3 | 1 | 1 | 3 | 10 | |
| Thick-billed Kingbird | 4 | 5 | 5 | 3 | 3 | 4 | 4 | 1 | 3 | 4 | 17 | BC1 |
| Three-toed Woodpecker | 1 | 1 | 1 | 3 | 3 | 2 | 3 | 1 | 3 | 3 | 11 | |
| Townsend's Solitaire | 2 | 2 | 2 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 12 | |
| Tree Swallow | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 3 | 10 | |
| Turkey Vulture | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 2 | 10 | |
| Varied Bunting | 3 | 4 | 4 | 3 | 3 | 3 | 3 | 1 | 3 | 2 | 13 | BC2 |
| Veery | 2 | 2 | 2 | 2 | 3 | 4 | 4 | 1 | 2 | 3 | 12 | BC1 |
| Verdin | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 11 | |
| Vermilion Flycatcher | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 3 | 2 | 9 | |
| Vesper Sparrow | 1 | 2 | 2 | 3 | 2 | 2 | 3 | 2 | 2 | 5 | 14 | SC2 |
| Violet-crowned Hummingbird | 4 | 4 | 4 | 2 | 2 | 4 | 4 | 1 | 3 | 2 | 14 | BC1 |
| Violet-green Swallow | 1 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 4 | 13 | |
| Virginia Rail | 2 | 2 | 2 | | | 2 | 2 | 1 | 3 | 3 | 11 | |
| Virginia's Warbler | 4 | 5 | 5 | 3 | 3 | 3 | 3 | 4 | 4 | 2 | 18 | SC1 |
| Warbling Vireo | 1 | 4 | 4 | 3 | 2 | 3 | 3 | 2 | 2 | 3 | 14 | SC2 |
| Western Bluebird | 3 | 3 | 3 | 3 | 2 | 3 | 3 | 3 | 3 | 4 | 16 | SC2 |
| Western Grebe | 3 | 3 | 3 | 4 | 4 | 3 | 4 | 1 | 2 | 3 | 13 | BC2 |
| Western Kingbird | 1 | 4 | 4 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 12 | |
| Western Meadowlark | 1 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 2 | 4 | 13 | |
| Western Screech-Owl | 2 | 2 | 2 | 3 | 2 | 2 | 3 | 2 | 3 | 3 | 13 | |
| Western Scrub-Jay | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 3 | 3 | 4 | 15 | SC2 |
| Western Tanager | 2 | 3 | 3 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 11 | |
| Western Wood-Pewee | 1 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 2 | 4 | 13 | |
| Whip-poor-will | 2 | 3 | 3 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 13 | BC2 |
| Whiskered Screech-Owl | 4 | 4 | 4 | 2 | 2 | 3 | 3 | 1 | 4 | 2 | 14 | BC2 |

| Common Name | Breeding Distribution | Non-breeding Distribution | Distribution | Breeding Season Threats | Non-breeding Season Threats | Breeding Season Threats In New Mexico | Threats | Importance Of New Mexico To Breeding | Population Size | Local Population Trends | Combined Score | Priority List Status |
|-------------------------|-----------------------|---------------------------|--------------|-------------------------|-----------------------------|---------------------------------------|---------|--------------------------------------|-----------------|-------------------------|----------------|----------------------|
| White-breasted Nuthatch | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 9 | |
| White-crowned Sparrow | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 3 | 9 | |
| White-faced Ibis | 3 | 4 | 4 | 4 | 3 | 2 | 4 | 1 | 2 | 3 | 14 | |
| White-tailed Ptarmigan | 3 | 3 | 3 | 2 | 2 | 4 | 4 | 1 | 3 | 2 | 13 | BC1 |
| White-throated Swift | 2 | 3 | 3 | 2 | 3 | 2 | 3 | 2 | 4 | 3 | 15 | SC2 |
| White-winged Crossbill | 1 | 1 | 1 | 3 | 2 | 2 | 3 | 1 | 2 | 3 | 10 | |
| White-winged Dove | 2 | 3 | 3 | 2 | 2 | 1 | 2 | 1 | 2 | 1 | 9 | |
| Wild Turkey | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 1 | 10 | |
| Williamson's Sapsucker | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 4 | 3 | 16 | SC2 |
| Wilson's Phalarope | 2 | 5 | 5 | 3 | 4 | 2 | 4 | 1 | 1 | 3 | 14 | |
| Wilson's Snipe | 1 | 2 | 2 | 3 | 2 | 3 | 3 | 1 | 1 | 3 | 10 | |
| Wilson's Warbler | 1 | 3 | 3 | 3 | 2 | 3 | 3 | 1 | 2 | 3 | 12 | BC2 |
| Wood Duck | 2 | 3 | 3 | | | 2 | 2 | 1 | 3 | 1 | 10 | |
| Yellow Warbler | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 1 | 2 | 2 | 9 | |
| Yellow-billed Cuckoo | 1 | 2 | 2 | 3 | 3 | 4 | 4 | 1 | 2 | 4 | 13 | BC1 |
| Yellow-breasted Chat | 1 | 3 | 3 | 3 | 2 | 2 | 3 | 1 | 2 | 2 | 11 | |
| Yellow-eyed Junco | 4 | 4 | 4 | 3 | 2 | 4 | 4 | 1 | 2 | 3 | 14 | BC1 |
| Yellow-headed Blackbird | 2 | 3 | 3 | 3 | 3 | 2 | 3 | 1 | 2 | 3 | 12 | |
| Yellow-rumped Warbler | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 7 | |
| Zone-tailed Hawk | 1 | 1 | 1 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 11 | |

Criteria

| | |
|---|---|
| Species Conservation Level 1 (SC1) | Importance of New Mexico to Breeding > 1 and Combined Score > 16 |
| Species Conservation Level 2 (SC2) | Importance of New Mexico to Breeding > 1 and Combined Score = 15 or 16 or Importance of New Mexico to Breeding > 1 and Combined Score = 14 and Breeding Season Threats in New Mexico + Local Population Trends > 5 |
| Biodiversity Conservation Level 1 (BC1) | Importance of New Mexico to Breeding = 1 and Breeding Season Threats in New Mexico > 3 |
| Biodiversity Conservation Level 2 (BC2) | Importance of New Mexico to Breeding = 1 and Breeding Season Threats in New Mexico = 3 and Combined Score > 11 |

Navajo Nation Sensitive Species List 2008

MAMMALS

| | |
|----------------------------------|--------------------------|
| <i>Castor canadensis</i> | American Beaver |
| <i>Euderma maculatum</i> | Spotted Bat |
| <i>Eumops perotis</i> | Western Bonneted Bat |
| <i>Lasionycteris noctivagans</i> | Silver-haired Bat |
| <i>Microtus pennsylvanicus</i> | Meadow Vole |
| <i>Mustela vison</i> | Mink |
| <i>Neotoma lepida</i> | Desert Woodrat |
| <i>Notiosorex crawfordi</i> | Crawford's Desert Shrew |
| <i>Perognathus longimembris</i> | Little Pocket Mouse |
| <i>Peromyscus eremicus</i> | Cactus Mouse |
| <i>Puma concolor</i> | Mountain Lion |
| <i>Sciurus aberti</i> | Abert's Squirrel |
| <i>Sigmodon fulviventer</i> | Tawny-bellied Cotton Rat |
| <i>Sorex merriami</i> | Merriam's Shrew |
| <i>Sorex monticolus</i> | Montane Shrew |
| <i>Sorex vagrans</i> | Vagrant Shrew |

