DATE: August 29, 2012

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS (BIA), DIVISION OF TRANSPORTATION, TO CONSTRUCT, OPERATE AND MAINTAIN BIA ROAD PROJECT NO. N31(4) 1, 2 & 4 AND N31 (4) SPUR, BOWL LAKE ROAD AND BRIDGE PROJECT, WITHIN MCKINLEY COUNTY, NEW MEXICO

PURPOSE: The purpose of the resolution is to approve the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation to construct, operate and maintain the BIA Road Project No. N31(4) 1, 2 & 4 and N31 (4) Spur, Bowl Lake Road and Bridge Project, within McKinley County, New Mexico.

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

22nd NAVAJO NATION COUNCIL -- Second Year, 2012

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0380-12

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE
GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS
(BIA), DIVISION OF TRANSPORTATION, TO CONSTRUCT, OPERATE AND
MAINTAIN BIA ROAD PROJECT NO. N31 (4) 1, 2 & 4 AND N31 (4) SPUR, BOWL
LAKE ROAD AND BRIDGE PROJECT, WITHIN MCKINLEY COUNTY, NEW
MEXICO

BE IT ENACTED:

Section One. The Navajo Nation finds the following with respect to this resolution:

A. Pursuant to 2 N.N.C. §501(B)(2), the Resources and Development Committee of the
Navajo Nation Council has authority to give final approval of rights-of-way on
Navajo Nation land; and

B. The Bureau of Indian Affairs (BIA), Division of Transportation, Navajo Area, P.O.
Box 1060, Gallup, New Mexico 87305, has submitted a right-of-way application to
construct, operate and maintain BIA Road Project No. N31(4) 1, 2 & 4 and N32 (4)
Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust
Lands within McKinley County, New Mexico, attached hereto and incorporated
herein as Exhibit A; and

C. The proposed right-of-way width varies in meters, is 8,891.719 meters (29,172.306
feet) in length, consisting of 45.808 hectares (113.191 acres), more or less, and Spur
road is 46 meters (10 feet) in width, 76.568 meters (251.207 feet) in length, consists
of 0.352 hectares (0.870 acre), more or less, on Navajo Nation Trust lands within Protracted Sections 20, 23, 24, 26, 27 and 29, Township 26 North, Range 13 East, McKinley County, New Mexico. The location is more particularly described on the map and legal description, attached hereto as Exhibit B; and

D. The Review Section with the Navajo Land Department has conducted the necessary land investigation and all land users identified have consented as stated on the field clearance report attached hereto as Exhibit C; and

E. The environmental and archaeological studies have been completed and are attached hereto.

F. Waiver of consideration is requested by the applicant because the right-of-way will benefit the Navajo Nation by serving the Mexican Springs Chapter and the surrounding communities and will enhance the value of Tribal lands for the Navajo Nation overall.

G. It is in the best interest of the Navajo Nation that the right-of-way for the BIA Division of Transportation be approved for seventy-five (75) year term.

Section Two. Granting of Right-of-Way and Terms and Conditions

A. The Navajo Nation hereby approves the granting of a right-of-way to Bureau of Indian Affairs (BIA), Division of Transportation to construct, operate and maintain the BIA Road Project No. N31(4) 1, 2 & 4 and N32 (4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands within McKinley County, New Mexico, more particularly described in Exhibit B.

B. The Navajo Nation hereby approves the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation, subject to but not limited to the terms and conditions contained in Exhibit D.

C. The Navajo Nation hereby waives consideration for the right-of-way because the project will benefit the Navajo Nation by serving Mexican Springs Chapter and the surrounding communities and will enhance the value of Tribal lands for the Navajo Nation overall.
D. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.
OFFICE OF THE PRESIDENT
THE NAVAJO NATION

DNR-13564

2 N.N.C. § 164 Review Process

FROM: DIVISION OF NATURAL RESOURCES
Howard Phillip Draper or Saraphina Tsosie
Exts. 6447 or 7051

DATE: June 7, 2012

DOCUMENT: Approving the Grant of a Right-of-Way to Bureau of Indian Affairs (BIA), Division of Transportation (DOT) for Construction, Operation and Maintenance of BIA Road Project N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project within McKinley County, New Mexico.
MEMORANDUM

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

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

THROUGH: Stephen E. Ettsitty, Executive Director
Navajo Nation Environmental Protection Agency

DATE: August 9, 2012

SUBJECT: DNR-13564 Approving the grant of right-of-way (ROW) to Bureau of Indian Affairs (BIA) Division of Transportation (DOT) for construction, operation and maintenance of BIA Road Project N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project within McKinley County, New Mexico.

The Navajo Nation Environmental Protection Agency (NNEPA) has reviewed\(^1\), \(^2\) and recommends conditional approval for the proposed construction, operation and maintenance of BIA Road No. N31(4)1,2&4 Spur, Bowl Lake Road and Bridge Project. The BIA Division of Transportation, Navajo Area, PO Box 1060, Gallup, New Mexico, 87305, submitted an application for the ROW for the BIA Road Project No. 31 along route N31(4), BIA Project N31(4)1,2&4 including BIA Bridge N613 and N31(4) Spur Road, the Bowl Lake Bridge and the Approach Road. The proposed action activities will consist of working within the same alignment and location of the existing road and

\(^1\) US Army Corps of Engineers. Final Environmental Assessment Construction of Navajo Route 31 Project N31(2) L2,4 from Navajo Route 12 to Assayi Lake Junction McKinley County, New Mexico.
After the review, NNEPA has the following comments and recommendations.

1. Will a temporary traffic bypass be constructed near the bridge construction zone to continue with traffic flowing?

2. As stated in the EA, the BIA DOT will apply for the Clean Water Act (CWA) Section 401, Water Certification and CWA 404, Nationwide Permit #14 application prior to commencing construction activities.

3. The hired contractor will apply for CWA Section 401 and submit the Storm Water Pollution Prevention Plan (SWPPP) in coordination with BIA DOT.

4. The proposed action will follow the same alignment, no jurisdictional wetlands in the area.

5. The Best Management Practices will also need to be prepared in coordination with BIA DOT and followed through to ensure water quality is not impacted.

6. The construction contractor will comply with the vegetative reclamation per Navajo Agriculture Department and/or Bureau of Indian Affairs Navajo Region Natural Resource Division's recommended seed mix within the disturbed areas of the ROW corridors.

7. NNEPA also recommends construction contractor to minimize establishing new access roads for the proposed project. In the past, we received complaints from community members on hired contractors clearing and removing soil to establish roads to gain access. We recommend that the disturbed areas be reclaimed.

8. Dust abatement will be achieved by a sprinkler truck.

9. Solid waste generated during and after construction will be properly disposed of at a certified and permitted landfill. Do not allow the public to take excess and/or extra materials from the construction.

10. No impact to ground water resources is anticipated to occur during construction or project completion.

11. The proposed project and new construction would be built without hazardous materials and immittigable hazardous waste/substances would not be generated.

If there are any questions, please contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.
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.: BIA Road Project N31(4)1,2,&4 and N31(4) Spur, Bowl Lake Road & Bridge Project
DESCRIPTION: Grant of Right-of-Way to Bureau of Indian Affairs (BIA), Division of Transportation (DOT) for construction, operation, and maintenance of N31(4)1,2,&4 and N31(4) Spur, Bowl Lake Road & Bridge.
LOCATION: BIA Road Project N31(4)1,2,&4 and N31(4), McKinley County, New Mexico
REPRESENTATIVE: Howard Draper/Saraphina Tsosie, Project Review Section, NLD
ACTION AGENCY: Bureau of Indian Affairs (BIA), Division of Transportation (DOT)
SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Wildlife Areas 1, 3, & 4. Four (4) areas or sections of the road are within 1.0 km (0.625 mi) of a known AQCH nest. Both roads and bridge are within a Raptor Sensitive Area (RSA). Nesting substrates and habitat is present for non-endangered species protected under the Migratory Bird Treaty Act.

POTENTIAL IMPACTS
FEDERALLY-LISTED SPECIES AFFECTED: NA
OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA
AVOIDANCE / MITIGATION MEASURES: [1] The NNDFW highly recommends that construction and maintenance activities avoid the breeding season for non-endangered raptors and other migratory birds; [2] The NNDFW concurs with the mitigation recommendations outlined in Sections 1.1 Project Description, 3.6.2 Wildlife, and 6.4 Biological Resources in the Final EA, with the exception of 6.4.4. The NNDFW highly recommends that all trees removed will be checked for nesting activity prior to disturbance and removal.
CONDITIONS OF COMPLIANCE*: [1] If construction and maintenance activity must occur during the Golden Eagle (Aquila chrysaetos) breeding season of 15 JAN-15 JUL, a survey will be necessary to determine if nests in the area are active. If a nest is active, activity may not be permitted depending on proximity to the nest site (GBENPR). The NNHP zoologist must be contacted before proceeding with project activity; [2] If construction and maintenance activity must occur during the Peregrine Falcon (Falco peregrinus) breeding season of 1 MAR-31 JUL between
STATION 9+602.714 and STATION 11+940.000, a survey will be necessary to determine if the nest is active. If the nest is active, activity may not be permitted depending on proximity to the nest site (GBENPR). The NNHP zoologist must be contacted before proceeding with project activity; [3] A survey for the Navajo Bladderpod (LesquereIIa navajoensis) must be conducted during the appropriate field season where suitable habitat is present prior to project activity that will require off-road ground disturbance.

FORM PREPARED BY / DATE: Pamela A. Kyselka/19 JUN 2012

COPIES TO: (add categories as necessary)

☐ 10

☐ 10

2 NTC § 164 Recommendation: Signature Date
☐ Approval
☒ Conditional Approval (with memo)
☐ Disapproval (with memo)
☐ Categorical Exclusion (with request letter)
☐ None (with memo)

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

6/18/12

* 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
Mr. Draper,

The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the Bureau of Indian Affairs (BIA) application for right-of-way for Bowl Lake Bridge and Road Project N31(4)1, 2, 3 & 4 and N31(4) Spur located in McKinley County, New Mexico. The purpose of this letter is to inform you that we are granting the proposed project a Conditional Approval. The project is approved with the following conditions:

[1] If construction and maintenance activity must occur during the Golden Eagle (Aquila chrysaetos) breeding season of 15 JAN-15 JUL, a survey will be necessary to determine if nests in the area are active. If a nest is active, activity may not be permitted depending on proximity to the nest site (GBENPR). The NNHP zoologist must be contacted before proceeding with project activity.

[2] If construction and maintenance activity must occur during the Peregrine Falcon (Falco peregrinus) breeding season of 1 MAR-31 JUL between STATION 9+602.714 and STATION 11+940.000, a survey will be necessary to determine if the nest is active. If the nest is active, activity may not be permitted depending on proximity to the nest site (GBENPR). The NNHP zoologist must be contacted before proceeding with project activity.

[3] A survey for the Navajo Bladderpod (Lesquerella navajoensis) must be conducted during the appropriate field season where suitable habitat is present prior to project activity that will require off-road ground disturbance.

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

Sincerely,

Pamela A. Kyselka, Wildlife Biologist
Natural Heritage Program
Department of Fish and Wildlife
Honorable Ben Shelly
President, The Navajo Nation

Attention: Division of Natural Resources, Project Review Office

Re: Application for Rights of Way, Bureau of Indian Affairs, Bowl Lake Bridge and Road Project N31(4)1,2&4 and N31(4) Spur, McKinley County, New Mexico.

Dear President Shelly:

On behalf of the Nabil<.i'yi Committee of the 22\textsuperscript{nd} Navajo Nation Council (NNC), the Bureau of Indian Affairs (BIA), hereby submits the enclosed Right-of-Way (ROW) application and supporting documents for BIA Project N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and bridge project. The road project is located within the Navajo, New Mexico Chapter community. Transmitted herewith are the required ROW data:

1. One original and a photocopy of the application for Right-of-Way;
2. One original reproducible right-of-way plat map;
3. Two photocopies of the right-of-way plat map;
4. Two photocopies of the legal description; and
5. One photocopy of the National Environmental Policy Act requirement, an Environmental Assessment (EA) report, an Archaeological Clearance report and a Categorical Exclusion determination.

Consistent with the enclosed NNC Resolution No. CN-67-02, "Approving Interim Standard Terms and Condition for the Granting of Right-of-Way for BIA Road Construction Projects on the Navajo Nation," we request the Nation to waive compensation that is subjected to this application.

The NNC resolves this project as a high priority transportation project and requires the BIA to complete all necessary grant of easement to allow road construction to begin as soon as practicable.

Your favorable consideration for this grant is greatly appreciated. If you have any questions or need additional information, please contact Mr. Harold Riley, Acting Division Manager at (505) 863-8284 or Mr. Herby Larson, Construction Manager at (505) 863-8255

Sincerely,

[Signature]

Acting Regional Director, Navajo

Enclosures
LANDOWNER NAME: Navajo Nation  LAND STATUS: Navajo Tribal Trust

DESCRIPTION OF LAND: UN-SECTION 20, 29, 28, 27, 26, 23, 24, T20N, R21W, NMPM, McKinley County, New Mexico

COMES NOW THE APPLICANT: Bureau of Indian Affairs, Navajo Region, Division of Transportation of this 5 day of June, 2012, 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 USC 323-328), and Departmental Regulations 25 CFR 169, an application of a SEVENTY FIVE TERM EASEMENT (term of years) right-of-way for the following purposes and reasons:

The purpose of the proposed action is to improve the safety and efficiency of transportation along Route N31(4), BIA Project N31(4)1,2&4 including BIA Bridge N613, and N31(4) Spur road, the Bowl Lake Bridge, and the Approach Road, whereas the local and other community residents along this route depend upon N31(4) for travel to Window Rock, AZ and Gallup, NM for goods and services by upgrading the existing bridge and dirt road to an all weather approach road including realignment, asphaltic pavement, and related traffic safety improvements. Currently, the existing roadway is at times very rough and impassable during wet and inclement weathers, thus jeopardize the public’s health and safety. The proposed improvements will also address the expected increase in traffic volumes through the year 2015.

Across the following described restricted land (easement description)

BOWL LAKE ROAD PROJECT No. N31(4)1,2&4 AND PROJECT N31(1) SPUR BRIDGE# N613 AND APPROACH ROAD PROJECT
NAVAJO NATION, MCKINLEY COUNTY, NEW MEXICO
NEW MEXICO PRINCIPLE MERIDIAN

A strip of land with varied widths along the following described centerline and lying within Un-Section 20, 23, 24, 26, 27, 28 & 29, Township 26 North, Range 13 East, New Mexico Principal Meridian and more particularly described as follows:

Beginning at Engineer’s survey centerline, POINT OF BEGINNING, station 4+815.005m, on BIA Road Project N31(4)1,2&4, whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N= 549,309.248m, E= 725,580.812m, and New Mexico State Plane Modified Ground Values of N= 549,477.455m, E= 725,802.996m, said point having a cadastral tie to the southeast corner of section 12, Township 20 North, Range 21 West, NMPM, Mckinley County, New Mexico, bears N 41°09'05" W, a distance of 3,691.267 meters, and whence a NGS Geodetic Control tie was made to “P34 A”, bears S 11°49'46" W, a distance of 32,494.245 meters:

UN-SECTION 20, 23, 24, 26, 27, 28 & 29, TOWNSHIP 26 NORTH, RANGE 13 EAST, NMPM, (NAVAJO NATION LAND)
THENCE, continuing with said centerline N31(4) along the arc of a 0°56′12″ Curve (1), having a radius of 1,864.335 meters, a central angle of 08°17′00″ LEFT, having an arc length of 269.526 meters, a tangent distance of 134.998 meters, a chord distance of 269.292 meters and a chord bearing of S 29°08′20″ E, to P.T. station 5+084.531m;

THENCE, S 33°16′50″ E, continuing with said centerline N31(4), a distance of 135.109 meters to PC station 5+219.640m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14′13″ Curve (2), having a radius of 280.000 meters, a central angle of 45°58′31″ LEFT, having an arc length of 224.514 meters, a tangent distance of 118.685 meters, a chord distance of 218.548 meters and a chord bearing of S 56°15′05″ E, to P.T. station 5+444.154m;

THENCE, S 79°13′20″ E, continuing with said centerline N31(4), a distance of 770.703 meters to PC station 6+214.857m;

THENCE, continuing with said centerline N31(4) along the arc of a 8°07′22″ Curve (3), having a radius of 215.000 meters, a central angle of 91°34′42″ RIGHT, having an arc length of 343.644 meters, a tangent distance of 221.006 meters, a chord distance of 308.215 meters and a chord bearing of S 33°25′59″ E, to P.T. station 6+558.501m;

THENCE, S 12°21′22″ W, continuing with said centerline N31(4), a distance of 102.958 meters to PC station 6+661.460m;

THENCE, continuing with said centerline N31(4) along the arc of a 9°42′07″ Curve (4), having a radius of 180.000 meters, a central angle of 29°38′01″ LEFT, having an arc length of 290.703 meters, a tangent distance of 188.141 meters, a chord distance of 260.124 meters and a chord bearing of S 33°54′39″ E, to P.T. station 6+952.163m;

THENCE, S 80°10′39″ E, continuing with said centerline N31(4), a distance of 278.830 meters to PC station 7+230.993m;

THENCE, continuing with said centerline N31(4) along the arc of a 5°29′50″ Curve (5), having a radius of 317.689 meters, a central angle of 15°46′13″ RIGHT, having an arc length of 87.442 meters, a tangent distance of 87.166 meters, a chord distance of 87.166 meters and a chord bearing of S 74°56′21″ E, to P.T. station 7+318.435m;

THENCE, S 64°24′26″ E, continuing with said centerline N31(4), a distance of 638.406 meters to PC station 7+956.841;

THENCE, continuing with said centerline N31(4) along the arc of a 4°38′18″ Curve (6), having a radius of 376.509 meters, a central angle of 21°03′49″ LEFT, having an arc length of 138.416 meters, a tangent distance of 69.998 meters, a chord distance of 137.638 meters and a chord bearing of S 74°56′21″ E, to P.T. station 8+095.257m;

THENCE, S 85°28′15″ E, continuing with said centerline N31(4), a distance of 794.329 meters to PC station 8+889.587m;

THENCE, continuing with said centerline N31(4) along the arc of a 4°46′57″ Curve (7), having a radius of 365.156 meters, a central angle of 32°22′45″ LEFT, having an arc length of 206.358 meters, a tangent
distance of 106.016 meters, a chord distance of 203.623 meters and a chord bearing of N 78°20'22" E, to P.T. station 9+095.944m;

THENCE, N 62°09'00" E, continuing with said centerline N31(4), a distance of 244.223 meters to PC station 9+340.168m;

THENCE, continuing with said centerline N31(4) along the arc of a 3°15'55" Curve (8), having a radius of 534.829 meters, a central angle of 21°03'32" RIGHT, having an arc length of 196.575 meters, a tangent distance of 99.409 meters, a chord distance of 195.471 meters and a chord bearing of N 72°40'46" E, to P.T. station 9+536.743m;

THENCE, N 83°12'32" E, continuing with said centerline N31(4), a distance of 174.381 meters to PC station 9+711.124m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'12" Curve (9), having a radius of 280.015 meters, a central angle of 59°59'23" LEFT, having an arc length of 293.180 meters, a tangent distance of 161.633 meters, a chord distance of 279.971 meters and a chord bearing of N 53°12'51" E, to P.T. station 10+004.304m;

THENCE, N 23°13'09" E, continuing with said centerline N31(4), a distance of 520.009 meters to PC station 10+524.313m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'15" Curve (10), having a radius of 279.884 meters, a central angle of 38°38'19" RIGHT, having an arc length of 185.256 meters and a chord bearing of N 42°32'19" E, to P.T. station 10+713.126m;

THENCE, N 61°51'28" E, continuing with said centerline N31(4), a distance of 142.951 meters to PC station 10+856.077m;

THENCE, continuing with said centerline N31(4) along the arc of a 1°49'21" Curve (11), having a radius of 958.288 meters, a central angle of 8°06'08" LEFT, having an arc length of 135.958 meters, a tangent distance of 67.869 meters, a chord distance of 135.398 meters and a chord bearing of N 57°48'24" E, to P.T. station 10+991.588m;

THENCE, N 53°45'20" E, continuing with said centerline N31(4), a distance of 549.470 meters to PC station 11+541.058m;

THENCE, continuing with said centerline N31(4) along the arc of a 3°56'45" Curve (12), having a radius of 442.577 meters, a central angle of 21°17'58" LEFT, having an arc length of 164.525 meters, a tangent distance of 83.223 meters, a chord distance of 163.580 meters and a chord bearing of N 43°06'21" E, to P.T. station 11+705.584m;

THENCE, N 32°27'23" E, continuing with said centerline N31(4), a distance of 107.318 meters to PC station 11+812.902m;

THENCE, continuing with said centerline N31(4) along the arc of a 1°08'11" Curve (13), having a radius of 1,536.639 meters, a central angle of 6°23'36" RIGHT, having an arc length of 171.467 meters, a tangent distance of 85.823 meters, a chord distance of 171.467 meters and a chord bearing of N 35°39'11" E, to P.T. station 11+984.369m;
THENCE, N 38°50'59" E, continuing with said centerline N31(4), a distance of 112.196 meters to PC station 12+096.565m;

THENCE, continuing with said centerline N31(4) along the arc of a 10°54'53" Curve (14), having a radius of 160.000 meters, a central angle of 117°44'28" RIGHT, having an arc length of 328.796 meters, a tangent distance of 264.928 meters, a chord distance of 273.921 meters and a chord bearing of S 82°16'47" E, to P.T. station 12+425.361m;

THENCE, S 23°24'33" E, continuing with said centerline N31(4), a distance of 373.544 meters to PC station 12+798.905m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'13" Curve (15), having a radius of 280.000 meters, a central angle of 15°06'57" LEFT, having an arc length of 73.869 meters, a tangent distance of 37.150 meters, a chord distance of 73.655 meters and a chord bearing of S 30°58'01" E, to P.T. station 12+872.774m;

THENCE, S 38°31'29" E, continuing with said centerline N31(4), a distance of 107.321 meters to PC station 12+980.095m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'13" Curve (16), having a radius of 280.000 meters, a central angle of 23°31'41" LEFT, having an arc length of 114.980 meters, a tangent distance of 58.312 meters, a chord distance of 114.174 meters and a chord bearing of S 50°17'20" E, to P.T. station 13+095.074m;

THENCE, S 62°03'10" E, continuing with said centerline N31(4), a distance of 269.801 meters to PC station 13+364.875m;

THENCE, continuing with said centerline N31(4) along the arc of a 10°42'07" Curve (17), having a radius of 163.182 meters, a central angle of 80°05'43" LEFT, having an arc length of 228.116 meters, a tangent distance of 137.157 meters, a chord distance of 209.990 meters and a chord bearing of N 77°53'58" E, to P.T. station 13+592.991m;

THENCE, N 37°51'07" E, continuing with said centerline N31(4), a distance of 60.974 meters to Point of Intersection station 13+653.965m, whence said point is the Point of Beginning station 0+000.000 of the Bowl Lake Spur Road;

THENCE, N 37°51'07" E, continuing with said centerline N31(4), a distance of 52.759 meters to POE-PC station 13+706.724m, whence the said point is the END OF PROJECT of the Bowl Lake Road; whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N=548,998.504m, E=732,352.948m, and New Mexico State Plane Modified Ground Values of N=549,166.815m, E=732,577.205m, said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°54'00" W, a distance of 10,316.248 meters, and whence a NGS Geodetic Control tie was made to "P34 A", bears S 23°06'13" W, a distance of 34,239.445 meters;
PROJECT N31(4) SPUR

A strip of land with varied widths along the following described centerline and lying within Un-Section 24, Township 26 North, Range 13 East, New Mexico Principle Meridian and more particularly described as follows:

Beginning at a Point of Intersection station 0+000.000m N31(4) Spur Road and station 13+663.965 of N31() bears a tangent line of N 41°07'55" W, along said centerline N31(4) Spur Road, a distance of 23.432 meters to station 0+023.432m,

Thence said point is the POINT OF BEGINNING. Station 0+023.432m, of the N31(4) Spur Road, whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N=548,974.502m, E=732,305.175m and New Mexico State Plane Modified ground Values of N=549,142.606m, E=732,529.418m, said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°39'35" W, a distance of 10,284.735 meters, and whence a NGS Geodetic Control tie was made to "P34 A", bears S 23°02'45" W, a distance of 34,198.627 meters;

UN-SECTION 24, TOWNSHIP 26 NORTH, RANGE 13 EAST, NMPM, (NAVAJO NATION LAND)

THENCE, N 41°07'55" W, continuing with said centerline N31(4) Spur, a distance of 76.568 meters to Point of Ending station 0+100.000m, said point having New Mexico State Plane Modified Ground Values of N=549,200.277m, E=732,479.051m, and New Mexico State Plane Coordinates (West Zone) Grid Values of N=549,032.155m, E=732,254.824m; said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°49'02" W, a distance of 10,213.547 meters, and whence a NGS Geodetic Control tie was made to "P34 A", bears S 22°55'50" W, a distance of 34,232.048 meters;

The Project Right of Way width varies meters left and right on each side of said centerline survey N31(4)1,2 & 4 and N31(4) Spur Road which contains a total of 8.968 kilometers (5.573 miles) in length, and contains 46.272 hectares (114.340 acres), more or less.
### SUMMARY BY LAND STATUS

<table>
<thead>
<tr>
<th>LAND STATUS</th>
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<td>(29,172.306 ft)</td>
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<td>N31(4) SPUR</td>
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<td>0+100.000</td>
<td>76.568</td>
<td>23m Lt&amp;Rt</td>
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<td>8,968.287</td>
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<td>(29,423.455 ft)</td>
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<td>(114.061 ac)</td>
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</table>

NOTE: THE AREA OF 461,606.444sqm WAS CALCULATED USING THE PERIMETER (18,434.926m) OF EASEMENT.
### PROJECT N31(4) 1,2&4 RIGHT-OF-WAY TAKINGS

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### PROJECT N31(4)SPUR - RIGHT-OF-WAY TAKINGS

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### COMBINED TOTAL

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<td>5.573</td>
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Said right-of-way to be 8968.287m (29423.514 ft.) in length, various in width, and 46.160 ha (114.061 ac.) in size (or area), 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 4/31/12

APPLICANT

REQUIRED SUPPORTING DOCUMENTS WERE SENT ON May 31, 2011:

1. (X) Map (plats) of definite location (1) original mylars & 2 copies, See 25 CFR 169.6, 169.7, 169.8, 169.9, 169.10 and 169.11).

DOES NOT APPLY

3. (X) OST-OAS Approved Appraisal Report, Navajo Nation provides their own appraisal and contributes the consideration as monetary contribution to the project.

4. (X) Deposit of estimated damages or compensation (See 169.4 and 169.14).

5. (X) Evidence of Authority of Officers to Execute Papers (ROW Form 94-4)

6. (X) For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
   ( ) a. State certified copy of corporate charter or articles of incorporation.
   ( ) b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.
RIGHT-OF-WAY DESCRIPTION
BOWL LAKE ROAD PROJECT No. N31(4)1,2&4 AND PROJECT N31(1) SPUR BRIDGE# N613 AND APPROACH ROAD PROJECT
NAVAJO NATION, McKINLEY COUNTY, NEW MEXICO
NEW MEXICO PRINCIPLE MERIDIAN

A strip of land with varied widths along the following described centerline and lying within Un-Section 20, 23, 24, 26, 27, 28 & 29, Township 26 North, Range 13 East, New Mexico Principle Meridian and more particularly described as follows:

Beginning at Engineer’s survey centerline, POINT OF BEGINNING. station 4+815.005m, on BIA Road Project N31(4)1,2&4, whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N= 549,309.248m, E= 725,580.812m, and New Mexico State Plane Modified Ground Values of N= 549,477.455m, E= 725,802.996m, said point having a cadastral tie to the southeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 41°09'05" W, a distance of 3,691.267 meters, and whence a NGS Geodetic Control tie was made to “P34 A”, bears S 11°49'46" W, a distance of 32,494.245 meters;

UN-SECTION 20, 23, 24, 26, 27, 28 & 29, TOWNSHIP 26 NORTH, RANGE 13 EAST, NMPM, (NAVAJO NATION LAND)

THENCE, continuing with said centerline N31(4) along the arc of a 0°56'12" Curve (1), having a radius of 1,864.335 meters, a central angle of 08°17'00" LEFT, having an arc length of 269.526 meters, a tangent distance of 134.998 meters, a chord distance of 269.292 meters and a chord bearing of S 29°08'20" E, to P.T. station 5+084.531m;

THENCE, S 33°16'50" E, continuing with said centerline N31(4), a distance of 135.109 meters to PC station 5+219.640m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'13" Curve (2), having a radius of 280.000 meters, a central angle of 45°56'31" LEFT, having an arc length of 224.514 meters, a tangent distance of 118.685 meters, a chord distance of 218.548 meters and a chord bearing of S 56°15'05" E, to P.T. station 5+444.154m;

THENCE, S 79°13'20" E, continuing with said centerline N31(4), a distance of 770.703 meters to PC station 6+214.857m;

THENCE, continuing with said centerline N31(4) along the arc of a 8°07'22" Curve (3), having a radius of 215.000 meters, a central angle of 91°34'42" RIGHT, having an arc length of 343.644 meters, a tangent distance of 221.006 meters, a chord distance of 308.215 meters and a chord bearing of S 33°25'59" E, to P.T. station 6+558.501m;

THENCE, S 12°21'22" W, continuing with said centerline N31(4), a distance of 102.958 meters to PC station 6+661.460m;

THENCE, continuing with said centerline N31(4) along the arc of a 9°42'07" Curve (4), having a radius of 180.000 meters, a central angle of 92°32'01" LEFT, having an arc length of 290.703 meters, a tangent distance of 188.141 meters, a chord distance of 260.124 meters and a chord bearing of S 33°54'39" E, to P.T. station 6+952.163m;

THENCE, S 80°10'39" E, continuing with said centerline N31(4), a distance of 278.830 meters to PC station 7+230.993m;
THENCE, continuing with said centerline N31(4) along the arc of a 5°29'50" Curve (5), having a radius of 317.689 meters, a central angle of 15°46'13" RIGHT, having an arc length of 87.442 meters, a tangent distance of 43.999 meters, a chord distance of 87.166 meters and a chord bearing of S 72°17'32" E, to P.T. station 7+318.435m;

THENCE, S 64°24'26" E, continuing with said centerline N31(4), a distance of 638.406 meters to PC station 7+956.841;

THENCE, continuing with said centerline N31(4) along the arc of a 4°38'18" Curve (6), having a radius of 376.509 meters, a central angle of 21°03'49" LEFT, having an arc length of 138.416 meters, a tangent distance of 69.998 meters, a chord distance of 137.638 meters and a chord bearing of S 74°56'21" E, to P.T. station 8+095.257m;

THENCE, S 85°28'15" E, continuing with said centerline N31(4), a distance of 794.329 meters to PC station 8+889.587m;

THENCE, continuing with said centerline N31(4) along the arc of a 4°46'57" Curve (7), having a radius of 365.156 meters, a central angle of 32°22'45" LEFT, having an arc length of 206.358 meters, a tangent distance of 106.016 meters, a chord distance of 203.623 meters and a chord bearing of N 78°20'22" E, to P.T. station 9+095.944m;

THENCE, N 62°09'00" E, continuing with said centerline N31(4), a distance of 244.223 meters to PC station 9+340.168m;

THENCE, continuing with said centerline N31(4) along the arc of a 3°15'55" Curve (8), having a radius of 534.829 meters, a central angle of 21°03'32" RIGHT, having an arc length of 196.575 meters, a tangent distance of 99.409 meters, a chord distance of 195.471 meters and a chord bearing of N 72°40'46" E, to P.T. station 9+536.743m;

THENCE, N 83°12'32" E, continuing with said centerline N31(4), a distance of 174.381 meters to PC station 9+711.124m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'12" Curve (9), having a radius of 280.015 meters, a central angle of 59°59'23" LEFT, having an arc length of 293.180 meters, a tangent distance of 161.633 meters, a chord distance of 279.971 meters and a chord bearing of N 53°12'51" E, to P.T. station 10+004.304m;

THENCE, N 23°13'09" E, continuing with said centerline N31(4), a distance of 520.009 meters to PC station 10+524.313m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'15" Curve (10), having a radius of 279.984 meters, a central angle of 38°38'19" RIGHT, having an arc length of 188.812 meters, a tangent distance of 98.155 meters, a chord distance of 185.256 meters and a chord bearing of N 42°32'19" E, to P.T. station 10+713.126m;

THENCE, N 61°51'28" E, continuing with said centerline N31(4), a distance of 142.951 meters to PC station 10+856.077m;
THENCE, continuing with said centerline N31(4) along the arc of a 1°49'21" Curve (11), having a radius of 958.288 meters, a central angle of 8°06'08" LEFT, having an arc length of 135.512 meters, a tangent distance of 67.869 meters, a chord distance of 135.398 meters and a chord bearing of N 57°48'24" E, to P.T. station 10+991.588m;

THENCE, N 53°45'20" E, continuing with said centerline N31(4), a distance of 549.470 meters to PC station 11+541.058m;

THENCE, continuing with said centerline N31(4) along the arc of a 3°56'45" Curve (12), having a radius of 442.577 meters, a central angle of 21°17'58" LEFT, having an arc length of 164.525 meters, a tangent distance of 83.223 meters, a chord distance of 163.580 meters and a chord bearing of N 43°06'21" E, to P.T. station 11+705.584m;

THENCE, N 32°27'23" E, continuing with said centerline N31(4), a distance of 107.318 meters to PC station 11+812.902m;

THENCE, continuing with said centerline N31(4) along the arc of a 1°08'11" Curve (13), having a radius of 1,536.639 meters, a central angle of 6°23'36" RIGHT, having an arc length of 171.467 meters, a tangent distance of 85.823 meters, a chord distance of 171.467 meters and a chord bearing of N 35°39'11" E, to P.T. station 11+984.369m;

THENCE, N 38°50'59" E, continuing with said centerline N31(4), a distance of 112.196 meters to PC station 12+096.565m;

THENCE, continuing with said centerline N31(4) along the arc of a 10°54'53" Curve (14), having a radius of 160.000 meters, a central angle of 117°44'28" RIGHT, having an arc length of 328.796 meters, a tangent distance of 264.928 meters, a chord distance of 273.921 meters and a chord bearing of S 82°16'47" E, to P.T. station 12+425.361m;

THENCE, S 23°24'33" E, continuing with said centerline N31(4), a distance of 373.544 meters to PC station 12+798.905m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'13" Curve (15), having a radius of 280.000 meters, a central angle of 15°06'57" LEFT, having an arc length of 73.869 meters, a tangent distance of 37.150 meters, a chord distance of 73.655 meters and a chord bearing of S 30°58'01" E, to P.T. station 12+872.774m;

THENCE, S 38°31'29" E, continuing with said centerline N31(4), a distance of 107.321 meters to PC station 12+980.095m;

THENCE, continuing with said centerline N31(4) along the arc of a 6°14'13" Curve (16), having a radius of 280.000 meters, a central angle of 23°31'41" LEFT, having an arc length of 114.980 meters, a tangent distance of 58.312 meters, a chord distance of 114.174 meters and a chord bearing of S 50°17'20" E, to P.T. station 13+095.074m;

THENCE, S 62°03'10" E, continuing with said centerline N31(4), a distance of 269.801 meters to PC station 13+364.875m;

THENCE, continuing with said centerline N31(4) along the arc of a 10°42'07" Curve (17), having a radius of 163.182 meters, a central angle of 80°05'43" LEFT, having an arc length of 228.116 meters, a tangent distance
of 137.157 meters, a chord distance of 209.990 meters and a chord bearing of N 77°53’58” E, to P.T. station 13+592.991m;

THENCE, N 37°51’07” E, continuing with said centerline N31(4), a distance of 60.974 meters to Point of Intersection station 13+653.965m, whence said point is the Point of Beginning station 0+000.000 of the Bowl Lake Spur Road;

THENCE, N 37°51’07” E, continuing with said centerline N31(4), a distance of 52.759 meters to POE-PC station 13+706.724m, whence the said point is the END OF PROJECT of the Bowl Lake Road; whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N=548,998.504m, E=732,352.948m, and New Mexico State Plane Modified Ground Values of N=549,166.615m, E=732,577.205m, said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°54’00” W, a distance of 10,316.248 meters, and whence a NGS Geodetic Control tie was made to “P34 A”, bears S 23°06’13” W, a distance of 34,239.445 meters;

PROJECT N31(4) SPUR

A strip of land with varied widths along the following described centerline and lying within Un-Section 24, Township 26 North, Range 13 East, New Mexico Principle Meridian and more particularly described as follows:

Beginning at a Point of Intersection station 0+000.000m N31(4) Spur Road and station 13+653.965 of N31() bears a tangent line of N 41°07’55” W, along said centerline N31(4) Spur Road, a distance of 23.432 meters to station 0+023.432m,

Thence said point is the POINT OF BEGINNING. Station 0+023.432m, of the N31(4) Spur Road, whence said point having New Mexico State Plane Coordinates (West Zone) Grid Values of N=548,974.502m, E=732,305.175m and New Mexico State Plane Modified ground Values of N=549,142.606m, E=732,529.418m, said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°39’35” W, a distance of 10,284.735 meters, and whence a NGS Geodetic Control tie was made to “P34 A”, bears S 23°02’45” W, a distance of 34,198.627 meters;

UN-SECTION 24, TOWNSHIP 26 NORTH, RANGE 13 EAST, NMPM. (NAVAJO NATION LAND)

THENCE, N 41°07’55” W, continuing with said centerline N31(4) Spur, a distance of 76.568 meters to Point of Ending station 0+100.000m, said point having New Mexico State Plane Modified Ground Values of N=549,200.277m, E=732,479.051m, and New Mexico State Plane Coordinates (West Zone) Grid Values of N=549,032.155m, E=732,254.824m; said point having a cadastral tie to the northeast corner of section 12, Township 20 North, Range 21 West, NMPM, McKinley County, New Mexico, bears N 62°49’02” W, a distance of 10,213.547 meters, and whence a NGS Geodetic Control tie was made to “P34 A”, bears S 22°55’50” W, a distance of 34,232.048 meters;

The Project Right of Way width varies meters left and right on each side of said centerline survey N31(4)1, 2 & 4 and N31(4) Spur Road which contains a total of 8.968 kilometers (5.573 miles) in length, and contains 46.272 hectares (114.340 acres), more or less.
## SUMMARY BY LAND STATUS

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### PROJECT N31(4)SPUR - RIGHT-OF-WAY TAKINGS

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| KILOMETERS | **8.968** | **5.573** | **MILES** |
MEMORANDUM

TO: Alfred Dehiya, ASO III
Project Review Office
Division of Natural Resources

FROM: Art C. Slim, Right-of-Way Agent II
BIA Roads Section/DNR

SUBJECT: Field Clearance Report on BIA Road Project N31(2), Section “A”, Navajo to Mexican Springs Roads

The Bureau of Indian Affairs (BIA), Branch of Roads, Fort Defiance Agency, Post Office Box 619, Fort Defiance, Arizona 86504, has requested for field clearance on the above mentioned road project. The proposed road project is for road construction, operation and maintenance and the right-of-way will be 150.91 feet (46 meters) wide, 8.33 miles (13.4255 kilometers) in length, and contains 154.84 acres (62.666 Hectares), more or less, on unsurveyed Navajo Tribal lands within Crystal and Mexican Springs, McKinley County, New Mexico.

The field clearance on the above mentioned project is completed. The proposed right-of-way lies within two (2) Navajo Nation Chapters which are Mexican Springs and Crystal Chapter.

In the Mexican Springs Chapter, Mr. Joseph Bitsue, Grazing Committee Member was contacted for information on who has grazing permits and land use rights that will be affected by the road project. Mr. Bitsue identified seven (7) individuals who should consent to the road project and they are:

1. Harry Wilson Begay, C# 41,237 Permit # 14-707
2. Elizabeth Begay, C# 42,264 Permit # 14-706
3. Darrell Paul C# 203,625 Permit # 14-0593
4. Raymond Catron C# 41,914 Permit # 14-18-77
5. Irene Mose C# 54,420 Permit # 14-05-86
6. Ilene Tsosie C# 42,283 Permit # 14-17-88
7. David Mike Tsosie C# 55,279 Permit # 14-04-74
The above mentioned land users were contacted and has consented to the road project without any objections within the Mexican Springs Chapter area.

In the Crystal Chapter area, Mr. Ronnie Bahe, Grazing Committee Member was contacted for information on who has land use rights or grazing permit within the proposed road project area. Mr. Bahe identified that there are four (4) individuals, who's consent should be obtained and they are:

1. Anna Boyd Anderson  C# 51,830  Trustee - Frank Boyd  NO PERMIT
2. Nora Lilly Roanhorse  C# 51,938  Permit # 18-16-90
3. Leonard Holyan  C# 51,937  Permit # 18-16-90
4. Arnold Holyan  C# 606,136  Permit # 18-16-90

The above mentioned land users (grazing permittees) were contacted and two of them have consented and they are Arnold Holyan and Leonard Holyan. Two of them have refused to consent to the road project and they are Anna Boyd Anderson and Nora Lilly Roanhorse. This office has met with both land users and they explained their refusal to consent. See attached report.

After further investigation by this office and Crystal Chapter, the following information was obtained and letters was received from Crystal Chapter to document these findings and they are:

1. Anna Anderson - doesn't have a valid permit, but her late brother, Frank Boyd, C#51,829 was designated as a trustee for their late parent's grazing permit. Mr. Frank Boyd, now deceased, had consented to the road project on October 17, 1973. The grazing permit hasn't been probated.

2. Nora Lilly Roanhorse - is daughter of Minnie and Kee Holyan, who are now deceased and their grazing permit #18-24-74 have not been probated. Both the late Minnie and Kee Holyan had consented to the road project in October, 1973. Ms. Roanhorse has a valid grazing permit #18-17-90, which was given to her as a gift from her aunt Fannie Morris, C# 54,355, now deceased. This permit was divided into two (2) permits with one going to Ms. Roanhorse and the other permit to Leonard and Arnold Holyan, which both of them have consented.

The Crystal Chapter has requested for this office to accept the consents of Frank Boyd, Minnie and Kee Holyan as a valid consent and to proceed with the processing of the application documents to obtain the right-of-way for the road project from the Navajo Nation. Also, this office have received a copy of a resolution from the Fort Defiance Agency Road Committee requesting that the President of the Navajo Nation and Resources Committee of the Navajo Nation Council to implement eminent domain to obtain the right-of-way for BIA Road Project N31(2), Section "A", Navajo to Mexican Springs.
Memo to Mr. Alfred Dehiya, ASO III  
January 27, 1994  
Page Three

This office will processed the right-of-way application for the proposed road project on the SAS reviewal process and let the Resources Committee of the Navajo Nation Council decide to either approved or disapprove the project.

I will need your recommendation and if you have any questions, please contact me and advise. Thank you.

xc:  Chrono  
     Project File
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Harry Wilson Barney, hereby grant consent to the Fort Defiance Agency Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Roads of Fort Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and its operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

[Signature]

[Date]

Land User Signature (or thumbprint) Census No. Permit No.

WITNESS:

[Signature]

[Date] Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read or explained to the land user in Navajo or English (check where applicable).
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

1. ELIZABETH BUGAY hereby grant consent to the Fort Defiance Agency Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Roads of Fort Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and its operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road.

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: ____________________________

Land User Signature (or thumbprint)  Mrs. Elizabeth Bagays

Date  1/04/93  Census No.  92249  Permit No.  14-782

WITNESS:

MEXICAN SPRINGS CHAPTER PRES.

Date  3/12/93  Grazing Committee or Land Board Member  44-68

District No.