BIRDS

| | |
|----------------------------------|------------------------|
| <i>Actitis macularia</i> | Spotted Sandpiper |
| <i>Aechmophorus occidentalis</i> | Western Grebe |
| <i>Aimophila ruficeps</i> | Rufous-crowned Sparrow |
| <i>Anas acuta</i> | Northern Pintail |
| <i>Anas crecca</i> | Green-Winged Teal |
| <i>Anas cyanoptera</i> | Cinnamon Teal |
| <i>Ardea herodias</i> | Great Blue Heron |
| <i>Asio otus</i> | Long-Eared Owl |
| <i>Buteo swainsoni</i> | Swainson's Hawk |
| <i>Butorides virescens</i> | Green Heron |
| <i>Callipepla squamata</i> | Scaled Quail |
| <i>Catharus ustulatus</i> | Swainson's Thrush |
| <i>Certhia americana</i> | Brown Creeper |
| <i>Circus cyaneus</i> | Northern Harrier |
| <i>Cistothorus palustris</i> | Marsh Wren |
| <i>Gallinago delicata</i> | Wilson's Snipe |
| <i>Geococcyx californianus</i> | Greater Roadrunner |
| <i>Geothlypis trichas</i> | Common Yellowthroat |
| <i>Haliaeetus leucocephalus</i> | Bald Eagle |
| <i>Hirundo rustica</i> | Barn Swallow |

Icteria virens
Icterus cucullatus
Megascops kennicottii
Mergus merganser
Myadestes townsendi
Nycticorax nycticorax
Pandion haliaetus
Passerina amoena
Passerina cyanea
Phainopepla nitens
Piranga flava
Podiceps nigricollis
Progne subis
Recurvirostra americana
Regulus satrapa
Spizella atrogularis
Toxostoma crissale
Tyto alba
Vermivora luciae
Vireo vicinior
Xanthocephalus xanthocephalus

Yellow-breasted Chat
Hooded Oriole
Western Screech-Owl
Common Merganser
Townsend's Solitaire
Black-Crowned Night-Heron
Osprey
Lazuli Bunting
Indigo Bunting
Phainopepla
Hepatic Tanager
Eared Grebe
Purple Martin
American Avocet
Golden-crowned Kinglet
Black-chinned Sparrow
Crissal Thrasher
Barn Owl
Lucy's Warbler
Gray Vireo
Yellow-headed Blackbird

REPTILES

Arizona elegans
Aspidoscelis inornatus
Aspidoscelis neomexicanus
Crotalus viridis abyssus
Diadophis punctatus
Eumeces multivirgatus
Eumeces obsoletus
Heterodon nasicus
Hypsiglena torquata
Lampropeltis getulus
Leptotyphlops humilis
Rhinocheilus lecontei
Xantusia vigilis

Glossy Snake
Little Striped Whiptail
New Mexico Whiptail
Grand Canyon Rattlesnake
Ringneck Snake
Many-lined Skink
Great Plains Skink
Western Hognose Snake
Night Snake
Common Kingsnake
Western Blind Snake
Longnose Snake
Desert Night Lizard

AMPHIBIANS

Ambystoma tigrinum
Bufo cognatus
Pseudacris triseriata

Eastern Tiger Salamander
Great Plains Toad
Western Chorus Frog

FISHES

Lepidomeda vittata

Little Colorado Spinedace

INVERTEBRATES

Anodonta californiensis

California Floater

Cicindela praetextata

A Tiger Beetle

Daihinibaenetes arizonensis

AZ GiantSandTreaderCricket

Stenopelmatus Navajo

Navajo Jerusalem Cricket

PLANTS

Abronia bolackii

Bolack's Sand Verbena

Acanthochiton wrigthii

Green-stripe Amaranth

Aletes macdougallii ssp. breviradiatus

San Juan False Carrot

Aliciella haydenii

San Juan Gilia

Amsonia tomentosa var. stenophylla

Narrowleaf Blue Star

Artemisia pygmaea

Pigmy Sagebrush

Asclepias cutleri

Cutler's Milkweed

Astragalus chuskanus

Chuska Milk-vetch

Astragalus cottamii

Cottam's Milk-vetch

Astragalus cliffordii

Clifford's Milk-vetch

Astragalus micromerius

Chaco Milk-vetch

Astragalus missouriensis var. accumbens

Zuni Milk-vetch

Astragalus monumentalis var. monumentalis

Monument Valley Milk-vetch

Astragalus oocalycis

Arboles Milk-vetch

Astragalus sophoroides

Painted Desert Milk-vetch

Astragalus tortipes

Sleeping Ute Milk-vetch

Astragalus xiphoides

Gladiator Milk-vetch

Caesalpinia repens

Creeping Rush-pea

Calypso bulbosa

Fairy Slipper

Camissonia specuicola ssp. specuicola

Kaibab Suncup

Ceanothus greggii var. franklinii

Franklin Ceanothus

Chrysothamnus molestus

Arizona Rabbitbrush

Chrysothamnus viscidiflorus ssp. planifolius

Yellow Rabbitbrush

Cirsium chellyense

Canyon de Chelly Thistle

Clematis hirsutissima var. hirsutissima

Clustered Leather-flower

Cryptantha atwoodii

Atwood's Catseye

Cymopterus acaulis var. higginsii

Higgins Biscuit root

Cymopterus beckii

Featherleaf Spring-parsley

Cymopterus megacephalus

Bighead Spring-parsley

Dalea scariosa

La Jolla Prairie Clover

Eremocrinum albomarginatum

Sand Lily

Erigeron canaanii

Canaan Daisy

Eriogonum clavellatum

Comb Wash Buckwheat

Eriogonum lachnogyne var. colobum

Clipped Wild Buckwheat

| | |
|--|------------------------------|
| <i>Eriogonum ripleyi</i> | A Buckwheat |
| <i>Euphorbia aaron-rossii</i> | Marble Canyon Spurge |
| <i>Frittilaria atropurpurea</i> | Spotted Fritillary |
| <i>Hesperodoria scopulorum</i> | Grand Canyon Evening Daisy |
| <i>Hymenoxys argentea</i> var. <i>thoreauensis</i> | Thoreau woollybase Hymenoxys |
| <i>Hymenoxys jamesii</i> | Jame's Rubberweed |
| <i>Hymenoxys helenioides</i> | Intermountain Rubberweed |
| <i>Isoetes bolanderi</i> | Bolander Quillwort |
| <i>Lupinus caudatus</i> var. <i>cutleri</i> | Cutler's Lupine |
| <i>Mammillaria wrightii</i> var. <i>wrightii</i> | Wright Fishhook Cactus |
| <i>Oenothera cavernae</i> | Cave Evening-Primrose |
| <i>Ostrya knowltonii</i> | Knowlton's Hop hornbeam |
| <i>Parthenium alpinum</i> var. <i>alpinum</i> | Alpine Fever-few |
| <i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i> | Peebles Navajo Cactus |
| <i>Pediocactus simpsonii</i> var. <i>minor</i> | Snowball Cactus |
| <i>Phacelia buell-vivariensis</i> | Buell Park Phacelia |
| <i>Phacelia howelliana</i> | Howell Phacelia |
| <i>Phacelia splendens</i> | Patch Phacelia |
| <i>Phacelia welshii</i> | Welsh's Phacelia |
| <i>Phlox cluteana</i> | Navajo Mountain Phlox |
| <i>Platanthera stricta</i> | Slender Bog-orchid |
| <i>Polygala acanthoclada</i> | Thorn Milkwort |
| <i>Proatriplex pleiantha</i> | Mancos Saltplant |
| <i>Psoralidium junceum</i> | Western Scurf Pea |
| <i>Psoralea scoparius</i> | Broom Pea |
| <i>Psoralea thompsoniae</i> var. <i>whitingii</i> | Whiting Indigo Bush |
| <i>Rosa stellata</i> ssp. <i>abyssa</i> | Grand Canyon Rose |
| <i>Senecio cliffordii</i> | Clifford's Groundsel |
| <i>Spiranthes romanzoffiana</i> | Hooded Ladies'tresses |

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.: Sacred Wind Fiber-Optic Line

DESCRIPTION: SWC propose to construct, operate, and maintain a new subsurface fiber-optic line. The fiber-optic line would measure 839.68 ft. in length w/ a 20-ft. wide ROW. Total permitted fiber-optic ROW would be 0.39 acres.