Acknowledgement of Field Agent

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

Field Agent Signature
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Darrell Paul, hereby grant consent to the Fort Defiance Agency of Navajo Tribe and the Bureau of Indian Affairs to permit the BIA Branch of Roads to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: 

Date
Land User Signature (or thumbprint)
Census No.
Permit No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read to the land user in Navajo or English (check where applicable).
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Raymond Catron, hereby grant consent to the Fort Defiance Agency Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Roads of Fort Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and its operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road.

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

[Signature]

Date: 3/13/93
Land User Signature (or thumbprint): Raymond Catron
Census No.: 41914
Permit No.: 17-11-22

WITNESS:

Date: 3/11/93
Grazing Committee or Land Board Member: [Signature]
District No.: 14-46

Acknowledgement of Field Agent

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

Field Agent Signature: [Signature]
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Irene Mose, hereby grant consent to the Fort Defiance Agency of the Navajo Tribe and the Bureau of Indian Affairs to permit the BIA, Branch of Roads, P.O. Box 619 of Fort Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and its operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

IRENE MOSE

Both Right Thumbs

Date Land User Signature (or thumbprint) Census No. Permit No.

Witness:

Mexico Valley Chapter Pres.

Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

Field Agent Signature
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, JLENIE TSOSIE, hereby grant consent to the Fort Defiance Agency
Navajo Tribe and the Bureau of Indian Affairs to permit BIA Branch of Roads
P.O. Box 619 of Fort Defiance, Arizona 86504 to use a portion of my land use area for the
following purpose (s): For a right-of-way for highway construction and its
operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road.
as shown on the map showing the location of the proposed project on the back of
this consent form.

I hereby waive any rights I may have to compensation for the diminishment
in value of my land use rights as a result of the above-referenced project
as proposed.

REMARKS: __________________________

______________________________

Date Land User Signature (or thumbprint) Census No. Permit No.

WITNESS:

______________________________

Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

TO WHOM IT MAY CONCERN:

I, DAVID MICE YAZZIE, hereby grant consent to the Fort Defiance Agency
Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Roads
of Fort Defiance, Arizona 86504 to use a portion of my land use area for the
following purpose(s): For a right-of-way for highway construction and its
operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs
Road.

as shown on the map showing the location of the proposed project on the back of
this consent form.

I hereby waive any rights I may have to compensation for the diminishment
in value of my land use rights as a result of the above-referenced project
as proposed.

REMARKS: I am for this road because they
started. I also need a cattle a south end of
of the highway about 1/2 a mile off main, don’t turn me
off on this.

2/02/93  x  David Mice Yazzie 55279  11-09-74
Date  Land User Signature (or thumbprint)  Census No.  Permit No.

WITNESS:

2-27-93  Jack S.
Date  Grazing Committee or Land Board Member  District No.

Acknowledgement of Field Agent

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

[Signature]  10-
CONSENT OF USE OF
NAVAJO TRIBAL LANDS
Route - 31

For good and valuable consideration, the undersigned authorized customary user(s) of Navajo Tribal lands, as grantor(s), hereby grant(s) to US Government, as grantee, and its successors and assigns, my (our) consent to utilize a portion of my (our) customary land use area as a right-of-way easement for a road and highway, with the right to survey, construct, maintain, and repair same forever; said easement to follow the route, path, and dimensions as shown by the attached map.

Other terms and conditions (if applicable):

Cattle guard on right - gate on the left
Note: Request for IVOVEL WIRE

Date: 10-17-73
Permittee

Box 784
Fort Def. Arizona

 Permittee 18-1028
Grazing Permit No.

46
Sheep Unit

WITNESSES:
1. Art Mitchell
2. Andrew Evans

ATTESTED:
Grazing Committee Member
18 Date

District
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Nora Roanhorse, hereby grant consent to the Fort Defiance Agency Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Roads of Fort Defiance, Arizona 86504 to use a portion of my land use area for the following purpose(s): For a right-of-way for highway construction and its operation and maintenance of BIA Road Project N31, Navajo to Mexican Springs Road.

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

Date Land User Signature (or thumbprint) Census No. Permit No.

07-03-96 Nora Roanhorse 51,938

WITNESS:

Date Grazing Committee or Land Board Member District No.

07-03-96 18-1

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained// to the land user in Navajo// or English// (check where applicable).
CONSENT FORM - 3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, **Leonard Holyan**, hereby grant consent to the
Navajo Tribe and the Bureau of Indian Affairs to permit **BIA Road or Road**
of **Fort Defiance, Arizona** to use a portion of my land use area for the
following purpose(s): **FOR A RIGHT OF WAY FOR ROAD**

**CONSTRUCTION OF BIA ROAD PROJECT N31, NAVAJO TO**

**MEXICAN SPRINGS**, as shown on the map showing the location of the proposed project on the back of
this consent form.

I hereby waive any rights I may have to compensation for the diminishment
in value of my land use rights as a result of the above-referenced project
as proposed.

REMARKS:

________________________________________________________________________

________________________________________________________________________

**8/26/93** **Leonard Holyan** **51,937** **18-16-90**

Date Land User Signature (or thumbprint) Census No. Permit No.

WITNESS:

**10/12/93** **Rennie Bake** **18-1**

Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

**Art C. LC**
CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Arnold Holyau, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit BIA, Branch of Road, of Fort Defiance, Arizona, to use a portion of my land use area for the following purpose(s): FOR A RIGHT OF WAY FOR ROAD CONSTRUCTION OF BIA ROAD PROJECT N31/Navajo To Mexican Springs, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: 

8/22/93 Arnold Holyau 606/136 18-16-90
Date Land User Signature (or thumbprint) Census No. Permit No.

WITNESS:

10-12-93 Ronnie Baker 18-1
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read/full explained to the land user in Navajo or English (check where applicable).
July 12, 1996

MEMORANDUM

TO: Anthony Aguirre, Staff Attorney
Natural Resources Unit
Department of Justice

FROM: Alfred Dehiya, ASO III
Project Review Office
Division of Natural Resources

SUBJECT: Legal Opinion on Grazing Permittee’s Consent on BIA Road Project N31, Navajo to Mexican Springs

The Project Review Office would like to request for a legal opinion from your office concerning a grazing permittee’s consent that was obtained for BIA Road Project N31.

The grazing permittee, Frank Boyd, C# 51829 had consented to the road project on November 17, 1973 as a trustee for the permit. Mr. Boyd have since died and the permit hasn’t been probated, yet. One of his trustee, Ms. Annie Boyd Anderson, C# 51830 has now refused to consent to BIA road project. The questions are:

1. Is Mr. Frank Boyd’s consent to the road project still valid?
2. Is there a valid grazing permit within the area since Mr. Boyd have been deceased?
3. Does Ms. Annie Boyd Anderson have a legal right to refuse to consent, even though Mr. Frank Boyd have been deceased?
4. Shall the Navajo Nation go ahead and grant the right-of-way for road project to the BIA Roads without her consent?
5. Who shall initiate the eminent domain procedures in obtaining the right-of-way for the road project?

This office is requesting for a written response on these questions, before this office proceeds on the matters. There is a directive from the Fort Defiance Agency Roads Committee and the joint Resources and Transportation Community Development Committee to implement the eminent domain for this road project.
Memo to Mr. Anthony Aguirre, Staff Attorney  
July 12, 1996  
Page Two

If you need additional information or questions, please call Mr. Art C. Slim, Right-of-Way Agent II for the Right-of-Way Clearance Program or myself at tribal extension 6447.

xc:    Chrono/Project File
       Melvin Bautista, Executive Director/Division of Natural Resources
       Albert Hale, President/Office of the President and Vice President
       Elmer L. Milford, Chairperson/Resources Committee & Fort Defiance Agency Road Committee
       Lawrence Morgan, Chairperson/Transportation & Community Development Committee
       Luke Deswood, Agency Road Engineer/Fort Defiance BIA, Branch of Roads
MEMORANDUM

TO: Alfred Dehiya, ASO III
   Project Review Office

THROUGH: James R. Bellis, Asst. Attorney General
         Natural Resources Unit, Dept. of Justice

FROM: Raymond C. Etcitty, Jr., Staff Attorney
      Natural Resources Unit, Dept. of Justice

DATE: August 28, 1996

SUBJECT: RFS No. 96-1817: Legal Opinion on Grazing Permittee's Consent on BIA Road Project N31, Navajo to Mexican Springs

Please consider this memorandum a response to your above-referenced Request for Services (RFS). Before answering your questions, the first part of this memorandum will attempt to restate the facts, which led to this request for a legal opinion.

According to the documents provided to the Department of Justice, it appears that on October 18, 1963 the Window Rock District Court probated the estate of Slim Boyd. Contained within Slim Boyd’s estate was Grazing Permit No. 7033. The grazing permit was for land located near Bureau of Indian Affairs (BIA) Route N31—a road between Navajo, New Mexico to Mexican Springs, New Mexico. The Court awarded the permit to the surviving heirs of Slim Boyd (Anna Anderson, Bennie Boyd, Jimmie Boyd, Frank Boyd, Nellie Roseberry, Antonette Boyd, Mary Alice Baca, and Johnny Henry Boyd). In addition, the Court named Frank Boyd as trustee for the grazing permit.

On October 17, 1973, Frank Boyd signed a consent form, which allowed BIA to use of portion of the heirs' land for a right-of-way. In exchange for Frank Boyd’s consent, BIA placed a cattle guard on a road for the Boyd family’s use. After more than twenty (20) years, it appears that Frank Boyd (the trustee) died and the four surviving heirs of the late Slim Boyd (Anna Anderson,
Antonette Shorty, John Henry Boyd, and Jimmy Boyd) sought to vacate the trust held by the late Frank Boyd. On January 3, 1995, the Window Rock Family Court vacated the trust and named the surviving heirs as holders to the grazing permit in tenancy in common with Anna Anderson acting as head permittee.

It now appears that the BIA Branch of Roads desires to further develop the BIA road next to the customary use land held by the Boyd family. Anna Anderson, head permittee for the customary use land, refuses to consent to the BIA project without further compensation.

After reviewing the facts and researching your questions, the Department of Justice has the following answers:

1. Is Mr. Frank Boyd's consent to the road project still valid?

   Generally, a trustee can grant an easement (in this case consenting to the granting of a right-of-way) in certain limited circumstances, such as if the easement is necessary or beneficial to the trust and the trustee's authority to grant an easement flows from a trustee's power of sale. Since the documents provided do not characterize the types of powers held by the late Frank Boyd, as trustee over the trust, it can be assumed that Frank Boyd held general powers of a trustee, which includes the power of sale. Since Frank Boyd held a trustee's power of sale, Frank Boyd's consent to grant a right-of-way is valid.

   Furthermore, because Frank Boyd's consent was given more than twenty (20) years ago, there may be no need for the Nation to obtain consents from the descendants. See, Question No. 3.

2. Is there a valid grazing permit within the area since Mr. Boyd has been deceased?

   Yes, a grazing permit still exist. According to Navajo law, grazing permits can be probated, which apparently did occur. According to the Court order vacating the trust, the grazing permit is held tenancy in common by Anna Anderson, Antonette Shorty, John Henry Boyd, and Jimmy Boyd. The Court order also states that Anna Anderson is the head permittee over the permit.

3. Does Anna Boyd Anderson have a legal right to refuse to consent, even though Frank Boyd has been deceased?

   As stated above, Frank Boyd consented to the granting of a right-of-way. It also appears that the BIA and the Nation relied
upon Frank Boyd's consent because a road currently exists there. In addition, for twenty (20) years the descendants of Slim Boyd did not contest Frank Boyd's consent, until now. If the descendants wanted to contest Frank Boyd's consent, they should have contested the consent years ago. Because the descendants failed to contest the consent, the Nation is protected from suit by the Nation's statute of limitation, 7 N.N.C. § 602 (1996).

Because of reliance by BIA and the Nation, and the fact that the descendants did not contest the consent, the Nation need not obtain further consents from the Boyd family. However, if the BIA or the Nation is requesting for more land than those received by Frank Boyd's consent, additional consent is necessary.

4. Shall the Navajo Nation go ahead and grant the right-of-way for the road project to BIA without her consent?

Yes, the Nation may grant the right-of-way for the following reasons: 1) Consent was already obtained; 2) the Nation and the BIA relied upon the consent; and 3) the descendants did not contest Frank Boyd's consent for more than twenty (20) years. However, if the Nation wants to compensate the descendants because of possible time constraints with completing the road project, the Nation may compensate the descendants.

5. Who shall initiate the eminent domain procedures in obtaining the right-of-way for the road project?

The Resources Committee because it has authority to initiate the proceeding, pursuant to 2 N.N.C. §§ 691 et al.

If you have any questions, please call at 871-6931.
September 17, 2001

MEMORANDUM:

To: Alfred Dehiya, Director
Navajo Land Department

From: Art C. Slim, Right-of-Way Agent II
BIA Roads Section, N.L.D.

Subject: Addendum to field clearance of BIA Road Project N31(2), North of Navajo.

The Bureau of Indian Affairs, Branch of Roads, Navajo Regional Office has changed the right-of-way of BIA Road Project N31(4), North of Navajo. The new propose right-of-way will be called BIA Road Project N31(2), North of Navajo.

The area of the right-of-way will change. The right-of-way will now be 46 meters (150.88 feet) to 100 meters (328.00 feet) in width, 4.792.14 kilometers (2.975 miles) in length, consists of 25.778 hectares (63.697 acres), more or less, of Navajo Nation Trust lands situated in Section 13, Township 20 North, Range 21 West and Sections 17, 18, & 20, Township 20 North, Range 20 West, New Mexico Principal Meridian, Navajo, McKinley County, New Mexico.

This office has conducted a follow-up on the field clearance on said project. Ms. Louise Q. Mark, Grazing Committee member was contacted to see if changes in land users consents had occurred. Ms. Mark stated that theirs no changes to the land users. She also inform this office by letter dated May 14, 2001, concerning the situation with Anna Anderson. Ms. Anderson objects to the propose right-of-way, but her late brother, Frank
Boyd had consented. There's an legal opinion from Department of Justice that says Frank Boyd's consent is valid, and Ms. Mark, Grazing Committee member said that opinion is still valid. This office also received additional consents from the Mexican Springs Chapter. The additional consents is from Elouise Jackson C# 68863 and Leo C. Watchman, C# 610,442. These land users had concerns pertaining to the location of the propose right-of-way. The Mexican Chapter officials had a meeting with land users, at which time, they obtained the consents. The executed consents that are already on file for BIA Road Project N31(4) will be use on this project, because its the same project, but was shorten.

The field clearance is completed and the application will be put on the 164 SAS reviewal process for Navajo Nation's approval. This office recommends approval.
CONSENT FORM - 3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, _______ ELLOUISE JACKSON _______, hereby grant consent to the
Navajo Nation and the Bureau of Indian Affairs to permit _______ The Branch of Roads
of _______ Gallup NM and Fort Defiance, AZ _______ to use a portion of my land use area for the
following purpose (s): _______ To construct the pavement of Navajo Route 30 ad 31 within
Crystal and Mexican Springs, New Mexico.

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my
land use rights as a result of the above-referenced project as proposed.

REMARKS: ____________________________

5/14/01 Elouise Jackson 68503 14-23-98
Date Land User Signature (or thumbprint) Census No. Permit No.

WITNESS:

Donald Yellowman

5/14/01
Date Grazing Committee or Land Board Member

Acknowledgement of Field Agent

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

Field Agent Signature
CONSENT FORM - 3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, ____________________________, hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit ____________________________ to use a portion of my land use area for the following purpose (s): _______ to construct the pavement of Navajo Route 30 and 31 within Crystal and Mexican Springs, New Mexico.

______________________________

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: WE AGREE TO OPTION B PLAN SITING BY BIA ON MEETING HELD WITH MEXICAN SPING CHAPTER.

5/14/01 ____________________________ 610447 4/22/98
Date Land Use Signature (or thumbprint) Census No. Permit No.

WITNESS:

______________________________
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

______________________________
Field Agent Signature
May 14, 2001

Art C. Slim Right-of-Way  
BIA ROADS DEPARTMENT  
Window Rock, Arizona

RE: BIA ROAD PROJECT N31

Mr. Slim,

First of all, a grazing permit is not a land title, although many permittees treat it as such. They are simply documents to permit individuals to graze stock with limitation based on the vegetation of a particular area. According to the opinion of the letter dated August 28, 1996, the validity of the consent that was signed by the late Frank Boyd for the N31 right-of-way, it still stands/good.

Secondly, there are no records of any livestock tally conducted for Ms. Anna Anderson within the past ten years. It is a federal regulation that all permittees have an annual livestock tally done. Any one who desires a grazing permit also needs to be aware of all stipulations.

If Ms. Anderson is out there pulling the survey stakes, then she is doing criminal damage to public property.

Lastly, why is the bureau putting stakes out, then questioning if the Ms. Anderson has the right to consent.

Any other questions, call me at (505) 777-2806.

Respectfully,

Louise Q. Mark, DGCM #18-1  
Crystal Chapter

cc: chrono file
MEMORANDUM

TO: Alfred Dehiya, Acting Director
    Navajo Land Department

FROM: Art C Slim, Right-of-Way Agent II
      BIA Road Section, Project Review Office

SUBJECT: Final Field Clearance Report on BIA Road Project N31, Navajo to Mexican Springs Road

The BIA, Branch of Roads of Fort Defiance Agency, Post Office Box 619, Fort Defiance, Arizona 86504 and Navajo Area Office, Post Office 1060, Gallup, New Mexico 87305, have been involved in obtaining the right-of-way for the said project. The right-of-way application was filed with this office and will now be put on the 164 SAS Reviewal Process for the granting of the right-of-way from the Navajo Nation.

The right-of-way will be 150 feet (46 meters) wide a length of 8.33 miles (13.42 kilometers) and consist of 154.84 acres (62.66 hectares), more or less, of unsurveyed Navajo Tribal Trust Lands within projected Township 19 & 20 North, Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico.

A portion of the field clearance was conducted and completed on January 27, 1994 (attached) at which time all of the affected land users (grazing permittees) within the Mexican Springs Chapter had consented. The only problem was that two of the land users were objecting to the road project and they were Ms. Anna Anderson, C# 51,830 and Ms. Nora Lilly Roanhorse, C# 51,938. Ms. Roanhorse has now consented to the road project for the usage of her land use area with some stipulation and they are:

1. Livestock underpass be installed.
2. Gravel road to residents.
3. Stay close to south side rock formation.
4. Chapter’s assistance in relocation of Leroy Lilly’s house.
5. Installation of Windmill.

Ms. Anderson still refuse to consent, but according to a legal opinion dated August 28, 1996 from Navajo Nation, Department of Justice, that the Nation doesn’t require a consent from her since Mr. Frank Boyd, C# 51,829 had already consented on her behalf and the consent is valid (attached). Therefore, field clearance is completed.

If you should have any questions pertaining to this report. Please feel free to contact me.

xc: Chrono/Project File
TERMS AND CONDITIONS

Bureau of Indian Affairs (BIA), Division of Transportation
Right-of-Way for BIA Road Project No. N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project across Navajo Nation Trust Lands within McKinley County, New Mexico

a. The term of the right-of-way shall be 75 years.

b. Consideration for the grant of the right-of-way is hereby waived, because the project will benefit Navajos living in the area.

c. The Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or may be hereafter in force and effect, including but not limited to the following:

i. Title 25, Code of Federal Regulations, Parts 162 and 169;

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


d. 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 construction and maintenance of the project.

e. 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 and all improvements thereon and make all necessary and reasonable repairs.

f. The Grantee shall obtain permission to cross existing rights-of-way from the appropriate parties before constructing the proposed projects.

g. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
h. 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, without the prior written consent of the Navajo Nation and the Secretary. 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 sole discretion of the Navajo Nation.

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

j. 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 buildings and other improvements erected or placed thereon.

k. Nothing contained herein shall be construed to affect or be deemed a waiver of the Navajo Nation’s sovereign immunity from suit.

l. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agent, 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.

m. Grantee shall retain as much of the natural vegetation within the right-of-way as possible.

n. Grantee shall re-vegetate all disturbed areas.

o. 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 traveling public, and all activities conducted or otherwise occurring within the right-of-way, and specifically including, but not limited to, jurisdiction to enforce speed limits and compliance with traffic control devices, jurisdiction to enforce Navajo Nation laws applicable to the operation of motor vehicles and jurisdiction to adjudicate disputes arising from motor vehicle accidents or other conduct or activities 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, consistent with federal law.
RESOLUTION OF THE
NAVAJO NATION COUNCIL

Approving Interim Standard Terms and Conditions for the
Granting of Right-of-Way for BIA Road Construction Projects on
the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and

2. Pursuant to 2 N.N.C. §102 (C), the Navajo Nation Council shall supervise all powers delegated; and

3. Pursuant to 2 N.N.C. §423 (E), the Transportation and Community Development Committee is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and

4. Pursuant to 2 N.N.C. §695 (B)(2), the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of rights-of-way over Navajo lands in accordance with applicable federal and Navajo Nation laws; and

5. Based on the federal law, the Transportation Equity Act for the 21st Century (TEA-21) authorized funding for Federal Aid Highways, Highway Safety Programs, Transit, and Federal Lands Programs including the Indian Reservation Roads Program; and

6. TEA-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of $225,000,000 for Fiscal Year 1998 and $275,000,000 for each fiscal year of 1999 and 2003; and

7. Based on annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of $55 million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of-way; and
9. On April 23, 2002, the Transportation and Community Development Committee of the Navajo Nation Council was apprised that certain road projects, totaling an approximate amount of $24.37 million, were experiencing delays due to unresolved right-of-way issues:

- N-21(2)2 & 4, Kaibeto to Red Lake
- N-32(2)2 & 4, Navajo to Mexican Springs
- N-27(2-1/N-2-1)(1-2)2 & 4, Nazlini to Chinle
- N-203 (1)1,2,3 Switchback Bridge Project at Kinlichee
- N-55(2)2 & 4, Alamo to I-40
- N-35(6)2 & 4, U.S. 191 Rock Point to Sweetwater;

and in subsequent years, additional delays and potential loss of federal funds may occur if the right-of-way issue is not resolved by the two (2) standing committees; and

9. The Navajo Nation President Kelsey A. Begaye has taken the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation must fully utilize the annual allocated IRR funds to improve badly needed roads; and

10. The Right-of-Way Clearance Program under the Navajo Land Department has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right-of-way; and

11. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of interim Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA Road Projects; and
12. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and the Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Interim Terms and Conditions that would specifically address BIA road projects. The agreed upon Interim Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"; and

13. On May 15, 2002, the Transportation and Community Development Committee of the Navajo Nation Council met with the Resources Committee of the Navajo Nation Council in a joint meeting and discussed the status of road projects and the "Terms and Conditions" for the right-of-way. Such Interim Terms and Conditions were made available; and

14. On May 21, 2002, by Resolution TCDCMY-31-02, attached and marked herein as Exhibit "B", the Transportation and Community Development Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects; and


NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby approves the Interim Right-of-Way Terms and Conditions for Road Projects, attached hereto as Exhibit "A".

2. The Navajo Nation Council directs that the Interim Standard Terms and Conditions shall be used for all subsequent Right-of-Way for BIA Road Projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA road projects.
CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 66 in favor, 0 opposed and 0 abstained, this 1st day of November 2002.

Edward T. Begay, Speaker
Navajo Nation Council

Motion: Larry Noble
Second: Joe Dayzie
a. The term of the right-of-way shall be for 75 years.

b. Consideration for the grant of the right-of-way is hereby waived, because the project will benefit Navajos living in the area.

c. The Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or may be hereafter in force and effect, including but not limited to the following:

i. Title 25, Code of Federal Regulations, Parts 162 and 169;

ii. All applicable Federal and Tribal antiquities law 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; and


d. 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 construction and maintenance of the project.

c. 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 and all improvements thereon and make all necessary and reasonable repairs.

f. The Grantee shall obtain permission to cross existing rights-of-way from the appropriate parties before constructing the proposed projects.
g. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

h. 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, without the prior written consent of the Navajo Nation and the Secretary. 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.

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

j. 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 buildings and other improvements erected or placed thereon.

k. Nothing contained herein shall be construed to affect or be deemed a waiver of the Navajo Nation's sovereign immunity from suit.

l. 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.

m. Grantee shall retain as much of the natural vegetation within the right-of-way as possible.

n. Grantee shall re-vegetate all disturbed areas.

o. 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 traveling public, and all activities conducted or otherwise occurring within the right-of-way, and specifically including, but not limited to, jurisdiction to enforce speed limits and compliance with traffic control devices, jurisdiction to enforce Navajo Nation laws applicable to the operation of motor vehicles and jurisdiction to adjudicate disputes arising from motor vehicle accidents or other conduct or activities 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, consistent with federal law.
LOCATION: Buell Park, Arizona & New Mexico, Todilto Park, New Mexico USGS Quadrangle Map, 7.5 Minute Series
Legal Description: Section 13, Township 20 North, Range 21 West–BOP, NMPM
UTM Coordinates: Zone 12, Northing 3981560, Easting 677900–BOP; Northing 3979650
Easting 688030–EOP. Todilto Park, McKinley County, New Mexico

The proposed action addresses the N31 (2) 1, 2&4 Road Construction Project, Green Knobs at Navajo Route 12 to Asaayi Lake Junction Road Construction Project, encompassing 8.36 miles. The project is sponsored by the Navajo Regional Office, Branch of Roads, of Gallup, New Mexico.

The project environmental assessment (EA) has been reviewed by the Navajo Regional Office, Branch of Environmental Services. Based on the information contained in the applicant's environmental document, including the mitigation measures as proposed in the document, it is determined the proposed road reconstruction project will not have a significant impact on the natural and human environment. Therefore, in accordance with the National Environmental Policy Act, Section 102 (2) (c), an environmental impact statement will not be prepared.

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

1. Agency and public involvement was solicited, and environmental issues related to the development of the road reconstruction project were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues, EA @ Appendix A.

2. The EA disclosed the environmental consequences of the proposed action, and three potentially viable alternatives, including the "no action alternative".

3. In compliance with the Endangered Species Act, a threatened and endangered species (T&E) list was acquired by the project sponsor from the Navajo Nation Natural Heritage Program (NNNHP), and the U.S. Fish & Wildlife Service. Field surveys were performed. The Navajo Nation Fish & Wildlife Department, Biological Survey Services Program, performed field surveys, and reports. The program has crafted a biological evaluations/surveys entitled: Black-footed Ferret Inventory for BIA N31: Navajo to Mexican Springs, New Mexico; 1995 Mexican Spotted Owl Inventory of N-31; and Vegetation Survey of Mexican Spotted Owl Habitat (1996). The project is not expected to affect any federally listed species, notwithstanding, significantly impact any tribally listed species or other species of concern.

4. Potential impacts to flood plains and wetlands by the proposed alternative have been evaluated in accordance with Executive Orders 11938 and 11990 respectively. The
10. In accordance with the Resource Conservation and Recovery Act, Subtitle D, nonhazardous solid waste is mitigated in Section 4.0 and 6.2 to minimize the effects of the proposed action.

11. The project sponsor has crafted a seed mixture, and method of reclamation for the proposed road project, EA @ Section 6.2.3. Also see EA @ Section 6.4.2, & 6.4.4.

12. Cumulative and secondary effects on soil erosion, cultural resources, wildlife resources (species and habitat) were considered, and found acceptable, provided that the Branch of Roads shall implement mitigation measures as described in this environmental assessment, including the best management practices developed by the Branch of Roads for construction, EA @ Section 4.13.

13. Impacts and mitigation to minority and low-income populations in accordance with the President's Executive Order on Environmental Justice has been considered by the Regional NEPA Coordinator, as well as the impacts and mitigation to Indian trust resources.

The proposed road project would improve the economic-social conditions, and serve the affected Navajo, Crystal, Tohatchi, and Mexican Springs, New Mexico Indian communities, and surrounding areas. The N31 road construction project is supported by resolution from the Crystal, Mexican Springs, Red Lake Chapters, and the Fort Defiance Agency Roads Committee.

[Signature]
Navajo Regional NEPA Coordinator

June 14, 2001
FINAL
ENVIRONMENTAL ASSESSMENT
CONSTRUCTION OF NAVAJO ROUTE 31
Project N31 (2) 1, 2 & 4
From Navajo Route 12 To Asaayi Lake Junction
McKinley County, New Mexico

Prepared for
BUREAU OF INDIAN AFFAIRS
NAVAJO AREA OFFICE
BRANCH OF ROADS
301 West Hill Street
Gallup, New Mexico 87305

Prepared by
U.S. ARMY CORPS OF ENGINEERS
ALBUQUERQUE DISTRICT
4101 Jefferson Plaza, N.E.
Albuquerque, New Mexico 87109

September 10, 1999
Revised April 21, 2000
By
Navajo Regional Branch of Roads
P. O. Box 1060
Gallup, New Mexico 87305-1060
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Appendix J: Comments to the Draft Environmental Assessment
INTRODUCTION

The Bureau of Indian Affairs (BIA), Navajo Area Office, Branch of Roads, is proposing new construction and rehabilitation of a 8.36-mile (13.45 kilometer [km]) segment of Navajo Route 31 (N31), designated as Segment (2)1,2&4, which includes grading and drainage, bridge construction, and asphalt surfacing. The western portion of the proposed project connects Navajo Route 12 (N12) with the existing N31 route at a point near and immediately east of the Tohdildonih Wash and Bowl Canyon Creek confluence. From this confluence, the eastern portion of the proposed project follows the existing N31 alignment to the Asaayi Lake junction. This eastern portion of the proposed project requires rehabilitation of the existing N31 alignment to meet modern highway design criteria for public safety. The western portion has two alignment alternatives to make the Tohdildonih Wash connection; the recommended alignment, also known as the Split Mesa Valley alignment, and the Alternative Route which is the existing N31 route along Tohdildonih Wash. The recommended Split Mesa alignment approximately follows existing rural dirt roads but basically would require new construction. The Alternative Route would require extensive rock blasting and streambank protection to rehabilitate the existing N31 roadway.

The recommended N31 alignment would begin at N12, approximately 4.5 miles north of Navajo, New Mexico, north of the Green Knobs Hill, and would extend in a easterly direction for 4.27 miles (6.88 km) around (north of) Split Mesa, crossing Tohdildonih Wash via a new bridge near the Wash’s confluence with Bowl Canyon Creek, and then tie into the existing N31 dirt roadway. From this tie-in point, the roadway would closely follow the existing alignment for 4.08 miles (6.57 km) to the terminus of the proposed project at a point known as the Asaayi Lake junction where an unnamed dirt road leads north to Asaayi Lake (Figure 1 General Location Map and Figures 2, 3, and 4 Project Area Maps). The Universal Transverse Mercator (UTM), Zone 12, location for the beginning of the project is 677900 E, 3981560 N and the location for the end of the project is at 688030 E, 3979650 N. The dirt roads and two-wheel track trails of the recommended Split Mesa alignment do not currently accommodate through-traffic because the area is fenced with gates and is used primarily for grazing.

The existing N31 roadway, which will be evaluated throughout this document as the Alternative Route alternative to the proposed action, is a gravel/dirt mountain road comprised of two 12.5-foot lanes with no shoulders. This roadway begins at the existing N12/N31 junction in Navajo, New Mexico, and continues northeast along Tohdildonih Wash to the tie-in point noted above. From this tie-in point, the eastern portion of the project is the same as described above, also terminating at the Asaayi Lake junction. All of the N31 project lies within the Navajo Nation Reservation, McKinley County, New Mexico. Besides running parallel to Tohdildonih Wash, a major intermittent wash, N31 also crosses numerous small ephemeral and perennial washes such as Oak Creek, all of which feed into Tohdildonih Wash (Figures 2, 3, and 4, Project Area Maps).

Therefore the proposed project (recommended plan) builds about 4.27 miles of new roadway along the Split Mesa Valley alignment and abandons the existing N31 dirt roadway along Tohdildonih Wash (identified as the Alternative Route in this report, see description below). This abandoned roadway would remain open for local access; however, would not be maintained.

According to guidelines established by the American Association of State Highway and
Transportation Officials (AASHTO), both the existing N31 route and the proposed N31 roadway alignment are designated as "Minor Rural Arterials." AASHTO's road designations are based on functional classification by the character of service they provide. A rural local road system primarily provides access to land adjacent to a collector road network and serves travel over relatively short distances.

The U.S. Army Corps of Engineers (Corps), Albuquerque District, under Memorandum of Agreement No. AG2N0000992, dated May 5, 1992, as amended, has prepared this Environmental Assessment (EA). This EA evaluates the environmental effects of the proposed roadway construction, as well as the Alternative Route and No Build (no action) alternatives, to determine whether any of these actions would result in significant environmental impacts. This proposed road project is one of a series of construction and improvement projects scheduled for Navajo Routes 30 and 31. Environmental investigations for other segments have been or will be conducted separately.
1. DESCRIPTION OF THE PROPOSED ACTION

1.1 PROJECT DESCRIPTION

The proposed N31 roadway, the Split Mesa Valley alignment (4.27 miles; 6.88 km) and the eastern 4.08 miles (6.57 km) of the existing N31 alignment, would have 11-foot (3.35-meter) driving lanes with 2-foot (0.61-meter) paved shoulders for an overall roadway width of 26 feet (7.92 meters). The right-of-way width for the proposed alignment would vary between 150 feet (45.7 meters) and 250 feet (76.2 meters). To meet design criteria and safety requirements such as line-of-sight visibility, the new roadway construction would make small alignment changes to straighten curves north or south of the existing roadway. Over the course of the 8.36 mile (13.45 km) project area, approximately 156.0 acres would be disturbed by the proposed action. Surfacing tapers would be constructed with 6:1 or flatter slopes (Figure 5, Typical Project Cross Section). The new road would be designed as an all-season road and winter maintenance would consist of plowing and spreading cinders. The new paved road would have a design speed of 40 to 50 miles per hour and a design loading of HS-20. All permanent and temporary signs and coding would be placed along the proposed roadway during and after construction in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways.

The new roadway would be elevated an average of four feet from the existing ground to prevent peak runoff from overtopping the roadway at drainage crossings. The cuts and fills would be designed to balance out to the fullest extend possible to avoid any borrow. If, however, borrow is necessary, it would be acquired from approved borrow sources or by adjusting the ditch sections in the cut areas. Because the proposed alignment is in sandy loam material, little to no rock excavation would be required.

Because of the steep slopes throughout the proposed project area, permanent erosion protection would be provided along the proposed project alignment. During construction, a Storm Water Pollution Prevention Plan would be implemented (See Section 4.2, Water Resources). Permanent erosion protection measures would include installing new culverts and replacing old culverts. Where required, new and replaced culverts would be protected with outlet rip rap, end blankets, and concrete headwalls. On some reshaped slopes, diversion berms would be built on the tops of the slopes, and paved run downs would be constructed along flow lines. Where appropriate, reshaped slopes would be terraced. Paved and corrugated bar ditches running parallel to the road would extend to the ends of the slopes and splash pads would be placed at the ends of the bar ditches. In high embankment fill areas, guardrails with asphalt curbing will be constructed for both traffic safety and to direct pavement runoff to paved rundowns. Filter fabric dams would be used to catch sediment until a permanent soil stabilizing vegetative cover is established. Re-vegetation measures that include mulching, re-seeding with approved native plant species, and monitoring for reestablishment of vegetation would be provided for all disturbed areas.

Tohdildonih Wash would be crossed with a bridge, requiring special armoring of the roadway embankment. The proposed bridge across Tohdildonih Wash would consist of five 20-foot (6.097-meter) spans, for a total bridge length of 100 feet (30.485 meters), and a total bridge width of 30.0 feet (9.14 meters). The bridge would be supported by three steel piles, one of
which would be placed in the middle of the 33.2-foot-wide (10.12-meter) Tohdildonih Wash channel. The bridge structure would require both 94.3 yd\(^3\) of excavation and backfill; because of a small hill on the east side of the bridge structure would require excavation and the west side of the bridge structure would require fill material to achieve 2:1 ramp slopes on both sides of the bridge. The proposed location for the bridge may need re-evaluation because local sources indicate that the small hill, noted above that is proposed to be excavated, is considered by some local people to be a "landmark." The 2:1 slopes are necessary for the installation of wire-wrapped rip-rap to protect the embankment. The rip rap would be 6.56 feet (2.00 meters) deep and have filter fabric installed underneath. The rip rap would also be anchored and excavation of a rip rap toe trench to place rip rap below channel flow line may be required. The Tohdildonih channel would be graded to its natural flow-line elevation within the limits of the wire-wrapped rip rap and right-of-way lines. Minimum bearing capacity of the bridge would be 70 tons, and 350 linear feet of guardrail would be installed (Figure 6, Bridge Profile View). Construction of the bridge would include erosion control measures and would be scheduled during low flow or no flow periods to minimize turbidity and other water quality impacts.

The proposed action is at a stage of design where the features and procedures are known in sufficient detail to facilitate compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and related requirements of the BIA and Navajo Nation. However, some design and procedural details remain subject to minor adjustment until or even during actual construction, including location of haul and access roads and minor right-of-way adjustments. Work related to these items will be accomplished in accordance with existing tribal regulations, permit stipulations, and all applicable laws and regulations. Local Chapter House Resolutions have requested that the project include fencing, cattleguards, gates, and/or cattle underpasses. Right-of-way fencing would be designed to allow for wildlife movement.

There is suitable Golden Eagle and Peregrine Falcon habitat near the proposed project alignment and there are current and historically known nesting sites in the vicinity. The Golden Eagle is on the Navajo Endangered Species List and the Peregrine Falcon has Federal, Navajo and State protected status. Due to the sensitivity of these two bird species, the proposed project would include conservation measures that would be handled confidentially through consultation and coordination during all phases of construction between the BIA and the Navajo Fish and Wildlife Department and the U.S. Fish and Wildlife Service. Conservation measures would include conducting presence/absence surveys and reporting as well as monitoring of known sites each year through the duration of the project. Survey reports would be distributed to and reviewed by persons on a "need to know" basis to protect the identity of known habitat in and near the proposed project area. BIA agrees that if these bird species are found breeding/nesting within the immediate vicinity of construction activities during critical nesting periods that construction would be stopped in that location during the critical period. If a nest is not active in a given year then there would be no need to modify construction activities near that nest.

1.2 PURPOSE AND NEED

The purpose of the proposed roadway is to construct a new N31 segment and improve upon a segment of the existing N31 roadway to a standard that will meet the current and future needs
of the Navajo area residents. This includes public safety for the public’s vehicular travel and for
local residents. The N31 route is also used as a school bus route. These needs can be broken
down into two categories: an adequate transportation system to meet existing and projected
transportation use and continued implementation of the Navajo Reservation Master Road Plan.
Navajo Route 31 would primarily serve the community of Navajo and rural residents, as well as
provide access for ranchers and the timber industry to the high grass lands and forest areas of the
Chuska Mountains. This road is also considered a recreational and scenic byway, providing
access for fishing to Whiskey and Asaayi Lakes and many smaller fishing lakes in the Chuskas.
This road also provides an alternate route between the Tohatchi, Mexican Springs, and Navajo
communities.

In 1994, numerous traffic counts were conducted along the existing N31 roadway by the
Navajo Transportation Planning Department. The following results were tabulated by location
and average daily traffic volume (ADT) in vehicles per day (1994) and ADT projected for the year
2014:

<table>
<thead>
<tr>
<th>Location</th>
<th>ADT 1994</th>
<th>Projected ADT 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>N12/N31 Junction (Jct), Navajo, NM</td>
<td>315</td>
<td>384</td>
</tr>
<tr>
<td>0.25 miles east of N12/N31 Jct</td>
<td>801</td>
<td>977</td>
</tr>
<tr>
<td>5 miles east of N12/31 Jct</td>
<td>136</td>
<td>166</td>
</tr>
<tr>
<td>7 miles east of N12/31 Jct</td>
<td>178</td>
<td>217</td>
</tr>
</tbody>
</table>

The high traffic count volume recorded at the 0.25 miles east of N12 site can be explained by the
numerous logging and delivery trucks, as well as employee vehicles at the now defunct Navajo
Forest Products Industries (NFPI) sawmill. The Navajo Nation Division of Economic
Development is proposing to lease the NFPI property and traffic volume may again increase in the
area. Because the first four miles of the western half of the proposed alignment is currently used
for grazing, a traffic count could not be taken; however, the traffic counts that most closely reflect
average daily traffic for the proposed route would be somewhere between the traffic counts taken
5 miles and 7 miles east of the N12/N31 junction (136 vehicles per day and 178 vehicles per day,
respectively).

The Navajo Reservation Master Road Plan, first developed in the late 1970s and adjusted
and improved as necessary throughout the years, has served as a transportation program and goal
for the Reservation. Today, this system is far from complete, lagging 60% behind the rest of the
Southwest in surfaced highways per square mile. The improvement of N31 is another step in
completing this system so that the Master Road Plan can function as originally conceived.

1.2.1 Chapter Concerns, Disputes, and Resolutions.

Since initiation of project planning, several public meetings have been held by the BIA for
the Mexican Springs, Crystal, Red Lake, and Tohatchi Chapters to comment on the proposed
road construction of the Navajo 30 and 31 Routes. Two official public hearings which had the
most public attendance concerning the N31 route were held on September 29, 1987, at the Mexican Springs Chapter House and on September 13, 1995, in Navajo, New Mexico (meeting minutes are documented in Appendix A). The majority in attendance at the 1987 meeting favored the recommended Split Mesa Valley alignment. The majority in attendance at the 1995 meeting favored the Alternative Route (the existing N31 route). Although public opinion was aired at these meetings, no Chapter House Resolutions in support of the project or for either alignment have been received by the BIA to date.

Chapter House Resolutions from the Mexican Springs, Red Lake, and Crystal Chapters in support of the proposed project and specific features such as right-of-way fencing, gates or cattle-guards at local turn-outs, and/or cattle underpasses are attached in Appendix A and are part of the permanent project documentation. Construction of the N31 project’s recommended Split Mesa Valley alignment would primarily affect people of the Mexican Springs and Crystal Chapters while rehabilitation of the existing N31 roadway would affect the Red Lake and Crystal Chapters.

After review of the project alternatives, their potential impacts, and other supporting information documented in this EA, the Fort Defiance Agency Roads Committee (Roads Committee) held a meeting on December 13, 1995, and passed a Resolution entitled:

Approving and Recommending to the Navajo Nation Council Transportation and Community Development Committee and the Navajo Area Bureau of Indian Affairs Branch of Roads that Navajo Route 31 Would Start at the Original Alignment 3 Miles North of Navajo, New Mexico off N12, and then Follow the Split Mesa Valley Alignment [emphasis added](Appendix A).

The Roads Committee is comprised of chapter officials assembled by the Navajo Nation to address transportation needs of the people. As indicated in the Resolution title, the Roads Committee has recommended the Split Mesa Valley alignment to the Navajo Nation Council of Transportation and Community Development Committee and the BIA and if necessary, the use of "Condemnation Power and/or Eminent Domain Power" by the Navajo Nation to acquire the right-of-way.

Because of the lengthily time elapsed between initiation of project planning and the current date, and because of two land disputes concerning the proposed roadway alignment, it is appropriate to provide a documentary outline of chapter hearings, and the concerns, disputes, and resolutions presented at such meetings. An outline of the project’s history and documentation is therefore provided in Appendix A.
Figure 1: Navajo Route 31, General Project Area, near Navajo, McKinley County, New Mexico.
Figure 2: Navajo Route 31 Project Area (western portion) with Proposed Alignment; adapted from USGS 7.5 Minute Quadrangle Map: Buell Park, Ariz.-N. Mex. (35109-H1, Prov.Ed. 1982), Not to Scale.
Figure 3: Navajo Route 31 Project Area (central portion) with Proposed Alignment: adapted from USGS 7.5 Minute Quadrangle Map: Todilto Park, New Mexico (35108-H8, Prov.Ed. 1982), Not to Scale.
Figure 4: Navajo Route 31 Project Area (eastern portion) with Proposed Alignment; adapted from USGS 7.5 Minute Quadrangle Map: Todilto Park, New Mexico (35108-H8, Prov.Ed. 1982), Not to Scale.
Figure 6: Profile View of Proposed Bridge

NOTE: The HP 14x73 Piles shall be driven to a capacity of 32 tons at or below the minimum penetration elevations shown.
2. REASONABLE ALTERNATIVES

It is the policy of the Federal Highway Administration that alternative courses of action be evaluated and decisions made in the overall, best interest of the public. Alternatives should be based upon a balanced consideration of the need for safe and efficient transportation; social, economic, and environmental impacts of the proposed project; transportation improvement; and national, state, and local environmental protection goals. The following two reasonable alternatives were evaluated.

2.1 NO-BUILD ALTERNATIVE

Under the No-Build alternative, residents of the area would continue to use the existing N31 dirt roadway, corrective actions would not be taken, current maintenance practices would continue, and about 156.0 acres of grazing and natural lands would not be disturbed.

2.2 ALTERNATIVE ALIGNMENT

The Alternative Route would strictly follow the existing N31 dirt roadway, from the N12/N31 junction located behind the NFPI plant in Navajo, New Mexico, northeast to the terminus of proposed project at the Asaayi Lake junction (Figures 2, 3, and 4). Approximately 3.1 miles of the roadway alignment parallels Tohdildonih Wash with 0.6 miles of the wash immediately adjacent to the edge of the roadway. Along this 3.1 miles tall sandstone outcrops, ranging from about 100 feet and some in excess of 200 feet in height, abut the roadway's south shoulder. The vertical curves of the existing roadway are relatively flat with little to no shoulder drainage to prevent continuing erosion of the roadway into the wash. To satisfy design standards for safety, sight distances, and alignment requirements, several sharp horizontal curves of the roadway would require straightening. Straightening portions of the roadway alignment would require either moving the roadway into the rock cliffs or into Tohdildonih Wash. Moving the roadway into the cliffs and away from Tohdildonih Wash would require extensive rock blasting to achieve clear recovery zone distances and stable back slopes, and would destroy portions of the scenic red sandstone cliffs. If the roadway was moved away from the cliffs and nearer to Tohdildonih Wash, construction would require building (filling) in portions of Tohdildonih Wash and the construction of extensive streambank armoring of the roadway embankment slopes. In numerous areas along the existing roadway, the adjacent Tohdildonih Wash has 20 to 100 feet vertical banks, making movement of the roadway toward the wash impractical. Roadway construction along Tohdildonih Wash would also require extensive installation of guard rail. Bank stabilization features and/or rock blasting of the cliffs would require significantly more than a 150-foot right-of-way width, especially within the 0.6 miles of roadway that abuts both the wash and the sandstone cliffs. Construction along Tohdildonih Wash would also require mitigation for several small wetland areas that would be disturbed by construction. If the proposed (recommended) plan is accepted, this existing (alternative) route would be abandoned but would remain open for local access. Preliminary estimates indicate that the reconstruction of this existing (alternative) N31 route would cost at least $525,000.00 more than the recommended...
2.3 PREFERRED ALTERNATIVE: Split Mesa Valley Alignment

The Proposed N31 Roadway Alignment is the preferred alternative and was chosen over the Alternative Route as the recommended plan for the following beneficial reasons:

- Little to no expensive rock blasting and excavation would be required;
- Little to no construction into Tohdildonih Wash or streambank protection along Tohdildonih Wash would be required;
- Terrain is rolling hills, making construction easier;
- Grade and horizontal curves would meet AASHTO criteria without design exceptions;
- Good sight distance with a minimum of steep embankments;
- The project would be designed so that all cut-and-fill materials would come from within the proposed right-of-way; therefore additional borrow would most likely not be required;
- Cost per mile is cheaper than the alternative alignment;
- Very minimal traffic control would be required;
- Low cost of maintenance; and
- Lower liability, lower potential for accidents, and lower potential for catastrophic events causing loss of life and road closures.

Disadvantages of the preferred alternative:

- About 156.0 acres of undisturbed lands would be disturbed;
- The preferred alignment would divide several grazing allotments into two portions causing some inconvenience to permit holders;
- The preferred alignment is close enough to known Golden Eagle and Peregrine Falcon habitat to be of concern;
- The preferred alignment is close to known Traditional Cultural Properties.

The Alternative Route alternative was not chosen for the following disadvantages:

- Horizontal sight distance is poor and would require significant construction to straighten the existing alignment; existing conditions make it exceedingly difficult to accommodate the AASHTO minimum design criteria for vehicular safety without cutting deep into the sandstone mountain or building into the wash;
- If the alignment is moved into the sandstone mountain, major and expensive rock blasting would be necessary, requiring specialized equipment and manpower, and even then there would be no guarantee that the cut back slopes on the sandstone mountain could be stabilized for 20 to 30 years without very costly counter-measures;
- Blasting would destroy the scenic beauty of the existing red sandstone cliff formations;
- Undercutting of the existing stream embankment is prominent and threatens the roadway base;
• If the alignment is moved into Tohdildonih Wash, major and expensive stream embankment construction and armoring would be necessary to prevent roadway embankment washouts during Tohdildonih Wash's peak runoff periods;
• Building into Tohdildonih Wash would create 404 Clean Water Act concerns and mitigation would be required;
• There would be no room to detour traffic during construction. For a period of up to 18 months, construction would cause either significant traffic delays and/or the road would have to be closed for unknown time periods during embankment construction and/or rock blasting. The construction time for the Alternative Route would take up to six months longer to build than the Recommended Route;
• Construction of the Alternative Route would impact several small wetland areas and mitigation would be required;
• The existing N31 alignment crosses NFPI land and construction would pose a major congestion problem if NFPI resumes operations, or, if, as reported, Millennial Homes moves into the old NFPI plant.

Overall, the Alternate Route is feasible, but from an engineering and liability perspective, it is not advisable. Rehabilitation of the Alternative Route (the existing N31 roadway) has no known practical benefits. There are also some unknown cultural resources costs associated with the alternative route that could not be determined without a preliminary field survey which has not been conducted. Further, the potential problem with NFPI (or Millennial Homes) traffic crossing the alternative route near the N12 junction is a big concern in that it represents a high liability potential the BIA cannot justify. Finally, there is no guarantee that even with the best drainage and geotechnical engineering the road's north embankment would not be severely damaged during a 100-year flood event. The BIA would save a considerable amount of Federal funding by adhering to the recommended plan and constructing the preferred Split Mesa Valley alignment.
3. THE AFFECTED ENVIRONMENT OF THE PROPOSED ACTION

3.1 GENERAL SETTING AND CLIMATE

The proposed N31 roadway project lies at an elevation between 6,800 and 7,500 feet within the Little Colorado River Basin, which is drained by Tohdildonih Wash and Black Creek as well as other minor drainages. The proposed project area is located at the southeastern edge of the Colorado Plateau, in its Navajo physiographic section, which is characterized by mesas, cuestas, rock terraces, escarpments, canyons, and arroyos. Some of the prominent topographical features of the proposed project area include Red Valley, Red Lake, Buell Park, Green Knobs, Split Mesa, Zilditloii Mountain, Beelzebub outcrop, and Tohdildonih Wash Canyon. The proposed roadway is located in the southwestern section of the Chuska Mountains, near the Arizona and New Mexico border.

The climate of the area is semi-arid continental with an average annual precipitation of 20 inches. Snow depths average about 3.5 feet during winter, with temperatures dropping to as low as -20° Fahrenheit. Summer temperatures are pleasant, averaging between 80° and 90° Fahrenheit.

3.2 GEOLOGY AND SOILS

The proposed road project crosses numerous geologic units including the Chinle Formation, Windgate Sandstone, Todilto Limestone, Summerville Formation, Cow Springs Sandstone, Morrison Formation, Dakota Sandstone, Mancos Shale, Menefee Formation, and local alluvium. The proposed project area is situated near the southwestern end of the Chuska Mountains, reaching into the edge of the mountains at the project’s eastern terminus. The Chuskas are steep-sided, horizontal sandstones reaching nearly 10,000 feet in elevation, are forested, and are a long ridge-like anticline topped with Triassic, Jurassic, and Tertiary rock. Absence of Cretaceous rock shows that the range first uplifted in Mesozoic or early Tertiary time. The mountains are fringed with landslides where younger rocks have slid down over soft-slippery shales that wall the range.

There is considerable soil erosion within the proposed project area, likely a result of overgrazing on the two very fragile, dominant soil units of the project area, described as follows:

Rockland-Torriorthents-Haplargids - This soil unit is present in the lowland parts of the project area and is typically composed of a complex of shallow, loamy soils and outcrops of sandstone and other sedimentary rocks. Permeability is moderate and run-off is rapid. The hazard of water erosion is very high. These soils are used principally for livestock grazing and wildlife.

Eutroboralfs-Ustorthents - This soil association is unique to the Chuska Mountains, and is characterized by relatively broad gently sloping to rolling plateaus or mountain tops and very steeply sloping mountain side slopes and escarpments. The soils in this unit are developing dominantly in sandstone parent materials. Permeability is moderate and run-off is rapid. The hazard of water erosion is very high. These soils are best used for forestry, range, and recreation.

3.3 WATER RESOURCES
3.3.1 **Surface Water.**

Several streams and washes occur in the project area, all of which drain to Black Creek in Arizona. Tohdildonih Wash, Squirrel Springs Wash, and Little Water Creek are ephemeral while Oak Creek and Bowl Canyon Creek are perennial. Temporary surface water is present as sheet flow, depression storage, and in most of the streams and washes during and immediately after thunderstorms. Sheet flow occurs over gentle slopes where water courses are less defined. The mean annual runoff in the area is approximately 0.5 to 1.0 inches, with the Chuska Mountains contributing most of the runoff. Base flow in the area, largely a result of spring discharge from the Chuskas, contributes to nearly continuous annual flow in Tohdildonih Wash. The annual erosion rates in the project area average from less than 0.2 acre-feet per square mile in the eastern half of the proposed roadway area to greater than 3.0 acre-feet per square mile in the western half of the project area. The proposed project with either of the alignment alternatives would require Section 404 of the Clean Water Act authorization and Water Quality Certification (See Section 4.2 Water Resources).

3.3.2 **Ground Water.**

The closest water well to the proposed project area with available water quality data is located near Squirrel Springs Wash, between Little Water Creek and Bowl Canyon Creek. The project area is in a recharge area, supplying groundwater recharge to both a Jurassic and Triassic aquifer. Depth to ground water in the project area averages between 200 to 500 feet, and wells in the proposed project area yield as much as 100 gallons per minute.

3.3.3 **Wetlands.**

Two jurisdictional wetlands that have been identified in the project area. One is located near the confluence of Bowl Canyon Creek with Tohdildonih Wash. This wetland is upstream of the proposed bridge crossing of Tohdildonih Wash. The second wetland is located at the fork of two unnamed, ephemeral washes about 1.5 miles west of the proposed Tohdildonih Wash bridge. This wetland is downstream of the proposed roadway (Appendix G). Several other small wetland areas containing cattails occur along the Alternative Route where the existing roadway parallels Tohdildonih Wash. These wet areas occur immediately adjacent to the existing N31 roadway.

3.3.4 **Flood Plains.**

The Tohdildonih Wash channel has a 500-year flood capacity. However, a diversion dam at NEPI has become filled with sediment creating a backwater condition which is causing erosion downstream and increasing the likelihood that sediment will begin aggrading the wash bed upstream from the dam. In June, 1995, a flood plain evaluation was performed by the Corps to determine the 100-year flood flows generated by the watershed and the potential impact of such an event on the proposed roadway (Appendix B). This analysis concluded that the proposed project design provides adequate drainage.
3.4 AIR QUALITY

The proposed project area is in New Mexico's Air Quality Control Region No. 1 (Environmental Protection Agency [EPA] Region 014). These areas have been designed for evaluating, planning, and managing air quality on a regional basis. Region 1 is "in attainment" (does not exceed State or Federal Environmental Protection Agency air quality standards) for all criteria pollutants (carbon monoxide, sulfur oxides, nitrogen dioxide, lead, ozone, and particulate matter) based on national and state ambient air quality standards. These standards are intended to protect human health and public welfare (40 CFR 50.2b). In addition to protecting human health, the New Mexico standards are intended to protect animals and vegetation, to guard against corrosion of building materials and works of art, to protect visibility, and to restrict air pollution that diminishes the quality of life (EID 1990:7). Region 1, in northwestern New Mexico, is considered as a Class II area under the Prevention of Significant Deterioration (PSD) Program as required by the Clean Air Act of 1972, as amended. PSD Class II areas allow moderate development and the resulting air quality impacts. Class I areas are considered to have pristine air and almost no increase in air contaminant levels are allowed. There are no Class I areas in the vicinity of the project area.

3.5 NOISE CONDITIONS

The proposed project area is located in a relatively unpopulated portion of the state, with homes scattered throughout the area. When NFPI was in operation, there was continuous noise from the sawmill and transport vehicles at the west end of the existing N31 roadway. It is not yet known whether the new Millennial Homes manufacturing plant will create noise levels similar to those of the NFPI; however, it is assumed that there will be some increase in noise levels once Millennial Homes is in full operation. Large vehicles climbing the eastern end of the roadway cause the highest noise levels in the proposed project area, approximately 15 dBA higher than those of automobiles (AASHTO, 1993). Past and existing noise levels have not been identified as adversely affecting either wildlife species or the human population throughout the project area.

3.6 BIOLOGICAL RESOURCES

3.6.1 Vegetation Communities.

Vegetation in the proposed project area ranges from Great Basin grassland to coniferous woodland to mixed conifer, depending on elevation. Great Basin coniferous woodland is characteristic of the lower slopes of the Chuska Mountains throughout the proposed project area, mostly at elevations from 5,500 to 7,000 feet. This woodland merges with Great Basin grassland at lower elevations and with the Great Basin mixed conifer association at higher elevations where píñon and juniper are gradually replaced by the increasingly dominant ponderosa pine. The general aspect of the coniferous woodland is that of an open stand of dominant conifers interspersed with species of grasses and a few forbs in the open areas. Throughout the proposed project area, píñon and juniper are the dominant conifers, with Gambel oak dispersed through the
association. Dominant vegetation species in the Great Basin grassland at the lower elevations of the proposed project area are Indian ricegrass and galleta associated with various other grasses, including blue grama and sand dropseed. There is also a scattering of big sagebrush, Mormon tea, snakeweed, and juniper in this association. The easily discernible mixed conifer zone begins at approximately 7,000 feet in the proposed project area. Dominant mixed conifer include both ponderosa pine and Douglas fir. Other conifers, such as white fir and Rocky Mountain juniper, are also found here, with a shrubby understory of mountain mahogany and snowberry. Several distinct vegetation communities are found in the proposed project area including a large three-acre musk thistle patch located about 2.5 miles from the west end of the proposed roadway alignment; a large piñon-juniper woodland at the east end of the project area; and a Gambel oak woodland also located at the east end of the project area.

3.6.2 Wildlife.

Several animal species commonly occur in Great Basin grassland and conifer woodland habitats including 7 mammals, 19 birds, and 24 reptiles (Brown, 1982). Large animal species that potentially occur in the project area include mule deer, pronghorn antelope, elk, mountain lion, black bear, coyote, and turkey. Numerous small animals typically occurring in New Mexico also occur in the area. Abundant wildlife, primarily birds, were observed during field surveys and include Rufous Hummingbird (Selasphorus rufus), White-throated Swift (Streptoprocne zonaris), Cliff Swallow (Hirundo pyrrhonota), Chipping Sparrow (Spizella passerina), Western Meadowlark (Sturnella neglecta), Lesser Goldfinch (Carduelis psaltria), Sage Sparrow (Amphispiza belli), American Kestral (Falco sparverius), Mountain Bluebird (Sialia currucoides), Mourning Dove (Zenaida macroura), European Starling (Sturnus vulgaris), Common Raven (Corvus corax), Cassin's Kingbird (Tyrannus vociferans), Mountain Chickadee (Parus gambeli), Vermilion Flycatcher (Pyrocephalus rubinus), Acorn Woodpecker (Melanerpes formicivorus), Pygmy Nuthatche (Sitta pygmaea), Clark's Nutcracker (Nucifraga columbiana), Red-tailed Hawk (Buteo jamaicensis), Cooper's Hawk (Accipiter cooperii), Lewis' Woodpecker (Melanerpes lewis), Red-winged Blackbird (Agelaius phoeniceus), rock squirrel, and prairie dog. Numerous Rufous Hummingbird utilize the large musk thistle patch, mentioned in the above section, in mid- to late-summer while migrating through the proposed project area as well as many smaller bird species during late-spring.

3.6.3 Special Status Species.

While all Federal agencies and numerous other State and Tribal agencies have responsibility for the protection and conservation of animal and plant species, in the project area there are two agencies who have this task as their primary responsibility. The U.S. Fish and Wildlife Service (USFWS), under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531), as amended, has responsibility for Federally listed species and the Navajo Nation Fish and Wildlife Department (NNFWD) has responsibility for Navajo Nation lands (RCF-014-91). The New Mexico Department of Game and Fish (NMDGF) and the New Mexico Department of Energy, Minerals, and Natural Resources (NMEMNRD) have responsibility for wildlife and plant species, respectively, within the State and were also consulted. Each agency maintains a list of animal
and/or plant species which have been classified, or are candidates for classification as protected, based on present status and potential threat to future survival or recruitment. Informal coordination with these agencies has been conducted, and prior to conducting fieldwork, the above mentioned lists of animal and plant species were reviewed along with information on available habitat, habitat preferences, and known ranges. Each agency provided a general list of listed species for McKinley County that potentially could occur on or adjacent to the proposed project area (Appendix C). After species lists were reviewed and after site surveys, species which could occur near the project area were listed in Table 1 and are discussed below. All of the bird species noted below are also protected under the Migratory Bird Treaty Act.

Searches of the Navajo Natural Heritage database were conducted in 1992 and 1994 which resulted in a general list of 44 species (42 fauna, 2 flora) either known to occur or potentially occurring on or in the area of the proposed project. These species are listed, candidates for listing, or are of economic value to the Navajo Nation; however, they do not all have protected status (see status information in Table 1). The U.S. Fish and Wildlife Service (USFWS), New Mexico Ecological Services Field Office, located in Albuquerque, provided a list of 14 endangered or threatened species (10 fauna, 4 flora) that may occur within McKinley County, New Mexico (Consultation No. 2-22-94-I-096). Current species lists have also been reviewed; a NESL, dated May 1997, and the USFWS general species list for McKinley County, dated May 1998. The New Mexico Game and Fish Department’s Biota Information System of New Mexico (BISON-M) database was also reviewed for current species status.

The proposed project area was surveyed for Federal, Navajo, and State listed species that potentially occur in the project area including rare, endemic, and sensitive plant species such as Acoma fleabane, Goodding’s onion, Parish’s alkali grass, Sivinski’s fleabane, Zuni fleabane, and alcove bog-orchid (Appendix C). No listed plant species were observed during plant surveys of the project area. Recently, a population of Goodding’s onion (Allium gooddingii), a Federal Candidate species, NESL Group 3 species, and State Endangered, was discovered approximately two miles east of the project area; however, as noted, no Goodding’s onion were observed during plant surveys of the project area.

The USFWS identified 6 bat species that are all listed as Federal Species of Concern (Appendix C). These species include: fringed myotis (Myotis thysanodes); long-eared myotis (Myotis evotis); long-legged myotis (Myotis volans); occult little brown bat (Myotis lucifugus occultus); small-footed myotis (Myotis ciliolabrum); and spotted bat (Euderma maculatum). None of these bat species are currently listed on the NESL. The spotted bat is also a State Threatened species. Potential habitat areas for these taxa include steep hillsides and cliffs that provide rock crevices and shelters such as caves for roosting. In many instances these rocky locations have nearby streams, rivers, or other perennial water bodies. These bat species tend to occur in remote areas; however, some may also utilize hollow trees, tree bark or trees with dense foliage, or human buildings and structures such as barns as other roosting sites, especially during migration. A few of these species may hibernate locally through the winter, but most migrate to areas further south. Most New Mexican bats eat insects and small invertebrates.

There are a number of other species listed by USFWS, NMDGF and/or on the NESL for McKinley County that would most likely not occur in or near the project area, or are migratory and not likely to be affected by the proposed project (Appendix C). The Black Tern forages by diving and are usually found near large bodies of water and riverine areas that have sand bars or
beaches. The Gray Vireo is found in arid juniper woodlands on foothills and mesas; however, preferred habitat also includes a well developed grass component. The Mountain Plover migrates through the state and despite its name, is found primarily in dry, open shortgrass prairie habitats, especially in New Mexico's eastern plains. The White-faced Ibis is a rare to uncommon statewide migrant and are only known to breed in the New Mexican eastern plains. Generally these Ibis are found in shoreline and marsh habitats near open water, but may also frequent flooded fields for feeding. The Zuni bluehead sucker is endemic to the Zuni basin and is now confined to a few streams upstream of Zuni Pueblo. Navajo Mountain Vole, Pronghorn, and sagebrush lizard are also not likely to be affected by the proposed project.

Black-footed ferret (Mustela nigripes): NESL Group 2; ESA Endangered. The historic range of the black-footed ferret extends from southern Canada through the western United States including New Mexico; however, the black-footed ferret is considered to be extirpated in New Mexico by the New Mexico Department of Game and Fish. There are only a few past records for New Mexico that indicate prior habitation areas were found in the lowlands of the central part of the state. This species is known primarily to inhabit prairie dog towns and survey for black-footed ferret is required if a sizable prairie dog town is located near a project site.

A 360-acre prairie dog town was observed near the proposed project alignment during 1993 and 1994 general species surveys. While the density of prairie dog burrows is below the criteria set by the USFWS for defining a prairie dog town, the prairie dog town was surveyed by Navajo Fish and Wildlife Department (NFWD) in 1994 to determine presence or absence of the black-footed ferret (Appendix D). Methods for the survey were based on Black-Footed Ferret Guidelines for the Navajo Nation Reservation and Survey Guidelines for Compliance with the Endangered Species Act. The survey discovered 1,678 burrows with an average burrow density of 4.7 burrows per acre; however, 915 burrows were inactive. No evidence of black-footed ferret such as trenching, scats, or signs of predation were observed during surveys. In 1994, the number of active prairie dog burrows to be disturbed by the proposed project was estimated to be 30. However, recent general surveys conducted in 1995 and 1996 have determined that the prairie dog town has been abandoned.

American Dipper (Cinclus mexieanus): NESL Group 3. American Dipper are known to range across the western part of the United States. In New Mexico, American Dippers are residents in the Northern, Mogollon, and Sacramento Highlands, as well as the Sangre de Cristo Mountains. Dippers are found along clear, rushing mountain streams, and as high as timberline, mostly in montane riparian and aquatic habitats. They are generally nonmigratory, but may descend to lower elevations in winter. This species was not observed during surveys conducted in the proposed project area. It is highly unlikely that they exist in the project area due to the lack of preferred habitat. Also, there is no historical documentation of this species occurring in McKinley County.

American Peregrine Falcon (Falco peregrinus anatum): NESL Group 3; ESA Endangered; State Endangered. This endangered species is rare throughout a limited range, extending from Washington to Montana, south to Mexico. Peregrine Falcons are considered to be rare, are year-round residents in montane areas, and migrate and winter almost statewide. The
Peregrine's preferred habitat is in isolated wooded areas with cliffs that create "gulfs" of air in which the Peregrine can forage. There are current and historically known nesting sites in the project area. These sites are close enough to the project area to be of concern.

The Arctic Peregrine Falcon (*Falco peregrinus tundrius*) is also a Federally Endangered, NESL Group 3, and New Mexico State Endangered species due to similarity in appearance to the American Peregrine Falcon. This subspecies is a rare migrant in New Mexico. Due to the limited disturbance of the proposed project, there would be no effect to this subspecies by the proposed construction.

**Bald Eagle** (*Haliaeetus leucocephalus*): NESL Group 3; ESA Threatened; State Threatened. This species occupies New Mexico primarily as a winter resident between mid-November and mid-March. During this time, Bald Eagles are found along riparian areas such as rivers and reservoirs, but also migrate across country. Bald Eagles roost in large trees and prey on fish and waterfowl. There are no riparian areas with large trees for roosting in the immediate project area; and the perennial waters in Tohdildonih Wash are not deep enough to contain fish necessary to sustain a Bald Eagle. There may be, however, suitable roosting habitat near Asaayi Lake four miles north of the proposed road alignment. Surveys of the project area did not observe Bald Eagle; however, the surveys were not conducted during the winter residency period. Bald Eagle are not likely to occur in the project area.

**Blue Grouse** (*Dendragapus obscurus*): NESL Group 3. This bird is generally found in mixed species forests and in mountainous areas above 6,000 feet. Important forest cover includes spruce-fir, Douglas fir and ponderosa pine. Preferred nesting areas occur at forested meadow edges that have structural diversity and adjacent thickets. Nesting areas also need well developed herbaceous and shrub layers. Since the project area is extensively and heavily grazed by local livestock, the Blue Grouse is not likely to occur in the project area.

**Common Snipe** (*Gallinago gallinago*). At the initiation of project planning, Common Snipe were listed as a NESL Group 3 species; however, this bird was removed from the NESL in 1997. This fairly common bird breeds in the northern half of North America and winters in the southern half. In New Mexico, these birds inhabit wet grasslands at middle elevations (5000-7500 feet) in summer and inhabit lower elevations (2800-5000 feet) during migration and winter. Snipe prefer wet meadows with tall vegetation for nesting. Wetland habitat that is potentially suitable for Common Snipe exists near the Bowl Canyon Creek and Tohdildonih Wash confluence and adjacent to the location where the proposed Tohdildonih Wash bridge would be constructed. However, vegetation in this area is frequently and extensively grazed by livestock, therefore Snipe are not likely to be found in the project area. Marginal habitat may also exist in small wetland areas along an unnamed tributary to Tohdildonih Wash located south of the proposed road alignment which is also extensively grazed by livestock. Due to the lack of preferred habitat, Common Snipe are not likely to occur in the project area.

**The Ferruginous Hawk** (*Buteo regalis*), a Federal Species of Concern and NESL Group 3
species, may be seen seasonally throughout a large portion of the western United States. This hawk is fairly common and is a permanent resident of the High Plains and Basin and Range provinces. The species migrates and winters in most of New Mexico. It is shy and retiring, preferring open plains and prairie, and undisturbed areas for breeding and nesting. This hawk most likely would not frequent the project area and is not likely to be affected by the proposed construction.

**Golden Eagle (Aquila chrysaetos):** NESL Group 3. This species' breeding range covers most of the western United States and southwestern Canada. Golden Eagles are considered to be rare to locally common in New Mexico, migrating, wintering, and residing statewide. They inhabit mountainous or hilly terrain, hunting over open country for small mammals, snakes, birds, and carrion. Breeding season occurs from approximately February 1 to about August 15. There is suitable habitat, including current and historically known nesting sites, for Golden Eagle in the vicinity of the project area. These sites are close enough to the project area to be of concern.

**The Loggerhead Shrike (Lanius ludovicianus),** a Federal Species of Concern, is a year-round resident of New Mexico. They prefer semi-open areas with lookout posts from which they prey on insects and small lizards. Due to the limited disturbance of the proposed project and the mobility of this species, this Shrike is not likely to be affected by the proposed construction.

**Mexican Spotted Owl (Strix occidentalis lucida):** NESL Group 3; ESA Threatened. The Mexican Spotted Owl has been recorded in all National Forests in New Mexico at elevations ranging from 3,700 to 10,000 feet. This species inhabits mature montane forest and woodlands with high closure, multilayered canopy, high tree density, in association with wooded, steep canyons and cliffs. The preferred forest vegetation tends to be mixed conifer, although piñon-juniper woodlands may be utilized. In 1995, the U.S. Fish and Wildlife Service (USFWS) designated Critical Habitat for the Mexican Spotted Owl; however, in 1997, the USFWS withdrew the Critical Habitat designation. Approximately 2.0 lineal miles of the proposed road alignment at the eastern end of the project area is located in the de-listed Critical Habitat area that was identified as AZ-NAIR-1 (Figure 7).

Although there is no potential nesting or roosting habitat along the proposed alignment and the area is marginal for Mexican Spotted Owl use, surveys for Mexican Spotted Owl were conducted in 1995 and 1996. NFWD performed the two-consecutive-year Mexican Spotted Owl survey (Appendix E). The surveys were conducted using the United States Forest Service, Region 3, Interim Directive No. 2, 1994 Mexican Spotted Owl inventory protocol. NFWD surveyed along approximately four miles of the proposed alignment at the eastern end of the project area, of which approximately 2.0 miles was once designated as Critical Habitat (Figure 7). During the 1995 and 1996 surveys, no Mexican Spotted Owls nor evidence thereof, were observed.

The Corps also conducted a plant inventory along the two miles of proposed alignment that was once designated as Critical Habitat (Appendix F). The plant inventory area identified as Site #1 (Figure 7) is located at the eastern end of the project alignment and at the western edge of the de-listed AZ-NAIR-1 critical habitat. Site #1 was surveyed within 0.5 miles of both sides of the proposed alignment. The vegetation community at Site #1 was Great Basin Desert Scrub.
sandy soils and was composed of plants such as aster, cypress, mallow, and grasses. A mixed-conifer woodland is located at the edge of the survey area, approximately 0.5 miles south of the roadway. This woodland is composed of well-spaced piñon, Arizona yellow pine, and Douglas fir and has no canopy nor understory component.

Plant inventory Site #2, located approximately 1.5 miles east of Site #1 (Figure 7), was identified as a mixed-conifer woodland that came within 200 feet of the roadway and west of a large sandstone formation. Trees are well-spaced, with no canopy and very little understory. Vegetation in the area was identified as piñon, Arizona yellow pine, Douglas fir, butterweed, two types of cactus, Gambel oak, wild onion, soapweed yucca, and prickly phlox (Appendix F). Both Site #1 and #2 were considered to be marginal habitat for Mexican Spotted Owl use. Therefore, Mexican Spotted Owl are not likely to occur in the proposed project area.

Northern Goshawk (Accipiter gentilis), a Federal Species of Concern and NESL Group 4 species, is a resident of the northern Mogollon and Sacramento Highlands and have a stable population. They are fairly common to the coniferous and deciduous forests in the western United States. It is shy and retiring, preferring mountainous regions, and they utilize moderate to highly canopied, mature coniferous forests, nesting in those forested areas with a high density of large trees. The species migrates and winters throughout the entire state. Preferring forests, they could be found in the Chuska Mountains and a single Northern Goshawk was observed in the project area during the black-footed ferret survey conducted in 1994. However, they are not likely to be affected by the proposed project.

Southwestern Willow Flycatcher (Empidonax trailli extimus): NESL Group 2; ESA Endangered, with designated Critical Habitat; State Threatened. The Southwestern Willow Flycatcher, a flycatcher subspecies, is a migratory bird whose breeding range is basically restricted to the southwestern United States. It’s habitat includes willow thickets, riparian woodlands, pastures, dry and brushy fields, mountain meadows, and margins of mixed deciduous forests with water or low damp ground nearby. This species is diminishing in numbers primarily because of loss and degradation of streamside habitat. Although there is some riparian habitat along Tbdildonih Wash, the dense willow component necessary for suitable flycatcher habitat does not exist within the proposed project area. It is highly unlikely that Southwestern Willow Flycatcher occur in the project area because of the lack of preferred habitat, the existing riparian habitat in the area is dominated by Russian olive which is marginal for Flycatcher, and because the area’s understory component is routinely and extensively grazed by livestock. Potential habitat occurs about 0.25 mile from the project area; however, this area will not be disturbed by project construction and is also extensively grazed.

The Western Burrowing Owl (Athene cunicularia hypugea), a Federal Species of Concern (was removed from NESL in 1997), prefers open grasslands and is known to utilize prairie dog burrows for nesting. Habitat also includes bank walls of incised streams and arroyos. During field surveys, prairie dog towns were observed (see Black-footed ferret above); however, no Western Burrowing Owl were observed. The proposed project would cause limited disturbance to prairie dog towns in the project area. During the survey for black-footed ferret, it was estimated that only 30 burrows would be disturbed by construction; therefore, this species is
not likely to be affected by the proposed construction.

The Northern leopard frog (Rana pipiens) is a NESL Group 3 species. The population trend for this frog species is decreasing and 1996 surveys in the Chuska Mountains found no leopard frogs at historic sites. They utilize a variety of aquatic and riparian habitats and are found in association with areas of standing water, marshes, ponds, streams, and other water sources. They are rarely found near ephemeral ponds. While the proposed project calls for the construction of a bridge at Tohdildonih Wash and the installation of culverts on Squirrel Springs Wash and Oak Creek, this limited disturbance is not likely to significantly affect this species. Along the existing N31 roadway, identified as the project’s Alternative Route, the road parallels Tohdildonih Wash for about 3.1 miles. This 3.1 mile area has several smaller areas with cattails and such areas may provide habitat for the northern leopard frog.

The Western seep fritillary (Speyeria nokomis nokomis), also known as the Blue-black silverspot butterfly, is a Federal Species of Concern and a NESL Group 3 species. While little is known about this butterfly, the Navajo Nation up-graded the species listing to Group 3 because “only three or four breeding occurrences” have been documented. Also, several threats to the species have been identified and include grazing, water diversion, drought, and illegal collection. The project area has been extensively and heavily grazed and because proposed construction would result in limited disturbance, this species is not likely to be affected by the proposed project.
Figure 7. Vegetation Areas (Site #1 and #2) Surveyed for Potential Mexican Spotted Owl Habitat along the N31 Project Area (within the withdrawn Critical Habitat Area AZ-NAIr-1), near Navajo, McKinley County, New Mexico (Not to Scale).
Table 1: Special Status Species with the Potential to Occur in the Vicinity of the Proposed Project Area.

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Scientific Name</th>
<th>Federal (USFWS) status</th>
<th>NESL status</th>
<th>State of New Mexico status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plants</strong></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Goodding’s onion</td>
<td><em>Allium gooddingii</em></td>
<td>C</td>
<td>Gp 3</td>
<td>E</td>
</tr>
<tr>
<td><strong>Animals</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Black-footed ferret</td>
<td><em>Mustela nigripes</em></td>
<td>E</td>
<td>Gp 2</td>
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<tr>
<td>Fringed myotis</td>
<td><em>Myotis thysanodes</em></td>
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<td><em>Myotis evotis</em></td>
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<td>---</td>
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<tr>
<td>Long-legged myotis</td>
<td><em>Myotis volans</em></td>
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<tr>
<td>Occult little brown bat</td>
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<tr>
<td>Small-footed myotis</td>
<td><em>Myotis ciliolabrum</em></td>
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<td>Spotted bat</td>
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<td>American dipper</td>
<td><em>Cinclus mexicanus</em></td>
<td>---</td>
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<td>American peregrine falcon</td>
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<td>Arctic peregrine falcon</td>
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<td>Blue grouse</td>
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<td>Golden eagle</td>
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<td>Mexican spotted owl</td>
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<td>Southwestern willow flycatcher</td>
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<td>Western seep fritillary</td>
<td><em>Speyeria nokomis nokomis</em></td>
<td>SC</td>
<td>Gp 3</td>
<td>---</td>
</tr>
</tbody>
</table>

* Endangered Species Act (ESA) (as prepared by U.S. Fish and Wildlife Service) status: Only
Endangered and Threatened species are protected by the ESA.

E = Endangered: any species that is in danger of extinction throughout all or a significant portion of its range.

T = Threatened: any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

C = Candidate: taxa for which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

SC = Species of Concern: taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat are not currently available to support proposed rules.

CH = Critical Habitat, as established by the agency.

P = Proposed for listing in the identified category listed above.

S/A = Similarity of Appearance.

**Navajo Endangered Species List (NESL) Status:** Only Groups 2 and 3 are protected by Tribal Code (17 Navajo Tribal Code Section 507).

**Group 2** = those species or subspecies which are in danger of being eliminated from all or a significant portion of their range on the Navajo Nation.

**Group 3** = those species or subspecies which are likely to become endangered within the foreseeable future, throughout all or a significant portion of their range on the Navajo Nation.

**Group 4** = any species or subspecies for which the NNFWD does not currently have sufficient information to support their being listed in Groups 2 or 3, but has reason to consider them. The NNFWD is actively seeking information on these species to determine if they warrant inclusion in a different group or removal from the NESL; these species have no legal protection under the Navajo Tribal Code.

**State of New Mexico status:**

**NM FAUNA**

E = Endangered Animal species whose prospects of survival or recruitment within the state are in jeopardy.

T = Threatened Animal species whose prospects of survival or recruitment within the state are likely to become jeopardized in the foreseeable future.

### 3.7 CULTURAL RESOURCES

An archaeological inventory along the proposed alignment was conducted in 1989 by personnel from BIA. Four archaeological sites and two isolated occurrences were identified along the N31 route during this survey. BIA contracted with Zuni Cultural Resource Enterprise’s Zuni
Archaeology Program (ZAP), a cultural resource management contract firm, for archaeological data recovery along the two proposed project routes; for the N30 and the N31 projects. ZAP conducted testing at all four of the N31 sites (test excavations at two prehistoric sites and ethnographic documentation at two historic sites). The work was accomplished in the spring of 1992. In consultation with BIA and Navajo Nation Historic Preservation Department (NNHPD), it was determined that no further work was necessary at these sites because of loss of integrity and lack of data potential; however, a burial was excavated during the testing phase. Reburial was conducted in June, 1993, which completed the field work. All cultural resources work was conducted in consultation with the Navajo Nation Tribal and New Mexico State Historic Preservation Officers, and BIA under a Memorandum of Agreement and accepted by the Advisory Council on Historic Preservation (Appendix H).

There was some voiced concern and a verbal request for protection of “two grey hills,” one of which the existing N31 roadway has cut through and the other which is the proposed location for excavation for the east approach/on-ramp to the proposed Tohdiidonih Wash bridge (Public Hearing Minutes, September 29, 1987; Appendix A). These “two grey hills” are identified as a “landmark” and may be considered as a “traditional cultural property” (TCP). The small hill, for which excavation is proposed for the bridge’s east approach, is located immediately south of the Tohdiidonih Wash’s confluence with Bowl Canyon Creek. Many other TCP’s are also located in the project area.

3.8 LAND USE

3.8.1 Grazing

The Mexican Springs Chapter is in Land Management District 14, and the Crystal Chapter is in Land Management District 17. Many local residents hold grazing and/or land-use permits along the entire route of the proposed project. At higher elevations, the hill country, especially in the Crystal Chapter, is well watered and fertile providing good grazing areas for livestock. Most area residents raise sheep and cattle.

3.8.2 Agriculture

Soil quality, slope, and water availability determine the agricultural potential in a given area. Approximately 220,000 acres in the Navajo Nation Reservation are designated as suitable for cultivation. There are 55 registered family farms in the proposed project area: 30 farms in the Mexican Springs Chapter area and 25 farms in the Crystal Chapter area. Additional families from the Crystal Chapter have filed for farming plots to the Farm Board. Information is not available for the Crystal and Mexican Springs Chapters to ascertain how many acres are actually suitable for cultivation; however, Crystal Chapter lists fertile farming land as one of their natural resources.

3.8.3 Mineral Resources

One of the primary components of the Navajo resources base is its mineral wealth. Fuel mineral deposits such as coal, uranium, oil, and gas provide the majority of the revenues on which the tribal government operates. There are either known or potential sand and gravel resources in the proposed project area. There are no copper, uranium or coal mines along or near the
proposed project area. There are, however, coal mines located in the nearby Fort Defiance, Naschitti, Tohatchi, and Coyote Canyon Chapter areas.

3.8.4 Hunting, Fishing, and Gathering

The 4,500,000 acres of woodland forest on the Navajo Nation are valued as a source of piñon seeds, which are used as food by the Navajos and are regarded as a cash crop. The existing N31 roadway provides access to the plentiful piñon trees in the Chuska Mountains, as well as the mountain lakes such as Asaayi Lake. Asaayi Lake is stocked with rainbow and brown trout as well as cat fish, and several of the mountain lakes offer good trout fishing. N31 also provides mountain access to areas for hunting waterfowl, pheasant, quail, and other large and small game in the Asaayi and Whiskey Lakes areas and the Chuska Mountains.

3.8.5 Recreation

Narbona Pass in the Chuska Mountains is the site of one of the most popular and competitive cross-country running events in the southwestern region, and the Narbona Pass' picnic area hosts area schools for picnics and games. The Mexican Springs Chapter area provides recreational areas at Asaayi and Whiskey Lakes for fishers, campers, and hikers, and Camp Asaayi provides recreational facilities for youth camping activities.

3.8.6 Timber Harvesting

The piñon-juniper woodland on the Navajo Nation is valued as a source of poles for fences, corrals and homes. Dead trees such as juniper, piñon, oak and pine are sources for firewood. The Navajo Nation contains 537,000 acres of timberlands found mainly in the nearby Fort Defiance and Tsaile areas. Both the Mexican Springs and Crystal Chapters list timber as a local natural resource. At the western end of the existing N31 roadway is an inactive sawmill, NFPI, once the primary purchaser of timber offered for sale by the Navajo Nation. Timber was processed at this sawmill. Therefore, one of the purposes of the proposed roadway project was to provide improved access for timber harvesting in the southern Chuska Mountains. However, the sawmill closed operations in about 1991, because of an inadequate supply of timber and the failure of the Navajo Nation Forestry Department to file a Ten Year Forest Management Plan after many extensions of the previous plan. As noted above, the USFWS has withdrawn the designation of Critical Habitat for the Mexican Spotted Owl.

3.9 SOCIO-ECONOMICS

The proposed right-of-way lies within two Navajo Nation Chapters: Mexican Springs and Crystal Chapters. Nakaibito is the main town located within the Mexican Springs Chapter, and Navajo is the main town located within the Crystal Chapter. The Mexican Springs Chapter had a population in 1993 of 728 and a projected 1997 population of 753; the Crystal Chapter had a 1993 population of 758, and a projected 1997 population of 805. The median household income for Nakaibito is $16,250, and the median household income for Navajo is $19,508, much higher than the Navajo Nation's $10,433 median household income (U.S. 1990 Census). The principal employers in the Mexican Springs Chapter area are the Navajo Nation, U.S. Postal Service, and the Mexican Springs Trading Post. The major employers in the Crystal Chapter area are the
As noted above, Millennial Homes plans to spend $1.5 million to convert the defunct NFPI lumber mill into a 120,000 square feet modular-home manufacturing plant that will eventually employ 3,000 workers. The Navajo Nation Tribal Council has voted to approve a 25-year lease with Millennial. Jobs would start at $6.50 per hour, with a potential wage increase to $11.00 per hour to $13.00 per hour after a 90-day probation period. There will be two daily work shifts that will employ approximately 400 employees after 4 months of operation. The plant was expected to open in March 1998. The Navajo Reservation is suffering from a 56% unemployment rate. By providing gainful employment, Millennial Homes should locally and regionally ameliorate the reservation’s very high unemployment rate.

The Mexican Springs Chapter 1996 school enrollment was: Tohatchi Elementary School, 80 students; Tohatchi Middle School, 50 students; the Tohatchi High School, 518 students; and the Chuska Boarding School, 25 students. The Crystal Chapter's 1996 school enrollment was: Chee Dodge Pre-school, 20 students and Crystal Boarding School, 165 students.

Of the total households represented in the Nakaibito and Navajo area, 67% and 90%, respectively, use public or private companies for their water source; 69% and 86%, respectively, use the public sewer system for sewer disposal; and the majority of households in both the Navajo and Nakaibito areas use utility gas, bottled or tank LP gas, or wood to heat their homes. Of these household units, 60% do not have a telephone, while 77.5% of all housing units on the Navajo Nation do not have a telephone (U.S. 1990 Census).

Law enforcement and fire protection services for the Mexican Springs Chapter area are provided by sources in Crownpoint, and services for the Crystal Chapter are provided by sources in Window Rock. Area residents travel to both Ft. Defiance and Gallup for most of their health care needs. The tribal offices that provide services within the Mexican Springs and Crystal Chapters are Navajo Child Development, Navajo Community Health, Navajo Department of Employment and Training, Navajo Senior Citizen Center, Navajo Adult In-Home Care, Navajo Foster Grandparents Program, Navajo Food Distribution, Navajo Aging Services, and Navajo Division of Social Services.