LOCATION: Sections 14 & 23, T29N, R14W, NMPM, Upper Fruitland, San Juan County, New Mexico

REPRESENTATIVE: John E. Dodge, Dodge Environmental, LLC. for Sacred Wind Communications, Inc.

ACTION AGENCY: Navajo Land Department & Bureau of Indian Affairs - Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: Proposed Sacred Wind Fiber-Optic Built Project/SEP 2014/Dodge Environmental, LLC.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3. Project is located in a highly disturbed area and within the existing PNM transmission ROW.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA


AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/15 SEP 2014

COPIES TO: (add categories as necessary)

☐ _____ ☐ _____

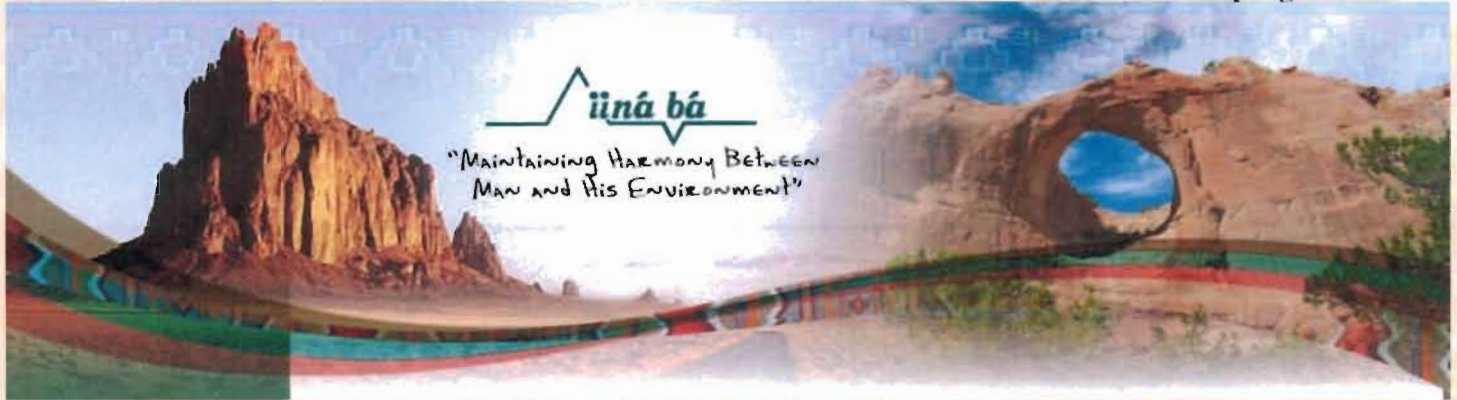
| | | |
|--|--|-----------------|
| <u>2 NTC § 164 Recommendation:</u> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Conditional Approval (with memo) <input type="checkbox"/> Disapproval (with memo) <input type="checkbox"/> Categorical Exclusion (with request letter) <input type="checkbox"/> None (with memo) | Signature  Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife | Date 9/15/14 |
|--|--|-----------------|

*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 B



**APPENDIX B — CULTURAL RESOURCE INVENTORY/NNHPD CONCURRENCE
ENVIRONMENTAL ASSESSMENT REPORT
PROPOSED FIBER OPTIC PROJECT
UPPER FRUITLAND, SAN JUAN COUNTY, NEW MEXICO**



**PREPARED FOR:
SACRED WIND COMMUNICATIONS, INC.
5901-J WYOMING BLVD NE
ALBUQUERQUE, NM 87109**

**PREPARED BY:
IINÁ BÁ, INC.
4801 N. BUTLER AVENUE, SUITE 1101
FARMINGTON, NM 87401
www.iinábá.com
PHONE: (505) 327-1072
FAX: (505) 327-1517
SEPTEMBER 2014**



THE NAVAJO NATION

BEN SHELLY
PRESIDENT

REX LEE JIM
VICE-PRESIDENT

May 23, 2014

Tico Charlee
Sacred Wind Communications, Inc.
875-, US Highway 491 North
Yatahey, New Mexico 87375

RE: Determination of No effect for the Fast Track/ Sacred Wind Fiber Optic Line in Upper Fruitland, San Juan County, New Mexico

Dear Mr. Charlee;

The Cultural Resource Compliance Section of the Navajo Nation Historic Preservation Department (HPD) has reviewed the following report: A Cultural Resource Inventory of the Fast Track/Sacred Wind Fiber Optic Line in Upper Fruitland, San Juan County, New Mexico. NNAD-14-067. No Cultural Resources were noted during the archaeological survey of the proposed undertaking, which consists of 839.68 feet of new construction (burying) the fiber optic line, with in the proposed right-of-way corridor. No cultural resources were noted, it is our determination that no further work is warranted. Accordingly, we recommend that the proposed undertaking be authorized to proceed.

As agent of the Bureau of Indian Affairs (pursuant to Public Law 93-638, Archaeological Service Contract), the NNHPD, with this letter, hereby documents compliance with the Navajo Nation Cultural Resource Protection Act (19 NNC 1021) and Consultation with the Navajo Nation Historic Preservation Officer pursuant to Sections 101(a & d), 106(a & d) and 110(a), 2(e)ii of the National Historic Preservation Act.

Should any previously unidentified or incorrectly identified cultural resources including, but not limited to, archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices be discovered, all operations in the immediate vicinity must cease and the Navajo Nation Historic Preservation Department must be notified. If you have any questions regarding this matter, please call Ron Maldonado at (928) 871-7139.

Sincerely,

Ronald P. Maldonado
Acting Tribal Historic Preservation Officer



**THE
NAVAJO
NATION**

NNAD
Box 580
Shiprock, NM 87420
Phone: (505) 368-1214/1507
Fax: (505) 368-1215
Email: ecmason@frontiernet.net



BEN SHELLY
PRESIDENT

REX LEE JIM
VICE PRESIDENT

May 21, 2014

Tico Charlee
Sacred Wind Communication, Inc.
875-D, US Highway 491 North
Yatahey, NM 87375


Dear Mr. Charlee:

Enclosed is a copy of the Navajo Nation Archaeology Department's cultural resource inventory report NNAD 14-067 concerning a cultural resource inventory of the proposed Fast Track Communications/Sacred Wind Communications fiber optic line in Upper Fruitland, San Juan County, New Mexico.

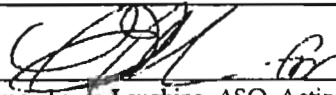
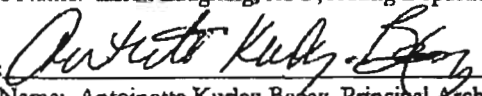
As a result of the cultural resource inventory, no cultural resources were identified within the project area. Therefore, a determination of no cultural resources affected is recommended for the proposed undertaking since no significant cultural resources were noted within the proposed right-of-way.

Please note that receipt of this report does not constitute approval. The report has been submitted to the Navajo Nation Historic Preservation Department (NNHPD) for review on behalf of the Bureau of Indian Affairs. Once a determination of archaeological approval has been made on your proposed undertaking, you will be notified by the NNHPD in the form of a compliance letter. Should you have any questions concerning this report, contact me at (505) 368-1214.