Recreational facilities located in the Crystal Chapter area are an outside basketball court, baseball fields, and parks; facilities located in the Mexican Springs Chapter area are outside basketball courts and baseball fields. The closest libraries are located in Naschitti, Tohatchi, and Fort Defiance Chapters. The closest rodeo grounds are located in the Sawmill, Naschitti, and Fort Defiance Chapters. The Mexican Springs Chapter House was built in 1986 and renovated in 1991, and the Crystal Chapter House was built in 1964, and renovated in 1984. Both chapter houses also have a community planning entity.

3.10 PEDESTRIANS, EQUESTRIANS, AND BICYCLISTS

The highway transportation system is characterized by the interaction of alternative modes of transportation; motor vehicles including transit services, bicycles, and walking. Because of the rural character of the Navajo Nation, equestrians are often accommodated by roadways. Because the existing N31 roadway is located in a visually aesthetic area, the roadway may be used for bicycle travel. However, because of the long distances of isolated travel, probably the most common user is the "advanced" touring bicyclist. At present the roadway is hazardous to
bicyclists because of the steep grade and winding curves. Also there are few places for bicyclists to pull over and rest or to move to the right to get out of the way of faster traffic.

3.11 VISUAL RESOURCES

The proposed project area is located at the foothills of the south end of the Chuska Mountains and is known for its scenic views. The roadway begins at Split Mesa and ascends into the Chuskas, winding between vistas and mesas, offering spectacular panoramic views of such natural landmarks as Green Knobs hills, Cleopatra's Needle, Venus' Needle, Bueil Park, Zilditlo Mountain, and the Tohildonih Wash canyon area. The proposed roadway alignment jogs through grasslands, spotted with thistle patches which are heavily used during the late summer months by migrating hummingbirds, and piñon-juniper and Gambel oak woodlands that border the eastern alignment, providing habitat for a variety of wildlife.
4. FORESEEABLE EFFECTS OF THE PROPOSED ACTION AND ALTERNATIVES

4.1 GEOLOGICAL AND SOIL RESOURCES

The entire proposed right-of-way alignment (8.36 miles [13.45 km] long and between 150 feet and 250 feet in width) would be cleared and grubbed prior to construction, and approximately 522,446 cubic yards of roadway excavation would occur during construction. Foreseeable effects to the geological and soil resources of the project area resulting from construction activities consist of disturbing between 131 and 219 acres, including soil disturbance and loss of existing vegetation along approximately 90 percent of the proposed alignment’s right-of-way that is currently undisturbed (about 156.0 acres). The soils on the proposed project site are erodible and slow to drain, and, due to poor drainage, susceptible to both ponding and erosion. Soil and vegetation disturbance reduces infiltration and increases sediment production. Organic matter plays a key role in aggregate formation and stability; grass roots induce aggregate formation. Decreases in cover also reduces interception where precipitation tends to break down aggregate bonds. Out of the 131 to 219 acres, 22.75 acres will be covered with impervious roadway materials, resulting in a slight increase in the runoff coefficient, and, consequently, an potential increase in erosion rates along the disturbed, unpaved roadway areas. To reduce these impacts, the proposed roadway design includes flattened slopes, an aggressive re-vegetation program, and major erosion control features, including necessary installation of rip-rap on the proposed roadway and bridge embankments and ditch blocks, all of which would prevent the deterioration of geological and soil resources over time. Vegetation cover, especially, increases rainwater infiltration into the soils rather than losing the moisture as run-off which creates gullies and increases sedimentation into the local drainage-ways. Erosion from surface water is also discussed below in Water Resources.

Under the No Build alternative, there would be no effect on existing conditions; in other words, soil erosion throughout the project area would continue at its current rate, which is relatively high. During severe thunderstorms that produce heavy rainfall, high flows would continue to destroy portions of the existing N31 roadway threatening vehicular traffic and increasing road maintenance costs. Severe weather conditions causing poor road conditions such as rain-soaked or drifted snow also hampers access to the area and delays timely arrival of emergency and police services. The traveling public including school buses would continue to be exposed to unsafe roadway conditions such as poor visibility due to substantial vertical and horizontal curves.

The Alternative Route would require flattening of several sharp horizontal curves, pushing the roadway further into adjacent sandstone mountains which would require heavy rock blasting. Further, shifting the roadway away from the mountain would result in more of the roadway being exposed to Tohdildonih Wash, requiring armoring of the outside embankment slopes to prevent erosion. Rock outcrops which are exposed along the alternative alignment would require some roadcuts needed for construction, producing new exposures of these formations.

The No Build alternative or construction of either the Alternative Route or the Proposed Route would have no effect on the area’s climate.
Section 404 of the Clean Water Act of 1972 (CWA; 33 U.S.C. 1251 et seq.), as amended, provides for the protection of waters of the United States through regulation of discharge of dredged or fill material in aquatic habitats, including wetlands. The U.S. Army Corps of Engineers (Corps) Regulatory Program (33 CFR Parts 320-330) requires that a Section 404 determination be conducted for all proposed construction that may affect waters of the United States. The Regulatory Branch of the Corps' Albuquerque District, conducted a reconnaissance survey of the proposed project area and made a 404 determination on January 25, 1995 (Appendix G). The proposed project would require 404 authorization. In the proposed action, the placement of dredged and fill material associated with surface water drainage structures would be authorized under Nationwide Permits No. 14 and No. 3, provided the permit conditions are met including any required notification procedures.

Section 401 of the CWA requires that any permit applicant under Section 404 also obtain water quality certification from the water pollution control agency. This certification is normally issued by the New Mexico Environment Department; however, the U.S. Environmental Protection Agency (EPA), Region 9, San Francisco, California, administers certification for Navajo Nation lands. Conditions attached to the Permit and the Water Quality Certification issued to the BIA by the EPA would greatly reduce the potential negative effects of the proposed action to water resources of the construction area.

Section 402 of the CWA, as amended, regulates point source discharges of pollutants into waters of the United States and specifies that storm-water discharges associated with construction activity be conducted under National Pollutant Discharge Elimination System guidance (NPDES). Storm-water discharge associated with "construction activity" includes discharges from construction activities (clearing, grading, and excavation) that result in disturbance to five or more acres of land. NPDES guidance would apply to this project because the construction area is more than five acres. Project construction would comply with the general conditions of NPDES, a Notice of Intent would be filed with EPA by BIA, and a Storm Water Pollution Prevention Plan for the project would be developed and be kept on file at the construction site and becomes part of the permanent project record. One major condition of the NPDES general permit is the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The six major phases of the SWPPP are: (1) site evaluation and design development, (2) assessment, (3) control selection and plan design, (4) certification and notification, (5) construction/implementation, and (6) final stabilization/termination. All project construction activities would utilize Best Management Practices (BMPs) including the SWPPP to reduce/eliminate pollutants. BMPs include practicing "good housekeeping" procedures, performing preventive maintenance, maintaining visual inspections, preventing and responding to spills, controlling sediment and erosion, managing runoff, training personnel, keeping records, and reporting, and any other activity-specific and site-specific storm water best management practices that apply.

The Navajo Nation Water Code (Title 22, Navajo Tribal Code, Chapter 7), administered by the Navajo Department of Water Resources Management, states "It is unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.T.C. 254, to impound, divert, withdraw, or otherwise make any use of, or take any action of whatever kind affecting the
use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except water-use rights obtained under and subject to this Code." Therefore, the BIA or their Contractor would obtain a water-use permit from the Navajo Nation Department of Water Resources Management prior to the start of construction activities for water obtained from Navajo Nation sources. In order to allow proper review, the permit application for water-use would be filed with the Navajo Nation at least thirty (30) days before water use is scheduled to begin. Any construction in waters of the United States that might be used temporarily to obtain water, must also be approved by Sections 404 and 401 of the CWA.

One foreseeable effect on surface water resources from a paved roadway surface in the construction of either the proposed N31 roadway or the Alternative Route, rather than dirt/gravel surfaces, is increased surface water runoff. All disturbed areas and re-contoured slopes would be mulched and re-seeded to assist in stabilization of soils to minimize erosion. Initially, storm water flowing from the paved (impervious) road surface over newly shaped roadway slopes would cause slight erosion that would progressively decrease until disturbed areas became stabilized. In the project area, existing surface water drainage patterns including those of Oak Creek, Squirrel Springs Wash, and Tohdildonih Wash would temporarily receive sediment-laden runoff from the disturbed, unpaved right-of-way areas during high precipitation events. However, proposed construction activities would construct drainage structures and erosion/sedimentation control features with the utilization of energy dissipators such as rip-rap and culvert outlet stilling basins to reduce overland surface flow velocities while not disturbing existing surface water drainage patterns. The effect to water resources from construction of the bridge would be minimal due to the implementation of special conditions attached to the Section 404 of the Clean Water Act permit.

Project activities would have no effect on ground water quality or supplies. Further, because there are no wetlands nor special aquatic sites within the proposed right-of-way, wetlands would not be affected by the proposed action. The small wetland located outside of the right-of-way near the proposed bridge site at Tohdildonih Wash would be fenced prior to construction in order to prevent equipment from disturbing its important aquatic features. Finally, any project activities within the surface drainage ways will be in compliance with Executive Order 11988, Flood Plain Management and Executive Order 11990, Protection of Wetlands.

The No Build alternative would have no effect on existing conditions; that is, the continued use and high erosion associated with the use of the existing dirt/gravel surface of the Alternative Route would continue on its present trend. Under the No Build alternative, the existing roadway conditions are not expected to substantially contribute to sediment or other non-point source pollution to area washes. The No Build alternative would not affect the current quality of area ground water, floodplains, or wetlands.

4.3 AIR QUALITY

The proposed action, as well as the Alternative Route, will not result in any permanent or significant degradation of air quality; however, some localized and ephemeral increases in the concentration of dust and combustion emissions would be expected from construction activities,
including the operation of an asphalt plant and construction vehicles and equipment. Therefore, excavations, embankments, stockpiles, haul roads, access roads, plant sites, waste areas, borrow areas, and all other work areas within or without project boundaries would be required to be maintained so that dust would be controlled which could cause a hazard or nuisance to others. Sprinkling water or other approved temporary dust suppression methods, such as chemical treatment, light bituminous treatment, or similar methods, would be used to control dust. Sprinkling would be repeated at such intervals as to keep all parts of the disturbed area at least damp at all times. Dust control would be performed as work proceeds and whenever a dust nuisance or hazard occurs. The operation of an asphalt plant during construction may require an Air Quality Permit from the Navajo EPA Air Quality Office, which may require various mitigative measures to limit the suspension of particulates, thereby reducing potential negative air quality effects of the proposed action. The No Build alternative may result in long-term air quality degradation due to the continued generation of suspended particulates in the form of dust.

4.4 BIOLOGICAL RESOURCES

The foreseeable effects of the proposed action on the biological resources of the project area would not be significant. There would be a temporary disturbance of approximately 156 acres of currently undisturbed land, which would include the loss of some sparsely vegetated groundcover. Some effects to the three-acre musk thistle patch, piñon-juniper woodlands, and Gambel oak woodlands—all heavily biotically-utilized natural areas—would also occur as a result of the proposed project. However, adverse impacts to animals utilizing these areas would be minimized if all necessary clearing occurs during the winter months. Winter clearing of piñon-juniper may have some impact on local deer; however, the impact is not expected to be significant. No protected plant species would be affected by project activities. The construction plans would include environmental directives to minimize disturbance of native vegetation within the project limits.

Other effects of the proposed action, including the establishment and use of borrow areas, water sources, and construction yards, may cause animal populations intolerant of conditions accompanying construction to be temporarily displaced, causing temporary stress on wildlife in the proposed project area. There may also be increased roadkills, resulting from both new traffic and increased traffic speeds, and an increase in rodent populations resulting from a "greening effect" due to augmented water availability from runoff for roadside vegetation. Deer and rabbits are particularly susceptible when caught in headlight glare. Right-of-way fencing has been requested and would be designed to allow for wildlife movement. Small birds feeding next to the roadway, raptors feeding on carcasses left on the highway, and snakes crossing or warming themselves on the pavement would also be effected. Species intolerant of roads and traffic are not likely to be displaced by either the No Build or the Alternative Route alternatives since the N31 roadway and its traffic already exist.

4.4.1 Special Status Species.

The proposed project area was surveyed for Federal, Navajo, and State listed species including rare, endemic, and sensitive plant species. No listed plant species were observed during
All six bat species noted above potentially occur in McKinley County and may occur in the project area. Roosting and feeding habitat will not be altered by the proposed action. Due to non-disturbance of roosting or feeding habitat and the limited nature of proposed construction, these species and their habitat are not likely to be significantly affected.

Due to the lack of potential, suitable, or preferred habitat or seasonality, several species noted in Section 3.6.3 above are not expected to occur in the project area, and due to the limited nature of the proposed action, there would be no effect on these species by the proposed project.

**Black-footed Ferret.** As described above in Section 3.6.3, Special Status Species, no evidence of black-footed ferret trenching, scats, nor signs of predation were found during NFWD’s black-footed ferret survey. It was further determined that due to the insufficient density of prairie dog burrows and the high incidence of feral and domestic canines near the proposed alignment, as well as strong evidence that the prairie dog town had been abandoned, that the proposed project would have no effect to this species. However, due to the dynamic nature of prairie dog colonies and due to the time elapsed since the survey, NFWD recommends resurvey of the prairie dog town prior to construction for verification of abandonment.

**Peregrine Falcon.** There is also suitable Peregrine Falcon habitat near the proposed project alignment and there are current and historically known nesting sites in the vicinity. The Corps, on behalf of the BIA, has initiated informal consultation with the NFWD and USFWS on this species. For protection of Peregrine Falcon and its nesting sites conservation measures will be handled confidentially through consultation and coordination during all phases of construction between the BIA, NFWD, and USFWS. Conservation measures would include conducting Peregrine Falcon presence/absence surveys and reporting as well as monitoring of known sites each year through the duration of the project. Survey reports would be distributed to and reviewed by persons on a "need to know" basis to protect the identity of known habitat in and near the proposed project area. The BIA agrees that if Peregrine Falcon are found breeding/nesting within immediate vicinity of construction activities during the critical nesting period from March 1 to July 15 that construction would be stopped in that location during the critical period. Therefore, the proposed project is "not likely to adversely affect" the Peregrine Falcon. Note: Recently, The PF has been delisted from the USFWS T/E list, Therefore only the Navajo Nation FWD will need to be involved in the consultations. Due to the possibility of a change in status on the Navajo Nation list for the PF, The above mentioned measures may not be necessary. Negotiations with the Navajo Nation FWD prior to construction will be necessary to determine the extent of conservation measures for the Peregrine Falcon.

**Golden Eagle.** There is suitable Golden Eagle habitat near the proposed project alignment and there are current and historically known nesting sites in the vicinity. The Corps, on behalf of the BIA, has initiated informal consultation with the NFWD on this species. For protection of nesting sites and due to Navajo Nation cultural sensitivity of this species, conservation measures will be handled confidentially through consultation and coordination during all phases of construction between the BIA and NFWD. Conservation measures would include conducting Golden Eagle presence/absence surveys and reporting as well as monitoring of known sites each year through the duration of the project. Survey reports would be distributed to and reviewed by persons on a "need to know" basis to protect the identity of known habitat in and near the
proposed project area. BIA agrees that if Golden Eagle are found breeding/nesting within immediate vicinity of construction activities during the critical nesting period from February 1 through May 15 that construction would be stopped in that location during the critical period. Therefore, the proposed project is "not likely to adversely affect" the Golden Eagle.

Mexican Spotted Owl. Because no Mexican Spotted Owls, or signs thereof, were encountered during the 1995 and 1996 surveys conducted by NFWD, it is the BIA's and NFWD's opinion that habitat contained within the proposed project alignment has been adequately and completely surveyed for Mexican Spotted Owl, and that there will be no significant adverse effect to this species as a result of the project. Critical Habitat, at one time identified and designated in the project area by the USFWS, has been withdrawn by the USFWS. Furthermore, based upon the vegetation survey conducted, the conifer vegetation adjacent to the proposed right-of-way is neither suitable nor potential habitat for the owl, and construction of the road would not adversely affect the owl. This determination was made because of the discontinuous and very narrow band of mixed conifer woodland that exists in the project area without an old growth component or perennial source of water. Such habitat does not correspond to that described in the Mexican Spotted Owl Recovery Plan (USFWS 1995), which states that within the Colorado Plateau, the owl occurs in "steep sloped, mixed-conifer forested canyons and steep-walled canyons on the Navajo Nation." Finally, during a field trip taken with representatives from USFWS and NFWD, it was determined that the owl habitat in and around the proposed project area is marginal at best, and that it is highly unlikely the Mexican Spotted Owl would inhabit the proposed project area because there is potential owl habitat located several miles away in the higher elevations of the Chuska Mountains. The Corps initiated, on behalf of the BIA, informal consultation with the USFWS and NFWD on the Mexican Spotted Owl and based on survey results and discussions with USFWS and NFWD, that a determination of "no effect" can be made, completing Section 7 consultation for this species.

4.5 CULTURAL RESOURCES

Consultation between the BIA, the New Mexico State Historic Preservation Officer, and the Navajo Nation Historic Preservation Officer for known and unknown cultural resources in the proposed N31 project area has occurred with a determination of "no effect" for the proposed project. Consultation under Section 106 of the National Historic Preservation Act of 1966, was completed on October 24, 1989, with the Advisory Council on Historic Preservation acceptance of a Memorandum of Agreement (MOA) between the BIA, the New Mexico State Historic Preservation Officer, and the Navajo Nation Historic Preservation Officer for construction and rehabilitation of the N30 and N31 roadways. This MOA serves as a cultural resource "clearance" document for the proposed undertaking, and the project may proceed according to the stipulations outlined in the MOA (Appendix H). Based on this finding, the BIA may initiate the process of acquiring the necessary right-of-way for the N31 roadway.

According to the stipulations contained in another agreement document entitled A Programmatic Agreement Among the Navajo Nation, the Bureau of Indian Affairs, Navajo Area Office, the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Officer, the New Mexico State Historic Preservation Officer, and the Utah State Historic Preservation Officer for Cultural Resource Management Projects Conducted under the Auspices
of the Navajo Nation Historic Preservation Department, Roads Planning Section within the Boundaries of the Navajo Nation, the BIA in coordination with NNHPD, will ensure that the provisions of the project description concerning cultural resource effects are implemented accordingly, as follows:

When historic properties are found in the area of potential effect of an undertaking, HPD shall apply the criteria of effect and adverse effect (36 CFR 800.9(a) and (b)) and inform the BIA Area Director which measures are available to avoid, minimize, or mitigate any effects to such properties. HPD may also recommend a preferred measure. In situations where cultural and historic properties are subject to effects that cannot be avoided by project redesign, HPD, with the agreement of the BIA Area Director, will ensure that appropriate treatment plans, designed to minimize or mitigate effects, are developed and implemented for the affected properties. The Advisory Council on Historic Preservation, appropriate State Historic Preservation Officers, and interested parties will be provided with determinations of effect and copies of all proposed and finalized treatment plans.

As per the Discovery Plan noted in the MOA (Stipulation No. 6; Appendix H); should previously undiscovered artifacts or features be unearthed during construction, work would be stopped in the immediate vicinity of the find, a determination of significance made, and a mitigation plan would be formulated in coordination with the above entities. The construction contract plans and specifications have provisions to ensure that all known and unknown cultural resources are adequately protected. All cultural resources including traditional cultural properties and the treatment thereof are protected by Federal, State, and Tribal laws and regulations.

There are also many traditional cultural properties known to occur in the project area. It is recommended that BIA evaluate local TCP’s known to occur along the proposed project’s Split Mesa Valley alignment including the “two gray hills” noted in Section 3.7 above.

4.6 LAND USE

Foreseeable effects of the proposed action on land use would include the loss of 24 acres of grazing land, which would be withdrawn from the adjacent grazing allotments for the new roadway easement. Construction of the new roadway on the recommended Split Mesa Valley alignment would divide several existing graizing allotments into two parcels. This would pose some inconvenience upon the grazing permit holders and may make utilization of the allotted grazing lands somewhat inefficient; however, the majority of the local residents in this area are in favor of the Split Mesa Valley alignment (Appendix A). Because the proposed roadway would run through grazing areas, livestock may be present near the construction area during the construction period. Local Chapter House Resolutions have requested specific items such as permanent right-of-way fencing, gates and/or cattle-guards at roadway turnouts, and cattle underpasses, that would be included in the project design and installed along the proposed roadway corridor during construction. While the land along Tohdilodonih Wash and the Alternative Route may be included in grazing allotments and land use permits, this area along the existing N31 roadway is not extensively used for grazing. While construction of the Alternative Route would result in significant traffic delays and possibly periods of road closure, it would most
likely not significantly effect current land use or grazing practices or methods. The No Build alternative would not impact land use or the use of grazing lands in and around the proposed project area.

The proposed action and the Alternative Route alternatives would have a positive effect on future residential and commercial development of the area, as well as on recreation, hunting, and fishing by providing residents, recreationists, and tourists with improved reliable access to Asaayi Lake, Whiskey Lake, the Chuska Mountains, and Narbona Pass, which have great scenic and recreational qualities.

Improved roads tend to encourage the movement of people near the roads and allow for substantial community development. Though some migration would occur with the improvement of an area transportation route, migration is not expected to be significant since most of the area's land is presently controlled by existing land use and grazing permits.

Both the proposed action and the Alternative Route alternatives would have a positive impact on mountain access for timber harvesting, if resumed, by providing logging trucks with an improved all-weather transportation route to and from the Chuska Mountains, which are identified as a resource area for timber.

Because there are no copper, uranium, or coal mines along or near the proposed project area, N31 would not provide access to mineral extraction areas being mined or likely to be mined in the near future. Finally, no "prime or unique farmland" would be affected by the proposed project.

4.7 SOCIO-ECONOMICS

Foreseeable beneficial effects of the proposed action to the socio-economic resources of the project area would include improved and safer access to and from the Navajo and Tohatchi communities to schools, health facilities, post offices, shopping centers, employment areas, and social events in nearby communities, as well as reduced maintenance costs on public and private vehicles. However, an adverse effect of the proposed action may be an increase in more serious injuries sustained as vehicular speeds increase. During construction, some inconvenience to local residents and travelers would be unavoidable; however, this effect would be temporary and offset by longer term benefits. Commercial traffic as well as traffic from adjoining communities should not experience detrimental effects or isolation from the construction process. Traffic would be maintained on the existing roadway until construction of the new alignment is underway; then one-lane closures would become necessary, and flagpersons or signals would be used to keep the roadway open for public use. The No Build alternative would have no positive affect on the socio-economics of the project area; rather, they would remain static.

4.8 NOISE CONDITIONS

Construction activity would result in some temporary effect on local wildlife. Local noise levels resulting from increased traffic levels are expected to slowly increase in the future no matter which project alternative is chosen. Noise levels and noise duration would increase temporarily during construction primarily from the use of construction equipment. These noise increases are
not likely to cause additional long-range adverse affects on wildlife. However, some noise levels are thought to disturb certain nesting raptors; therefore, as noted above, all suitable raptor habitat in the area will be surveyed immediately prior to commencement of construction activities to avoid those areas and minimize disturbance.

4.9 VISUAL RESOURCES

The proposed right-of-way width will be greater than the right-of-way width of the existing N31 roadway. Further, the western four-mile stretch of the proposed roadway will be constructed where only small dirt roads and trails currently exist; therefore, the proposed project will result in broader vistas. Methods employed to minimize effects on topography and native vegetation will reduce project effects on existing visual resources. No extraneous removal of vegetation by the contractors would be allowed. Newly excavated slopes will be flattened to a greater than 3 to 1 ratio to facilitate the reestablishment of vegetative cover, and the land area surrounding the road will be graded and contoured to a natural appearance. All disturbed areas will be re-seeded with native grass and shrub species. Construction debris and equipment will be contained and kept out of sensitive areas.

4.10 PEDESTRIANS, EQUESTRIANS, AND BICYCLISTS

The addition of 12-foot-wide paved shoulders will provide adequate roadway width for bicyclists to move to the right of faster motor vehicles, or to pull over and stop. These accommodations may entice more bicycle use. Equestrians will be able to use the right-of-way between the shoulders and the right-of-way fence, if installed. Finally, pedestrians are likely to use some stretches of proposed N31 roadway to travel to and from their residences, N12, and recreational areas.

4.11 U.S. DEPARTMENT OF TRANSPORTATION SECTION 4(f) PROPERTIES

Title 23 of the United States Code 138 (Department of Transportation Act of 1966, Section 4(f)) states that no land from any significant publicly owned park, recreation area, wildlife refuge, or any significant historic site can be used for a Federal Highway Administration project without the evaluation of prudent and feasible alternatives. No property associated with this project is considered Section 4(f) property, therefore, no Section 4(f) evaluation has been performed.

4.12 UTILITY ADJUSTMENTS

Portions of the proposed project alignment run adjacent to overhead power lines, crossing them at seven locations. These power lines would require relocation prior to and/or during construction of the proposed roadway. Relocation and construction activities would be coordinated with Navajo Tribal Utility Authority. Environmental effects of the utility relocation within the proposed right-of-way including Endangered Species Act and cultural resources concerns would not create significant environmental impacts.
4.13 CUMULATIVE IMPACTS

The construction of the proposed N31 roadway segment has been concurrently planned by the BIA with construction of the remaining segments of N31, as well as Navajo Route 30. Environmental assessments for each roadway segment either have been or will be prepared prior to construction of each segment. Construction of each roadway segment would result in an improved N31/N30 roadway running west to east, beginning at Navajo, New Mexico, and ending at Mexican Springs, New Mexico, with cumulative, but minor and temporary adverse impacts to soils, water resources, biological resources, and air resources of the area. Most of these impacts would be negligible and would be mitigated for during construction. There is an existing gravel roadway that runs from Navajo to Mexican Springs, New Mexico, that is currently utilized. This current use involves dust and noise emissions that would be decreased with the construction of a paved road. However, as discussed in this document, vehicular traffic would likely increase along the entire route in this relatively secluded mountain area. Increased ease of access provided by a modern, paved roadway is likely to result in adverse impacts to the area’s wildlife by increased residential and commercial development, illegal hunting and dumping, and threat of roadkill. While paved roadway surfaces may slightly increase water run-off, the new roadway, with modern design and erosion control features and capacities, and re-vegetation measures would in the long term reduce the high erosion/sediment rates currently experienced with the existing roadway and it’s route. However, increased access is likely to result in positive impacts to both the socio-economics and land uses of the entire area. The paved roadway with modern design would improve public safety and decrease vehicle maintenance costs for local residents. Roadway maintenance costs incurred by the BIA would also be reduced.

In consideration of the past, present, and future (foreseeable, reasonable actions), the cumulative impacts of the proposed project would be negligible on the resources of the construction area. There are no other completed or planned Federally-funded or non-Federal projects in the vicinity of the proposed project. The currently proposed project would not create significant cumulative environmental impacts.

4.14 IRRETRIEVABLE COMMITMENT OF RESOURCES

Irretrievable commitment of resources for the construction of the proposed N31 roadway or the Alternative Route would include fuel (primarily diesel) for construction activities, and construction products such as gravel, aggregate, sand, cement, metal, plastic, and wood. In addition, about 24 acres of grazing land would be lost, and 156 acres of soil and vegetation would be temporarily disturbed. However, the use of any of these resources is minimal in comparison to the regional or national consumption.
5. CONSULTATION AND COORDINATION

This Environmental Assessment was prepared by the U.S. Army Corps of Engineers, Albuquerque District, in compliance with all applicable Federal statutes, regulations, and executive orders, including:

Archaeological Resources Protection Act of 1979 (16 U.S.C. 470)
Clean Air Act of 1972, as amended (42 U.S.C. 7401 et seq)
Clean Water Act of 1972, as amended (33 U.S.C. 1251 et seq)
National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq)

This EA also reflects compliance with all applicable State of New Mexico, Navajo Nation (NN), and BIA regulations, statutes, policies, and standards for conserving the environment such as water and air quality, endangered plants and animals, and cultural resources, including:

NN Water Code (7 N.T.C. 254)
NN Solid Waste Code (RCO-171-90)
NN Pesticide Code Resolution (CJY46-86)
NN Fish and Wildlife Department policies protecting endangered species (Title 17 N.T.C. 507)
NN Highway Public Safety Department policies
NN Cultural Resources Protection Act (CMY-19-88)
NN Policy to Protect Traditional Cultural Properties
NN Policies and Procedures Concerning the Protection of Cemeteries, Gravesites, and Human Remains (ACMA-39-86)

and BIAM30.

A scoping letter dated September 8, 1992, with a project description and associated maps, that solicited comments regarding the proposed project was sent to all known individuals, groups, and governmental organizations who may have concerns or interests with the proposed project. A list of these entities is available upon request. The scope of this EA was determined in part by consultation with these entities. Both biological and abiotic issues of concern that surfaced during the scoping process, as outlined below, helped define the objectives for this assessment. (See, Appendix C and I for agency responses to the scoping letter). Comments to the draft EA and Corps responses are in Appendix J.

Biological Concerns.

The Navajo Natural Heritage Program of the Navajo Fish and Wildlife Department, the U.S.
Fish and Wildlife Service, and the New Mexico Energy, Minerals, and Natural Resources Department provided threatened and endangered species lists and expressed concerns regarding the proposed project and/or requested surveys of the project area (See Section 3.6.3, "Special Status Species" above and Appendices C, D, E, F, I, and J for scoping letter and draft EA comments and responses, species lists, and survey results.)

Abiotic Concerns.

The Navajo Nation Water Resources Management Department is concerned with all activities that use or may affect the water resources of the Navajo Nation, particularly, the potential effects the proposed road project may have on surface water drainages in its vicinity. They specifically requested that this assessment address the hydrologic and geomorphologic effects of activities such as paving, bridge replacement, culvert placement, and other drainage modifications on surface drainages near the project. The Navajo Nation Minerals Department noted that additional rights-of-way required for this project, such as additional width, would require approval of the Resources Committee of the Navajo Nation Council, and that borrow material from Navajo land for this project would require sand and gravel permit(s) to be approved by the Resources Committee.

The Navajo Nation Historic Preservation Office noted that the consultation required under Section 106 was completed as of 24 October 1989, and transmitted Memorandum of Agreement, which serves as a cultural resource clearance document for the construction of N31 (as well as N30).

The Navajo Forest Products Industries responded to the scoping letter by writing a favorable letter of recommendation for the project, stating that the road would provide improved access for timber harvesting in the southern Chuskas. Further, they suggested that the design should accommodate current legal load limits in New Mexico of 80,000 pounds gross vehicle weight, and that the slope of the roadbed should not exceed six percent.

The Navajo Tribal Utility Authority reviewed the project maps and discovered that the proposed project would cross their existing single phase overhead powerline at seven locations. However, the proposed project would not affect any existing water/wastewater lines in the area.
6. CONCLUSIONS

The economic condition of any area is dependent on many factors, one of which is transportation facilities. Adequate transportation by itself will not bring the economic standard of the Navajo Nation up to that of the rest of the country, but an inadequate transportation system will hold economic development back, possibly preventing achievement of equality. Navajo Route 31 is a part of the Master Road Plan for the Navajo Reservation. This road, like other rural roads, is important because it connects smaller villages and communities to major roads, providing access to shopping areas, employment centers, schools, and medical facilities. Unless rural roads on the Reservation are constructed/reconstructed to allow quick and convenient all-weather passage of vehicles, isolation of these communities can be expected during bad weather, and participation in school, work, and medical care will continue to be low. Therefore, if N31 is not improved, the Master Road Plan will not be functioning as presently conceived, and economic, education, and health improvement on the Reservation will be set back.

The construction of N31 is consistent with the long-term planning goals and objectives of the Navajo Nation. Over the long-term, any adverse effect must be weighed against the advantages of improving access to provide for orderly growth of the Navajo/Tohatchi area and improved regional accessibility.

Project effects on biological, geological, and cultural resources; air and water quality; land use; and socio-economics have been analyzed and assessed to be negligible. Adverse effects would be compensated for by mitigation measures, and therefore, would not result in any significant adverse effects to the human environment. The Alternative Route alternative to the proposed action would result in excessive construction costs and environmental impacts resulting from the construction intensive work required to rehabilitate the existing roadway. These costs and impacts were determined by the BIA to be unnecessary and infeasible in relation to the planned action. Therefore, considering the negligible environmental effects of the proposed action and its ability to effectively correct transportation deficiencies on N31, the proposed action is both recommended and preferred by the BIA.

Mitigation measures or environmental commitments incorporated into the project design to compensate for the disturbance to the project area are outlined in the following sections.

6.1 GEOLOGICAL, SOIL, AND WATER RESOURCES

1. Culverted drainage will be placed as necessary at those highly erodible locations along the project alignment. This drainage will have dissipator pools with loose riprap lining and aprons installed to control erosion in natural channels.

2. Erosion control measures consisting of hydraulic seeding of cut and fill slopes will be implemented the entire alignment of the proposed roadway and all construction areas.

3. Loose riprap will be used to stabilize areas within intermittent wash areas subject to erosion.

4. All waterholes generated for the purposes of construction will be refilled post-construction, using the reserved first four to five inches of seedbank (topsoil) as the top layer of the fill, and recounted to correspond to the existing landscape.
5. Any utilized borrow pits will be blanketed with the reserved first four to five inch seedbank (topsoil) and recontoured to correspond to the post-construction landscape.

6. Additional rights-of-way required for N31 construction, such as additional width or realignment, will require approval of the Natural Resources Committee of the Navajo Nation Council.

7. Borrow material/aggregate obtained from Navajo lands for N31 construction would require sand and gravel permits to be obtained by the BIA Contractor from the Navajo Nation.

6.2 WATER RESOURCES

1. The BIA construction engineer is required to see that the road contractor complies with the conditions of Section 404 of the CWA, including those permit conditions requiring proper maintenance of culverts and protection of endangered species and historic properties, as well as any conditions attached to the Section 401 Water Quality Certification.

2. In compliance with the CWA's Section 402(p) NPDES program, a Storm Water Pollution Prevention Plan will be developed as part of the project plans. This plan will provide temporary measures for controlling erosion and sedimentation of surface waters by storm water runoff at the construction site. Specifications on temporary erosion, sediment, and water pollution control will be included in the construction contracts to ensure that temporary pollution control provisions are coordinated with permanent soil erosion control measures to provide maximum attainable erosion control. The temporary structures will be inspected and maintained during construction to ensure that they are functioning properly. Pollution prevention measures will also be outlined for any activities which may involve non-storm water discharges. The plan will also stipulate permanent erosion control structures and measures, including a revegetation plan. The revegetation plan will result in at least 70% of the original amount of vegetative cover as required by NPDES.

3. Seeding will be composed of native grass and shrub species. The seed mix will be composed of available species comparable to the surrounding vegetation.

4. The BIA engineer is required to monitor the contractor's compliance with the plans and specs which contain Section 402(p) of the CWA's best management practices, including sediment and erosion control and storm water management measures.

5. The contractor is required to obtain a permit from the Navajo Division of Water Resources (NDWR) for construction of N31 at least 30 days prior to construction. This permit will require all points of diversion, withdrawal, or impoundment of water be identified. The BIA believes it is the responsibility of the NDWR to monitor the contractor's compliance with any conditions stipulated in said permit.

6. Numerous culverts will be upgraded to assist drainage which crosses the roadway. Where erosion and gullying is a problem, protective measures such as installation of rip-rap and rock check dams on the downstream side will be used.

7. Tohdiidonih Wash will be properly protected from construction activities and unnecessary equipment entering the wash.

8. Unwanted materials generated will be hauled to designated, environmentally approved disposal sites. Unusable or remaining excavated material will be disposed of in an environmental suitable disposal site that is decided upon and coordinated by the Contractor with the appropriate regulatory agencies. The Contractor shall notify the Project Manager in writing of the details of disposal operations. Borrow material, rock waste, vegetative debris, etc., shall not be placed in
disposal operations. Borrow material, rock waste, vegetative debris, etc., shall not be placed in wetland areas or areas which may impact endangered species or archaeological resources. An archaeological survey and environmental clearance shall be obtained by the Contractor before disposal sites are accepted.

6.3 AIR QUALITY

1. Compliance with the specifications will be strictly administered for all burning operations and dust-producing aspects of construction operations. The control of particulate matter emanating from various construction activities will be in accordance with applicable Navajo Nation regulations. Dust abatement is required at all Contractor occupied areas, including the proposed roadway construction area, borrow areas, staging areas, and haul roads. The amount of dust created by construction will be limited by measures such as wetting exposed earth during construction and applying chemical soil stabilizers as soon as earth disturbing activities are completed. Dust abatement activities will reduce the health risks to construction workers associated with airborne dust.

2. An air quality permit from the Navajo Nation's Environmental Protection Agency's (NNEPA) Air Quality office would be required for the operation of the asphalt plant. Further, the BIA believes it is the responsibility of NNEPA to comply with permit requirements and enforcement because the BIA has no oversight or control over NNEPA or their permitting process.

6.4 BIOLOGICAL RESOURCES

1. Disturbance of surrounding vegetation will be minimized. No extraneous land disturbance or excavations will be caused by construction equipment. No unnecessary clearing of trees and shrubs from right-of-way fence to right-of-way fence will be allowed. No disturbance of vegetation will be performed beyond project easements granted by the Navajo Nation. Permanent right-of-way fence will be installed prior to other construction.

2. Re-vegetation of any disturbed land should be performed using native vegetation and reserved four to five inch seedbank (top soil) from excavations. Vegetation restoration plans should be directed to Judy Willetto, Range Conservation, Navajo Department of Agriculture, or the Natural Resource Manager, Branch of Land Operations, Fort Defiance Agency.

3. Ordinarily, if any trees are to be removed during construction, a permit may be required from the Navajo Forestry Department. However, the BIA believes that because Navajo Forestry is under the BIA through a 638 contract, the BIA is not required to apply for a permit for tree cutting. However, if said permit is required, the permit is required to be in cutter's possession at the time of tree cutting. Additionally, the BIA will be responsible for monitoring the Contractor's compliance with the Navajo Forestry Department's Forest and Woodlands Regulations tree cutting guidelines, recommended for piñon-juniper woodlands.

4. The Navajo Fish and Wildlife Department recommends that any piñon or juniper that are removed during construction be replaced with like saplings which can be acquired from A.K. Arbab, Navajo Forestry Department.

5. Signs to alert drivers to wildlife crossings will be installed along the roadway where warranted.

6. A survey for active bird nests will be performed prior to the commencement of project
activities if construction will be performed during the nesting season. If active nests of protected bird species are encountered during the construction period, the NFWD will be notified immediately and conservation measures will be identified and employed.

Specifically, as noted in Section 4.4.1 above, for protection of the American Peregrine Falcon and the Golden Eagle and their nesting sites, BIA has committed to conservation measures that will be handled confidentially through consultation and coordination during all phases of construction between the BIA (and their contractor), Navajo Fish and Wildlife Department (NFWD), and U.S. Fish and Wildlife Service (USFWS). Conservation measures would include conducting Peregrine Falcon and Golden Eagle presence/absence surveys and the subsequent reporting of, as well as monitoring of known sites each year through the duration of the project. Survey reports would be distributed to and reviewed by persons on a "need to know" basis to protect the identity of known habitat in and near the proposed project area. The BIA agrees that if Peregrine Falcon are found breeding/nesting in the immediate vicinity of construction activities during the critical nesting period from March 1 to July 15 that construction would be stopped in that location during the critical period. For protection of the Golden Eagle and its nesting sites, and due to Navajo Nation cultural sensitivity of this species, BIA agrees that if Golden Eagle are found breeding/nesting within immediate vicinity of construction activities during the critical nesting period from February 1 through May 15 that construction would be stopped in that location during the critical period. The BIA would also provide NFWD and USFWS with project information such as maps of the specific alignment. Note: Recently, the PF has been delisted from the USFWS T/E list. Therefore, only the Navajo Nation FWD will need to be involved in future consultation. Due to the possibility of change in status on the Navajo Nation for the Peregrine Falcon, the above mentioned measures may not be necessary. Negotiations with the Navajo Nation FWD prior to construction will be necessary to determine the extent of conservation measures for the Peregrine.

7. Portable toilets will be available for construction workers and delayed motorists throughout the construction period.

6.5 CULTURAL RESOURCES

1. The Zuni Cultural Resource Enterprise (ZCRE) recommends that fences be constructed along the right-of-way at each archaeological site to deter further damage to the sites.
2. Because of the high probability that unidentified historic properties may be present, ZCRE recommends that an archaeological monitor be present during all phases of construction.
3. ZCRE recommends that construction be allowed to commence with the understanding that a Discovery Plan for treatment of previously unidentified historic properties would be developed by BIA-NAO and reviewed by the appropriate agencies, as per the MOA.

6.6 SOCIO-ECONOMICS

1. At the commencement of construction activities, right-of-way fencing will be installed throughout the project area to contain cattle within current grazing areas.
2. Relocation of utilities will be coordinated with NTUA. The NTUA may be required to file an application with the appropriate Navajo agency to obtain approval for relocating utilities. Utility relocation will be conducted concurrently with project construction. The project contract will ensure that utility adjustments are not delayed over extended periods of time.
3. No road closures are expected due to the construction schedule. Commercial traffic, as well as traffic from adjoining communities should not experience detrimental effects or isolation from the construction process. Traffic will be maintained on the existing roadway while construction of the new alignment is underway. When one-lane closures are necessary, flagpersons or signals will be used to keep the roadway open for public use.

6.7 VISUAL RESOURCES

In order to retain the natural appearance of the surrounding landscape, native plant cover should not end abruptly at the right-of-way fence. By minimizing disturbance of especially larger vegetation, which take years to regrow, the scenic qualities of the area can be retained. Disturbed areas adjacent to the newly constructed road will be graded and contoured to a natural appearance, and all disturbed areas will be reseeded with native grass and shrub species.

IN SUMMARY, cumulative effects caused by the construction of N31 to the resources of the project area would be insignificant, provided the BIA implements the above-described mitigative measures and the following best management practices during construction:

1. To the greatest extent possible, inspect all equipment daily to ensure that leaks or discharges of lubricants, hydraulic fluids, or fuels do not occur. Store and dispense of all fuels, lubricants, hydraulic fluids, and other petrochemicals away from any water body and its banks. Contain and remove any petrochemical spills, including contaminated soil, and dispose of these materials at an approved upland disposal site, in accordance with United States and Navajo Environmental Protection Agency protocol.

2. To the greatest extent possible, sediment catchments should be constructed to catch and filter runoff from the construction sites. Contain any poured concrete in sealed forms and behind cofferdams to prevent discharge into wetland areas. Place no surplus concrete within arroyos or their banks. Contain and treat, or remove for off-site disposal, any wastewater from concrete batching, vehicle washdown, and aggregate processing.

3. To the greatest extent possible, place only clean, course, and low erosion-type fills in a water body and employ silt curtains, settling basins, or other suitable means to control the turbidity. Monitor water quality during the construction phase to ensure compliance with EPA and Tribal water quality standards.

4. Riprap and other bank stabilization materials, including temporary and permanent structures placed in a water course, must be free of fines and chemical contaminants.

5. To the greatest extent possible, all topsoil removed from road construction should be utilized as the uppermost layer of fill material whenever possible.

6. To the greatest extent possible, damage to trees and shrubs should be avoided. All disturbed terrestrial sites should be revegetated with a mixture of native grasses and bushes to stabilize soils and reduce erosion. Use only uncontaminated soil or alluvium suitable for revegetation with native plant species for backfills.

7. To the greatest extent possible, wetlands, riparian vegetation, and sensitive habitats on or near the project area should be avoided and protected.