Sincerely,


Antoinette Kurley-Begay
NNAD Archaeologist

Enclosure

| | | |
|---|-----------------------|--|
| 1. HPD REPORT NO. | 2. (FOR HPD USE ONLY) | 3. RECIPIENTS ACCESSION NO. |
| 4. TITLE OF REPORT: A Cultural Resource Inventory of the Fast Track/Sacred Wind Fiber Optic line in Upper Fruitland, San Juan County, New Mexico AUTHOR(S): Antoinette Kurley-Begay | | 5. FIELDWORK DATES May 20, 2014 |
| | | 6. REPORT DATE May 21, 2014 |
| 7. CONSULTANT NAME AND ADDRESS: Gen'l Charge: Linda Laughing, Acting Department Manager Org. Name: Navajo Nation Archaeology Department Org. Address: P. O. Box 689 Window Rock, Arizona 86515 Phone: (928) 871-6540 | | 8. Permit No. NTC |
| | | 9. Consultant Report No. NNAD 14-067 |
| 10. SPONSOR NAME AND ADDRESS: Ind. Responsible: Tico Charlee Org. Name: Sacred Wind Communications, Inc. Org. Address: 875-D U.S. Highway 491 North Yatahey, New Mexico 87375 Phone: (505) 905-6000 | | 11. SPONSOR PROJECT NO. |
| | | 12. AREA OF EFFECT: 0.39 acre (0.16 ha) AREA SURVEYED: 2.31 acres (0.94 ha) |
| 13. LOCATION (MAP ATTACHED): | | |
| a. Chapter: Upper Fruitland b. Agency: Shiprock c. County: San Juan d. State: New Mexico e. Land Status: Navajo Tribal Land f. UTM Center: See Supplemental Sheet g. Area: see Supplemental Sheet h. 7.5' Map Name(s): Kirtland, N. Mex., 1966 (Photorevised 1979) | | |
| 14. REPORT /X/ OR SUMMARY (REPORT ATTACHED) / / | | |
| a. Description of Undertaking: Sacred Wind Communications, Inc. and Fast Track Communications, Inc. propose to construct an underground fiber optic line which will tie into an existing transmission line housing an existing fiber optic line. The proposed fiber optic line right-of-way measures 839.68 feet (256 m) long by 20 feet (6.09 m) wide for a total acreage of 0.39 acre (0.16 ha) of land that will be potentially affected by the proposed construction of the fiber optic line under this project. The types of ground disturbance expected to result from the fiber optic construction will include surface and subsurface disturbances from trenching, stringing the fiber optic line in the trench, and backfilling the trench. Vehicular traffic carrying personnel and equipment will also be required along the right-of-way. An improved service road and existing dirt roads will provide access to the project area. b. Existing Data Review: See Supplemental Sheet c. Area Environmental & Cultural Setting: The project area is situated south of the San Juan River and north of the bluffs overlooking the San Juan River. The project area gradually slopes north and is situated at an elevation of 5274 feet (1608 m). The sediments within the project area consist of aeolian sand mixed with alluvial deposits of silt. The vegetation within the project area consists of cheat grass, Russian thistle, rabbitbrush, and muhly. An unnamed north-flowing drainage tributary to the San Juan River is located directly west of the project area. d. Field Methods: The proposed fiber optic line was inventoried on May 20, 2014 by NNAD archaeologist, Antoinette Kurley-Begay. The inventory was conducted by the archaeologist walking parallel two transects on both sides of the staked center line. A 120-foot (36.59 m) wide inventory area was examined under this project. The 120-foot wide inventory area included the 20-foot wide proposed fiber optic line with a 50-foot (15.24 m) wide buffer zone located on both sides of the 20-foot wide right-of-way. A total area of 2.31 acres (0.94 ha) of land was examined under this project. In addition to the inventory, an ethnographic interview was also conducted with a local chapter resident, in an attempt to secure information on any possible Traditional Cultural Properties (TCP—blessed or sacred places or structures) and graves that might be present in or near the project area. The interview was conducted with Mr. David Jones by the archaeologist in the English language after the inventory was conducted. | | |
| 15. CULTURAL RESOURCE FINDINGS: | | |
| a. Location/Identification of Each Resource: No cultural resources were identified during the inventory under this project. b. Evaluation of Significance of Each Resource (above): N/A | | |
| 16. MANAGEMENT SUMMARY (RECOMMENDATIONS): A determination of no historic properties affected is recommended for the project area since no cultural resources were identified. | | |
| 17. CERTIFICATION: | | |
| SIGNATURE:  | | DATE: 5/21/14 |
| General Charge Name: Linda Laughing, ASO, Acting Department Manager | | |
| SIGNATURE:  | | DATE: May 21, 2014 |
| Direct Charge Name: Antoinette Kurley-Begay, Principal Archaeologist | | |

AIR SUPPLEMENTAL SHEET: NNAD 14-067

13. LOCATION:

f. UTM Center: See Table 1

g. Area: See Table 1

Table 1. UTM Coordinates (Zone 12) and Legal Description for the Project Area.

| Project Area | (NAD 83) | | | | | Section | Township | Range |
|-------------------------|----------|---------|-----|-----|----|---------|----------|-------|
| | Northing | Easting | ¼ | ¼ | ¼ | | | |
| Beginning of Line (BOI) | 4067187 | 742643 | SW, | SE, | SW | 14 | 29N | 14W |
| Bend 1 | 4067181 | 742616 | SW, | SE, | SW | 14 | " | " |
| Bend 2 | 4067003 | 742713 | NW, | NW, | NW | 23 | " | " |
| End of Line (EOL) | 4066995 | 742717 | NW, | NW, | NW | 23 | " | " |

14. REPORT:

- c. Existing Data Review: A check of Navajo Nation Historic Preservation Department (NNHPD) and New Mexico State Archaeological Resource Management System (ARMS) files archival was conducted on May 20 and 21, 2014. The records check indicated that nine previous projects (IHS NA-79-213, NTM-87-130 (NNCRMP 87-083 and 87-083-Addendum 2), NNAD 94-205, HPD-95-084 (CASA 94-103), HPD-96-093, HPD-94-731, HPD-98-586, HPD-99-477, and HPD-04-225) have been conducted within a 500-foot (152-m) radius of the project area. The records check also revealed that three archaeological sites have been previously recorded within a 500-foot radius of the project area. The three previously recorded sites, NM-H-22-131, NM-H-22-143, and NM A-7-1, were noted out of the current project area. The records check conducted at the NNHPD Traditional Cultural Program files also revealed that the San Juan River, a TCP, was located about 3,000 feet (914.63 m) from the project area. The TCP records search verification form is attached to this report.

Finally, a check of Van Valkenburgh (1974) indicates that the nearest recognized sacred place is Shiprock Pinnacle (*Tsé bit'a'i*—Winged Rock) located about 20 miles (32.18 km) to the west of the project area.

Van Valkenburgh, Richard F.

1974 Navajo Sacred Places. In *Navajo Indians III*, edited by Clyde Kluckhohn, pp. 9-199. Garland Publishing, New York, New York.

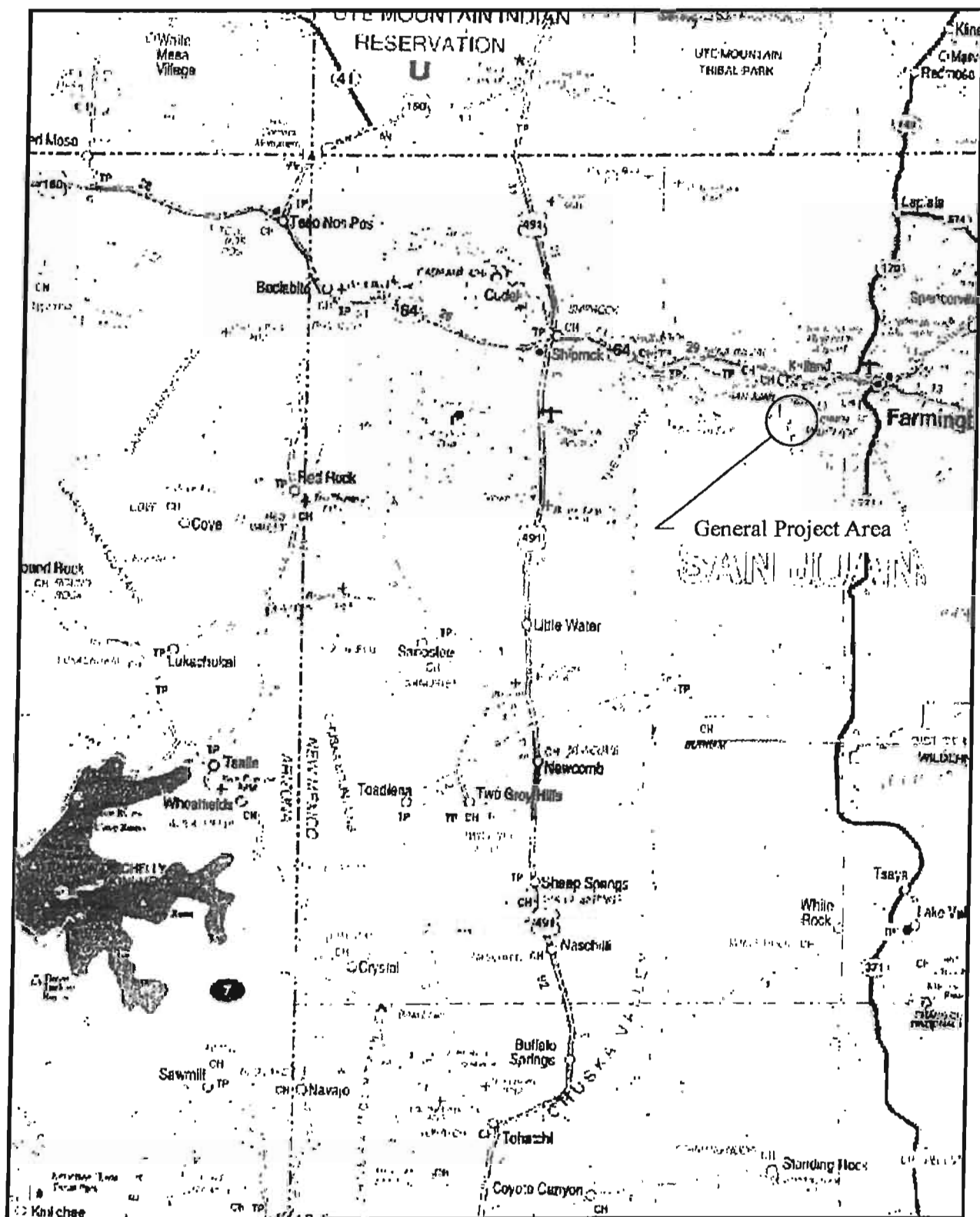


Figure 1. Vicinity map showing general project area. Indian Country Regional Map, n.d. (NNAD 14-067).

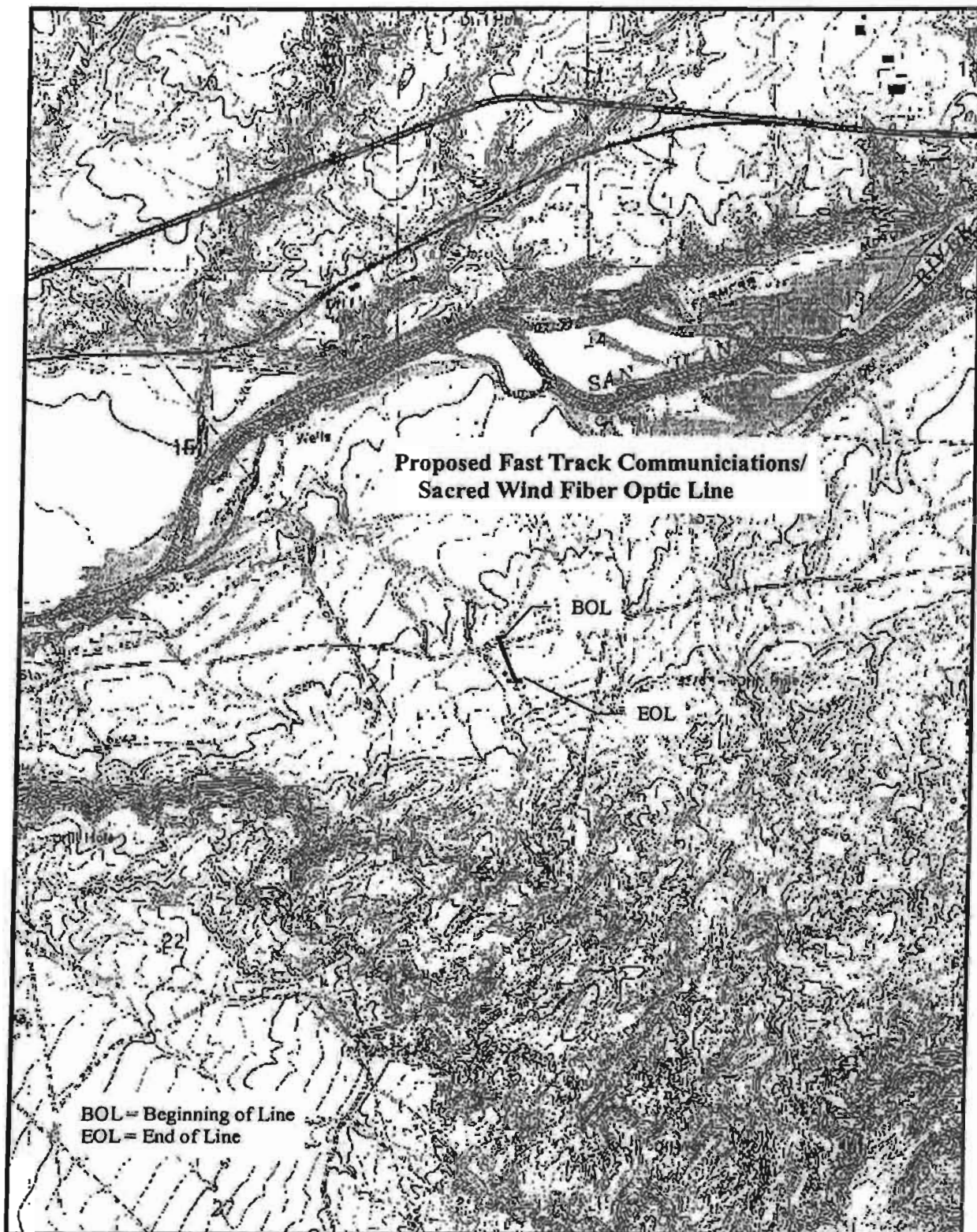
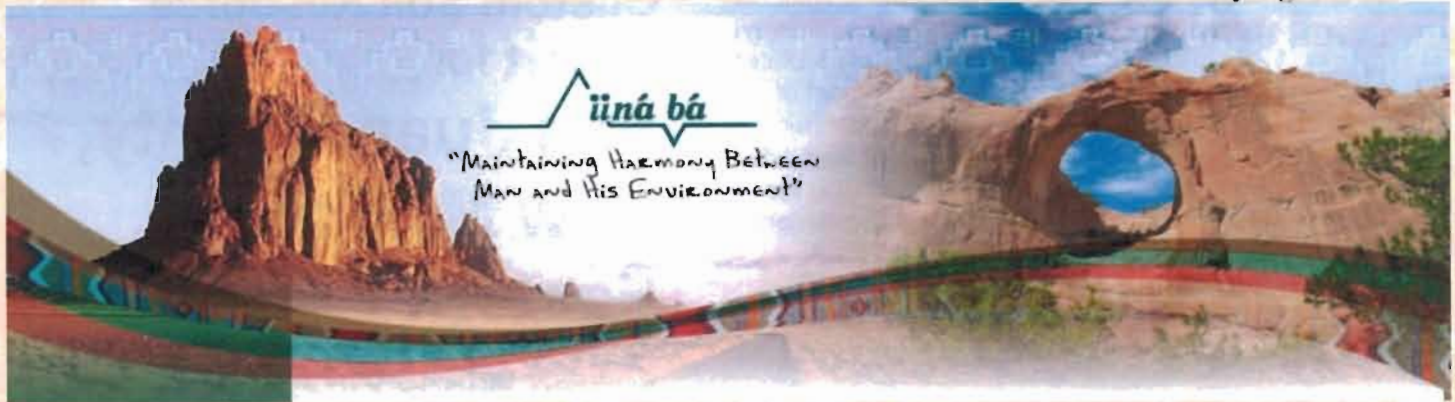