8. To the greatest extent possible, parking should be limited to the construction corridor. Utilize existing roads and right-of-ways whenever possible, and keep all off-road driving to a minimum.
(9) To the greatest extent possible, the relocation, addition, and construction of new powerlines should follow existing right-of-way, access roads, and private drives whenever possible. All line conversions and new line construction should incorporate the latest guidelines for the protection of raptors, as noted in *Suggested Practices for Raptor Protection on Power Lines - State of the Art in 1996*, by the Avian Power Line Interaction Committee. The document may be requested from the Raptor Research Foundation, Inc., 12805 St. Croix Trail, Hastings, Minnesota 55033, phone (612) 437-4359 or JMFITZPTRK@aol.com.
7. LITERATURE CITED AND TAXONOMIC REFERENCES

Albuquerque Journal

American Association of State Highway and Transportation Officials

Avian Power Line Interaction Committee

Brown, David E., ed.

Harrison, Hal. H.

National Geographic Society

Navajo Nation Commission for Accelerating Navajo Development Opportunities

New Mexico State University, Agricultural Experiment Station
1974 Soil Associations and Land Classification for Irrigation, McKinley County. Agricultural Experiment Station Research Report No. 262. In Cooperation with Water Resources Research Institute and Soil Conservation Service. Las Cruces, New Mexico.

Nickelson, Howard B.

Martin, William C., and Charles R. Hutchins

New Mexico Environmental Department, Air Quality Bureau

Rodgers, Larry, ed.


for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

APPENDICES

Appendix A: Project History, Public Meetings Minutes, Chapter House Resolutions, Roads Committee Resolution


Appendix C: Special Status Species Lists and Vegetation Surveys Information
    - U.S. Fish and Wildlife Service
    - Navajo Fish and Wildlife Department
    - New Mexico Energy, Minerals and Natural Resources Department

Appendix D: Black-footed Ferret Survey (1994)

Appendix E: Mexican Spotted Owl Surveys (1995 and 1996)

Appendix F: Vegetation Survey of Mexican Spotted Owl Habitat (1996)

Appendix G: Water Resources Information
    - Section 404 Determination and Authorization Documentation
    - Section 404 Nationwide Permits No. 3 and 14 (and Conditions)
    - Water Quality Certification

    Storm Water Pollution Prevention Plan

Appendix H: Cultural Resources Documentation

Appendix I: Scoping Letter Responses

Appendix J: Comments to the Draft EA
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix A

Project History
Public Meetings Minutes
Crystal Chapter House Resolution
Mexican Springs Chapter House Resolution
Red Lake Chapter House Resolution
Roads Committee Resolution
Appendix A

Project History

September 29, 1987

From the documents made available to the BIA by the Fort Defiance Road Agency, it appears that the first official public hearing on the proposed road project was held on September 29, 1987, with the Mexican Springs and Tohatchi Chapters. According to the minutes of this hearing (Appendix A), there had been previous chapter meetings held; however, minutes were not taken, and, therefore, the meeting was not made official. This particular hearing was identified as the "final meeting set for the public to express their opinion and to make final approval." It appears that disagreements had arisen at previous meetings because the proposed road alignment was designed to go through people's corrals, current residences, and old residences. However, the BIA noted that some right-of-way consents had been signed by residents. The need for fencing along the entire route was also expressed to keep passers-by from trespassing onto private property, controlling wood haulers, and keeping livestock from wandering onto the road and being hit; reinforced gates along the fencing were also requested to prevent theft of livestock. Other residents mentioned the need for cattleguards with turnouts and cattle underpasses (7-foot culverts). However, the proposal for cattleguards brought quite a bit of disapproval from the public due to the belief that cattleguards can be hazardous to livestock. The BIA noted at this hearing that fencing is also a concern to the BIA because installing fencing along the entire 16-mile road project would cost millions of dollars and they feared that the residents would not take care of it. Another big concern noted was the need to install properly sized culverts. According to the residents, the culverts currently installed are apparently not sized correctly because some culverts and bridges wash out with the first rain. Several residents have encountered hardships due to impassable roads and vehicles becoming stuck at wash crossings because culverts had washed out. The existing N31 roadway is also used as a school bus route and oftentimes children miss school due to inclement weather and impassable road conditions. The Asaayi Lake turnoff was specifically noted as an area that becomes very muddy and impassable thereby preventing fishermen and hunters from reaching fishing and hunting areas and bringing in revenue to the Navajo Nation. The two grey hills near Navajo between which the bridge is expected to be placed were mentioned as landmarks that needed preserving. Finally, in answer to the question posed by the BIA as to which of the two proposed locations for the road the public approved, there was noted support for using the existing N31 route for construction of a new roadway.
A March 15, 1993 memo from the BIA Roads Section of the Navajo Nation's Division of Natural Resources to the Project Review Office of the same division discusses a March 11, 1993 meeting that was held with the Crystal Chapter to request that the four land users (grazing permittees) objecting to granting right-of-way on their grazing land to the BIA for the proposed N31 roadway project reconsider and give their consent (Appendix A). Out of the nine people attending this meeting, only one out of the four objecting land users was present. Ms. Anna Boyd Anderson was the only land user to attend, and she refused to give her consent and requested that the proposed right-of-way be rerouted through another grazing area or a different route because she and her family would like to use her grazing land for a homesite, and, further, she does not want her livestock stolen or her area filled with trash by passers-by. The Division of Natural Resources requested that the Chapter work closely with the land users and another meeting be rescheduled after the land users have met with their immediate families to discuss the right-of-way issue.

January 27, 1994

A January 27, 1994 memo from the BIA Roads Section of the Navajo Nation's Division of Natural Resources was sent to the Project Review Office of the same division requesting field clearance for the N31 road project (Appendix A). According to this memo, the proposed right-of-way lies within two Navajo Nation Chapters--Mexican Springs and Crystal Chapter. The memo identifies seven individuals in the Mexican Springs Chapter and four individuals in the Crystal Chapter who have grazing permits and land-use rights that will be affected by the road project and who should consent to the road project. According to this memo, all seven individuals in the Mexican Springs Chapter and two individuals in the Crystal Chapter have consented to the road project without any objections; the remaining two individuals in the Crystal Chapter refused to consent. This memo states that one of the two dissenting land users does not have a valid grazing permit and that her late brother had consented to the road project in 1973, and that the other land user's parents consented to the proposed road project in 1973. This memo requests that the Project Review Office accept the consents of these land users' late brother and parents and proceed with the processing of the application documents to obtain the right-of-way for this road project, and for a resolution from the Fort Defiance Agency Road Committee requesting that the President of the Navajo Nation implement eminent domain (16 Navajo Tribal Code [N.T.C.], Section 1401) to obtain the right-of-way.

January 5, 1995

On January 5, 1995, the BIA Road Section/Project Review Office of the Navajo Nation's Division of Natural Resources transmitted to the BIA Branch of Road's Office field clearance reports and reports of meetings with the two still-objecting land users to granting right-of-way
August 31, 1993
A September 3, 1993, memo from the N31 road project's Navajo Nation Division of Natural Resources Right-of-Way Agent to the Project Review Office of the same division discusses a August 31, 1993, meeting the Right-of-Way Agent had with Ms. Nora Lilly Roanhorse about her refusal to consent granting right-of-way for the N31 road project (Appendix A). Ms. Roanhorse still refused to consent during this meeting for the following reasons:

- The N31 right-of-way will cut her grazing area in half, and, therefore, she won't be able to use the southern portion of the area where a well is located;
- She does not trust BIA roads when they say that they will put in a livestock underpass;
- She was never informed of the proposed road project either by the Chapter or the BIA during the planning stages (early 1970s?) until now;
- She believes there would be a problem with people abusing the new roadway by littering, speeding, and killing livestock;
- She would like to have some land that can be used by future generations; and
- She suggested that BIA should build the new roadway on the existing road.

January 31, 1994
A February 2, 1994, memo from the N31 roadway project's Navajo Nation Division of Natural Resources Right-of-Way Agent to the Project Review Office of the same division discusses a January 31, 1994, meeting the Right-of-Way Agent had with Ms. Annie Boyd Anderson about her refusal to consent granting right-of-way for the N31 road project (Appendix A). Ms. Anderson still refused to consent during this meeting for the following reasons:

- She would be losing a large portion of her use area, and N31 would cut that in half, and she does not have much of a use area;
- She wants her kids and grandkids to have usage of the area for homesites and livestock;
- She fears people will be depositing trash along the roadway and that passers-by would not respect her privacy;
- She needs to contact her brothers and sister for their opinion and she won't consent by herself; and
- She recommends the existing route and does not know why the BIA needs a new route when they already have one.
After the right-of-way agent explained why this road was needed for "their" own benefit and the benefit of the Navajo Nation, Ms. Anderson got angry, and the right-of-way agent left.

June 20, 1995

A meeting was held in the BIA Area Office to discuss the requirements of finalizing the Environmental Assessment for the proposed N31 road project (Appendix A). Of particular concern was the National Environmental Protection Act (NEPA) requirement that alternative measures must be considered. Therefore, constructing a new roadway using the existing N31 roadway alignment was determined to be an alternative route worthy of NEPA analysis. The BIA also decided during this meeting if another public hearing was held, with the role of choosing a preferred alignment, and the public expressed preference for the alternative route, the BIA would seriously consider the ramifications of going with the public's preferred route. Therefore, the memo, dated July 14, 1995, from the Area Director to the Fort Defiance Agency Area Road Engineer, summarizing this June meeting requested a public hearing be advertised and held.

September 13, 1995

A public hearing was held in Navajo, New Mexico, by the Ft. Defiance Road Agency for the public to determine which route the public supported—the proposed route or the alternative route (existing N31 route). The majority of the people that attended the hearing were in favor of the alternative route.

August 28, 1996

A legal opinion from the Navajo Nation's Department of Justice was issued on August 28, 1996, in response to a request for legal opinion from the Navajo Nation's Project Review Office of the Division of Natural Resources (Appendix A). This opinion states that the Navajo Nation/BIA does not need a signature of consent from Ms. Anderson due to a variety of reasons and therefore Navajo Land Department, Division of Natural Resources, can proceed with application documents for the N31 right-of-way approval. (From this legal opinion, it appears that by this date, the only objecting land user was Ms. Anderson.)
SUPPORTING THE IMMEDIATE CONSTRUCTION OF N31 (1) 2&4
AND REQUESTING THE TRANSPORTATION AND COMMUNITY
DEVELOPMENT COMMITTEE OF THE NAVAJO NATION COUNCIL,
AND THE BUREAU OF INDIAN AFFAIRS, NAVAJO AREA ROAD,
TO PROVIDE IN THE PROJECT THE R-O-W FENCES, GATES,
CATTLEGUARDS AND STOCK UNDERPASSES.

WHEREAS:

1. Pursuant to 2 N.N.C., Section 3 (A), the Crystal Chapter is a certified chapter of the
   Navajo Nation Chapter as listed and under 11 N.N.C., Part 1 Section 10; and

2. Pursuant to 2 N.N.C., Section 1 (B), the Crystal Chapter is the delegated governmental
   authority to make decisions over local matters consistent with Navajo law, custom and tradition;
   and

3. The Project N31 (1) 2&4 (the road from Mexican Spring, NM to Navajo, NM over
   Chuska Mountain) has been delayed over four years because of land acquisition and
   environmental problems; and

4. The current rationale, by the Area BIA Roads, pending the project lacks an updated EPA
   studies required by the Clean Water Act (Water Permit 401 and 404) which protects the Assayii
   Wash and the Threatening and Endangered Species Act, protecting the Spotted Owl; and

5. The two studies were completed more than two years ago and the two studies must be
   renewed every two years. The current studies has expired and a new studies must be performed
   again; and

6. The majority of the residents living along the proposed road construction, N31, are
   livestock owners and use the area for grazing; and

7. For future safety road users and keeping the livestock off the road, the Crystal Chapter
   has taken this action to include in the road construction project the following infrastructure:
   construct fences along the road, fencing off the R-O-W, install gates and cattleguards and stock
   underpasses where necessary; and
8. The immediate construction of N31 would be very important and economical for approximate one hundred residents living along the route and communities of Red Lake, Crystal, Navajo, Sawmill, Chinle, Tasile, and Lukachukai who will have an alternate road.

NOW THEREFORE LET IT BE RESOLVED THAT:

1. The Crystal Chapter, hereby, supports the immediate construction of N31 (1) 2&4 and requesting the TCDC of the NNC and the BIA Navajo Area Road to help in the project of R-O-W fences, gates, cattleguards and livestock underpasses where necessary.

2. The Crystal Chapter further requests the Navajo Area BIA Roads Officials to immediately update and complete the Clean Water Act (401 and 404) study for the consultant to use as indicated in the FY 1998 IRR Priority list, including the Threatening Endangered Species study immediate construction of N31; and

3. The Crystal Chapter also requests that the existing route N31 that lies along the Tohdiildonih Wash be closed when the new N31 is completed.

CERTIFICATION

We, the Crystal Chapter, hereby certify that the foregoing resolution was duly considered at a duly called meeting at the Crystal Chapter, Crystal (Navajo Nation), New Mexico at which a quorum was present and that same was passed by a vote of _35_ in favor, _0_ opposed and _0_ abstained on this 16 day of May, 1999.

Motioned by: Ross Begay
Seconded by: Linda Mark

Crystal Chapter President
RESOLUTION OF MEXICAN SPRINGS CHAPTER
FORT DEFIANCE AGENCY DISTRICT 16

Requesting the Bureau of Indian Affairs, Branch of Roads to Immediately Complete the Design and Acquire the Right-of-Way Acquisition for Route N-30 and N-31, from U.S. 666 Highway Towards Mexican Springs, New Mexico to Route N-12 Red Lake, New Mexico

WHEREAS:

1. The existing on System Route N-30 beginning at U.S. 666 East of Mexican Springs, New Mexico extending towards the west intersection with Route N-31 and on to Route N-12 is currently an un-improved roads; and

2. The road is heavily traveled on by School buses and other private vehicles and through traffic; and

3. The Mexican Springs Chapter has sought by resolutions and memorandum to have this route improved by constructing a new paved road. Action was also supported by the local people, Chapter, District 14 Council, Fort Defiance Agency Council, the Fort Defiance Agency Roads Committee and on to the Area Director; and

4. The construction of this road currently appears on the priority list as number 4, on the Agency Roads Construction list of the Agency; and

5. To this date, some of the required documents such as the design Right-of-Way Acquisition, which are not completed for this proposed construction project; and

6. The Area Director, Mr. Donald Dodge has instructed the Bureau of Indian Affairs Road Staff and the Agency Roads Committee to prepare documents for the assessment study and the budget to get the construction project started from U.S. 666 to Mexican Springs Chapter.

NOW THEREFORE BE IT RESOLVED THAT:

1. The members of Mexican Springs Chapter, requests and consents the Agency Roads Committee, BIA Branch of Roads and the Navajo Tribe that they immediately complete the design work and acquire the necessary right-of-way assessment study and a budget for this project, so that it will be ready for construction as soon as possible, when it appears as the No. 1 on the construction priority list.

2. The members of the Mexican Springs Chapter further requests that the BIA-Area Road Office to immediately start on the requests so that it will be ready for construction.
CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by the Mexican Springs Chapter at a duly called meeting at Mexican Springs, Navajo Nation (New Mexico) at which a quorum was present and that same was passed by a vote of 51 in favor and 0 opposed this 6th day of March, 1983.

Ernest Bitsie, Chapter President

Harry Belone Sr., Chapter Vice President

Richard Bowman, Chapter Secretary

CONCURRENCE:

Kenneth Howard, Council Delegate
Mexican Springs Chapter

WHEREAS:

1. Pursuant To 26 N.N.C., Section 3 (A), the Red Lake Chapter is a certified chapter of the Navajo Nation as listed and under 11 N.N.C., Part I, Section 10; and

2. Pursuant to 26 N.N.C., Section 1 (B), the Red Lake Chapter is delegated the governmental authority to make decisions over local matters consistent with Navajo Law, custom, and tradition; and

3. The Project N31 (1) 2 & 4 (the road from Mexican Spring, NM to Navajo, NM over Chuska Mountain) has been delayed over four years due to land acquisition and environmental problems; and

4. The current rationale for the holdup by the Area BIA Road Officials is that the project lacks the updated EPA studies which is required by the Clean Water Act (Water Permit 401 and 404) protecting the Assayii Wash and the Threatening and Endangered Species Act, protecting the spotted owl; and

The two studies were completed more than two years ago; the two studies must be renewed every two years. The current studies had expired and new studies must be performed again; and

6. Majority of the residents living along the proposed road construction, N-31, are livestock owners and use the area for grazing; and

7. For the safety of the future road users and keeping the livestock off the road, the Red Lake Chapter has taken this action to include in the road construction project the following infrastructure: construct fences along the road, fencing off the R-O-W, install gates and cattle guards and stock underpasses where necessary; and

8. The immediate construction of N31 would be very important and economical for approximate one hundred residents living along the route and communities,
such as Red Lake, Crystal, Navajo, Sawmill, Chinle, Tsiie, Lukachukai, who would have an alternate route.

NOW THEREFORE LET IT BE RESOLVED THAT:

1. The Red Lake Chapter hereby supports the immediate construction of N-31 (1) 2&4 and requesting the TCDC of the NNC and the BIA, Navajo Area Road, to provide in the project the R-O-W fences, gates, cattle guards and livestock underpasses where necessary.

2. The Red Lake Chapter further requests the Navajo Area BIA Roads Officials to immediately update and complete the Clean Water Act (401) and 404 study for the consultant to use, including the Threatening Endangered Species study so the N31 could be under construction immediately, as indicated in the FY 1998 IRR Priority list; and

3. The Red Lake Chapter also requests that the existing route N31 that lies along the Tohdilohni Wash be closed when the new N31 is completed.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Red Lake Chapter Community, at duly called meeting at which a quorum was present and that same was passed by a vote of ___28___ in favor, ___0___ opposed, and ___0___ abstentions, this 12th day of May, 1999.

[Signature]
Paul Milford, President
TO: Navajo Area Office, Gallup, New Mexico  
Attention: Area Road Engineer

A public hearing which was advertised twice in the Navajo Times was held on September 29, 1987 at the Chapter House in Mexican Springs, New Mexico at 2:30 p.m.

The meeting was conducted by Messrs. Ernest Bitsie, Harlin Scott and Harold Noble of the Fort Defiance Agency Road Committee and Messrs. John Quilliman and Luke Deswo of Bureau of Indian Affairs were in attendance. Approximately fifty (50) other persons were also at the meeting.

About twenty (20) persons made comments during the hearing.

The majority of the comments favorable to construction. A copy of the transcription of the hearing is enclosed.

John W. Robertson

Attachments

FAX TRANSMITTAL

To: Casandra        FROM: Steve
U.S. ADE          Phone: 842-5455
Fax: 342-9144     Fax: 342-8353

RECEIVED

OCT 14 1987

NAVAGO AREA OFFICE
MINUTES
PUBLIC HEARING
N30 & N31 Proposed Paved Road Construction
Mexican Springs, NM To Navajo, NM
September 29, 1987
2:00 P.M.

Meeting was opened by Ernest Bitsie, Chairman Fort Defiance Agency Roads Committee

Invocation was given by Jeanette Barney.

Introductions were made as follows:
- Joe Bitsie, Mexican Springs Chapter Vice-president
- FB Branch of Roads Representative (John Quillinan & Luke Deswood)
- Harold Noble, Roads Committee Member/District 17
- Harlin Scott, Roads Committee Member/District 7
- Ora Burbank, Tohatchi Chapter Official
- 2 Archeological Representatives
- Other Roads Committee Members not here yet

BITSIE:
This road has been requested for and it's been planned for some time and started by some of our former leaders, most of them are no longer here with us. Luep Barney's here who is one of them. Please stand up and see you on the wall. Now it's our turn to carry on what they had started. Those of us who live along these routes. Today, we will further discuss and plan for the road construction of these routes (N30 & N31). This meeting was set to discuss this road request. A Public Hearing is required prior to any road construction. This was what took place for the N30 from highway 666 to the housing area. This road request will be from the end of the pavement and on over the mountains to Navajo, New Mexico. This will not be done tomorrow or the next week but as everything else it takes time. There were funds available at one time but we caused these funds to be used elsewhere because of our disagreements. You've seen the red flags up along the road. Some go through the corrals, in front of residents, some go through old residents. This public hearing is held so we could hear from you, local residents, to hear what your opinions are and to hear what questions you might have. This has been mentioned to you before on several occasions in the past from us, the chapter officials but we are not always believed. This is how we are. And what we've been telling you is really becoming a reality.

HARLIN SCOTT - Roads Committee Member:
Thank you. I would like to say a few words here about this proposed road. The construction work being done now is at District 7 in Dilcon area. They have been over there for over 2 years now and they'll probably be over there till next year. Until after that, they will be out here, that's how it's listed on the Priority List. It'll be a couple more years before they get to N30/N31. The purpose of this meeting is so we can avoid any further disagreement and not to hold up this project again. If you have a disagreement let it be heard here today. Branch of Roads has proposed to construct and pave the road only. They said that fencing will cost at least more and besides that the residents won't take care of it. It'll cost somewhere in the millions to put up the fencing on each of the road for 16 mile road. BUT during the prior meetings the residents did strongly request the fence to be included and put up the same time as the road construction. So if you still wish to have the fencing put up let it be heard here today. The Police Department and the Grazing Officer should really up to the local residents who live along these routes and to express their opinion. We need to know about turnout too.
--Harold Noble - Roads Committee Member:
These routes (H30 & H31) has been in the talking for quite awhile. This is not a recent issue. It has been going up the Priority List and it's finally here. Anytime there's a disagreement it holds up progress. This is the final meeting set for the public to express their opinion and to make the final approval before the planning is done and before the actual construction starts.

--Luke Deswood - Fort Defiance Branch of Roads:
Thank you all for coming. We had three meetings sometime ago but we were told it was not conducted properly and was unofficial. That's why we scheduled this meeting again and had it announced from the radio station and it was in the newspaper. This way the public will know about it and also it is being recorded for the records. Some of you have already signed the Right-of-Way consents. A 200 feet centerline is required in some places where there are hills. Right now the survey work is being done to show the road alignment. Secondly, there is the archeological clearance to be done and thirdly the Plans & Specifications will be drawn up showing the turnouts and where the culverts will be installed. Traffic Study will also be made. So it will be 3-4 years before construction. NARO Roads will do the drafting and design work and they also, along with the Roads Committee and Tribal Transportation Committee, have the authority to allocate funds for these roads and bridge constructions. Today, we are here to get your approval or disapproval.

--EBitsie: Anyone want to comment? We will open this public hearing to the public now.

--Max Belone - Mexican Springs, NM:
We are here to discuss this road which was started about 20 years ago. I don't know what they did with the other papers from the last meeting. Let's approve this road construction. Let's not argue about grazing areas or homesteads or what ever. I was already asked if I wanted a cattle guard, I said no. I want a gate because livestock get caught in the cattle guard. I would recommend to have a gate and the gate welded on somehow onto the fencing this way it won't be that easily stolen. There are a lot thieves. I had a corral for my cows and someone stole it all. So if anyone were to steal these gates they would have to steal the fencing along with it. Reinforce it with extra bolts then welded or something. Install proper culverts not small ones. Some areas wash out with the first rain runoffs. Or they overflow. Then it takes about one week to repair and it's unsafe. There was incident at Chinle where a bridge was poorly built and during heavy rains it washed out and a family drove through and drowned, not realizing the bridge was out. So we want this construction to be done properly.

--EBitsie: Anyone else? This road is for everyone who uses it.

--Luepp Barney - Tohatchi, NM:
I live on this route, but I'm registered with the Tohatchi chapter. This road has been there as long as I can remember. My parents also said it's been there even when they were young. During the heavy rain the culverts wash out and the road would become impassable. Vehicles are ruined. We've been asking for a paved road and I approve of this road construction, it is much needed.

--EBitsie: Anyone else?

--Martha Etsitty - Box 12, Mexican Springs, NM:
I live just up the road. I want to say that it is true that culverts get washed out. I live near one of these areas. I also approve of the fencing on each side of the road. I herd sheep and have some cows. I approve of the cattle guard or a gate.

--EBitsie: Anyone else?

--Loretta Watchman Tsosie - Box 112, Window Rock, AZ:
I have some questions. (Directed to Branch of Roads Engineers) and a request. First of all, I am speaking on behalf of myself, my brothers
My other is Flora Watchman from Navajo, NM. We appreciate this proposed road construction. I approve of it and the fencing too. My questions are:

1) Are you going to go out and ask each resident if they want a cattleguard at their turnouts?

2) Can large culverts be installed so that cows and sheep can cross through from one side of the road to the other?

3) Will there be job opportunities for the local residents?

Request is: Near my home there are two grey hills, according to your maps, it looks as if the road goes through one of them but I would like these hills preserved because it's a landmark.

Thank you.

--Luke Deswood:

1) We won't know about the turnouts until the plans are being drawn up. But they would be drawn and put on obvious turnouts. Places where people are residing and where turnouts are used alot. As for the cattleguards: They would be put in at the turnouts and this comes with the fencing. This will be determined until later on. As mentioned by Mr. Noble and Mr. Scott, if you feel you'd be better off with gates or cattleguards and if you will take care of it then there is no problem.

2) As for the cattle underpass: 7' and 8' culverts are used for this. This again is determined and planned for with the fencing.

3) Hiring of the local residents: This is up to the contractor and this is decided at the time of construction. If a private contractor he hires his own crew. But if BIA Force Account gets the job, then they have their own crew and it would be hard to hire local residents. They are like us, already with BIA. They will be hiring some temporary laborers and operators for 4-6 months if necessary. You can have someone at the chapter level to coordinate this with the contractor and hire some local qualified equipment operators and laborers.

4) Your Request: Is this where the bridge is going to be?

--Loretta W. Tsosie: Yes, it looks like it.

--Luke Deswood:

That won't be determined until after the Plans are drawn up. They might decide a different location for the bridge or that hill might have to be cut if the bridge is best suitable at this location. If a request is made to move this bridge to a different location we can recommend it and it would have to be checked out and an on site review made first.

--EBitsie: Anyone else?

--Raymond Catron - Box 610, Navajo, NM:

I live just at the edge of District 14 in Navajo, NM. I just want to express my appreciation. It's true what's been said so far. We have encountered hardship due to impassible roads. I had made a request to you for improvement of the crossing at that wash. Because I've gotten my vehicle stuck down that wash every year. Others have gotten stuck too. I've gone to BIA Roads requesting a different be bladed to my residents but I was told no because that route is no longer on the BIA System. So, I strongly approve of this road construction. Besides this has been requested and planned for a number of years now. It's been approved on several occasion despite a couple of disagreements in the past. I also approve of the fencing. There are live stock runned over and they also cause deaths along highways. Damages to vehicles are done. It's true there are some who don't take care of the gates but I strongly approve of the fence with gates not cattleguards. There is a cattleguard near Navajo and the cows just go through it because these cattleguards are small so that doesn't do any good. I recommend gates. I want to thank you all for coming and helping make this become a reality. Thank you.

--Nathaniel Tsosie Box 871, Navajo, NM:

I live at Asaaayll Lake turnout and you probably know my mother, Eileen Tsosie. We also appreciate this road construction because we have to drive through the mud since I can remember. The road is needed by all, fishermen, hunters and this brings in revenues to the tribe.
This is also a school bus route. I approve of this road construction and if it could be done right away or soon. We've given you enough time. I've thought of why the tribe couldn't set aside funds to pave even just up to the lakes instead of buying lands. This is just my thoughts. As for the cattleguards: it's kind of a hazard for the cows. And if gates are put up, maybe, they could be chained or reinforced just as it was mentioned before. This is cheaper than the cattleguards. I don't have a grazing permit but I'm just concerned. There should be a fence, some of us work and pay for our vehicles and we don't want livestock killed. I also agree with Loretta. There are a lot of fields in that area but no one plants except for myself and the Morris'. Besides I don't think they have grazing permits. So if they're not using it they shouldn't be opposing it. I don't know who owns those fields but they have been there since I can remember. That's it, thank you.

--Ella Nez - Box 23, Mexican Springs, NH:
I live about 2½ miles from here. We thought this was going to be done right away but it's not. We still want the road and I think it's better to have the fencing. There are a lot of residents and we have livestock. The fencing was requested during the last meeting. During the winter time is the worst time. We get stuck, children are missing school besides everyone will use it.

--Eileen Tsosie:
Thank you all. I live about 9 miles from Navajo at the Asaayii turnout. During heavy rains the wash overflows at the turnout to Asaayii. Is this included with this road construction and if so I would like a cattleguard installed at this location. Then I will run a fencing from this cattleguard to my existing field. This will keep our livestock from getting out. This is my request. There are a lot of people going through here who go fishing. So will you make a better turnout to Asaayii. There is a small culvert and during heavy rains it clogs up and washes out or runs over. These culverts are cleaned out once in awhile. This is all I have to say. Thank you.

--Luke Deswood:
Your question - where are you talking about? You mean to Asaayii turnout?

--Eileen Tsosie:
Yes, that's the main wash.

--Luke Deswood:
Okay, we will strongly recommend this. Sometimes if its necessary the plans will include a better turnout with a larger culvert or possibly a bridge.

--Eileen Tsosie:
There is a lot of water coming through and maybe two culverts are necessary.

--Irene Morris:
I live about 8 miles from Navajo, NH and I agree with this road construction and my children also approve. We would like it fenced with gates not cattleguards. We have livestock and we herd sheep around there. I appreciate it and would like the road soon. We live here year round. We also own one of those fields mentioned earlier but we use our field. Thank you.

--EBitsie: Anyone else?

--Joe Barney:
You have all those plans for the road construction. We have been requesting and giving our approval for the last several years. And its been 25 years now but will it really become a reality? I approve of this paved road and I appreciate it. It's really for our children's use. They have vehicles. During the rainy weather it when it gets impassible. We use it year round. You'd start going up that way, you see Anglos, Mexicans with boats using this road, it's not just us. I was told to come to this meeting by my children and to say yes so I approve.
of the road construction. It's up to the engineers to plan it. It would be great to have this paved road. Thank you.

--Raymond Malone - Box 138, Navajo, NM:
We are all residents of this area and we approve of the road construction. The residents from this community all approve. It's from the other side of the mountain (Navajo, NM) that are doing the opposing during the last meeting. (The Watchmen's) But we've heard today, they approve now. We've also heard of another family disapproving over there and because of the archeological sites and because of all this we've lost funds which was to have been used on this paved road. It is being used over at New Lands, Sanders, AZ. We approve of this road construction because during rainy weather we just have to park across the washes and walk home pigback. I approve of the fence. We, Indians, are bad about taking care of things and in appreciating things, we are always complaining. But regardless I want this road construction and I approve of the fencing. You see roads being built in all sorts of places, even through rock ridges and I know it can be done. This is all for me now. I'll say my thanks until road construction is done. This is it.

--Roy Tom Etsitty Box 37, Mexican Springs, NM:
I'm from around here. Right now I live in the housing area. This road we are discussing here has been slowed down because of some disagreements. This is just holding up the construction. But as I heard that changed and approval is made. We would appreciate it if it could be done. When it gets really muddy, it gets impassible. It's like that all the way over the mountains. Putting up fence is better, this way wood haulers will be controlled. I approve with this road construction and do it soon.

--Alton Thompson - Box 77, Mexican Springs, NM:
This has been requested for and planned for several years now. We all wish for and want this paved road. Fencing is needed too, to keep our livestock off the road. We have some youths who would like to work. Please keep them in mind. Don't put this construction off too long but start construction soon.

--EBitsie:
Anyone else?

--Roslind Tsosie:
We've spent about two hours now discussing this road construction. My reason for the disagreement the last time was because of the Morris' field, but now I approve. It's good this road will be paved. This has been worked on for several years now. I think we've heard a majority approval for the last two hours now. So I want to motion to adjourn this public hearing now. Can this be done? This way we can go on with our chapter meeting.

MOTION SECONDED BY: Alton Thompson

--EBitsie:
I have one question regarding Irene Morris' comment. There are two proposed locations for the road. Which one do you approve of?

--Irene Morris:
Through the present/existing road.

--EBitsie:
You say road construction soon but the government plans and allocates funds two years in advance. So this road construction will follow N35 road construction and will not be until two years. There are a lot of roads being requested for. We're not the only ones. This N30 & N31 has finally reached the top of the priority list (#1). On November 23, 1987 the archeological work will begin. We are here today to get you approval for the Right-of-Way. The fencing needs to be requested now, along with the road construction because if its requested later we'll run into problems. This has happened. Then when the fencing is constructed, who will maintain it? Who will be responsible for accidents due to livestock?
things to be concerned about. You need to take care of your livestock.
We need to help each others in this regard.

--Kenneth Howard:
The N30 paved road from Highway 666 to housing area had started from
#14 on the Priority List and with a lot of work it was completed.
Right now the road construction is taking place in Bilicon area (N15(10))
and that has taken quite awhile to complete. After that is this N30
& N31. This is how it’s shown on the ‘priority list. We had funds
at one time but for one reason or another it was transferred to New
Lands. Let’s approve this and get this road paved. We’d like to hurry
this project, the right-of-way, the archeological clearance, the design
and have this road built right away. We need your help.

MEETING ADJOURNED 4:30 p.m.

Recorded by: JWQuillinan
Transcribed by: EPeshlakai
March 15, 1993

MEMORANDUM

TO: Alfred Dehiya, ASO III
   Project Review Office
   Division of Natural Resources

FROM: Saraphina Tsosie, Secretary
       BIA Roads Section/DNR

SUBJECT: BIA Road Project N31

A meeting was held on March 11, 1993 with Crystal Chapter on the proposed Right-of-Way for BIA Branch of Road on Project N31, Navajo to Mexican Springs Road. The following people attended the meeting:

1. Carol Alvin
2. Perry Wilson
3. Johnny Laughlin, Sr.
4. Saraphina Tsosie
5. Art Slim
6. Ronnie Bahe
7. Anna Anderson
8. Sandra J. Toline
9. Mark Peshlakai

During this time the Council Delegate, Mr. Mark Peshlakai explained the purpose of the meeting and requested the land user (grazing permittees) to reconsider and give their consent. There are four (4) land users who have not given their consent to the project. Only one (1) land user, Ms. Anna Anderson Toline attended the meeting, the other three (3) land users could not make it and requested to reschedule the meeting to a later date.

Ms. Anderson refused to give her consent and requested to reroute the right-of-way through Mr. Kee Holyan grazing area or a different route, not through her grazing area. The reason is she would like her family to use the land for homesite and she said she does not want to get blame for anything and also because of the trash and people taking her livestock. Ms. Sandra Toline agreed with her mother. They requested to meet with their family and discuss the project with them before she can consider giving her consent. Mr. Frank Boyd, a trustee had consented on behalf of Ms. Anderson and her family on October 17, 1973. According to Ms. Anderson this consent is not valid. A legal opinion is requested whether this consent should be used or not.
March 15, 1993
Page Two

Mr. Kee Holyan and Minnie Yazzie Holyan are both deceased, their permit is not valid because its not being probated at this time. Mr. Holyan had consented on October 18, 1973 and Mrs. Holyan had gave her consent on October 16, 1973 for the proposed project.

Ms. Fannie Morris (deceased) had divided her grazing permit among 3 people who are Nora Roanhorse, Leonard Holyan and Arnold Holyan. According to Mr. Ronnie Bahe, Grazing Committee Member for Crystal Chapter, this permits may not be valid because the permit might be within District No. 14, which is outside the Crystal Chapter District. Mr. Bahe will conducted a research on this permit.

Our office is requesting the Chapter to work closely with the land users and to reschedule another meeting after the land users have met with their immediate family. The chapter is to notify our office of the next meeting and the status of the land users request.

Please call me or Mr. Art Slim at tribal extension 6447, if you should have any question regarding the above matter. Thank you this concludes my report.

xc: Chrono/Project File
Art C. Slim, Right-of-Way Agent/BIA Roads
MEMORANDUM

TO: Alfred Dehiya, ASO III
   Project Review Office
   Division of Natural Resources

FROM: Art C. Slim, Right-of-Way Agent II
       BIA Roads Section/Project Review Office

SUBJECT: Meeting with Ms. Nora Roanhorse on BIA Roads Project N31, Navajo to Mexican Springs

On August 31, 1993, I had a meeting with Ms. Nora Roanhorse at her residence pertaining to BIA Road Project N31, Navajo to Mexican Springs. Ms. Roanhorse is a land user that is affected by the proposed right-of-way of said road project that she is objecting and won't consent to the right-of-way.

I explained my purpose of the visit and told her that in any way will I ridicule or blame anything on her decision of not consenting to the road project and that the BIA Roads, Fort Defiance Agency plans to apply for the right-of-way. When the BIA Roads applies for the right-of-way they plan to stay on the old existing road.

Ms. Nora Roanhorse then stated that she's still opposed to the road project and that she won't consent due to the following reasons:

1. That the road right-of-way will cut her grazing area in half, therefore will not be utilizing the southern portion which is where a well is located, which she won't be able to use it. She doesn't trust the BIA Roads when they say that they will put in livestock under pass.

2. She was never informed of the road project either by the chapter or the BIA Roads during the planning stages, until now.

3. That the problem of people abusing the highway will rise, also such things as trash being thrown on the road, speeding, and livestock being killed by vehicles.
4. She's not consenting, also to save some land to be used by her future generations and that her parents objected to the road project in the beginning and she will also do it.

She suggested that the BIA Roads should build and stay on the existing road which is going east from Navajo to Mexican Springs and she pleaded with me not to pursue this project any longer. I then asked if there's any way she can change her mind and consent to the road project, but her answer was no. This concludes my report.

xc: Chrono
Project File
January 27, 1994

MEMORANDUM

TO: Alfred Dehiya, ASO III
Project Review Office
Division of Natural Resources

FROM: Art C. Slim, Right-of-Way Agent II
BIA Roads Section/DNR

SUBJECT: Field Clearance Report on BIA Road Project N31(2), Section "A", Navajo to Mexican Springs Roads

The Bureau of Indian Affairs (BIA), Branch of Roads, Fort Defiance Agency, Post Office Box 619, Fort Defiance, Arizona 86504, has requested for field clearance on the above mentioned road project. The proposed road project is for road construction, operation and maintenance and the right-of-way will be 150.91 feet (46 meters) wide, 8.33 miles (13.4255 kilometers) in length, and contains 154.84 acres (62.666 hectares), more or less, on unsurveyed Navajo Tribal lands within Crystal and Mexican Springs, McKinley County, New Mexico.

The field clearance on the above mentioned project is completed. The proposed right-of-way lies within two (2) Navajo Nations Chapters, which are Mexican Springs and Crystal Chapter.

In the Mexican Springs Chapter, Mr. Joseph Bitsue, Grazing Committee Member was contacted for information on who has grazing permits and land use rights that will be affected by the road project. Mr. Bitsue identified seven (7) individuals who should consent to the road project and they are:

1. Harry Wilson Begay, C# 41,237  Permit # 14-707
2. Elizabeth Begay, C# 42,264  Permit # 14-706
3. Darrell Paul, C# 203,625  Permit # 14-0593
4. Raymond Catron, C# 41,914  Permit # 14-18-77
5. Irene Mose, C# 54,420  Permit # 14-05-86
6. Ilene Tsosie, C# 42,263  Permit # 14-17-88
7. David Mike Tsosie, C# 55,279  Permit # 14-04-74
The above mentioned land users were contacted and has consented to the road project without any objections within the Mexican Springs Chapter area.

In the Crystal Chapter area, Mr. Ronnie Bahe, Grazing Committee Member was contacted for information on who has land use rights or grazing permit within the proposed road project area. Mr. Bahe identified that there are four (4) individuals, who's consent should be obtained and they are:

1. Anna Boyd Anderson  
   C# 51,830  
   Trustee - Frank Boyd

2. Nora Lilly Roanhorse  
   C# 51,938  
   Permit # 18-17-90

3. Leonard Holyan  
   C# 51,937  
   Permit # 18-16-90

4. Arnold Holyan  
   C# 606,136  
   Permit # 18-16-90

The above mentioned land users (grazing permittees) were contacted and two of them have consented and they are Arnold Holyan and Leonard Holyan. Two of them have refused to consent to the road project and they are Anna Boyd Anderson and Nora Lilly Roanhorse. This office has met with both land users and they explained their refusal to consent. See attached report.

After further investigation by this office and Crystal Chapter, the following information was obtained and letters was received from Crystal Chapter to document these findings and they are:

1. Anna Anderson - doesn't have a valid permit, but her late brother, Frank Boyd, C#51,829 was designated as a trustee for their late parent's grazing permit. Mr. Frank Boyd, now deceased, had consented to the road project on October 17, 1973. The grazing permit hasn't been probated.

2. Nora Lilly Roanhorse - is daughter of Minnie and Kee Holyan, who are now deceased and their grazing permit #18-24-74 have not been probated. Both the late Minnie and Kee Holyan had consented to the road project in October, 1973. Ms. Roanhorse has a valid grazing permit #18-17-90, which was given to her as a gift from her aunt Fannie Morris, C# 54,355, now deceased. This permit was divided into two (2) permits with one going to Ms. Roanhorse and the other permit to Leonard and Arnold Holyan, which both of them have consented.

The Crystal Chapter has requested for this office to accept the consents of Frank Boyd, Minnie and Kee Holyan as a valid consent and to proceed with the processing of the application documents to obtain the right-of-way for the road project from the Navajo Nation. Also, this office have received a copy of a resolution from the Fort Defiance Agency Road Committee requesting that the President of the Navajo Nation and Resources Committee of the Navajo Nation Council to implement eminent domain to obtain the right-of-way for BIA Road Project N31(2), Section “A”, Navajo to Mexican Springs.
January 27, 1994
Page Three

This office will processed the right-of-way application for the proposed road project on
the SAS reviewal process and let the Resources Committee of the Navajo Nation Council decide to
either approved or disapprove the project.

I will need your recommendation and if you have any questions, please contact me and
advise. Thank you.

xc: Chrono
    Project File
February 02, 1994

MEMORANDUM

TO: Alfred Dehiya, ASO III
   Project Review Office
   Division of Natural Resources

FROM: Art C. Slim, Right-of-Way Agent II
       BIA Roads Section/Project Review

SUBJECT: Meeting with Annie Boyd Anderson on BIA Road Project N31, Navajo to Mexican Springs

On Tuesday, January 31, 1994, I met with Ms. Annie Boyd Anderson, C# 51-830 at her residence in Navajo, New Mexico on the proposed BIA Road Project N31, about her refusal to consent to the mentioned road project.

I asked her if she had thought about the proposed road project and if she would consent this time, but her response was no, that she still refuses to consent due to the following:

1. That she would be losing a large portion of her use area and that the highway will cut that in half. She doesn't have much of a use area.

2. That she wants her kids and grand kids to have usage of the area for such as homesite and livestock.

3. That people will be trashing along the road and people don't respect other people's privacy.

4. That she needed to contact her brothers and sister for their opinion and that she won't consent by herself.

5. That she recommends the existing road and why BIA Roads needs a new route while they already have one.
February 02, 1994
Page Two

After explaining why there was a need for this road that its for their own benefit and the Nation, she got agitated and angry with me. I was told that she only invited me in was to hear her side of the story and not for her consent, I then left.

This concludes my report, if you should have any questions, call me at extension 7051.

xc: Chrono
Project File
January 05, 1995

Mr. Burt Lesser, COR
Bureau of Indian Affairs
Branch of Roads Office
Post Office Box 1060
Gallup, New Mexico 87305

Dear Mr. Lesser:

Per our telephone conversation, here is the information of the persons whom are objecting and refusing to consent to the BIA Road Project N31, Navajo to Mexican Springs Road:

1. Nora Lilly Roanhorse, C# 51,938
   P.O. Box 738
   Navajo New Mexico 87328

2. Annie Boyd Anderson, C# 51,830
   P.O. Box 35
   Navajo, New Mexico 87328

Also, attached for your information is a field clearance reports and reports of meeting with land users. If you have questions, please call me at telephone number (602) 871-6447 or 7051.

Sincerely,

[Signature]

Art C. Slim, Right-of-Way Agent II
BIA Road Section/Project Review Office
Division of Natural Resources

xc: Chrono
Project File
On June 20, 1995, a meeting was held in the Area Office with the Corps of Engineers, Albuquerque District, for the purpose of finalizing the requirements of the Environmental Assessment for the Project N31(2).

Of great and particular concern is the requirement that alternative measures must be considered. This could be no action, substitute pavement type, or different locations. The Corps has considered as an alternate route location the existing N31 route from Route N12 north of Navajo to a point approximately four miles northeasterly where it meets the new proposed route coming southeasterly from a connection on N12 further north of Navajo, see map enclosed.

After much discussion it was agreed that if another public hearing were held, with the role intent of choosing a preferred alignment, then the BIA Branch of Roads would seriously consider the ramifications of going with the preferred route. This would include costs for additional archaeological and ethnological surveys, the impact to TohdIldonik Wash from a water quality and water certification, storm drainage pollution discharge permit, threatened species, survey, design and construction, etc.

This is a formal request for your office to advertise and conduct such a public hearing. We strongly feel that this is necessary to keep this project alive and well.

If you need any additional information please call Burt Lesser, Highway Engineer at (505) 863-8456.
August 30, 1995

Agency Road Engineer, Fort Defiance Agency.

Public Hearing on Route N31, Navajo, New Mexico to Mexican Springs, New Mexico

To:
Burton S. Lesser, Navajo Area Office, Gallup, N.M.

Please be informed that there will be a Public Hearing for the construction of the proposed highway N31 from Navajo, New Mexico to Mexican Springs, New Mexico on Wednesday, September 13, 1995 at the Navajo, New Mexico Catholic Church at 10:00 A.M. The Agency Roads Committee will conduct the hearing.

Please schedule to attend this public hearing to answer any questions the community may have regarding the Rights-of-Way.

Attached is a copy of the Public Hearing Notice for you files.

Please call me at (520) 729-7324 if you have any questions.

[Signature]

Attachment
NOTICE

A PUBLIC HEARING WILL BE HELD AT NAVAJO, NEW MEXICO CATHOLIC CHURCH ON WEDNESDAY, SEPTEMBER 13, 1995, AT 10:00 AM CONCERNING THE PROPOSED CONSTRUCTION OF AN ALL-WEATHER ROAD OF ROUTE N31 FROM NAVAJO, NEW MEXICO TO MEXICAN SPRINGS, NEW MEXICO VIA ASAYII LAKE. THIS PROJECT WILL START OFF OF NAVAJO ROUTE N12 AT OR NEAR THE TOWN OF NAVAJO, NEW MEXICO, THEN EASTERLY THROUGH TOHDILO WASH AND THROUGH ASAYII TURNOFF AND UP THE OAK CREEK DRAW AND JOIN THE N30 ROAD AT THE TOP OF THE CHUSKA MOUNTAINS AND THEN, FOLLOW N30 SOUTH TOWARDS MEXICAN SPRINGS, WHERE IT WILL THEN CONNECT THE PRESENT PAVE ROUTE N30 HIGHWAY.

IT HAS BEEN REPORTED THAT THERE IS SOME LAND DISPUTE NORTH OF THE GREEN KNOB WHERE IT WAS SURVEYED THE ALIGNMENT WILL START OFF OF NAVAJO ROUTE N12 AND ALIGN AROUND SPLIT MESA AND JOIN THE PRESENT N31 ROADWAY NEAR THE OLD SLUICE DAM.

THIS PUBLIC HEARING IS TO DETERMINE IF THE PRESENT N31 NORTH OF NFPI PLANT SITE IS FEASIBLE.

IF THERE ARE ANY QUESTIONS CONCERNING THIS PROJECT, PLEASE CONTACT:

THE BUREAU OF INDIAN AFFAIRS
FORT DEFIANCE AGENCY SUPERINTENDENT
P.O. BOX 619
FORT DEFIANCE, ARIZONA 86504
TELEPHONE (520) 729-7222
Approving and Recommending to the Navajo Nation Council Transportation and Community Development Committee and the Navajo Area Bureau of Indian Affairs Branch of Roads that Navajo Route N31 would start at the original alignment 3 miles north of Navajo, New Mexico off N12, and then follow the Split Mesa Valley alignment.

WHEREAS:

1. The Fort Defiance Agency Roads Committee is comprised of Chapter Officials assembled by the Navajo Nation to address the transportation needs of the people to appropriate agencies; and

2. Based on the Navajo Area BIA Branch of Roads' recommendation to hold another Public Hearing on N31, Alternate Route which would follow the present gravel road immediately east of Navajo, New Mexico and this Public Hearing was conducted on September 13, 1995 in Navajo, New Mexico; and

3. Although the majority of the people that attended the Public Hearing were in favor of the Alternate Route, The Fort Defiance Roads Committee requested the Red Lake Chapter to recommend this Alternate Route by a Chapter Resolution, however there is no Chapter Resolution thus far; and

4. The Fort Defiance Agency Roads Committee is aware that the Navajo Area BIA has spent Millions of Dollars already on the Split Mesa alignment in terms of Reconnaissance Survey, Alignment Surveys, Archeological Clearance, Environmental Assessment and Highway Design and a Bridge Study; and

5. Further, The Fort Defiance Agency Roads Committee has passed Resolution to use the "Condemnation Power and/or Eminent Domain Power" by the Navajo Nation to use on the Split Mesa Alignment land dispute to continue on the Split Mesa Alignment.

NOW THEREFORE BE IT RESOLVED THAT:

The Fort Defiance Agency Roads Committee hereby approves and Recommends to the Navajo Nation Council Transportation and Community Development Committee and the Navajo Area Bureau of Indian Affairs Branch of Roads that Navajo Route N31 would start at the original alignment 3 miles north of Navajo, New Mexico off N12, and then follow the Split Mesa Valley alignment.
I hereby certify that the foregoing resolution was duly considered by the Fort Defiance Agency Roads Committee at a regular monthly meeting at which a quorum was present, and that same was passed by a vote of 5 in favor, 0 opposed, and 0 abstention this 13th day of December, 1995.

Elmer Milford / Chairperson
September 10, 1996

Mr. Luke Deswood, Agency Road Engineer
Bureau of Indian Affairs, Branch of Roads
Fort Defiance Navajo Agency
Post Office Box 619
Fort Defiance, Arizona 86515

RE: BIA Road Project N31, Navajo to Mexican Springs Road

Dear Mr. Deswood:

The Project Review Office with the Division of Natural Resources has obtained a legal opinion from the Navajo Nation Department of Justice dated August 28, 1996, in which it stated that the Nation doesn't need the signature of consent from the person who is objecting to the road project (attached). Therefore, this office will proceed to put the application documents on the Legislative 164 SAS review process for approval in granting of the right-of-way on the said project if all appropriate documents are received.

Please submit all the updated reports to BIA Road Section within this office for their action. If you have any questions, please call me or Mr. Art C. Slim at telephone number (520) 871-6447.

Thank you.

Sincerely,

[Signature]

Alfred Debiya, Acting Director
Navajo Land Department
Division of Natural Resources

ATTACHMENTS

xc: Chrono/Project File
    Burt Lesser/BIA, Navajo Area Branch of Road
MEMORANDUM

TO: Alfred Dehiya, ASD III
Project Review Office

THROUGH: James R. Bellis, Asst. Attorney General
Natural Resources Unit, Dept. of Justice

FROM: Raymond C. Etchitty, Jr., Staff Attorney
Natural Resources Unit, Dept. of Justice

DATE: August 28, 1996

SUBJECT: RFS No. 96-1817: Legal Opinion on Grazing Permittee's Consent on BIA Road Project NJ1, Navajo to Mexican Springs

Please consider this memorandum a response to your above-referenced Request for Services (RFS). Before answering your questions, the first part of this memorandum will attempt to restate the facts, which led to this request for a legal opinion.

According to the documents provided to the Department of Justice, it appears that on October 18, 1963 the Window Rock District Court probated the estate of Slim Boyd. Contained within Slim Boyd's estate was Grazing Permit No. 7033. The grazing permit was for land located near Bureau of Indian Affairs (BIA) Route NJ1 - a road between Navajo, New Mexico to Mexican Springs, New Mexico. The Court awarded the permit to the surviving heirs of Slim Boyd (Anna Anderson, Bannie Boyd, Jimmie Boyd, Frank Boyd, Nellie Roseberry, Antonette Boyd, Mary Alice Baca, and Johnny Henry Boyd). In addition, the Court named Frank Boyd as trustee for the grazing permit.

On October 17, 1971, Frank Boyd signed a consent form, which allowed BIA to use of portion of the heirs' land for a right-of-way. In exchange for Frank Boyd's consent, BIA placed a cattle guard on a road for the Boyd family's use. After more than twenty (20) years, it appears that Frank Boyd (the trustee) died and the four surviving heirs of the late Slim Boyd (Anna Anderson,
Antonette Shorty, John Henry Boyd, and Jimmy Boyd) sought to vacate
the trust held by the late Frank Boyd. On January 3, 1995, the
Window Rock Family Court vacated the trust and named the surviving
heirs as holders of the grazing permit in tenancy in common with
Anna Anderson acting as head permittee.

It now appears that the BIA Branch of Roads desires to
further develop the BIA road next to the customary use land held by
the Boyd family. Anna Anderson, head permittee for the customary
use land, refuses to consent to the BIA project without further
compensation.

After reviewing the facts and researching your questions,
the Department of Justice has the following answers:

1. Is Mr. Frank Boyd’s consent to the road project still valid?

   Generally, a trustee can grant an easement (in this case
   consenting to the granting of a right-of-way) in certain limited
   circumstances, such as if the easement is necessary or beneficial
to the trust and the trustee’s authority to grant an easement flows
from a trustee’s power of sale. Since the documents provided do
not characterize the types of powers held by the late Frank Boyd,
as trustee over the trust, it can be assumed that Frank Boyd held
general powers of a trustee, which includes the power of sale.
Since Frank Boyd held a trustee’s power of sale, Frank Boyd’s
consent to grant a right-of-way is valid.

   Furthermore, because Frank Boyd’s consent was given more
than twenty (20) years ago, there may be no need for the Nation to
obtain consents from the descendants. See, Question No. 3.

2. Is there a valid grazing permit within the area since Mr. Boyd
   has been deceased?

   Yes, a grazing permit still exist. According to Navajo
law, grazing permits can be probated, which apparently did occur.
According to the Court order vacating the trust, the grazing permit
is held tenancy in common by Anna Anderson, Antonette Shorty, John
Henry Boyd, and Jimmy Boyd. The Court order also states that Anna
Anderson is the head permittee over the permit.

3. Does Anna Boyd Anderson have a legal right to refuse to
   consent, even though Frank Boyd has been deceased?

   As stated above, Frank Boyd consented to the granting of
a right-of-way. It also appears that the BIA and the Nation relied
upon Frank Boyd's consent because a road currently exists there. In addition, for twenty (20) years the descendants of Slim Boyd did not contest Frank Boyd's consent, until now. If the descendants wanted to contest Frank Boyd's consent, they should have contested the consent years ago. Because the descendants failed to contest the consent, the Nation is protected from suit by the Nation's statute of limitation, 7 N.N.C. § 602 (1996).

Because of reliance by BIA and the Nation, and the fact that the descendants did not contest the consent, the Nation need not obtain further consents from the Boyd family. However, if the BIA or the Nation is requesting for more land than those received by Frank Boyd's consent, additional consent is necessary.

4. Shall the Navajo Nation go ahead and grant the right-of-way for the road project to BIA without her consent?

Yes, the Nation may grant the right-of-way for the following reasons: 1) Consent was already obtained; 2) the Nation and the BIA relied upon the consent; and 3) the descendants did not contest Frank Boyd's consent for more than twenty (20) years. However, if the Nation wants to compensate the descendants because of possible time constraints with completing the road project, the Nation may compensate the descendants.

5. Who shall initiate the eminent domain procedures in obtaining the right-of-way for the road project?

The Resources Committee because it has authority to initiate the proceeding, pursuant to 2 N.N.C. §§ 691 et al.

If you have any questions, please call at 871-6931.
MEMORANDUM

TO : Anthony Aguirre, Staff Attorney
     Natural Resources Unit
     Department of Justice

FROM : Alfred Dahya, ASO III
       Project Review Office
       Division of Natural Resources

SUBJECT: Legal Opinion on Grazing Permittee's Consent on BIA Road Project N31, Navajo to Mexican Springs

The Project Review Office would like to request for a legal opinion from your office concerning a grazing permittee's consent that was obtained for BIA Road Project N31.

The grazing permittee, Frank Boyd, C# 51829 had consented to the road project on November 17, 1973 as a trustee for the permit. Mr. Boyd has since died and the permit hasn't been probated, yet. One of his trustees, Ms. Annie Boyd Anderson, C# 51830 has now refused to consent to BIA road project. The questions are:

1. Is Mr. Frank Boyd's consent to the road project still valid?
2. Is there a valid grazing permit within the area since Mr. Boyd have been deceased?
3. Does Ms. Annie Boyd Anderson have a legal right to refuse to consent, even though Mr. Frank Boyd have been deceased?
4. Shall the Navajo Nation go ahead and grant the right-of-way for road project to the BIA Roads without her consent?
5. Who shall initiate the eminent domain procedures in obtaining the right-of-way for the road project?

This office is requesting for a written response on these questions, before this office proceeds on the matters. There is a directive from the Fort Defiance Agency Roads Committee and the joint Resources and Transportation Community Development Committee to implement the eminent domain for this road project.
If you need additional information or questions, please call Mr. Art C. Slim, Right-of-Way Agent II for the Right-of-Way Clearance Program or myself at tribal extension 6447.

Subject: Chrono/Project File

Melvin Bautista, Executive Director/Division of Natural Resources
Albert Hale, President/Office of the President and Vice President
Elmer L. Milford, Chairperson/Resources Committee & Fort Defiance Agency Road Committee
Lawrence Morgan, Chairperson/Transportation & Community Development Committee
Luks Deswood, Agency Road Engineer/Fort Defiance BIA, Branch of Roads
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix B
U.S. Army Corps of Engineers Flood Plain Evaluation
Hydraulic and Hydrologic Evaluation of the BIA proposed Route N-31

As per request from Cassandra D'Antonio, Environmental Section, a hydraulic and hydrologic analysis was performed for the watershed containing the Bureau of Indian Affairs proposed and alternate routes N-31 west of the Navajo Village close to the Arizona border (see site map).

The objective of this analysis was to determine the 100-year flows generated by the watershed and the impact on the proposed roadway. Plan and profiles were available for the proposed roadway, but no data was given for the bridges or the alternate route.

The sizing, capacity and stationing called for in the proposed roadway plans were identified on the area map (attachment 1). Critical drainage points along the roadway were selected. The watershed was determined to be approximately 86 square miles. Sub-areas were identified along the critical drainage points (attachment 2).

Discharges for the sub-areas were determined by using the USGS Methods for Estimating Magnitude and Frequency of Floods in the Southwestern United States, Open-File Report 93-419. Because of the high elevation between 6800 feet and 7500 feet of the entire watershed, a discharge for each sub-area was generated for the region in which the watershed lies, which is Region 11, (attachment 3), and a separate discharge was generated for the high elevation, Region 1 (attachment 4). Once each of these discharges were computed, a weighted flood-frequency relationship developed by USGS was used to come up with one discharge for each sub-area.

The resulting discharges were then evaluated to determine if the proposed BIA design had culverts sized for adequate draining along the critical points (attachment 5).

If the proposed route is designed as indicated in the BIA plans, then there is adequate draining provided.

The alternate route is an existing road that follows the Tohdildonih Wash into the Navajo Village. There has been no flood insurance study done on this area. However, in order to determine if the roadway lies within the 100-year boundary, a normal depth analysis was performed for selected cross-sections along the wash and roadway. Since no data was available for accurate road elevations, this is considered only an estimate (attachment 6). This analysis shows that the alternate route is located above the 100-year floodplain that is generated by the Tohdildonih Wash.

April Fitzner
Hydraulic Engineer
Hydrology and Hydraulics Section
Culvert Listing - Proposed Route

0. STA 0+50: 1-24"X52' CSP \( \Rightarrow \) Relief drain
1. STA 9+10: 1-24"X92' CSP \( \Rightarrow \) Relief drain
2. STA 10+75: 1-24"X86' CSP \( \Rightarrow \) Relief drain
3. STA 25+75: 2-50"X31' CSA \( \Rightarrow Q=81 \text{ cfs for 30 acres} \)
4. STA 40+00: 1-48"X64' CSP \( \Rightarrow Q=75 \text{ cfs for 28 acres} \)
5. STA 44+00: 1-84"X54' CSP \( \Rightarrow Q=277 \text{ cfs for 104 acres} \)
6. STA 67+30: 1-84"X52' CSP \( \Rightarrow Q=175 \text{ cfs for 65 acres} \)
7. STA 87+45: 1-24"X80' CSP \( \Rightarrow \) Relief drain
8. STA 94+38: 1-72"X44"X88' CSA \( \Rightarrow Q=90 \text{ cfs for 33 acres} \)
9. STA 113+50: 5-42"X70' CSP \( \Rightarrow Q=255 \text{ cfs for 96 acres} \)
10. STA 128+25: 1-17'-0"X11';0"X140' \( \Rightarrow Q=1446 \text{ cfs for 1312 acres} \)
11. STA 133+80: 1-144"X110' CSP \( \Rightarrow Q=1265 \text{ cfs for 1280 cfs} \)
12. STA 149+00 thru STA 153+00: 9-72"X44"X54' CSA \( \Rightarrow Q=876 \text{ cfs for 640 acres} \)
13. STA 165+00: 1-84"X64' \( \Rightarrow Q=157 \text{ cfs for 58 acres} \)
14. STA 177+00: 1-84"X54' \( \Rightarrow Q=35 \text{ cfs for 13 acres} \)
15. STA 183+50 thru STA 186+50: 7-60"X52' CSP \( \Rightarrow Q=791 \text{ cfs for 320 acres} \)
16. STA 209+19 thru STA 210+39: No data on bridge
17. STA 216+66: 1-58"X36"X52' CSP \( \Rightarrow Q=48 \text{ cfs for 19.2 acres} \)
18. STA 248+27: 1-8'-7"X5'-11"X64' CSA \( \Rightarrow Q=289 \text{ cfs for 128 acres} \)
19. STA 258+83: 1-30"X56' CSP \( \Rightarrow Q=23 \text{ cfs for 11.5 acres} \)

Attachment 1
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Total Watershed Area = 86.2749
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Q = Peak discharge in cfs
Area = drainage area in square miles
Evap = mean annual evaporation in inches

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**: Area will be used for applications due to high elevations.**

Refer to USGS Coop’s Report 53-419, pg. 58

*Method for Estimating Magnitude and Frequency of Floods in the Southwestern United States*
Region 1 Equation - will be used for transitioning due to high elevations.

Refer to USGS Open-file Report 93-418, pg. 26

Method for Estimating Magnitude and Frequency of Floods in the Southwestern United States

\[ Q = 6.78(Area)^{0.75}(Precip)^{0.668} \]

- \( Q \): Peak discharge in cfs
- \( Area \): Drainage area in square miles
- \( Precip \): Mean annual precipitation in inches

<table>
<thead>
<tr>
<th>Sub-Area Number</th>
<th>Area (sq. mile)</th>
<th>Precip (inches)</th>
<th>Q (cfs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td>1.9240</td>
<td>11.60</td>
<td>56.94</td>
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<tr>
<td>2.00</td>
<td>2.1369</td>
<td>11.60</td>
<td>61.61</td>
</tr>
<tr>
<td>3.00</td>
<td>1.0000</td>
<td>11.50</td>
<td>34.86</td>
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<tr>
<td>4.00</td>
<td>26.7470</td>
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<td>409.98</td>
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<tr>
<td>5.00</td>
<td>5.4218</td>
<td>11.60</td>
<td>123.85</td>
</tr>
<tr>
<td>6.00</td>
<td>9.9982</td>
<td>11.60</td>
<td>195.99</td>
</tr>
<tr>
<td>7.00</td>
<td>7.9798</td>
<td>11.60</td>
<td>165.49</td>
</tr>
<tr>
<td>8.00</td>
<td>4.8723</td>
<td>11.60</td>
<td>114.31</td>
</tr>
<tr>
<td>9.00</td>
<td>11.5049</td>
<td>11.60</td>
<td>217.75</td>
</tr>
<tr>
<td>10.00</td>
<td>3.8464</td>
<td>11.60</td>
<td>35.74</td>
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<tr>
<td>11.00</td>
<td>3.5313</td>
<td>11.60</td>
<td>89.79</td>
</tr>
<tr>
<td>12.00</td>
<td>4.2052</td>
<td>11.60</td>
<td>102.36</td>
</tr>
<tr>
<td>13.00</td>
<td>3.1071</td>
<td>11.60</td>
<td>81.57</td>
</tr>
</tbody>
</table>

Total Watershed Area = 86.27
For estimating the magnitude and frequency of floods in the Southwestern United States:

\[
 Qt(w) = Qt(I) \frac{(B-E)}{700} + Qt(h) \frac{1-(B-E)}{700}
\]

- **Qt(w)**: Weighted discharge, in cfs for the 100-year recurrence interval
- **Qt(I)**: Discharge from the low- to middle elevation region for t-year recurrence interval
- **Qt(h)**: Discharge from the high-elevation region for t-year recurrence interval
- **t-year=100-year interval**
- **E**: Elevation of the study site in feet, (elevation of the concentration point)
- **B**: Elevation of the lower boundary of the high-elevation region in feet, (7,500 ft.)

<table>
<thead>
<tr>
<th>Region 1</th>
<th>Region 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Area</td>
<td>Qt(h) (cfs)</td>
</tr>
<tr>
<td>Number</td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td>58.94</td>
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<td>2.00</td>
<td>61.61</td>
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<td>3.00</td>
<td>34.86</td>
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<td>4.00</td>
<td>409.96</td>
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<td>5.00</td>
<td>123.85</td>
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<tr>
<td>6.00</td>
<td>195.99</td>
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<tr>
<td>7.00</td>
<td>165.49</td>
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<td>8.00</td>
<td>114.31</td>
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<td>9.00</td>
<td>217.75</td>
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<td>10.00</td>
<td>95.74</td>
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<td>11.00</td>
<td>89.79</td>
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<tr>
<td>12.00</td>
<td>102.36</td>
</tr>
<tr>
<td>13.00</td>
<td>81.57</td>
</tr>
</tbody>
</table>

Total Weighted Q = 8502.72
**Project Description**

- **Project File**: c:\data\navajo\sectiona.fm2
- **Worksheet**: Alternate Route N-31, Section A
- **Flow Element**: Irregular Channel
- **Method**: Manning's Formula
- **Solve For**: Water Elevation

**Input Data**

- **Channel Slope**: 0.008000 ft/ft
- **Elevation range**: 7,100.00 ft to 7,160.00 ft

<table>
<thead>
<tr>
<th>Station (ft)</th>
<th>Elevation (ft)</th>
<th>Start Station</th>
<th>End Station</th>
<th>Roughness</th>
</tr>
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<tbody>
<tr>
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<td>7,140.00</td>
<td>0.00</td>
<td>1,500.00</td>
<td>0.035</td>
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<tr>
<td>200.00</td>
<td>7,140.00</td>
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<tr>
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<td>420.00</td>
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<td>7,100.00</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1,100.00</td>
<td>7,100.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,150.00</td>
<td>7,120.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,200.00</td>
<td>7,140.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,400.00</td>
<td>7,160.00</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1,500.00</td>
<td>7,160.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Discharge**: 8,503.00 cfs

**Results**

- **Wtd. Mannings Coefficient**: 0.035
- **Water Surface Elevation**: 7,102.45 ft
- **Flow Area**: 1,250.14 ft²
- **Wetted Perimeter**: 521.49 ft
- **Top Width**: 520.82 ft
- **Height**: 2.45 ft
- **Critical Depth**: 7,102.07 ft
- **Critical Slope**: 0.014114 ft/ft
- **Velocity**: 6.80 ft/s
- **Velocity Head**: 0.72 ft
- **Specific Energy**: 7,103.17 ft
- **Froude Number**: 0.77

Flow is subcritical.
### Project Description

**Project File:** c:\data\navajo\sectiona.fm2  
**Worksheet:** Alternate Route N-31: Section C  
**Flow Element:** Irregular Channel  
**Method:** Manning's Formula  
**Solve For:** Water Elevation

### Input Data

**Channel Slope:** 0.008000 ft/ft  
**Elevation range:** 6,940.00 ft to 7,225.00 ft.

<table>
<thead>
<tr>
<th>Station (ft)</th>
<th>Elevation (ft)</th>
<th>Start Station</th>
<th>End Station</th>
</tr>
</thead>
<tbody>
<tr>
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<td>7,220.00</td>
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</tr>
<tr>
<td>500.00</td>
<td>7,225.00</td>
<td>ROAD ELEVATION</td>
<td></td>
</tr>
<tr>
<td>550.00</td>
<td>7,225.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>600.00</td>
<td>7,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>6,980.00</td>
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<td></td>
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<tr>
<td>700.00</td>
<td>6,940.00</td>
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<td>1,800.00</td>
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<td>1,850.00</td>
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<tr>
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<td>7,060.00</td>
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<td></td>
</tr>
<tr>
<td>2,000.00</td>
<td>7,080.00</td>
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<td></td>
</tr>
</tbody>
</table>

**Discharge:** 5,863.00 cfs

### Results

- **Wtd. Mannings Coefficient:** 0.035  
- **Water Surface Elevation:** 6,941.23 ft  
- **Flow Area:** 1,349.79 ft²  
- **Wetted Perimeter:** 1,103.29 ft  
- **Top Width:** 1,102.04 ft  
- **Height:** 1.23 ft  
- **Critical Depth:** 6,940.96 ft  
- **Critical Slope:** 0.018126 ft/ft  
- **Velocity:** 4.34 ft/s  
- **Velocity Head:** 0.29 ft  
- **Specific Energy:** 6,941.52 ft  
- **Froude Number:** 0.69

Flow is subcritical.
Table 4. Summary of selected characteristics of flood regions in the southwestern United States

(numbers in parentheses in table heading are for references in text. DA, drainage area; MAP, mean annual precipitation; MB, mean basin elevation; MAB, mean annual evaporation; LAT, latitude; LONG, longitude. Dashes indicate no data)

| Flood region number | Flood region name   | Number of stations | Average percentage of peak discharges in gaging-station records | Explanatory variables used in regional relations (3) | Regional relations | Plots of explanatory variables (figure number) (6) | Region, 100-year flood discharge compared to 100-year discharge study at 1
<table>
<thead>
<tr>
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<th></th>
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<th></th>
<th></th>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>High Elevation</td>
<td>184</td>
<td>65 84 13 3</td>
<td>DA, MAP</td>
<td>5 19 18</td>
<td>Much less</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Northwest</td>
<td>139</td>
<td>108 53 5 42</td>
<td>DA, MB</td>
<td>6 21 20</td>
<td>Less</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>South-Central Idaho</td>
<td>40</td>
<td>35 80 4 16</td>
<td>DA, MAP</td>
<td>7 23 22</td>
<td>Less</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Northeast</td>
<td>123</td>
<td>108 79 15 6</td>
<td>DA, MB</td>
<td>8 25 24</td>
<td>Less</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Eastern Sierra</td>
<td>53</td>
<td>37 47 16 37</td>
<td>DA, MB, LAT</td>
<td>9 28 26,27</td>
<td>About the same</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Northern Great Basin</td>
<td>80</td>
<td>80 28 50 22</td>
<td>DA, MB</td>
<td>10 30 29</td>
<td>About the same</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>South-Central Utah</td>
<td>31</td>
<td>28 61 27 6</td>
<td>DA, MB</td>
<td>11 32 31</td>
<td>Less</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Four Corners</td>
<td>130</td>
<td>108 25 61 14</td>
<td>DA, MB</td>
<td>12 34 33</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Western Colorado</td>
<td>53</td>
<td>43 75 20 5</td>
<td>DA, MB</td>
<td>13 36 35</td>
<td>Less</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Southern Great Basin</td>
<td>104</td>
<td>104 8 50 42</td>
<td>DA</td>
<td>14 37 37</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Northeastern Arizona</td>
<td>46</td>
<td>46 10 61 29</td>
<td>DA, MA</td>
<td>15 39 38</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Central Arizona</td>
<td>82</td>
<td>68 6 46 48</td>
<td>DA, MB</td>
<td>16 41 40</td>
<td>More</td>
<td></td>
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<tr>
<td>13</td>
<td>Southern Arizona</td>
<td>90</td>
<td>73 2 78 20</td>
<td>DA</td>
<td>17 42 39</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Upper Gila basin</td>
<td>29</td>
<td>22 4 67 30</td>
<td>DA, MB</td>
<td>18 44 43</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Upper Rio Grande basin</td>
<td>28</td>
<td>17 34 41 5</td>
<td>DA, MB, LONG</td>
<td>19 47 45.46</td>
<td>About the same</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Southeast</td>
<td>120</td>
<td>120 21 71 8</td>
<td>DA, MA</td>
<td>20 49 48</td>
<td>More</td>
<td></td>
</tr>
<tr>
<td>1-16</td>
<td>All</td>
<td>1,323</td>
<td>42 38 20</td>
<td>---</td>
<td>--- 48</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>

Note: The table continues with additional columns for the number of stations, average percentage of peak discharges, explanatory variables, regional relations, and plots of explanatory variables. The entries in the table are not fully transcribed in the image.
Figure 11. Flood regions in New Mexico.
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo To Asaayi Lake Junction, McKinley County, New Mexico

Appendix C
Special Status Species Lists and Vegetation Surveys Information

U.S. Fish and Wildlife Service
Navajo Fish and Wildlife Department
New Mexico Energy, Minerals and Natural Resources Department
McKinley

Black-footed ferret, *Mustela nigripes*, E
Fringed myotis, *Myotis thysanodes*, SC
Long-eared myotis, *Myotis evotis*, SC
Long-legged myotis, *Myotis volans*, SC
Occult little brown bat, *Myotis lucifugus occultus*, SC
Small-footed myotis, *Myotis ciliolabrum*, SC
Spotted bat, *Euderma maculatum*, SC
American peregrine falcon, *Falco peregrinus anatum*, E
Arctic peregrine falcon, *Falco peregrinus tundrius*, E (S/A)
Bald eagle, *Haliaeetus leucocephalus*, T
Black tern, *Chlidonias niger*, SC
Ferruginous hawk, *Buteo regalis*, SC
Loggerhead shrike, *Lanius ludovicianus*, SC
Mexican spotted owl, *Strix occidentalis lucida*, T
Northern goshawk, *Accipiter gentilis*, SC
Southwestern willow flycatcher, *Empidonax traillii extimus*, E
Western burrowing owl, *Athene cunicularia hypugea*, SC
White-faced ibis, *Plegadis chihi*, SC
Zuni bluehead sucker, *Catostomus discobolus yarrowi*, SC
Acoma fleabane, *Erigeron acomanus*, SC
Goodding's onion, *Allium gooddingii*, C
Parish's alkali grass, *Puccinellia parishii*, PE
Sivinski's fleabane, *Erigeron sivinskii*, SC
Zuni (= rhizome) fleabane, *Erigeron rhizomatus*, T

Index

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>Endangered</td>
</tr>
<tr>
<td>PE</td>
<td>Proposed Endangered</td>
</tr>
<tr>
<td>PE w/CH</td>
<td>Proposed Endangered with critical habitat</td>
</tr>
<tr>
<td>T</td>
<td>Threatened</td>
</tr>
<tr>
<td>PT</td>
<td>Proposed Threatened</td>
</tr>
<tr>
<td>PT w/CH</td>
<td>Proposed Threatened with critical habitat</td>
</tr>
<tr>
<td>PCH</td>
<td>Proposed critical habitat</td>
</tr>
<tr>
<td>C</td>
<td>Candidate Species</td>
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<tr>
<td>SC</td>
<td>Species of Concern</td>
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<td>S/A</td>
<td>Similarity of Appearance</td>
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<tr>
<td>*</td>
<td>Introduced population</td>
</tr>
<tr>
<td>XN</td>
<td>Nonessential experimental</td>
</tr>
</tbody>
</table>
BISON-M

Biota Information System of New Mexico

Version 9/97
September 20, 1997

NEW MEXICO DEPARTMENT OF GAME AND FISH
in cooperation with
U.S. BUREAU OF LAND MANAGEMENT
U.S. FISH AND WILDLIFE SERVICE
U.S. ARMY CORPS OF ENGINEERS
U.S. BUREAU OF RECLAMATION
U.S. FOREST SERVICE
UNIVERSITY OF NEW MEXICO

These species accounts were developed by the New Mexico Department of Game and Fish and contain species information for both New Mexico and Arizona. For more information about these accounts, contact:

Jon Klingel
New Mexico Dept. of Game & Fish
P. O. Box 25112
Santa Fe, NM 87504
(505) 827-9912 voice,
(505) 827-9956 fax

To perform simple keyword searches on the New Mexico Species Accounts, 
Click here

Or, browse species information from the following list.

- Birds
- Fish
- Invertebrates
- Mammals
- Reptiles and Amphibians

The December 1998 version of the New Mexico Wildlife of Concern is now available in PDF format. Click here to download the file and launch Adobe Acrobat. If you don't have Adobe Acrobat Reader and would like to download a free copy, please click here first.
**New Mexico Game & Fish - Animals in BISON-M**

4/16/99  25 record(s) found  Last Updated: 5/8/98

McKinley county

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphibians</td>
<td>Frog, Leopard, Northern</td>
</tr>
</tbody>
</table>

**Birds**

- *Plegadis chihi*  
  *Haliaeetus leucocephalus*  
  *Accipiter gentilis*  
  *Buteo regalis*  
  *Aquila chrysaetos canadensis (NM)*  
  *Falco peregrinus anatum*  
  *Falco peregrinus tundrius*  
  *Charadrius montanus*  
  *Chlidonias niger surinamensis (NM)*  
  *Athene cunicularia hypugaea (NM,AZ)*  
  *Sturnus occidentalis lucida (NM,AZ)*  
  *Empidonax traillii extimus*  
  *Lanius ludovicianus*  
  *Vireo victinius*  
  *Vireo, Gray*  

**Fish**

- *Catostomus discobolus yarrowi (NM)*  
  *Sucker, Bluehead, Zuni*  

**Insects**

- *Charidryas acastus acastus (NM,AZ)*  
  *Butterfly, Checkerspot, Pearly*  

**Mammals**

- *Myotis ciliolabrum melanerinus (NM,AZ)*  
  *Myotis lucifugus occultus (NM,AZ)*  
  *Myotis volans interior (NM,AZ)*  
  *Myotis thysanodes thysanodes (NM,AZ)*  
  *Myotis evotis evotis (NM,AZ)*  
  *Microtus gregalis mexicanus (NM,AZ)*  
  *Antilocapra americana americana (NM,AZ)*  

**Reptiles**

- *Sceloporus gracioso gracioso (NM,AZ)*  
  *Lizard, Sagebrush, N.*

http://nmnhp.unm.edu/bisonm/bisonm.dbm

04/16/1999
User Statistics--Biota Information System of New Mexico

Species List

Last Updated --11 DEC 1998

http://www.fw.vt.edu/fishex/
To: Interested parties

Subject: NAVAJO ENDANGERED SPECIES LIST UPDATE

On 14 February 1991 the Resources Committee of the Navajo Nation Council, by Resolution RCF-014-91, approved the “Endangered Species List for the Navajo Nation” (NESL) and authorized the Director, Navajo Fish and Wildlife Department (NF&WD), to update the NESL when sufficient information is gathered to make such a determination. Based on the expertise of NF&WD biologists, Navajo Natural Heritage Program database information, and data, comments and recommendations from knowledgeable organizations and individuals, the NESL has been updated and will become effective 1 May 1997. Enclosed is a copy. Please route a copy to any other appropriate personnel in your office.

Changes to the NESL are summarized on the enclosed attachment. Group 1 contains those species that are extirpated on the Navajo Nation. Groups 2 and 3 contain species that are protected by tribal Code. Group 4 contains species for which information is being gathered to determine their status; they are not protected by tribal Code, but should be considered in project planning.

Title 17§507 of the Navajo Nation Code makes it unlawful for any person to “take, possess, transport, export, process, sell or offer for sale or ship any species or subspecies” on the NESL. The penalty for any person found guilty of unlawfully taking endangered species is imprisonment and/or a fine.

The NF&WD invites submittal of information relevant to updating the status of any species on the NESL, or any species that should be considered for inclusion on the NESL. Submit information to the Director. Attention: Endangered Species List Update.

If you have any questions concerning species status contact David Mikesic for animals or Daniela Roth for plants at (520) 871-6472.

Larry Benallie, Sr., Director
Navajo Fish and Wildlife Department
P.O. Box 1480
Window Rock, Navajo Nation, AZ 86515

attachments
xc: file/chrono
<table>
<thead>
<tr>
<th>SPECIES NAME</th>
<th>PREVIOUS NESL STATUS</th>
<th>NEW NESL STATUS (AS OF 5-1-97)</th>
<th>EXPLANATION FOR CHANGE IN STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buteo swainsoni (Swainson's Hawk)</td>
<td>Group 2</td>
<td>None (removed from NESL)</td>
<td>Uncommon migrant on the Navajo Nation; one historic breeding account on Navajo, but not considered a Navajo Nation breeder due to lack of suitable habitat.</td>
</tr>
<tr>
<td>Buteo lineatus (Green Heron)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>No historic or present breeding on the Navajo Nation; species is secure globally.</td>
</tr>
<tr>
<td>Circus cyaneus (Northern Harrier)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Incidental breeder on the Navajo Nation, which is at the edge of its range; secure elsewhere.</td>
</tr>
<tr>
<td>Cistothorus palustris (Marsh Wren)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Common migrant and probably wintering species on the Navajo Nation; no obvious threats to habitat; species is secure across its range.</td>
</tr>
<tr>
<td>Empidonax traillii extimus (Southwestern Willow Flycatcher)</td>
<td>Group 3</td>
<td>Group 2</td>
<td>Endangered with extinction throughout its range; riparian habitat on the Navajo Nation is degraded and continues to be impacted.</td>
</tr>
<tr>
<td>Eutrochius maculatus (spotted nut)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Although this is not a species typically found in abundance, it appears to be widespread on the Navajo Nation; typically inhabits a variety of habitat types; no known threats.</td>
</tr>
<tr>
<td>Felis concolor (mountain lion)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Found on the Navajo Nation in naturally low densities due to its large home range, and Navajo's low deer densities and limited deer occurrence.</td>
</tr>
<tr>
<td>Gallinago gallinacea (Common Snipe)</td>
<td>Group 3</td>
<td>None (removed from NESL)</td>
<td>Not known to breed on the Navajo Nation (no breeding documented in past six years), but is common during fall migration; secure throughout its range.</td>
</tr>
<tr>
<td>Mustela vison (mink)</td>
<td>Group 2</td>
<td>None (removed from NESL)</td>
<td>The Navajo Nation is on the edge of its range; historically and presently it probably only occurred here incidentally; secure elsewhere.</td>
</tr>
<tr>
<td>Nycticorax nycticorax (Black-crowned Night-heron)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Breeds at only a few places on the Navajo Nation because of limited good habitat; widespread elsewhere.</td>
</tr>
<tr>
<td>Phaethon rubricauda (Purple Martin)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Historic distribution did not include the Navajo Nation; populations appear secure throughout its range, although present concern exists over its national status.</td>
</tr>
<tr>
<td>species</td>
<td>group 4</td>
<td>group 3</td>
<td>notes</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>Rana pipiens (northern leopard frog)</td>
<td>Group 4</td>
<td>Group 3</td>
<td>1996 surveys found no leopard frogs at historic sites in the Chuska Mountains; populations in states surrounding the Navajo Nation are documented to be declining.</td>
</tr>
<tr>
<td>Rhinichthys osculus (speckled dace)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Common/widespread in the Chuska Mountains; also occurs in the mainstream Colorado, Little Colorado and San Juan rivers.</td>
</tr>
<tr>
<td>Sciurus aberti chuscensoris (Chuska tassel-eared squirrel)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Common on the Navajo Nation in the appropriate habitat; potential threat from logging do not appear to pose a danger of extirpation in the foreseeable future; question as to taxonomic uniqueness.</td>
</tr>
<tr>
<td>Sootyta curculata hypnusca (Western Burrowing Owl)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Common and widespread on the Navajo Nation; no significant threats.</td>
</tr>
<tr>
<td>Speyeria nokomis nokomis (western seep fritillary)</td>
<td>Group 4</td>
<td>Group 3</td>
<td>Navajo Nation has only three or four breeding occurrences; several recognizable threats, including grazing, water diversion, drought and illegal collection. Also, its common name on the NESL has changed from blue-black silverspot butterfly to western seep fritillary.</td>
</tr>
<tr>
<td>Xantusia vigilis umulensis (Utah night lizard)</td>
<td>Group 4</td>
<td>None (removed from NESL)</td>
<td>Common elsewhere; not known from the Navajo Nation, which is the southern part of its range; no threats.</td>
</tr>
</tbody>
</table>

NOTE: Due to a typographic error, the previous NESL gave the scientific name of the roundtail club as *Gila robusta*. It should be *Gila robusta robusta* and this is reflected in the revised NESL.
NAVAJO FISH & WILDLIFE DEPARTMENT

ENDANGERED SPECIES LIST
for
The Navajo Nation

1 MAY 1997

GROUP 1 Those species or subspecies that no longer occur on the Navajo Nation.

GROUP 2 Any species or subspecies which is in danger of being eliminated from all or a significant portion of its range on the Navajo Nation.

GROUP 3 Any species or subspecies which is likely to become an endangered species, within the foreseeable future, throughout all or a significant portion of its range on the Navajo Nation.

GROUP 4 Any species or subspecies for which the Navajo Fish & Wildlife Department (NF&WD) does not currently have sufficient information to support their being listed in Group 2 or Group 3 but has reason to consider them. The NF&WD will actively seek information on these species to determine if they warrant inclusion in a different group or removal from the list.