Figure 2. Location maps showing project area. Kirtland, N. Mex., 1966 (Photorevised 1979), 7.5' series USGS map; T.29N, R.14W, NMPM (NNAD 14-067).

Appendix C



APPENDIX C — RELATED DOCUMENTS
ENVIRONMENTAL ASSESSMENT REPORT
PROPOSED FIBER OPTIC PROJECT
UPPER FRUITLAND, SAN JUAN COUNTY, NEW MEXICO



PREPARED FOR:
SACRED WIND COMMUNICATIONS, INC.
5901-J WYOMING BLVD NE
ALBUQUERQUE, NM 87109

PREPARED BY:
IINÁ BÁ, INC.
4801 N. BUTLER AVENUE, SUITE 1101
FARMINGTON, NM 87401
www.iinabá.com
PHONE: (505) 327-1072
FAX: (505) 327-1517
SEPTEMBER 2014



United States
Department of
Agriculture

NRCS

Natural
Resources
Conservation
Service

A product of the National
Cooperative Soil Survey,
a joint effort of the United
States Department of
Agriculture and other
Federal agencies, State
agencies including the
Agricultural Experiment
Stations, and local
participants

Custom Soil Resource Report for **San Juan County, New Mexico, Eastern Part**

Sacred Winds Fiber Optic Project



August 8, 2014

Preface

Soil surveys contain information that affects land use planning in survey areas. They highlight soil limitations that affect various land uses and provide information about the properties of the soils in the survey areas. Soil surveys are designed for many different users, including farmers, ranchers, foresters, agronomists, urban planners, community officials, engineers, developers, builders, and home buyers. Also, conservationists, teachers, students, and specialists in recreation, waste disposal, and pollution control can use the surveys to help them understand, protect, or enhance the environment.

Various land use regulations of Federal, State, and local governments may impose special restrictions on land use or land treatment. Soil surveys identify soil properties that are used in making various land use or land treatment decisions. The information is intended to help the land users identify and reduce the effects of soil limitations on various land uses. The landowner or user is responsible for identifying and complying with existing laws and regulations.

Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. Examples include soil quality assessments (<http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/>) and certain conservation and engineering applications. For more detailed information, contact your local USDA Service Center (<http://offices.sc.egov.usda.gov/locator/app?agency=nrcs>) or your NRCS State Soil Scientist (http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/contactus/?cid=nrcs142p2_053951).

Great differences in soil properties can occur within short distances. Some soils are seasonally wet or subject to flooding. Some are too unstable to be used as a foundation for buildings or roads. Clayey or wet soils are poorly suited to use as septic tank absorption fields. A high water table makes a soil poorly suited to basements or underground installations.

The National Cooperative Soil Survey is a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local agencies. The Natural Resources Conservation Service (NRCS) has leadership for the Federal part of the National Cooperative Soil Survey.

Information about soils is updated periodically. Updated information is available through the NRCS Web Soil Survey, the site for official soil survey information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means

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How Soil Surveys Are Made

Soil surveys are made to provide information about the soils and miscellaneous areas in a specific area. They include a description of the soils and miscellaneous areas and their location on the landscape and tables that show soil properties and limitations affecting various uses. Soil scientists observed the steepness, length, and shape of the slopes; the general pattern of drainage; the kinds of crops and native plants; and the kinds of bedrock. They observed and described many soil profiles. A soil profile is the sequence of natural layers, or horizons, in a soil. The profile extends from the surface down into the unconsolidated material in which the soil formed or from the surface down to bedrock. The unconsolidated material is devoid of roots and other living organisms and has not been changed by other biological activity.

Currently, soils are mapped according to the boundaries of major land resource areas (MLRAs). MLRAs are geographically associated land resource units that share common characteristics related to physiography, geology, climate, water resources, soils, biological resources, and land uses (USDA, 2006). Soil survey areas typically consist of parts of one or more MLRA.

The soils and miscellaneous areas in a survey area occur in an orderly pattern that is related to the geology, landforms, relief, climate, and natural vegetation of the area. Each kind of soil and miscellaneous area is associated with a particular kind of landform or with a segment of the landform. By observing the soils and miscellaneous areas in the survey area and relating their position to specific segments of the landform, a soil scientist develops a concept, or model, of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted soil color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil scientists classified and named the soils in the survey area, they compared the

individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

The objective of soil mapping is not to delineate pure map unit components; the objective is to separate the landscape into landforms or landform segments that have similar use and management requirements. Each map unit is defined by a unique combination of soil components and/or miscellaneous areas in predictable proportions. Some components may be highly contrasting to the other components of the map unit. The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The delineation of such landforms and landform segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Soil scientists make many field observations in the process of producing a soil map. The frequency of observation is dependent upon several factors, including scale of mapping, intensity of mapping, design of map units, complexity of the landscape, and experience of the soil scientist. Observations are made to test and refine the soil-landscape model and predictions and to verify the classification of the soils at specific locations. Once the soil-landscape model is refined, a significantly smaller number of measurements of individual soil properties are made and recorded. These measurements may include field measurements, such as those for color, depth to bedrock, and texture, and laboratory measurements, such as those for content of sand, silt, clay, salt, and other components. Properties of each soil typically vary from one point to another across the landscape.

Observations for map unit components are aggregated to develop ranges of characteristics for the components. The aggregated values are presented. Direct measurements do not exist for every property presented for every map unit component. Values for some properties are estimated from combinations of other properties.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses and for engineering tests. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Some interpretations are modified to fit local conditions, and some new interpretations are developed to meet local needs. Data are assembled from other sources, such as research information, production records, and field experience of specialists. For example, data on crop yields under defined levels of management are assembled from farm records and from field or plot experiments on the same kinds of soil.

Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.

Soil Map


The soil map section includes the soil map for the defined area of interest, a list of soil map units on the map and extent of each map unit, and cartographic symbols displayed on the map. Also presented are various metadata about data used to produce the map, and a description of each soil map unit.

Custom Soil Resource Report Soil Map



MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)


Soils

 Soil Map Unit Polygons

 Soil Map Unit Lines

 Soil Map Unit Points

Special Point Features

 Blowout

 Borrow Pit

 Clay Spot

 Closed Depression

 Gravel Pit

 Gravelly Spot

 Landfill

 Lava Flow

 Marsh or swamp

 Mine or Quarry


 Miscellaneous Water


 Perennial Water

 Rock Outcrop


 Saline Spot


 Sandy Spot

 Severely Eroded Spot


 Sinkhole

 Slide or Slip


 Sodic Spot

 Spoil Area

 Stony Spot

 Very Stony Spot

 Wet Spot

 Other

 Special Line Features

Water Features

 Streams and Canals

Transportation

 Rails

 Interstate Highways

 US Routes

 Major Roads

 Local Roads

Background

 Aerial Photography

MAP INFORMATION

The soil surveys that comprise your Area of Interest (AOI) are:

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale may lead to a misunderstanding of the detail of map placement. The maps do not show the soils that could have been shown at a larger scale.

Please rely on the bar scale on each map for distance measurements.

Source of Map: Natural Resources
Web Soil Survey URL: <http://websoilsurvey.sc.egov.usda.gov/>
Coordinate System: Web Mercator

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction, but not distance and area. A projection that preserves distance and area, such as the Albers equal-area conic projection, should be used for calculations of distance or area.

This product is generated from the US National Map Accuracy Standards (NMAS) the version date(s) listed below.

Soil Survey Area: San Juan County
Survey Area Data: Version 11, December 2010

Soil map units are labeled (as space allows) with the name of the soil or larger.

Date(s) aerial images were photographed: 2010

The orthophoto or other base map on which the soil map is compiled and digitized probably differs from the imagery displayed on these maps. As a result, some map unit boundaries may be evident.

Map Unit Legend

| San Juan County, New Mexico, Eastern Part (NM618) | | | |
|---|--|--------------|----------------|
| Map Unit Symbol | Map Unit Name | Acres in AOI | Percent of AOI |
| SW | Stumble-Fruitland association, gently sloping | 11.2 | 100.0% |
| Totals for Area of Interest | | 11.2 | 100.0% |

Map Unit Descriptions

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

Most minor soils have properties similar to those of the dominant soil or soils in the map unit, and thus they do not affect use and management. These are called noncontrasting, or similar, components. They may or may not be mentioned in a particular map unit description. Other minor components, however, have properties and behavioral characteristics divergent enough to affect use or to require different management. These are called contrasting, or dissimilar, components. They generally are in small areas and could not be mapped separately because of the scale used. Some small areas of strongly contrasting soils or miscellaneous areas are identified by a special symbol on the maps. If included in the database for a given area, the contrasting minor components are identified in the map unit descriptions along with some characteristics of each. A few areas of minor components may not have been observed, and consequently they are not mentioned in the descriptions, especially where the pattern was so complex that it was impractical to make enough observations to identify all the soils and miscellaneous areas on the landscape.

The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however, onsite investigation is needed to define and locate the soils and miscellaneous areas.

An identifying symbol precedes the map unit name in the map unit descriptions. Each description includes general facts about the unit and gives important soil properties and qualities.

Soils that have profiles that are almost alike make up a *soil series*. Except for differences in texture of the surface layer, all the soils of a series have major horizons that are similar in composition, thickness, and arrangement.

Soils of one series can differ in texture of the surface layer, slope, stoniness, salinity, degree of erosion, and other characteristics that affect their use. On the basis of such differences, a soil series is divided into *soil phases*. Most of the areas shown on the detailed soil maps are phases of soil series. The name of a soil phase commonly indicates a feature that affects use or management. For example, Alpha silt loam, 0 to 2 percent slopes, is a phase of the Alpha series.

Some map units are made up of two or more major soils or miscellaneous areas. These map units are complexes, associations, or undifferentiated groups.

A *complex* consists of two or more soils or miscellaneous areas in such an intricate pattern or in such small areas that they cannot be shown separately on the maps. The pattern and proportion of the soils or miscellaneous areas are somewhat similar in all areas. Alpha-Beta complex, 0 to 6 percent slopes, is an example.

An *association* is made up of two or more geographically associated soils or miscellaneous areas that are shown as one unit on the maps. Because of present or anticipated uses of the map units in the survey area, it was not considered practical or necessary to map the soils or miscellaneous areas separately. The pattern and relative proportion of the soils or miscellaneous areas are somewhat similar. Alpha-Beta association, 0 to 2 percent slopes, is an example.

An *undifferentiated group* is made up of two or more soils or miscellaneous areas that could be mapped individually but are mapped as one unit because similar interpretations can be made for use and management. The pattern and proportion of the soils or miscellaneous areas in a mapped area are not uniform. An area can be made up of only one of the major soils or miscellaneous areas, or it can be made up of all of them. Alpha and Beta soils, 0 to 2 percent slopes, is an example.

Some surveys include *miscellaneous areas*. Such areas have little or no soil material and support little or no vegetation. Rock outcrop is an example.

San Juan County, New Mexico, Eastern Part

SW—Stumble-Fruitland association, gently sloping

Map Unit Setting

National map unit symbol: 1wxj
Elevation: 4,800 to 6,400 feet
Mean annual precipitation: 6 to 10 inches
Mean annual air temperature: 51 to 55 degrees F
Frost-free period: 140 to 160 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Stumble and similar soils: 45 percent
Fruitland and similar soils: 40 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Stumble

Setting

Landform: Dunes
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Eolian deposits derived from sandstone

Typical profile

A - 0 to 6 inches: loamy sand
C1 - 6 to 29 inches: loamy sand
C2 - 29 to 60 inches: gravelly loamy sand
C3 - 60 to 64 inches: loamy sand

Properties and qualities

Slope: 0 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Somewhat excessively drained
Runoff class: Negligible
Capacity of the most limiting layer to transmit water (Ksat): High to very high (6.00 to 20.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum in profile: 1 percent
Salinity, maximum in profile: Nonsaline (0.0 to 2.0 mmhos/cm)
Available water storage in profile: Low (about 3.6 inches)

Interpretive groups

Land capability classification (irrigated): 4e
Land capability classification (nonirrigated): 7e
Hydrologic Soil Group: A
Ecological site: Deep sand (R035XB007NM)

Description of Fruitland

Setting

Landform: Alluvial fans

Custom Soil Resource Report

Landform position (three-dimensional): Rise

Down-slope shape: Linear

Across-slope shape: Linear

Parent material: Fan alluvium derived from sandstone and shale

Typical profile

A - 0 to 7 inches: sandy loam

C - 7 to 60 inches: sandy loam

Properties and qualities

Slope: 0 to 8 percent

Depth to restrictive feature: More than 80 inches

Natural drainage class: Well drained

Runoff class: Low

Capacity of the most limiting layer to transmit water (Ksat): High (2.00 to 6.00 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: None

Frequency of ponding: None

Calcium carbonate, maximum in profile: 5 percent

Salinity, maximum in profile: Nonsaline (0.0 to 2.0 mmhos/cm)

Available water storage in profile: Moderate (about 7.2 inches)

Interpretive groups

Land capability classification (irrigated): 3e

Land capability classification (nonirrigated): 7e

Hydrologic Soil Group: B

Ecological site: Sandy (R035XB002NM)