The NF&WD shall determine the appropriate group for listing a species or subspecies based on any of the following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. over-utilization for commercial, sporting, scientific, or educational purposes;

C. disease or predation;

D. the inadequacy of existing regulatory mechanisms; or

E. other natural or manmade factors affecting its continuous existence.
MAMMALS
- Bear, grizzly (Ursus arctos)
- Otter, southwestern (Lutra canadensis sonora)
- Wolf, gray (Canis lupus lupus)

BIRDS
- Grouse, Sage (Centrocercus urophasianus)
- Hawk, Zone-tailed (Buteo albonotatus)

FISH
- Chub, bonytail (Gila elegans)

GROUP 2
MAMMALS
- Ferret, black-footed (Mustela nigripes)

BIRDS
- Flycatcher, Southwestern Willow (Empidonax traillii extimus)

FISH
- Chub, humpback (Gila cypha)
- Chub, roundtail (Gila robusta robusta)
- Squawfish, Colorado (Ptychocheilus lucius)
- Sucker, razorback (Xyrauchen texanus)

PLANTS
- Astragalus humillimus (Mancos milk-vetch)
- Pediocactus bradyi (Brady pincushion cactus)
- Puccinellia parishii (Parish's alkali grass)

GROUP 3
MAMMALS
- Pronghorn (Antilocapra americana americana)
- Sheep, desert bighorn (Ovis canadensis nelsoni)

BIRDS
- Dipper, American (Cinclus mexicanus)
- Eagle, Bald (Haliaeetus leucocephalus)
- Eagle, Golden (Aquila chrysaetos)
- Falcon, Peregrine (Falco peregrinus)
- Grouse, Blue (Dendragapus obscurus)
- Hawk, Ferruginous (Buteo regalis)
- Owl, Mexican Spotted (Strix occidentalis lucida)

REPTILES AND AMPHIBIANS
- Frog, northern leopard (Rana pipiens)

INVERTEBRATES
- Fritillary, western seep (Speveria nokomis nokomis)

PLANTS
- Allium gooddingii (Goodding’s onion)
- Astragalus cremophyllus var. hevronii (Hevron’s century milk-vetch)
- Astragalus preussii var. cutleri (Cutler’s milk-vetch)
- Carex specuicolis (Navajo sedge)
- Erigeron acmanus (Acoma fleabane)
- Habenaria zothecina (alcove bog-orchid)
- Pediocactus peeblesianus var. fickeisenii (Fickeisen plains cactus)
- Penstemon navajo (Navajo penstemon)
- Sclerocactus mesae-verdae (Mesa Verde cactus)
MAMMALS
Kangaroo rat, Marble Canyon (Dipodomys microps leucotis)
Vole, Navajo Mountain (Microtus mexicanus navaho)

BIRDS
Cuckoo, Western Yellow-billed (Coccyzus americanus occidentalis)
Flycatcher, Hammond’s (Empidonax hammondii)
Goshawk, Northern (Accipiter gentilis)
Grebe, Clark’s (Aechmophorus clarkii)
Kingfisher, Belted (Ceryle alcyon)
Owl, Flammulated (Otus flammeolus)
Owl, Northern Pygmy (Glaucidium gnoma)
Owl, Northern Saw-whet (Aegolius acadicus)
Pigeon, Band-tailed (Columbia fasciata)
Plover, Mountain (Charadrius montanus)
Sora (Porzana carolina)
Swallow, Tree (Tachycineta bicolor)
Warbler, Yellow (Dendroica petechia)
Woodpecker, Three-toed (Picoides tridactylus)

REPTILES AND AMPHIBIANS
Chuckwalla (Sauromalus ater)
Frog, chorus (Pseudacris crinia)
Snake, milk (Lampropeltis triangulum)

FISH
Sculpin, mottled (Cottus bairdii)
Sucker, bluehead (Catostomus discobolus)
Sucker, flannelmouth (Catostomus latipinnis)

INVERTEBRATES
Ambersnail, Kanab (Oxyloma haydeni kanabensis)

PLANTS
Aquilegia desertorum (desert columbine)
Asclepias weihii (Welsh’s milkweed)
Astragalus cronquistii (Cronquist milk-vetch)
Astragalus naturalis (Naturita milk-vetch)
Astragalus torripea (a milk-vetch)
Camissonia atwoodii (Atwood’s camissonia)
Clematis hispulissima var. arizonica (Arizona leather flower)
Cymopterus scaulis var. biggi (Higgins biseuitroot)
Cystopteris utahensis (Utah bladder-fern)
Erigeron bistifenis (Bisi fleabane)
Erigeron thizomatus (rhizone fleabane)
Erigeron givinskii (Sivinski’s fleabane)
Erazurizia rotundata (round dunebroom)
Hedypתחum diffusum (Flagstaff pennyroyal)
Phacelia welshii (Welsh phacelia)
Rosastellata ssp. albissa (Grand Canyon rose)
Tourneea papularina (grama grass cactus)
To: Cassandra D'Antonio, Biologist, EDPE

From: Phil Clayton, Botanist, EDPE

Subject: Plant Surveys for Navajo Route N-31, Mexican Springs, McKinley Co., New Mexico

A. Site #1, Where N-31 (sawmill road) turns near the critical habitat for Mexican spotted owl. The plant community adjacent to and within 0.5 miles of the road at this location is typical of the Great Basin Desert Scrub vegetation and the soil was very sandy:

**Asteraceae** - aster family
1) Artemisia tridentata - big sagebrush
2) Dyssodia spp. - dogweed
3) Ericameria spp. - rabbitbrush
4) Gutierrezia microcephala - broom snakeweed

**Cupressaceae** - cypress family
1) Juniper scopulorum - Rocky Mountain juniper

**Malvaceae** - mallow family
1) Sphaeralcea spp. - globe mallow

**Poaceae** - grass family
1) Bouteloua gracilis - blue grama

A mixed conifer woodland was located approximately 0.5 miles south of site #1. Trees are well spaced, with no canopy and no understory component (probably eliminated by overgrazing by livestock). The following species (in addition to Rocky Mountain juniper) were observed at this site:

**Pinaceae** - pine family
1) Pinus edulis - pinyon
2) Pinus ponderosa var. arizonica - Arizona yellow pine
3) Pseudotsuga menziesii var. glauca - Douglas-fir

B. Site #2, east of Site #1 and along N-31. A mixed conifer woodland comes within 200 feet of the roadway and west of a large, unknown, sandstone formation. Trees are well spaced, there is no canopy and very little understory present. The following species were observed in addition to Arizona yellow pine and Rocky Mountain juniper:

**Asteraceae** - aster family
1) Senecio spp. - butterweed

**Cactaceae** - cactus family
1) Opuntia fragilis - little prickly pear
2) Opuntia macrorhiza - tuberous prickly pear

**Fagaceae** - oak family
1) Quercus gambelii - Gambel oak. Leaves were a golden yellow color.
Liliaceae - lily family
1) Allium spp. - wild onion
2) Yucca glauca - soapweed yucca

Polemoniaceae - phlox family
1) Leptodactylon pungens - prickly phlox

Saxifragaceae - saxifrage family
1) Ribes spp. - occurs in an upland mesic drainage area, near the base of the sandstone formation.

**Site Descriptions:** The plant communities observed within the N-31 project area includes the: Great Basin mixed conifer woodland (Douglas-fir, Arizona yellow pine, pinyon, Gambel oak, and Rocky Mountain juniper); the Great Basin Desert Scrubland (big sagebrush, rabbitbrush, dogweed, and broom snakeweed); and a remnant of the Great Basin Desert Grassland. Part 1 of N-31 extends to the turn off to Assayi Lake and therefore, the plant survey/owlet habitat survey was not recorded beyond this location.

The mixed conifer woodland occupies upland sites within the project area and occurs near sandstone hills or formations. Greater precipitation rates and cooler temperatures at higher elevations (approximately 7,500 feet and up) support the growth of various coniferous species. Desert Scrubland vegetation occupies xeric and barren sites within the project area and particularly along Tohdildonih Wash, elevation 7230 feet. The Desert Grassland component within the project area, was severely overgrazed by livestock in the past and is represented by disjunct patches of blue grama today. Broom snakeweed is also an indicator of overgrazing and widespread in the project area.

**Mexican spotted owl habitat:** The U.S. Fish and Wildlife Service designated critical habitat for the Mexican spotted owl (owl) within the N-31 project area as AZ-NAIR-1. A boundary for this area crosses near the intersection of N-31 with Squirrel Springs Wash. However, there is only a discontinuous and very narrow band of mixed conifer woodland in this area (near Site #2) without any old growth component or perennial sources of water. According to the draft recovery plan for the owl (USFWS, 1995), within the Colorado Plateau, the owl occurs in “steep sloped, mixed-conifer forested canyons and steep-walled canyons on the Navajo Nation”. This description does not apply to the mixed conifer woodland located along Part 1 of N-31. Based on my observations of owl habitat along N-13; the conifer vegetation along N-31 (Part 1) is not potential or suitable habitat for the owl and construction of N-31 would not adversely affect the owl or its designated critical habitat (AZ-NAIR-1).

The critical habitat designation within the N-31 project area was probably designated only because the southern end of the Chuska Mountains extends into this area. The northern Chustas are heavily wooded with steep rocky canyons and perennial sources of water like Lukachukai Creek. However, the area near Navajo, New Mexico, is sparsely wooded and represents unsuitable habitat for the owl.

**STATEMENT OF BONA FIDES**

I certify that this survey was conducted on September 24, 1996, and that the information provided in this report is accurate and true.

Philip W. Clayton  Date
To: Cassandra D’Antonio, Biologist, USACE, ED-PE

From: Phil Clayton, Biologist, USACE, ED-PE

Subject: Plant survey for alternate route N31

A plant survey was conducted for the N31 alternate route, on July 11, 1994. This project occurs in McKinley County, New Mexico. Forty three species of plants were observed during the course of my survey:

**Asteraceae - Aster family**
1) Achillea lanulosa - yarrow
2) Artemisia tridentata - big sagebrush
3) Carduus nutans - musk thistle
4) Chrysopsis villosa - golden aster
5) Conyza canadensis - horse weed
6) Dyrssodia spp. - dogweed
7) Erigeron spp. - fleabane aster
8) Gutierrezia microcephala - broom snakeweed
9) Haplopappus gracilis - spiny goldenweed
10) Lactuca spp. - wild lettuce
11) Machaeranthera spp. - purple aster
12) Thelesperma megapotamicum - green thread
12) Verbesina encelioides - cowpen daisy

**Brassicaceae - Mustard family**
1) Descurainia spp. - tansy mustard
2) Dithyrea wislizenii - spectacle pod
3) Erysimum capitatum - western wallflower
4) Sisymbrium spp. - rocket

**Capparidaceae - Caper family**
1) Cleome serrulata - Rocky Mountain bee plant

**Caprifoliaceae - Honeysuckle family**
1) Symphoricarpus albus var. pauciflorus - white snowberry

**Commelinaceae - Spiderwort family**
1) Tradescantia occidentalis - western spiderwort

**Chenopodiaceae - Goosefoot family**
1) Salsola kali var. tenuifolia - Russian thistle

**Cupressaceae - Cypress family**
1) Juniperus monosperma - one-seed juniper
2) J. scopulorum - Rocky Mountain juniper

**Elaeagnaceae - Oleaster family**
1) Elaeagnus angustifolia - Russian olive
Lupinus spp. - lupine

Fagaceae - Oak family
1) Quercus gambelii - Gambel oak

Geraniaceae - Geranium family
1) Geranium caespitosum - purple geranium

Lamiaceae - Mint Family
1) Monarda spp. - horse mint

Liliaceae - Lily family
1) Yucca glauca - soapweed

Nyctaginaceae - Four o'clock family
1) Abronia fragrans - sand verbena

Onagraceae - Evening primrose family
1) Gaura coccinea - red gaura
2) Oenothera spp. - evening primrose

Pinaceae - Pine family
1) Pinus edulis - pinyon
2) P. ponderosa var. scopulorum - Ponderosa pine

Plantaginaceae - Plantain family
1) Plantago spp. - plantain

Poaceae - Grass family
1) Bouteloua spp. - grama grass
2) Bromus spp. - brome grass
3) Oryzopsis hymenoides - indian ricegrass

Ranunculaceae - crowfoot family
1) Clematis ligusticifolia - virgin's bower

Rosaceae - Rose family
1) Cercocarpus montanus - mountain mahogany

Saxifragaceae - Saxifrage family
1) Fendlera rupicola - Cliff Fendlerbush
2) Ribes spp. - currant

Scrophulariaceae - Figwort family
1) Castilleja spp. - paintbrush
2) Penstemon barbatus - scarlet beardtongue

Recommendation: No Federally listed, proposed, or candidate species, or Navajo Endangered Species List plants were observed within the project area. The alternate route would therefore, be no effect for these species.
I certify that this survey was conducted on July 11, 1994, and that the information provided in this report is accurate and true.

Philip W. Clayton

Dated 8/11/94
SUBJECT: N31 RECONSTRUCTION FOR 11.02 MILES, FROM N12 TO N30

Ms. Irick;

The following information on species and/or habitats of concern and wetlands is provided in response to your 24 November 1993 request concerning the subject project. The species information was identified by the Navajo Natural Heritage Program's biologists and computerized database. The wetlands information was compiled from a 1:100,000 scale National Wetlands Inventory (NWI) map published by the U.S. Fish & Wildlife Service.

Tribal and federal status for each species is indicated as follows: Navajo Endangered Species List (NESL), Endangered Species Act (USESA), Migratory Bird Treaty Act (MBTA), and Bald Eagle Act (BEA). Information is not provided on state listing. Species included below which do not occur on any Navajo, federal, or state listing or species with only USESA candidate or NESL group 4 status have no legal protection and are included for project planning and information gathering purposes only. The NESL status of some of the species listed below may change on 14 February 1994. The NESL that will become effective on that date has been finalized; if you have not received a copy and would like one, call me at (602) 871-7603.

Species known to occur on or adjacent to the project site include the following. For more information regarding the raptors, contact Pat Ryan, Natural Heritage Zoologist, at (602) 871-7638.

1. Astragalus chuskanus (Chuska milk-vetch). Known from "south end of Chuskas, 15 km east of Navajo"; exact location unknown. — removed from NESL gp 4 (1993) — demoted

2. Aquila chrysaetos (golden eagle); NESL group 3; MBTA; BEA.

3. Falco peregrinus (peregrine falcon); NESL group 3; USESA endangered; MBTA.
Additional species with potential to occur on or adjacent to the project site include:

7. *Aquilegia desertorum* (desert columbine); NESL group 4; USESA category 3C.
8. *Habenaria zothecina* (alcove bog-orchid); USESA category 2 candidate.
9. *Accipiter cooperii* (Cooper’s hawk); MBTA.
10. *Accipiter gentilis* (northern goshawk); NESL group 4; USESA category 2 candidate; MBTA.
11. *Accipiter striatus* (sharp-shinned hawk); MBTA.
12. *Aegolius acadicus* (northern saw-whet owl); MBTA.
13. *Butorides striatus* (green-backed heron); NESL group 4; MBTA.
15. *Catostomus discobolus* (bluehead sucker).
16. *Cervus elaphus nelsoni* (Rocky Mountain elk); NESL group 3.
17. *Cinclis mexicanus* (American dipper); NESL group 3; MBTA.
18. *Circus cyaneus* (northern harrier); NESL group X; MBTA.
19. *Cistothorus palustris* (marsh wren); NESL group X; MBTA.
20. *Coccyzus americanus occidentalis* (western yellow-billed cuckoo); NESL group 4; USESA category 3B; MBTA.
21. *Columba fasciata* (band-tailed pigeon); MBTA.
23. *Dendroica petechia* (yellow warbler); NESL group 4; MBTA.
24. *Empidonax hammondii* (Hammond’s flycatcher); NESL group 4; MBTA.
25. *Empidonax traillii extimus* (southwestern willow flycatcher); NESL group X; USESA proposed endangered; MBTA.
26. *Euderma maculatum* (spotted bat); NESL group X; USESA removed from NESL group 2 candidate.
27. *Felis concolor* (mountain lion); NESL group X. removed from NESL(1997)
28. *Gallinago gallinago* (common snipe); NESL group X; MBTA. removed from
29. *Glaucidium gnomon* (northern pygmy-owl); NESL group 4; MBTA.
30. *Meleagris gallopavo* (Merriam’s turkey). This species is of concern for its economic value.
31. *Mustela nigripes* (black-footed ferret); NESL group 2; USESA endangered. The potential for black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per Navajo Fish & Wildlife Department
guidelines) occur in the project area.

32. Nycticorax nycticorax (black-crowned night heron); NESL group \( \frac{2}{3} \); MBTA. removed from NESL (1994)
33. Odocoileus hemionus (mule deer). This species is of concern for its economic value.
34. Otus flammeolus (flammulated owl); NESL group 4; MBTA.
35. Picoides tridactylus (three-toed woodpecker); MBTA.
36. Porzana carolina (sora); NESL group 4; MBTA.
37. Progne subis (purple martin); NESL group \( \frac{2}{3} \); MBTA. removed from NESL (1997)
38. Pseudacris triseriata (chorus frog); NESL group 4.
39. Rana pipiens (Northern leopard frog); NESL group \( \frac{2}{3} \). removed from NESL (1997)
40. Rhinichthys osculus (speckled dace); removed from NESL (1997)
41. Speotyto cunicularia (burrowing owl); MBTA. to NESL group 4 (1995) removed from NESL (1997)
42. Speyeria nokomis nigrocaerulea (blue-black silverspot butterfly); NESL group \( \frac{2}{3} \); USESA category 3B. removed from NESL (1997)
43. Strix occidentalis lucida (Mexican spotted owl); NESL group 3; USESA threatened; MBTA.
44. Tachycineta bicolor (tree swallow); NESL group 4; MBTA.
45. Vireo vicinior (gray vireo); NESL group 4; MBTA.
46. Nesting and migratory waterfowl species.

According to a 1:100,000 scale NWI map, several wetlands occur in the vicinity of this project. Bowl Canyon Creek, Tohdihonih Wash, Oak Creek and Squirrel Springs Wash are classified as Palustrine-Emergent-Persistent-Temporarily Flooded (PEM1A), Palustrine-Emergent-Persistent-Seasonally Flooded (PEM1C), and Riverine-Intermittent-Streambed-Temporarily Flooded (R4SBA). A few other small wetlands also occur along the route and while the route does not appear to cross them, their exact location is not determinable due to the small scale of the NWI map; therefore, field surveys must be conducted to determine wetland presence. NWI maps are available for examination at the Natural Heritage office.

The water quality and native fisheries of the above mentioned streams are of concern. Also, section 404 permits under the Clean Water Act may be required.

Additionally, potential impacts to the migration routes of game species are of concern.

Surveys should be conducted during the appropriate season for the species listed above. Surveyors on the Navajo Nation must be permitted by the Director, Navajo Fish & Wildlife Department. If you have questions pertaining to biological assessments, contact John Nystedt, Environmental Assessment Reviewer, Navajo Fish & Wildlife Department, at (602) 871-7060.

The information in this report is based on existing data known to the Heritage Program at this time. It should not be regarded as the final statement on the occurrence of wetlands or any species of concern, nor should it substitute for on-site
surveys for these species. Also, because the Heritage database is continually updated and because information requests are evaluated by type of action, any given information response is only wholly appropriate for its respective request. Accuracy in identifying wetlands that may be associated with your project depends on the scale of the map used and the proximity to delineated wetlands on the NWI maps. In cases where the presence of a wetland is questionable, field surveys must be conducted to determine wetland presence.

If you have any questions I may be reached at (502) 871-7603.

Annette Polt
Annette Polt, Data Manager
Navajo Natural Heritage Program
Fish & Wildlife Department
P.O. Box 1480
Window Rock, Navajo Nation 86515

CONCURRENCE

Larry Benallie, Sr., Director
Fish & Wildlife Department
Ms. Patricia Barlow-Irick
Albuquerque District, Environmental Section
U.S. Army Corps of Engineers
P.O. Box 1580
Albuquerque, New Mexico 87103

Dear Ms. Barlow-Irick:

This is in response to a letter from Mr. James A. White, Chief, Planning Branch, dated November 24, 1993, requesting information on threatened, endangered and candidate species for the preparation of an Environmental Assessment (EA). Your proposed project consists of reconstruction of the approximately 11-mile long Navajo Route (NR) 31. This two-phase project will involve widening the existing road from 22 feet to 28 feet, while maintaining the existing right-of-way width of 150 feet. Road improvements will consist of grading, asphalt surfacing, and minor realignment, as well as bridge construction over the Tohildonih Wash. Construction will begin approximately 4 miles north of the town of Navajo, New Mexico, at the NR12/NR31 intersection and proceed east to the NR30/NR31 intersection, within the Navajo Reservation, McKinley county, New Mexico. The proposed construction will follow the existing dirt road corridor, with minor changes to improve sight distance and accommodate road width considerations.

The U.S. Fish and Wildlife Service (Service) has used the information in your request to narrow the list of species that could be affected by the proposed project. The following listed species could occur in the anticipated construction area: the endangered black-footed ferret, American peregrine falcon, and bald eagle, the proposed endangered southwestern willow flycatcher and the threatened Mexican spotted owl and Zuni (rhizome) fleabane. Other species that could also occur include the Arizona leather flower, a category 1 candidate species, and the following category 2 candidate species: northern goshawk, ferruginous hawk, mountain plover, Acoma fleabane, Sivinski fleabane, spotted bat, and occult little brown bat.

Category 1 candidate species are those for which the Service has substantial information to support their listing as endangered or threatened. The development and publication of proposed rules for these species are anticipated. Category 2 candidate species are those for which the Service has information indicating that proposing to list is possibly appropriate, but for which substantial data on biological vulnerability or
threats are not currently known to support the immediate preparation of such rules. Candidate species have no legal status under the Endangered Species Act (Act) and are included in this document for planning purposes only. However, the Service is concerned and would appreciate receiving any information that is available or gathered on these species.

Western burrowing owls (Athena cunicularia hypugaea) may inhabit the banks of arroyos, and could occur in the project area. Although not a listed species, the owls are protected under the Migratory Bird Treaty Act.

Under Section 7(a)(4) of the Act, Federal agencies shall confer or consult with the Service on any action that is likely to jeopardize the continued existence of any proposed endangered or threatened species. Section 7(a)(2) of the Act requires Federal agencies ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or result in adverse modification or destruction of critical habitat for listed species. All agencies should safeguard these species by protecting individual animals and plants, as well as by protecting suitable habitat. The cumulative effects of other actions taken in the Chuska Mountains upon sensitive species should also be addressed in the EA currently being prepared by the Corps of Engineers (COE).

We offer the following suggestions for use in project planning to help minimize the effects of the proposed construction on wildlife resources in the area:

1. Construction crews should be made aware of the possible presence of the sensitive species outlined above. Parking should be limited to the construction corridor. Utilize existing roads and rights-of-way whenever possible, and keep all off-road driving to a minimum.

2. No mention is made in the project description concerning associated power line installations along the proposed route. The Service is currently involved in an effort to reduce the number of raptor electrocution mortalities that occur in New Mexico. All line conversions and new line construction should utilize pole designs that allow for the protection of raptors. The COE should advise any contracted power company or other installers of electrical distribution lines of the need to incorporate "raptor-proofing" modifications on old lines, and to install all new lines with this additional parameter in mind. Standard techniques have been developed to prevent raptor electrocutions on electric distribution lines. The latest guidance is included in the publication Suggested Practices for Raptor Protection on Power Lines - State of the Art in 1981, available from the Raptor Research Foundation, Inc., 12805 St. Croix Trail, Hastings, Minnesota 55033. Failure to implement raptor protection measures could subject companies to civil or criminal liability under the Migratory Bird Treaty Act, Endangered Species Act, and Eagle Protection Act.
3. All equipment should be free of any mechanical leaks or discharges. Fuels, lubricants, hydraulic fluids, and other petrochemicals should not be stored or discharged in arroyos, or on their banks. Store and dispense fuels, lubricants, hydraulic fluids, and other petrochemicals outside the 100-year floodplain. Inspect construction equipment daily to ensure that no leaks or discharges of lubricants, hydraulic fluids or fuels occur.

4. Keep constructed slopes at a minimal gradient. Whenever possible, topsoil removed for road construction should be reused as the uppermost layer of fill material. Damage to trees and shrubs should be avoided. Disturbed terrestrial sites should be revegetated with native vegetation to stabilize soils and retard erosion. Cottonwood or willow trees unavoidably impacted should be replaced at a ratio of ten young trees for every mature tree lost.

5. Sediment catchments should be constructed to catch and filter runoff from any construction site. Contain any poured concrete in forms and/or behind cofferdams to prevent accidental discharge. Contain and treat or remove for off-site disposal any wastewater from concrete batching, vehicle wash-down, and aggregate processing. Off-site disposal should follow Environmental Protection Agency protocol.

6. Every effort should be made to perform construction of the bridge crossing at Tohildonih Wash during periods of no flow or low flow to minimize turbidity and other water quality impacts. Planning of the drainage structures should take into consideration the increased levels of metals and metalloids that will accompany increased road usage; these structures should be designed to prevent these compounds from entering watercourses. Borrow material to be used as fill, bank-stabilizing material, riprap, and all temporary and permanent structures placed in a watercourse must be free of chemical contaminants.

Wetlands, riparian vegetation, and the above listed species' sensitive habitats on or near the site should be protected. If adverse impacts from the proposed action cannot be avoided, we would appreciate discussing your project in more detail. We suggest you contact the Navajo Division of Natural Resources and Navajo Natural Heritage Program for wildlife and plant concerns of the Navajo Nation.

For future actions, the Service will respond to requests such as this within 30 days. If you have any questions regarding these comments, or if we can be of further assistance, please call Clint Bailey at 883-7877.

Sincerely,

Jennifer Fowler-Propst
State Supervisor
Enclosure

cc: (wo/enc)
Director, Natural Heritage Program, P.O. Box 1480, Window Rock, Arizona
Director, Division of Natural Resources, The Navajo Nation, Window Rock, Arizona
Proposed Reconstruction of Navajo Route J1  
McKinley County, New Mexico  
December 14, 1993

**Endangered**

Black-footed ferret (*Mustela nigripes*) - This species is usually found in association with prairie dog towns in grassland plains and surrounding mountain basins up to 10,500 feet elevation. A survey for black-footed ferrets is required if the prairie dog town is over 80 acres for black-tailed prairie dogs and 200 acres for white-tailed and Gunnison’s prairie dogs. If the prairie dog town is greater than 1,000 acres, then the area should be evaluated for possible reintroduction of black-footed ferrets.


American peregrine falcon (*Falco peregrinus anatum*) - The peregrine falcon prefers areas with steep rocky cliffs in close proximity to water. Preferred habitat contains dense bird populations in conjunction with large gulfs of air such as is in canyons.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.

Bald eagle (*Haliaeetus leucocephalus*) - This species occupies New Mexico primarily as a winter resident, but also occurs as a migrant with several nesting in the state. Birds roost in large trees which may or may not be close to their feeding areas. Bald eagles are found in riparian areas adjacent to rivers, reservoirs, and ponds. Rabbits, fish and waterfowl are their primary prey items.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.

**Threatened**

Mexican spotted owl (*Strix occidentalis lucida*) - The Mexican spotted owl has been recorded in all New Mexico national forests at elevations of 3,700 to 10,000 feet. Habitat consists of caves, cliff ledges, witches’-broom, and stick nests of other species in mature and old growth forest associated with steep canyons. The preferred vegetation type is mixed conifer; however, they can be found in pinyon-juniper, pine-oak, and ponderosa pine.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.
Zuni (rhizome) fleabane (Erigeron rhizomatus) - This species is often found in close association with Chinle shale and Baca formation outcrops 7,300 to 8,000 feet elevation in the Zuni, Datil and Sawtooth Mountains. Habitat consists of sandstone slopes and clay banks.

Authority: Robert Sivinski, New Mexico Energy, Minerals and Natural Resources Department, Forest and Resources Conservation Division, P.O. Box 1948, Santa Fe, New Mexico 87504-1948, (505) 827-7865.

Proposed Endangered with Critical Habitat

Southwestern willow flycatcher (Empidonax traillii extimus) - This species inhabits thickets, riparian woodlands, pastures, and brushy areas. It is a sparrow sized, olive green flycatcher with a dark head, whitish throat, olive breast, and yellow belly. It has no eye ring and its wings have two white bars.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.

Category 1 Candidate

Arizona leatherflower (Clematis hirsutissima var. arizonica) - This perennial vine produces numerous upright to trailing stems 1-2 foot tall. The compound leaves have 7-13 linear and very narrow leaflets. The flowers appear on the tops of the stems in late spring and have four purplish petals. Each seed in the fruit has a long plume-like tail. This species occurs in the Zuni Mountains of McKinley County, New Mexico, at 6,500-7,000 foot elevation and in association with groves of Gambel's oak.

Authority: Robert Sivinski, New Mexico Energy, Minerals and Natural Resources Department, Forestry and Resources Conservation Division, P.O. Box 1948, Santa Fe, New Mexico 87504-1948, (505) 827-7865.

Category 2 Candidates

Northern goshawk (Accipiter gentilis) - This species utilizes primarily moderate to highly canopied mature coniferous forests with minimal understory. Nest sites are found in forest stands with a high density of large trees and canopy closure.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.

Ferruginous hawk (Buteo regalis) - This species is found almost statewide during migration. Birds seem to key in on wide open grasslands and prairies, especially for nesting.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.
Mountain plover (*Charadrius montanus*) - This species is primarily found in short grass prairies often associated with prairie dog towns. Nest sites are chosen in flat country with sparse and low-lying vegetation. This bird feeds exclusively on insects; primarily beetles, grasshoppers, and crickets.

Authority: Sandy Williams, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, (505) 827-9914.

Acoma fleabane (*Erigeron acomanus*) - A Category 2 candidate, it is a mat-forming perennial with basal leaves. Flowers with white rays and yellow disks are borne singly on stems from 4.5-15 centimeters tall. It is found in sandy soils at the base of sandstone cliffs. Associated plant species include one-seeded juniper (*Juniperus monosperma*), piñon pine (*Pinus edulis*), hairy golden aster (*Chrysopsis villosa*), and mountain mahogany (*Cercocarpus montanus*).

Authority: Dr. Robert Sivinski, New Mexico Energy, Minerals and Natural Resources Department, Forestry and Resources Conservation Division, P.O. Box 1948, Santa Fe, New Mexico 87504-1948, (505) 827-7865.

Sivinski fleabane (*Erigeron sivinskii*) - A perennial with a thick taproot and with numerous, short, upright branches. Stems are unbranched, green, and closely appressed trichomes, and up to 3.15 inches long. Leaves arise in dense basal clusters, linear, and up to 1 inch long and 0.8 mm wide. Flower heads are solitary, terminal, and 14 mm wide. Ray flowers number 21-33, are white with a lavender midstripe, and up to 9 mm long. Disk flowers are narrowly funnel-form, up to 4 mm long. Blooms May to June. Fruit is an achene, 2-3 nerved, narrowly oblong, with sparsely ciliate margins. Pappus of 21-27 bristles. Known only from McKinley County (Zuni Mountains) from 7,300 to 8,000 feet elevation. Occurs in association with Chinle shale outcrops in seleniferous (selenium bearing) soils.

Authority: Robert Sivinski, New Mexico Energy, Minerals and Natural Resources Department, Forestry and Resources Conservation Division, P.O. Box 1948, Santa Fe, New Mexico 87504-1948, (505) 827-7865.

Spotted bat (*Euderma maculatum*) - This bat is found in several national forests in New Mexico. This species tends to occur in remote areas, selecting specialized roosting sites. The presence of streams and nearby cliffs or steep hillsides with loose rocks may be habitat for this bat.

Authority: Scott Altenbach, University of New Mexico, Department of Biology, Albuquerque, New Mexico 87131, (505) 277-3411.
occult little brown bat (Myotis lucifugus occultus) - This species is a montane dweller and roosts in natural caves, mine tunnels, hollow trees, or buildings.

Authority: Scott Altenbach, University of New Mexico, Department of Biology, Albuquerque, New Mexico 87131, (505) 277-3411.
Dear Ms. Barlow-Irick,

This letter is in response to your letter requesting information on plants listed as endangered by the State of New Mexico. Plants of concern to the state with potential to occur in the area of the proposed Navajo Route 31 from the intersection of N12 to the N30/N31 intersection are Astragalus chuskanus (Chuska Mt. milkvetch), Sclerocactus mesae-verdae (Mesa Verde cactus), Sclerocactus parviflorus var. intermedius (small-flower devil's claw cactus), and Coryphantha missouriensis, (plains pincushion cactus).

We recommend that you conduct an endangered species biological clearance survey before proceeding with any construction. If during your survey, you encounter these or any other rare plants, we would appreciate knowing their exact locations.

If you have any questions, please do not hesitate to call Karen Lightfoot or Bob Sivinski, Endangered Species Botanists for the State of New Mexico.

Sincerely,

Raymond R. Gallegos
State Forester

By:
Karen S. Lightfoot
# VEGETATION LIST
(Compiled from Trip Reports dated 10/4/93 and 6/10/93)

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Scientific Name</th>
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<td>Russian Olive</td>
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<tr>
<td>Butter Flower</td>
<td>Senecio multicapitutus</td>
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<tr>
<td>Coyote Willow</td>
<td>Salix exigua</td>
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<td>Conyza spp.</td>
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<td>Snakeweed</td>
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<td>Bent Grass</td>
<td>Agrostis spp.</td>
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<tr>
<td>Foxtail barley</td>
<td>Hordeum jubatum</td>
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<tr>
<td>Horsetail</td>
<td>Equisetum arvense</td>
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<td>Plantago spp.</td>
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<tr>
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<td>Cirsium vulgare</td>
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<tr>
<td>Yarrow</td>
<td>Achillea lanulosa</td>
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<td>Barley</td>
<td>Hordeum spp.</td>
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<tr>
<td>Broom Snakeweed</td>
<td>Gutierrezia sarothrae</td>
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<td>Dandelion</td>
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<td>Artemisia tidentata</td>
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<tr>
<td>Douglas Fir</td>
<td>Pseudotsuga mienzii</td>
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<tr>
<td>Beehive cactus</td>
<td>Coryphantha spp.</td>
</tr>
<tr>
<td>One-seeded Juniper</td>
<td>Juniperus monosperma</td>
</tr>
</tbody>
</table>
SUBJECT: SPECIES OF CONCERN FOR PROPOSED ROAD CONSTRUCTION ACTIVITIES FOR ROAD N31, BETWEEN ROADS N12 AND N30, IN THE FORT DEFIANCE AGENCY.

Mr. Gamel;

A search of the Navajo Natural Heritage database has been completed in response to your 8 September 1992 information request concerning the subject project. This search has identified many species of concern as either occurring or potentially occurring in the project area.

Tribal and federal status for each species is indicated as follows: Navajo Endangered Species List (NESL), Endangered Species Act (USESA), Migratory Bird Treaty Act (MBTA), and Bald Eagle Act (BEA). Information is not provided on state listing. Species included below which do not occur on any Navajo, federal, or state listing or species with only USESA candidate or NESL group 4 status have no legal protection and are included for project planning and information gathering purposes only.

Species known to occur on or adjacent to the project site which may be affected by the proposed action include:

1. *Astragalus chuskanus* (a milk-vetch).
2. *Aquila chrysaetos* (Golden eagle); NESL group 3; MBTA; BEA. Known from within 0.5 mile of the route. For more information, contact Pat Ryan, Heritage Zoologist, at (602) 871-7638.
3. *Falco peregrinus* (Peregrine falcon); NESL group 3; USESA endangered; MBTA. Known from within 2 miles of the route. For more information, contact Pat Ryan, Heritage Zoologist, at (602) 871-7638.
4. *Haliaeetus leucocephalus* (Bald eagle); NESL group 3; USESA endangered; MBTA; BEA. For more information, contact Pat Ryan, Heritage Zoologist, at (602) 871-7638.
5. **Pandion haliaetus** (Osprey). For more information, contact Pat Ryan, Heritage Zoologist, at (602) 871-7638.

6. **Sciurus aberti chuscensis** (Chuska tassel-eared squirrel); NESL group 3.

Additional species with potential to occur on or adjacent to the project site include:

7. **Accipiter gentilis** (Northern goshawk); NESL group 4; USESA category 2 candidate; MBTA.
8. **Accipiter striatus** (Sharp-shinned hawk).
9. **Cinclus mexicanus** (American dipper); NESL group 3; MBTA.
10. **Dendragapus obscurus** (Blue grouse).
11. **Empidonax hammondii** (Hammond's flycatcher); NESL group 4; MBTA.
12. **Felis concolor** (Mountain lion); NESL group 4.
13. **Gallinago gallinago** (Common snipe); NESL group 3; MBTA.
14. **Glaucidium gnoma** (Northern pygmy-owl); NESL group 4; MBTA.
15. **Mustela nigripes** (Black-footed ferret); NESL group 2; USESA endangered. The potential for black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per Navajo Fish & Wildlife Department guidelines) occur in the project area.
16. **Otus flammeolus** (Flammulated owl); NESL group 4; MBTA.
17. **Pompeius subis** (Purple martin); NESL group 4; MBTA.
18. **Pseudacris triseriata** (Chorus frog); NESL group 4.
19. **Rana pipiens** (Leopard frog); NESL group 4.
20. **Speyeria nokomis nigrocaerulea** (Blue-black silverspot butterfly); NESL group 4; USESA category 3B.
21. **Strix occidentalis lucida** (Mexican spotted owl); NESL group 3; USESA proposed threatened; MBTA.
22. **Tachycineta bicolor** (Tree swallow); NESL group 4; MBTA.
23. **Vireo vicinior** (Gray vireo); NESL group 4; MBTA.

Additional species of cultural or economic significance that do not warrant protection under the NESL, with potential to occur on or adjacent to the project site include the following.

Potential impacts to migration routes are of concern for these species.

24. **Callipepla squamata** (Scaled quail).
25. **Cervus elaphus nelsoni** (Rocky Mountain elk); NESL group 3.
26. **Meleagris gallopavo** (Merrian's turkey).
27. **Odocoileus hemionus** (Mule deer).
28. Waterfowl species. Nesting and migration routes are of concern.

Also of concern are impacts to any riparian habitats (such as those of Bowl Canyon Creek, Tohildonih Wash and Oak Creek) and their associated species (including native fisheries). Section 404 permits may be required under the Clean Water Act.
Surveys should be conducted during the appropriate season for the species listed above. Surveyors on the Navajo Nation must be permitted by the Director, Navajo Fish & Wildlife Department. If you have questions pertaining to biological assessments (EAs), contact John Nystedt, EA Reviewer, Navajo Fish & Wildlife Department, at (602) 871-7060.

The information in this report is based on existing data known to the Heritage Program at this time. It should not be regarded as the final statement on the occurrence of any species of concern nor should it substitute for on-site surveys for these species. Also, because the Heritage database is continually updated and because information requests are evaluated by type of action, any given information response is only wholly appropriate for its respective request.

If you have any questions I may be reached at (602) 871-7603.

Annette Polt, Data Manager
Navajo Natural Heritage Program
Fish & Wildlife Department
P.O. Box 1480
Window Rock, Navajo Nation 86515
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31 (2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo To Asaayi Lake Junction, McKinley County, New Mexico

Appendix D
Black-footed Ferret Survey (1994)
May 23, 1994

Mr. Phil Clayton, Biologist
Department of the Army
Albuquerque District, Corps of Engineers
P.O. Box 1580
Albuquerque, New Mexico 87103-1580

Dear Mr. Clayton,

Attached are the black-footed ferret inventory reports for the proposed 5.8 mile N 54, 11.02 mile N 31, and the 7.3 N 57 highways. The N 57 highway is to be constructed from New Mexico intersection 504 to Cudei chapter house, the N 31 highway is to be constructed from Navajo, New Mexico to Mexican Springs, New Mexico, and the N 54 highway is to be constructed from Fort Defiance, Arizona to N 54 McKinley County, New Mexico. Black-footed ferret surveys were conducted with the right-of-way of the proposed highways. The black-footed ferret survey was contracted to the Navajo Natural Heritage Program by the Army Corps of Engineers (contract No. DACW47-94-P-0289). Please call me at (602) 871-7059 if any revisions are needed.

Sincerely yours,

Michael Tremble
Wildlife Manager
Navajo Fish & Wildlife Department

cc: File/Chrono
N54-MUNI

THREATENED & ENDANGERED SPECIES SURVEY:
BLACK-FOOTED FERRET

PROJECT:
PROPOSED NAVAJO ROUTE N 31 (NAVAJO, N.M.
TO MEXICAN SPRINGS, N.M.)

FOR:
UNITED STATES ARMY CORPS OF ENGINEERS
ALBUQUERQUE DISTRICT, ENVIRONMENTAL SECTION
P.O. BOX 1580
ALBUQUERQUE, NEW MEXICO 87103

MAY 1994

Report Prepared by:

Michael Tremble, Wildlife Manager
Navajo Natural Heritage Program
Navajo Fish & Wildlife Department

Larry Benallie, Sr., Director
Navajo Fish & Wildlife Department
INTRODUCTION

A black-footed ferret (*Mustela nigripes*) diurnal survey was conducted in existing prairie dog (*Cynomis gunnisoni*) towns found within the proposed 11.02 mile highway Navajo route N 31 right-of-way (ROW) as contracted between the Navajo Natural Heritage Program (NNHP) and the United States Army Corps of Engineers (USACE). A 0.5 mile corridor was surveyed with the proposed N 31 highway ROW as the center of the corridor. A map delineating the prairie dog towns and the N 31 ROW are shown in attachment 1. The N 31 route is located in McKinley County, New Mexico.

The survey and report are needed to fulfill the requirements of the Endangered Species Act (ESA) of 1973 and the National Environmental Policy Act (NEPA). Proponents using federal funding for any portion of a project which entails potentially disturbing threatened or endangered species or their habitat is required to obtain a survey for these species.

The objective of this survey was to determine the inhabitance or presence of the black-footed ferret within the prairie dog towns found within the proposed highway ROW.

METHODS

Three diurnal surveys were conducted by Steven Chischilly, Biologist, and Delra A. Yazzie, Wildlife Technician, within the prairie dog towns found within the proposed N 31 highway 0.5 mile ROW on May 7, 9, and 10, 1994. These individuals conducting the survey are employed by the Navajo Fish & Wildlife Department located in Window Rock, Arizona.

Stakes and concrete slabs were found at the center of the proposed N 31 highway ROW. These stakes were used by the biological surveyors to determine the 0.25 mile distance on each side of the ROW in which the black-footed ferret survey was conducted. A 0.25 mile distance was delineated on each side of the highway ROW. This distance was marked with flagging on each side of the ROW. A compass bearing was taken from the one ROW stake to the next and thus the 0.25 mile corridor distance was maintained.

Survey methods used were based upon the Navajo Fish & Wildlife Department black-footed ferret protocol (*Navajo Fish & Wildlife Department*, 1985). This survey provides construction clearance for one year on the 0.5 mile corridor and not the entire prairie dog towns beyond the 0.5 mile corridor.

The area identified within the flagged corridor was hiked. The area was then broken into 10 meter transects. These transects were hiked and notes were taken on the number and occupancy of prairie dog burrows. An active burrow was identified if there was

Fresh scat outside the burrow, diggings at the entrance of the burrow were fresh or if paw prints surrounding the burrow were found. A burrow was determined inactive if the burrow was plugged with soil or there was debris such as tumbleweeds and spider webs at the entrance of the burrow.

During the survey the surveyors kept a watch for signs which may indicate the presence of the black-footed ferret. Black-footed ferret signs such as scat, trenches, paw prints, and prairie dog remains were sought.

RESULTS/DISCUSSION

Approximately 360 acres of prairie dog towns were searched for black-footed ferret sign within the proposed Navajo route N 31 highway ROW. A total of 39 hours was spent surveying the corridor resulting in a total of 1678 burrows counted with 915 inactive burrows. The density of burrow openings averaged 4.7 burrows per acre. The estimated number of prairie dog burrows to be disturbed by the construction of N 31 is 30 active prairie dog burrows.

Six prairie dog skulls were collected all with no sign of the black-footed ferret dual puncture hole patterns at the back of the prairie dog skulls. Several other prairie dog bone fragments and badger scat were collected. Three adult and one juvenile western rattlesnakes were encountered during the transect surveys. Two golden eagles were also observed very near the proposed project area. A known golden eagle nest location is found approximately 60 meters from the proposed highway. If the highway is built the nest site will be exposed to construction activities as well as passing motorists once Navajo Route N 31 is complete (See "Conclusion/Recommendations" section).

Other wildlife seen during the survey include the following: American kestrel, merlin, cottontail rabbits, northern goshawk, Lewis' woodpecker, western bluebird, ravens, mallards, tree swallows, and western kingbirds. Livestock and other domestic/feral animals seen include cattle, horses, and dogs.

CONCLUSION/RECOMMENDATIONS

Black-footed ferrets are carnivorous with prairie dogs as their primary prey. Prairie dog towns of sufficient size were observed within the proposed Navajo route N 31 highway ROW. No black-footed ferret sign such as scat, trenches, skeletons, or tracks were observed within the highway ROW.

A 0.5 mile buffer zone has been establish on proposed N 31 highway to decrease disturbance of the Golden eagle nest during the
screeding and nesting season (See MAP 1). Construction of N 31 shall not occur during the months of March to August.