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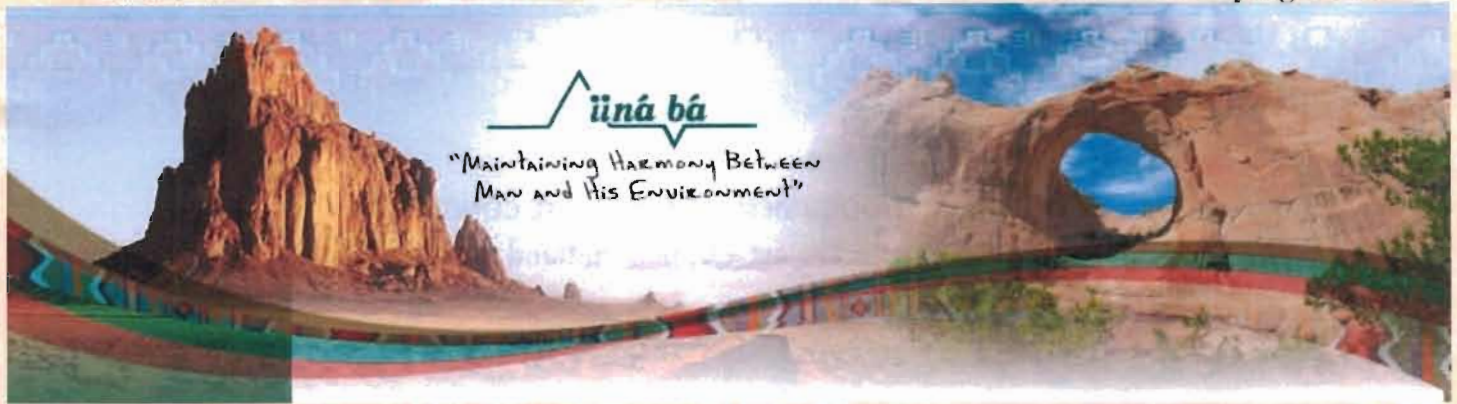
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Appendix D



APPENDIX D — PHOTOGRAPHIC DOCUMENTATION OF SITE CONDITIONS
ENVIRONMENTAL ASSESSMENT REPORT
PROPOSED FIBER OPTIC PROJECT
UPPER FRUITLAND, SAN JUAN COUNTY, NEW MEXICO



PREPARED FOR:
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ALBUQUERQUE, NM 87109

PREPARED BY:
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SEPTEMBER 2014

PHOTOGRAPHIC DOCUMENTATION OF SITE CONDITIONS
Proposed Fiber Optic Project – Upper Fruitland, New Mexico



Photographed by: John R. Isham, CPG (*iiná bá, Inc.*)

Photograph Period: Monday, July 28, 2014

Project Owner: Sacred Wind Communications – Mr. Tico Charlee

Project Location: Navajo Nation, Upper Fruitland, San Juan County, New Mexico



Photograph 1: View looking east from centerline of proposed fiber optic line near turning point of burial path to the south.



Photograph 2: View looking south from turning point on the proposed fiber optic line along the centerline.



Photograph 3: View of existing telephone communication line adjacent to the proposed fiber optic ROW.



Photograph 4: View of existing NTUA water service line adjacent to the proposed fiber optic ROW.



Photograph 5: View looking south from the southern limits of the proposed fiber optic ROW at nearby ridge.



Photograph 6: View looking north along centerline of proposed fiber optic ROW from a centerline stake.



Photograph 7: View looking east from centerline of proposed fiber optic ROW at open rangeland.



Photograph 8: View of existing fiber optic line on utility pole at southern limits of the proposed ROW.



Photograph 9: View of existing utility pole with terminated fiber optic cable to be connected to the proposed fiber optic line.



Photograph 10: View of existing NTUA water service line that crosses the proposed fiber optic line ROW.

Document No. **002980**Date Issued: **10/24/2014****EXECUTIVE OFFICIAL REVIEW**Title of Document: SacredWindsComm_FOptics.UpperFruitland Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: howarddraper@frontiernet.net Phone Number: 928 871-6447☐ **Business Site Lease** Sufficient Insufficient

- | | | | |
|---|-------------|---|---|
| 1. Division: _____ | Date: _____ | □ | □ |
| 2. Office of the Controller: _____ | Date: _____ | □ | □ |
| (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review) | | | |
| 3. Office of the Attorney General: _____ | Date: _____ | □ | □ |

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

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

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

- | | | | |
|---|-------------|---|---|
| 1. Office of Management and Budget: _____ | Date: _____ | □ | □ |
| 2. Office of the Controller: _____ | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Navajo Housing Authority Request for Release of Funds**

- | | | | |
|--|-------------|---|---|
| 1. NNEPA: _____ | Date: _____ | □ | □ |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Lease Purchase Agreements**

- | | | | |
|--|-------------|---|---|
| 1. Office of the Controller: _____ | Date: _____ | □ | □ |
| (recommendation only) | | | |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Grant Applications**

- | | | | |
|---|-------------|---|---|
| 1. Office of Management and Budget: _____ | Date: _____ | □ | □ |
| 2. Office of the Controller: _____ | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____ | Date: _____ | □ | □ |

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

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

☐ **Relinquishment of Navajo Membership**

- | | | | |
|--|-------------|---|---|
| 1. Land Department: _____ | Date: _____ | □ | □ |
| 2. Elections: _____ | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____ | Date: _____ | □ | □ |

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

Sufficient Insufficient

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

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

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

☐ **Rights of Way**

1. NLD _____ Date: _____ ☐ ☐
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: 04/20/14 ☒ ☐
2. F&W _____ Date: 02/20/15 ☒ ☐
3. HPD _____ Date: 10-31-14 ☒ ☐
4. Minerals _____ Date: 4-8-15 ☒ ☐
5. NNEPA _____ Date: 12-01-2014 ☒ ☐
6. DNR _____ Date: 12/5/10 ☒ ☐
7. DOJ (ic) _____ Date: 4/15/15 ☒ ☐
8. OPVP _____ Date: 4/23/15 ☒ ☐

☐ **OTHER:**

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



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



| | |
|--------------------------|----------------|
| DOJ | |
| 04-08-15@323p | DATE / TIME |
| <input type="checkbox"/> | 7 Day Deadline |
| DOC #: | 002980 |
| SAS #: | |
| UNIT: | NRW |

☒ RESUBMITTAL
(Feb. 2015)

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CLIENT TO COMPLETE

| | | | |
|------------------|---------------|-------------|------------------------------|
| DATE OF REQUEST: | 4/8/2015 | DIVISION: | Natural Resources |
| CONTACT NAME: | Howard Draper | DEPARTMENT: | Land Department |
| PHONE NUMBER: | 928-871-6447 | E-MAIL: | howarddraper@frontiernet.net |

TITLE OF DOCUMENT: 164#002980 "SacredWindsComm_FOptics.UpperFruitland"

DOJ SECRETARY TO COMPLETE

| | | | |
|---|--------------|------------------------------|----------------------|
| DATE/TIME IN UNIT: APR - 8 2015 DEPARTMENT OF JUSTICE NATURAL RESOURCES UNIT | 4/8/15 4r | REVIEWING ATTORNEY/ADVOCATE: | Amin Chee 4/17/15 |
| DATE TIME OUT OF UNIT: | | | |

DOJ ATTORNEY / ADVOCATE COMMENTS

- Doc. Resub. w/ Encroachment Agmt. between PNM & Sacred Wind, An. Attached. Doc. is now legally sufficient.

| | | | |
|----------------------|-------------|-----------------------|-----------------|
| REVIEWED BY: (Print) | Date / Time | SUBMITTED BY: (Print) | Date / Time |
| Amin Chee | 4/14/15 | Becker | 4/15/15 10:20am |

DOJ Secretary Called: Joan for Document Pick Up on 4-15-15 at 1:25 PM By: AJ

PICKED UP BY: (Print) DATE / TIME:

NNDJ/DRRF-July 2013

COMPLETED