Due to the insufficient density of prairie dog burrows and the high incidence of feral and domestic canines near the proposed N 31 ROW no significant negative impact is expected upon the black-footed ferret with the construction and use on the proposed N 31 highway.
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix E
Mexican Spotted Owl Surveys (1995 and 1996)
The Bureau of Indian Affairs (BIA) is proposing to construct an 11.02 mile, two-lane asphalt highway, designated Navajo Route 31 (N31), from Navajo Route 12, approximately four miles north of New Mexico, to the intersection of N31 and Navajo Route 30 (see MAP 1). The BIA asked United States Army Corps of Engineers (COE) to complete the environmental assessment. Approximately the last four miles of the eastern half of the proposed right-of-way, which is currently in use, is in close proximity to potential Strix occidentalis lucida (Mexican Spotted Owl) habitat (See MAP 2).

A contract between COE and Biological Survey Services Program (BSSP) to conduct a Mexican Spotted Owl (MSO) inventory on the proposed highway, N-31 has been awarded.

METHOD

The inventory was conducted using the United States Forest Service (USFS) Region 3, Interim Directive No. 2, 1994 Mexican Spotted Owl inventory protocol. The NFWD personnel conducting the inventory are certified to conduct MSO surveys.

Eight calling points (1-4 and 6-9) were established by Steven Chischilly, ex-BSSP biologist in April 1995 (See MAP 1). On April 3, calling point 9 was deleted due to the presence of unsuitable habitat. The first survey was conducted on April 3 by Steven Chischilly. The second survey was conducted on May 18 by Debra A. Yazzie, BSSP Biologist. The third survey was conducted on June 8 by Yazzie. The fourth survey was conducted on June 22 by Yazzie (See attached MSO field forms).

RESULTS

The first survey began at 2001 hours and was conducted by Chischilly. No raptor responses were heard during the survey. Domestic dogs of nearby residence were heard at calling point 2. The running water in the stream below calling points 1 and 3 was also heard. An unidentified sound (screech, shrill) was heard at calling point 6. The survey ended at 2206 hours.

The second survey began at 2138 hours and was conducted by Yazzie. Several raptor responses were heard. At calling point 1, a saw-whet owl was heard at 2146 hours. A coyote, dog and cat were also heard. At calling point 3, a saw-whet owl was heard at 2234 hours. At calling point 4, two pygmy owls were heard at 2254 hours. At calling point 6, three pygmy owls were heard at 2310 hours. The survey ended at 2345 hours.

The third survey began at 2102 hours and was conducted by Yazzie. No raptor responses were heard during the survey.
Domestic dogs of nearby residence were heard at calling point 2. The survey ended at 2306 hours.

The fourth survey began at 2100 hours and was conducted by Yazzie and Christopher Charlie (NNHP summer intern). No raptor responses were heard during the survey. At calling point 1, a squirrel was chattering and children at a nearby residence were laughing. At calling point 2, domestic dogs were barking and vehicles were traveling on Assayi lake road. At calling point 3, toads and crickets were active and water was running down stream. We arrived at calling point 4 at 2201 hours and began calling. A summer home was occupied west of calling point 4. The people began to make a lot of noise and dogs began to bark. It was decided at 2208 hours to leave the area and come back after calling at points 7 and 8. The survey ended at 2305 hours.

CONCLUSION

No Mexican Spotted owls were heard during the 1995 N-31 inventory. According to the USFS MSO protocol, one more MSO inventory, consisting of four (4) surveys, must be conducted next year (1996) to clear the area of Strix occidentalis lucida.

REFERENCES

U.S. Department of Interior; U.S. Fish & Wildlife Service. 
Federal Register. Vol. 58, No. 49.

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No calling point 5, skipped from 4 to 16.
1999 Mexican Spotted Owl Inventory Form

Forest: Navajo
District: Navajo
Inventory Area: N31
Survey #2 Date: 5
Quad Map Name(s): Direct
Topo MT# Inventory: X
Informal Monitoring: X
Survey Type: Nighttime
Daytime Survey: #2
Complete Survey
Outing #: Aborted?
Survey Results: Nighting
% area Surveyed: 86

Observers: Yazzie, D.

Weather:
Start: Wind 2 Clouds 0 PPT 0 Temp 50°F
End: Wind 2 Clouds 0 PPT 0

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<th>Night</th>
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Raptor Response: None
Weather: Heard Coyote, did not call.

NOTES:...
1994 Mexican Spotted Owl Inventory Form

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Weather:
Start: Windy, Clouds 70% PPT, True Temp 11°C  End: Windy, Clouds 25% PPT, 9°C
# 1994 Mexican Spotted Owl Inventory Form

**Forest District**: Navajo

**Inventory Area**: N-3

**Map Name(s)**: Todito Park, NM 3510868 MT#

**Survey**
- **Nighttime X**
- **Daytime**
- **Formal Monitoring**
- **Informal Monitoring**

**Survey Type**: Nighttime X Daytime

**Outing #**
- **Aborted?** No

**Visit Results**: 100%

**% area Surveyed**: 100%

**Observers**
- Charlie

**Start**: Wind
- **Clouds**: No
- **PPT**: No
- **Temp**: 72

**End**: Wind
- **Clouds**: No
- **PPT**: No
- **Temp**: 72

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</table>
The Bureau of Indian Affairs (BIA) is proposing to construct an 11.02 mile, two-lane asphalt highway, designated Navajo Route 31 (N31), from Navajo Route 12, approximately four miles north of Navajo, New Mexico, to the intersection of N31 and Navajo Route 30. The BIA asked United States Army Corps of Engineers (COE) to complete the environmental assessment. Approximately the last four miles of the eastern half of the proposed right-of-way, which is currently in use, is in close proximity to potential Strix occidentalis lucida (Mexican Spotted Owl) habitat.

METHOD

The inventory was conducted using the United States Forest Service (USFS) Region 3, Interim Directive No. 2, 1994 Mexican Spotted Owl inventory protocol.

Seven calling points were established throughout the potential Mexican Spotted Owl (MSO) which lies along N-31 (See figure 1). Surveyors arrived at a calling point 15 to 30 minutes prior to sundown. At this time, the inventory form was filled out and the calling point aluminum tag checked. The fixed calling point survey method was used. Calling method used was vocal (The surveyor would primarily use the four (4) note hoot, locator and begging call). A minimum of fifteen minutes was spent at each calling point.

RESULTS

The first survey was conducted on April 9, 1996 by Biological Survey Services Program (BSSP) Wildlife Biologist, Debra A. Yazzie.
Mexican spotted owl from the construction of the project is currently engineered. It is recommended that a Finding Of No Significant Impact (FONSI) be granted for the proposed project.

SIGNATURE OF AUTHORITY

This document, specific to Endangered, Threatened, and Candidate species on the Navajo Nation, has been prepared under my direct supervision and is accurate in detail to the best of my knowledge.

Signed on 15 JULY 1996,

Debra A. Yazzie, Wildlife Biologist
Biological Survey Services Program
Navajo Fish and Wildlife Department

CONCURRENCE

Larry Benallie, Sr., Director
Navajo Fish and Wildlife Department
Division of Natural Resources
Biological Survey Services Program

QUAD MAP  TODILTO PARK, NM  MAP #  3510888

Proposed N-31 road way - 

Calling point - 

Calling point 5 BD
1996 Mexican Spotted Owl Inventory Form

Forest Chuska Mtn. District 14 Mexican Spotted Owl Inventory Area N-31 Date: 9/15
Quad Map Name(s): Tohilito Park, NM MAP# 3510888
Inventory X: Informal Monitoring ___ Formal Survey ___
Survey Type: Nighttime X Daytime ___ Survey # 1 Complete Survey Outing # 1 Aborted? N Visit Results Negative ___ % area Surveyed ___
Observers: Yazzie, D.

Weather:
Start: Wind Z mph Clouds 60% PPT ☑ Temp 62°F End: ☑ Weather

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<th>Sex</th>
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1996 Mexican Spotted Owl Inventory Form

Forest District: Chuska Mtn. District
Chapter: Mexican Chapter
Inventory Area: N-31
Date: A

Quad Map Name(s): Tohdi Park N.M.
MAP #: 3510888

Inventory X: Informal Monitoring
Survey Type: Nighttime X Daytime
Survey #: 2 Complete Survey
Outing #: 1 Aborted? No
Visit Results: Negative
% area Surveyed: 100%

Observers: Yacień D., A. Bear E.

Weather:
Start: Wind mph, Clouds, PPT, Temp. 65°F
End: Wind mph, Clouds, PPT, Temp. 65°F

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Comments:
C.P. 7 - Common nighthawks sitting S. suggesting N direction.
C.P. 6 - Common nighthawks flying away from W to E.
C.P. 5 - Jays to the west.
C.P. 4 - Chimney, house to the W.
C.P. 2 - Domestic dog barking a little bit.
C.P. 1 - Domestic boys lurking a little bit, one white horse (walking on the road west.)
1996 Mexican Spotted Owl Inventory Form 3

Forest  | District  | N.  | Inventory Area  | Date:  | Quad Map Name(s):  | MAP#:  | Inventory X: Informal Monitoring  | Survey Type: Nighttime X  Daytime  Survey # 3  Complete Survey  
Outing #: Aborted?  Visit Results: Negative  % area Surveyed: 100

Observers:  

Weather:  
Start:  Wind  Clouds  PPT  Temp  End:  Wind  Clouds  PPT  

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Comments:
1996 Mexican Spotted Owl Inventory Form 4

Forest: Chucks Mtn, District: Mexican Spring Cliffs
Inventory Area: N-31
Quad Map Name(s): Tolda Park, NM
MP#: 3510888

Inventory X: Informal Monitoring
Survey Type: Nighttime X Daytime
Survey #4 Complete Survey?
Outing # I Aborted? N Visit Results
% area Surveyed

Observers: E. Aten
S. Deterr

Weather:
Start: Wind 10 Clouds 0 PPT 0 Temp 65
End: Wind 10 Clouds 0 PPT 0 Temp

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Comments: At call point #7 an unidentified bird flapping its wings through the trees!
CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo To Asaayi Lake Junction, McKinley County, New Mexico

Appendix F
Vegetation Survey of Mexican Spotted Owl Habitat (1996)
September 25, 1996

To: Cassandra D’Antonio, Biologist, EDPE

From: Phil Clayton, Botanist, EDPE

Subject: Plant Surveys for Navajo Route N-31, Mexican Springs, McKinley Co., New Mexico

A. Site #1, Where N-31 (sawmill road) turns near the critical habitat for Mexican spotted owl. The plant community adjacent to and within 0.5 miles of the road at this location is typical of the Great Basin Desert Scrub vegetation and the soil was very sandy:

**Asteraceae** - aster family
1) *Artemisia tridentata* - big sagebrush
2) *Dyssodia* spp. - dogweed
3) *Ericameria* spp. - rabbitbrush
4) *Gutiarrreza microcephala* - broom snakeweed

**Cupressaceae** - cypress family
1) *Juniper scopulorum* - Rocky Mountain juniper

**Malvaceae** - mallow family
1) *Sphaeralcea* spp. - globe mallow

**Poaceae** - grass family
1) *Bouteloua gracilis* - blue grama

A mixed conifer woodland was located approximately 0.5 miles south of site #1. Trees are well spaced, with no canopy and no understory component (probably eliminated by overgrazing by livestock). The following species (in addition to Rocky Mountain juniper) were observed at this site:

**Pinaceae** - pine family
1) *Pinus edulis* - pinyon
2) *Pinus ponderosa* var. *arizonica* - Arizona yellow pine
3) *Pseudotsuga menziesii* var. *glaucan* - Douglas-fir

B. Site #2, east of Site #1 and along N-31. A mixed conifer woodland comes within 200 feet of the roadway and west of a large, unknown, sandstone formation. Trees are well spaced, there is no canopy and very little understory present. The following species were observed in addition to Arizona yellow pine and Rocky Mountain juniper:

**Asteraceae** - aster family
1) *Senecio* spp. - butterweed

**Cactaceae** - cactus family
1) *Opuntia fragilis* - little prickly pear
2) *Opuntia macrorhiza* - tuberous prickly pear

**Fagaceae** - oak family
1) *Quercus gambelii* - Gambel oak. Leaves were a golden yellow color.
Liliaceae - lily family
1) Allium spp. - wild onion
2) Yucca glauca - soapweed yucca

Polemoniaceae - phlox family
1) Leptodactylon pungens - prickly phlox

Saxifragaceae - saxifrage family
1) Ribes spp. - occurs in a upland mesic drainage area, near the base of the sandstone formation.

Site Descriptions: The plant communities observed within the N-31 project area includes the: Great Basin mixed conifer woodland (Douglas-fir, Arizona yellow pine, pinyon, Gambel oak, and Rocky Mountain juniper); the Great Basin Desert Scrubland (big sagebrush, rabbitbrush, dogweed, and broom snakeweed); and a remnant of the Great Basin Desert Grassland. Part 1 of N-31 extends to the turn off to Assayi Lake and therefore, the plant survey/owul habitat survey was not recorded beyond this location.

The mixed conifer woodland occupies upland sites within the project area and occurs near sandstone hills or formations. Greater precipitation rates and cooler temperatures at higher elevations (approximately 7,500 feet and up) support the growth of various coniferous species. Desert Scrubland vegetation occupies xeric and barren sites within the project area and particularly along Tohdildonih Wash, elevation 7230 feet. The Desert Grassland component within the project area, was severely overgrazed by livestock in the past and is represented by disjunct patches of blue grama today. Broom snakeweed is also an indicator of overgrazing and widespread in the project area.

Mexican spotted owl habitat: The U.S. Fish and Wildlife Service designated critical habitat for the Mexican spotted owl (owl) within the N-31 project area as AZ-NAIR-1. A boundary for this area crosses near the intersection of N-31 with Squirrel Springs Wash. However, there is only a discontinuous and very narrow band of mixed conifer woodland in this area (near Site #2) without any old growth component or perennial sources of water. According to the draft recovery plan for the owl (USFWS, 1995), within the Colorado Plateau, the owl occurs in "steep sloped, mixed-conifer forested canyons and steep-walled canyons on the Navajo Nation". This description does not apply to the mixed conifer woodland located along Part 1 of N-31. Based on my observations of owl habitat along N-13; the conifer vegetation along N-31 (Part 1) is not potential or suitable habitat for the owl and construction of N-31 would not adversely affect the owl or its designated critical habitat (AZ-NAIR-1).

The critical habitat designation within the N-31 project area was probably designated only because the southern end of the Chuska Mountains extends into this area. The northern Chuskas are heavily wooded with steep rocky canyons and perennial sources of water like Lukachukai Creek. However, the area near Navajo, New Mexico, is sparsely wooded and represents unsuitable habitat for the owl.

STATEMENT OF BONA FIDES

I certify that this survey was conducted on September 24, 1996, and that the information provided in this report is accurate and true.

Philip W. Clayton Date
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix G
Water Resources Information

Section 404 Determination and Authorization Documentation
Section 404 Nationwide Permits No. 3 and 14 (and Conditions)
September 7, 1999

Operations Division
Regulatory Branch

Mr. Harold Riley
Branch of Roads
Navajo Area Office
P.O. Box 1060
Gallup, New Mexico 87305

Dear Mr. Riley:

This is in reference to your proposed road construction in the Tohildonih Wash, Bowl Canyon Creek, Squirrel Springs Wash, Oak Creek, and Little Water Creek near Navajo, McKinley County, New Mexico (Action No. 1994 00353).

The Corps of Engineers has published Nationwide Permits pursuant to Section 404 of the Clean Water Act (33 CFR 330). Nationwide Permit No. 14 authorizes discharges of dredged or fill materials into waters of the United States for road crossings. Nationwide Permit No. 3 authorizes discharges of dredged or fill materials into waters of the United States for maintenance of existing structures, including culverted road crossings. Summaries of Nationwide Permits No. 14 and 3 and a brochure describing the Corps regulatory program are enclosed for your information.

Your project is described as road crossing activities associated with the construction and/or repair of the road designated as N31. The crossings will involve the above waterways, which are tributaries of Red Lake. As such, activities in the waterways are subject to the Corps' Section 404 Regulatory program.

Your road crossing can be constructed under authority of the nationwide permit up to the acreage maximum. The permittee must insure compliance with all conditions of the permit, including submittal of the enclosed Compliance Certification required by
General Condition No. 14.

Any discharges of dredged or fill material into wetlands requires notification to this office (see General Condition 13 of the nationwide permit). Notification is also required if you combine this nationwide permit with another nationwide permit No. 12 through 40. You cannot combine this nationwide permit with No. 18 or 26 for the purpose of increasing the footprint of the road crossing.

Your proposed project appears to be located in a dry arroyo. Water quality certification for activities in non-perennial streams was issued by the United States Environmental Protection Agency on November 21, 1997, for use of this nationwide permit (copy enclosed). Please note any special conditions in the certification. You may contact the New Mexico Environment Department for additional information at (505) 827-0106.

General Condition No. 11 requires that no activity is authorized under any Nationwide Permit which is likely to jeopardize the continued existence of a listed or proposed threatened or endangered species, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. We have determined that your proposed work, as described, will have no affect on any listed or proposed endangered or threatened species or its critical habitat.

This verification will be valid for 2 years unless the nationwide permit is modified, reissued or revoked. The verification will remain valid if, during that time, the nationwide permit is reissued without modification or the activity complies with any subsequent modification of the nationwide permit authorization. If the nationwide permit authorization expires, is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit, the provisions of 33 CFR 330.6(b) will apply.

Enclosed is a Compliance Certification form. Upon completion of the project, please sign and date the form and return it to this office. To help us improve our service, please complete and return the attached Customer Service Survey.

If you have any questions regarding these regulations, please feel free to write or call me at (505) 342-3279.
Sincerely,

Edward L. Paulsgrove
Project Manager

Enclosures
1. Nationwide Permit Summaries
2. Brochure
3. Compliance Certification Form
4. November 21, 1997 WQ Cert Letter
5. Customer Service Survey
1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be maintained, including maintenance to ensure public safety.

3. Erosion and Sediment Controls. Appropriate erosion and sediment controls must be used and maintained in effective operating conditions during construction, and all exposed soil and other fills, as well as deposits below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt movement of those species of aquatic life indigenous to the waters, including those species which normally migrate through the area, if the activity's primary purpose is to impound water.

5. Equipment. Heavy equipment working in wetlands must be protected, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-by-Case Conditions. The activity must comply with any regional conditions which may have been added by the District Engineer (see 33 CFR 330.4(e)) and with any case-specific conditions added by the Corps or by the state or tribe in its section 401 water quality certification.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved water rights, including, but not limited to, reserved water rights and treaty- and hunting rights.

9. Water Quality Certification. In certain states, an Individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)). Note for work in Albuquerque District: Required water quality certification by the District Engineer.
Region 6, and tribal certifying authorities have variously issued, conditionally issued, or denied water quality certification for this nationwide permit. An information summary sheet is enclosed. You must insure compliance with the applicable water quality certification requirements for your project.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)). Note: Not applicable in Albuquerque District.

11. Endangered Species.
(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
(b) Authorization of an activity by a nationwide permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/~r9endspp/endspp.htm and http://kingfish.ssp.mil.gov/lmcinlyr/proft_res.html respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the local existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see CFR 330.4(g)).

13. Notification:
(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District Engineer; or
(1) Unless 30 days (or 45 days for NWP 26 only) have passed since the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer that an individual permit is required; or
(2) If notified by the District or Division Engineer that an individual permit is required; or
(3) Unless 30 days (or 45 days for NWP 26 only) have passed since the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer that an individual permit is required; or
(b) Contents of Notification. The notification must be in writing and include the following information:
(1) Name, address and telephone numbers of the prospective permittee;
(2) Location of the proposed project;
(3) Brief description of the proposed project; the project's purpose and intended to be used to authorize any part of the proposed project or related activity; and
(4) For NWPs 14, 18, 21, 26, 29, 34, and 38, the PCN must include a delineation of affected special aquatic sites, including wells (see paragraph 13(1));
(5) For NWP 21--Surface Coal Mining Activities, the PCN must include an OSM or state approved mitigation plan.
(6) For NWP 29--Single-Family Housing, the PCN must also include:
(i) Any past use of this NWP by the individual permittee and the permittee's spouse;
(ii) A statement that the single-family housing activity is for personal residence of the permittee;
(iii) A description of the entire parcel, including its size, and
District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any conditions the DE deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposal. If the NET adverse effects of the project (including the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the applicant may ask the Corps to delineate the special aquatic site. The applicant must include in the proposal the conditions that the adverse effects to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions.

(e) Agency Coordination. The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project’s adverse environmental effects to a minimal level.

(f) Wetlands Delineations. Wetland delineations must be performed in accordance with the current method required by the Corps. For NWP 26, see paragraph (b)(6)(ii) for parcels less than 0.5 acres in size. The delineation may be some delay if the Corps does the delineation. Furthermore, the 30-day period (45 days for NWP 26) will not start until the wetland delineation has been completed and submitted to the Corps, where applicable.

(g) Mitigation. Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(b));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee’s spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(7) For NWP 31—Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient channel information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands, and;

(iii) Location of the dredged material disposal site.

(8) For NWP 33—Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(c) Form of Notification. The standard Individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(7) of General Condition 13.A letter may also be used.

(d) District Engineer’s Decision. In reviewing the pre-construction notification for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the

(See paragraph 13(i));
(i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes;

(ii) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, "in lieu fees" to organizations such as The Nature Conservancy, state or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands. Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1-acre loss; however, 2 created acres can be used to reduce the impacts of a 3-acre loss.).

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b. A statement that any required mitigation was completed in accordance with the permit conditions; c. The signature of the permittee certifying the completion of the work and mitigation.

15. Multiple Use of Nationwide Permits. In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the "Notification" General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

Section 404 Only Conditions: In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed order for authorization by the NWPs to be valid:

1. Water Supply Intakes. No discharge of dredged or fill material occur in the proximity of a public water supply intake except where discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. Shellfish Production. No discharge of dredged or fill material occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 30.

3. Suitable Material. No discharge of dredged or fill material may be unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material discharged must be free from toxic pollutants in toxic amounts.

4. Mitigation. Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determine more beneficial to the environment than on-site minimization or avoidance measures.

5. Spawning Areas. Discharges into spawning areas during spawn seasons must be avoided to the maximum extent practicable.

6. Obstruction of High Flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of or expected high flows or cause the relocation of the water (unless primary purpose of the fill is to impound waters).

7. Adverse Effects From Impoundments. If the discharge creases impoundment of water, adverse effects on the aquatic system cause the accelerated passage of water and/or the restriction of its flow so minimized to the maximum extent practicable.

8. Waterfowl Breeding Areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. Removal of Temporary Fills. Any temporary fills must be removed entirely and the affected areas returned to their preexisting ele
CONDITIONS, LIMITATIONS, AND RESTRICTIONS
(Information from 33 CFR 330.4)

1. General. A prospective permittee must satisfy all terms and conditions of an NWP for a valid authorization to occur. Some conditions identify a “threshold” that, if met, requires additional procedures or provisions contained in other paragraphs in this section. It is important to remember that the NWP’s only authorize activities from the perspective of the Corps regulatory authorities and that other Federal, state, and local permits, approvals, or authorizations may also be required.

2. Further Information:

   (a) District Engineers have authority to determine if an activity complies with the terms and conditions of a NWP.

   (b) NWP’s do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorization required by law.

   (c) NWP’s do not grant any property rights or exclusive privileges.

   (d) NWP’s do not authorize any injury to the property or rights of others.

   (e) NWP’s do not authorize interference with any existing or proposed Federal project.

ADDITIONAL INFORMATION

For additional information concerning the nationwide permits or for a written determination regarding a specific project, please contact the office below:

In New Mexico:
Chief, Regulatory Branch
Albuquerque District, US Army Corps of Engineers
4101 Jefferson Plaza, N.E.
Albuquerque, NM 87109-3435
Telephone: (505) 342-3283
E-Mail: cespa-od-1@usace.army.mil

In southeastern Colorado:
Southern Colorado Project Office
720 North Main Street, Room 205
Pueblo, Colorado 81003-3046
Telephone: (719) 543-9459

In southern New Mexico and western Texas:
El Paso Regulatory Office
P.O. Box 6096
El. Bliss, Texas 79906-0096
Telephone: (915) 566-1359

Information about the U.S. Army Corps of Engineers regulatory program including nationwide permits, may also be accessed on our Internet site:
Nationwide Permit Summary

U.S. Army Corps of Engineers
Albuquerque District

No. 3, MAINTENANCE
(NWP Final Notice, 61 FR 65914, para. 3)

The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure’s configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays. Maintenance dredging and beach restoration are not authorized by this NWP. (Sections 10 and 404)

NATIONWIDE PERMIT CONDITIONS

General Conditions: The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Erosion and Siltation Controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as all below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, or activity’s primary purpose is to impound water.

5. Equipment. Heavy equipment working in wetlands must be plat- mals, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-by-Case Conditions. The activity must comply with any regional conditions which may have been added by the District Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its section 401 water certification.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a “study river” for possible inclusion in the system, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. Tribal Rights. No activity or its operation may impair reserved rights, including, but not limited to, reserved water rights and treaty and hunting rights.

9. Water Quality Certification. In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)). Note for work in Albuquerque District: Required water quality certification for non-tribal lands in Colorado was issued by the State of Colorado. The State of New Mexico, State of Texas, EPA Region 6, and tribal certifying authorities have variously issued, conditionally issued, or denied water quality certification for this nationwide permit. An information summary sheet is enclosed. You must insure compliance with the applicable water quality certification requirements for your project.
10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)). Note: Not applicable in Albuquerque District.

11. Endangered Species.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9/endspp/endspp.html and http://kingfish.ssp.mnlss.gov/tmciyrr/prol_res.html respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. Notification:

(a) Timing. Where required by the terms of the NWP, the permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days (or 45 days for NWP 26 only) have passed after the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Contents of Notification. The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's potential direct and indirect adverse environmental effects the project would have, and any other NWP(s), regional general permit(s) or individual permit(s) directly or indirectly related to the project;

(4) For NWP 14, 18, 21, 25, 29, 34, and 38, the PCN must include a delineation of affected special aquatic sites, including wetlands; and

(5) For NWP 21--Surface Coal Mining Activities, the PCN must include an OSM or state approved mitigation plan.

(6) For NWP 29--Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee or the permittee's spouse;

(ii) A statement that the single-family housing activity is the personal residence of the permittee;

(iii) A description of the entire parcel, including its size, a delineation of wetlands. For the purpose of this NWP, parcels of less than 0.5 acre will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps of Engineers; and

(iv) A statement that no activity will be conducted within the wetland or on wetland edge areas during the construction of the single-family housing activity.
(See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(7) For NWP 31—Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(8) For NWP 33—Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(c) Form of Notification. The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(7) of General Condition 13. A letter may also be used.

(d) District Engineer's Decision. In reviewing the pre-Construction notification for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-Construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any conditions the DE deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the pre-mitigation plan, but will not commence a second 30-day (or 45-day for NWP 26) notification procedure. If the net adverse effects of the project (mitigation proposal) are determined by the District Engineer to be more than minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP but subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions.

(e) Agency Coordination. The District Engineer will consider comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

[Note: Paragraphs (e)(i), (ii), (iii) of the NWP Final Notice (61 FR 6190) are deleted here for brevity. These paragraphs provide specifics related to the Corps' internal coordination with agencies.]

(f) Wetlands Delineations. Wetland delineations must be prepared according to the current method required by the Corps. For NWPs, see paragraph (b)(6)(iii) for parcels less than 0.5 acres in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period (45 days for NWP 26) will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

(g) Mitigation. Factors that the District Engineer will consider determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes;

(ii) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, "in lieu fees" to organizations such as The Nature
Conservancy, state or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands. Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: Reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1-acre loss; however, 2 created acres can be used to reduce the impacts of a 3-acre loss).

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b. A statement that any required mitigation was completed in accordance with the permit conditions; c. The signature of the permittee certifying the completion of the work and mitigation.

15. Multiple Use of Nationwide Permits. In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the “Notification” General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

Section 404 Only Conditions: In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed in order for authorization by the NWPs to be valid:

1. Water Supply Intakes. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. Shellfish Production. No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

3. Suitable Material. No discharge of dredged or fill material may occur in areas of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material discharged must be free from toxic pollutants in toxic amounts (section 307 of the Clean Water Act).

4. Mitigation. Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines more beneficial to the environment than on-site minimization or avoidance measures.

5. Spawning Areas. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. Obstruction of High Flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of migratory waterfowl or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. Adverse Effects From Impoundments. If the discharge creates the accelerated passage of water and/or the restriction of its flow so as to minimize to the maximum extent practicable.

8. Waterfowl Breeding Areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. Removal of Temporary Fills. Any temporary fills must be removed entirely and the affected areas returned to their preexisting condition.

(Excerpted from the December 13, 1996 Federal Register, Final Notice, Issuance, Reissuance, and Modification of Nationwide Permits [61 FR 65874]).

CONDITIONS, LIMITATIONS, AND RESTRICTIONS
(Information from 33 CFR 330.4)

1. General. A prospective permittee must satisfy all terms and conditions of an NWP for a valid authorization to occur. Some conditions iden
"Threshold" that, if met, requires additional procedures or provisions contained in other paragraphs in this section. It is important to remember that the NWP's only authorize activities from the perspective of the Corps regulatory authorities and that other Federal, state, and local permits, approvals, or authorizations may also be required.

2. **Further Information:**

   (a) District Engineers have authority to determine if an activity complies with the terms and conditions of a NWP.

   (b) NWP's do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorization required by law.

   (c) NWP's do not grant any property rights or exclusive privileges.

   (d) NWP's do not authorize any injury to the property or rights of others.

   (e) NWP's do not authorize interference with any existing or proposed Federal project.

**ADDITIONAL INFORMATION**

For additional information concerning the nationwide permits or for a written determination regarding a specific project, please contact the office below:

In New Mexico:
   Chief, Regulatory Branch
   Albuquerque District, US Army Corps of Engineers
   4101 Jefferson Plaza, N.E.
   Albuquerque, NM 87109-3435
   Telephone: (505) 342-3283
   E-Mail: cespa-od-r@usace.army.mil

In southeastern Colorado:
   Southern Colorado Project Office
   720 North Main Street, Room 205
   Pueblo, Colorado 81003-3046
   Telephone: (719) 543-9459

In New Mexico and western Texas:
   El Paso Regulatory Office
   P.O. Box 6096
   Ft. Bliss, Texas 79906-0096
   Telephone: (915) 568-1359

Information about the U.S. Army Corps of Engineers regulatory programs including nationwide permits, may also be accessed on our Internet website: [http://www.spad.usace.army.mil/reg/](http://www.spad.usace.army.mil/reg/)

This nationwide permit is effective February 11, 1997 and expires on February 11, 2002, unless sooner modified, suspended, or revoked.

Summary Version: 5/6/98
WATER QUALITY CERTIFICATION INFORMATION SUMMARY
FOR NATIONWIDE PERMIT USE IN THE ALBUQUERQUE DISTRICT

Section 401 water quality certification for nationwide permits (NWPs) in the Albuquerque District has been variously issued, waived, denied, or conditioned by certifying agencies. Review the following list to determine the status of water quality certification for the type of NWP and area of use. This list is a summary of information received from the certifying agencies; the specific requirements are available in each agency's water quality certification. You must obtain any required individual water quality certification from the appropriate water quality certification authority for your project area prior to construction under the specified nationwide permits:

State of Colorado. Water quality certification for all nationwide permits is issued by State of Colorado statute.

State of New Mexico. Issued unconditional certification for NWPs 20, 22, 27, 30, 38, and "incidental" discharges under NWP 18 (e.g., de minimus discharges). Conditional certification is issued for NWPs 3-7, 12-19, 21, 23, 25-26, 28-29, 31-37, and 40. If your project is in or near a perennial surface water, perennial reach of an interrupted or intermittent surface water, or wetland greater than 1/3 acre, you must obtain individual water quality certification from the New Mexico Environment Department to use these conditionally certified NWPs. Any use of NWP 18 exceeding 1/10 cu yd will require an individual water quality certification. NWP 12 is further conditioned requiring all utility lines to be installed perpendicular or as close to perpendicular as possible to a channel to minimize disturbance; any crossing of wetlands or streams must be justified and alternatives explored to avoid construction or maintenance in waters of the State; and the project must be restored to pre-construction contours and stabilized with native vegetation. Contact:

New Mexico Environment Department
Surface Water Quality Bureau
Harold Runnels Building, 1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502
Phone: (505) 827-0106

State of Texas. Issued conditional water quality certification (Standard Provisions) for all NWP use in Texas. Additional Conditions are included for NWPs 3, 7, 13, 16, 19, 26, 31, and 35. Copies of the conditions may be obtained from the Albuquerque District or from the Texas Natural Resource Conservation Commission. Contact:

Texas Natural Resource Conservation Commission
P.O. Box 13067
Austin, Texas 78711-3087
Phone: (512) 239-1000

Pueblo of Sandia lands. Requires individual water quality certification of any nationwide permit on tribal lands. Contact:

Environmental Director
Pueblo of Sandia
Box 6008
Bernalillo, New Mexico 87004
Phone: (505) 867-4533

Santa Clara Pueblo lands. Water quality certification is denied with prejudice for NWPs 6-7, 12-14, 18-19, 23, 25-26, 29, 30, 33, 36. You must obtain an individual water quality certification for your project use these NWPs on Pueblo lands. Contact:

Santa Clara Pueblo - Office of Environmental Affairs
Surface Water Division
P.O. Box 580
Espanola, New Mexico 87532
Phone: (505) 753-7326

Picuris Pueblo lands. Requires individual water quality certification of any nationwide permit on Pueblo lands. Contact:

Environment Department
Picuris Pueblo
P.O. Box 127
Penasco, New Mexico 87553
Phone: (505) 587-251

San Juan Pueblo lands. Requires individual water quality certification of any nationwide permit on Pueblo lands. Contact:

Office of Environmental Affairs
San Juan Pueblo
P.O. Box 1059
San Juan Pueblo, New Mexico 87566
Phone: (505) 869-27

Pueblo of Isleta lands. Water quality certification for all NWPs is denied with prejudice for NWPs 6-7, 12-14, 18-19, 23, 25-26, 29, 30, 33, 36. You must obtain an individual water quality certification to use any NWP on Pueblo lands. Contact:

Water Quality Program
Pueblo of Isleta
P.O. Box 1270
Isleta, New Mexico 87022
Phone: (505) 869-27

Nambe Pueblo lands. Water quality certification for all NWPs is denied with prejudice for NWPs 6-7, 12-14, 18-19, 23, 25-26, 29, 30, 33, 36. You must obtain an individual water quality certification to use any NWP on Pueblo lands. Contact:

Nambe Pueblo Department of Environmental Affairs
Route 1, P.O. Box 117BB
Nambe Pueblo, New Mexico 87501
Phone: (505) 455-
Pojoaque Pueblo lands. No certification information received. The Corps of Engineers considers that water quality certification is waived for NWP use on Pojoaque Pueblo lands; however, you must contact the Pueblo prior to conducting work on Pueblo lands. Contact:

Environmental Officer
Pojoaque Pueblo
Route 11, Box 71
Santa Fe, New Mexico 87501 Phone: (505) 455-2087

Tribal lands in Colorado, certifying agency: EPA, Region 8 (Note: EPA certifies projects on tribal lands in Colorado where the tribe does not have water quality certifying authority). EPA waived certification of NWPs 3-6, 14-15, 19-23, 25, 27, 29-30, 32, 34, 36-38, and 40. EPA, Region 8, has denied certification of NWPs 7, 12-13, 16-18, 26, 31, and 33. Individual water quality certification for use of these NWPs must be obtained from the EPA, Region 8. Contact:

U.S. Environmental Protection Agency, Region 8
Ecosystems Protection Program
999 18th Street, Suite 500
Denver, Colorado 80202-2466 Phone: (303) 312-6192

Tribal lands in New Mexico, certifying agency: EPA, Region 6 (Note: EPA certifies projects on tribal lands in New Mexico where the tribe does not have water quality certifying authority). Issued water quality certification for NWPs 3-4, 6-7, 13-18, 20-21, 23, 27, 30-32, 35-38, and 40. Water quality certification is denied without prejudice for all activities under NWPs 12, 25-26, and 28. Certification is denied for sand and gravel dredging, mining, and excavation under NWP 19. In addition, certification is denied under NWP 33 for activities resulting in the temporary loss of more than 1 acre of special aquatic sites, including wetlands. You must obtain individual water quality certification to use any NWP where water quality certification is denied without prejudice. Contact:

U.S. Environmental Protection Agency, Region 6
Ecosystems Protection Branch
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733 Phone: (214) 665-6694

Navajo Nation, certifying agency: EPA, Region 9. Issued conditional water quality certification for NWPs 3-7, 12-15, 17, 19-20, 22-23, 25, 27, 30, 32, 34, 36, 38, and 40. Copies of the conditions may be obtained from the Albuquerque District or from EPA, Region 9. Water quality certification for NWPs 16, 18, 21, 26, 29, 31, 33, and 37 is denied without prejudice. You must obtain an individual water quality certification to use these NWPs on Navajo Nation lands. Contact:

U.S. Environmental Protection Agency, Region 9
Water Division
75 Hawthorne Street
San Francisco, California 94105-3901 Phone: (415) 7

General Information regarding Section 401 water quality certificat
Section 404 permit requirements may be obtained from:
Chief, Regulatory Branch
Albuquerque District, U.S. Army Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, New Mexico 87109-3435
Phone: (505) 342-3293

Index of Nationwide Permits:
1. Aids to Navigation
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34. Cranberry Production Activities
35. Maintenance Dredging of... Area
36. Boat Ramps
37. Emergency Watershed Protection
38. Cleanup of Hazardous & Toxic Waste Sites
39. Reserved
40. Farm Buildings
MEMORANDUM FOR Chief, Regulatory Branch

SUBJECT: Request Reevaluation of Section 404 Jurisdictional Determination for the Proposed Construction and Rehabilitation of Navajo Route 31, McKinley County, New Mexico.

REFERENCE: Authorization No. 94-00353.

1. Environmental Section requests a reevaluation of the Section 404 Jurisdictional Determination for the proposed Navajo Route 31 project. Project planning has been held-up for several years. The proposed project was originally authorized under Nationwide Permit No. 26, with other improvements under Nationwide Permit No. 3. Because of the lengthy time elapsed between initiation of planning and the current date and because of the pending expiration of the Nationwide Permit No. 26, a reevaluation is necessary. The proposed project is scheduled to start construction in the summer of the year 2000.

2. Copies of several project memos and letters are enclosed for your reference. The draft Environmental Assessment (EA) has been reviewed by and comments received from BIA, Navajo Area Office, Branch of Roads; BIA, Navajo Area Office, Environmental Quality Services; and by Navajo Fish and Wildlife Department. For some unknown reason, the draft EA has not been submitted by BIA to the U.S. Fish and Wildlife Service (USFWS). Environmental Section is currently editing the draft EA as per comments from the above entities and anticipate submitting the draft EA to USFWS in about one week.

3. Environmental Section also requests that you verify if the following washes and creeks are ephemeral or perennial. These include Tohdildonih Wash, Bowl Canyon Creek, Squirrel Springs Wash, Oak Creek, and Little Water Creek, all of which are located on the USGS 7.5 Minute Quadrangle Map: Todilto Park, New Mexico (35108-H8, Prov. Ed. 1982).

4. Informal consultation was conducted several years ago for the preparation of the Draft EA. New endangered and protected species lists have been reviewed. There are Federal and Navajo concerns for the protection of known Golden Eagle and Peregrine Falcon habitat and nesting sites in the project area that will be addressed confidentially through consultation and coordination during all phases of construction between the BIA, NFWD, and USFWS. Mitigation would include conducting Peregrine Falcon and Golden Eagle presence/absence surveys and reporting as well as monitoring of known sites each year through the duration of the project. Survey reports would be distributed to and reviewed by persons on
a "need-to-know" basis to protect the identity of known habitat in and near the proposed project area. The BIA agrees that if Peregrine Falcon or Golden Eagle are found breeding/nesting within one-half mile of construction activities during their critical nesting periods that construction would be stopped in that location during the critical period. Therefore, the proposed project is "not likely to adversely affect" the Peregrine Falcon or the Golden Eagle.

5. Cultural resource clearance has been given for the project; however, the Corps is recommending to BIA that they also evaluate known Traditional Cultural Properties in the project area.

6. With available documentation, indications are that this project would have no effect on biological, natural, or cultural resources including vegetation communities, wildlife, and other endangered and special status species, or on air or water quality. There would also be no effect on land use or on social or economic considerations.

7. If you have any questions or need further information please contact Gregory Everhart at 505-342-3352 or myself at 505-342-3351.

MARK C. HARBERG
Chief, Environmental Section

Enclosures
Mr. Harold Riley, Area Road Engineer
Navajo Area Office, Branch of Roads
BIA
P.O. Box 1060
Gallup, New Mexico 87301

Dear Mr. Riley:

This is in reference to the site visit conducted December 1, 1994 regarding your proposed N31(2) road construction in the Tohdildonih Wash near Navajo, McKinley County, New Mexico (Action No. 1994 00353).

Regulations pursuant to Section 404 of the Clean Water Act (Appendix A to 33 CFR 330) describe Nationwide Permit No. 26 for discharges of dredged or fill materials into headwaters and isolated waters of the United States, including wetlands. A summary of Nationwide Permit No. 26 and a brochure describing the Corps regulatory program are enclosed for your information.

The described project includes a discharge into headwaters. Your project can be constructed provided it does not result in the loss of more than one acre of waters of the United States. The party responsible for the project must insure compliance with all conditions of the permit.

For discharges which cause the loss of one to ten acres of such waters, notification is required in accordance with General Condition No. 13. Discharges resulting in the loss of more than ten acres of these waters will require an individual Section 404 permit. The acreage of loss of waters of the U.S. includes the filled area plus waters of the U.S. that are adversely affected by flooding, excavation or drainage as a result of the project.

No work can be performed under this nationwide permit until the permittee has notified the Water Quality Section of the United States Environmental Protection Agency, Region 9 office, and has received Water Quality Certification approval of plans and specifications detailing how water quality standards will be attained. You may contact them at:
This verification will be valid for 2 years unless the nationwide permit is modified, reissued or revoked. The verification will remain valid if, during that time, the nationwide permit is reissued without modification or the activity complies with any subsequent modification of the nationwide permit authorization. If the nationwide permit authorization expires, is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit, the provisions of 33 CFR 330.6(b) will apply.

To avoid violation of the National Historic Preservation Act, you should immediately notify me if you encounter an archeological or historic site. You should avoid activities that impact the site until clearance is obtained.

Should you have any questions regarding these regulations, please feel free to write or call me at (505) 766-2776.

Sincerely,

Louis E. Clarke
Project Manager

2 Enclosures
1. Nationwide Permit Summary
2. Letter denying WQC on Navajo Lands

Copies furnished w/location maps:

U.S. EPA
Water Quality Section (WC-1)
75 Hawthorn Street
San Francisco, CA 94105
Attn: Mr. Mike Monroe

ph. (415) 744-1963
MEMORANDUM FOR Chief, Environmental Section

SUBJECT: Proposed BIA N31(2) road construction in unnamed creek and Tohdildonih Wash near Navajo, McKinley County, New Mexico, Authorization No. 94-00353

1. On 1 Dec 94 I accompanied Mr. Phil Clayton of your Section and Mr. Mike Toland of the BIA - Fort Defiance, Branch of Roads on a field investigation of the proposed N31(2) route.

2. On 11 Jul 94 a site visit was conducted at this general area and there was some confusion as to the exact alignment of the proposed section of road. There had not been any flagging of the proposed alignment. The Area Road Engineer accomplished the flagging of the right-of-way (ROW) in late November 1993.

3. The flagged ROW crosses an unnamed arroyo that discharges into the previously identified wetland. The actual crossing is proposed at UTM Zone 12 680888E 3980575N. There is not a wetland at this site. This is upstream of the wetland area identified in the July '94 site visit. The second proposed crossing will occur downstream from the previous identified crossing of Tohdildonih Wash. This crossing is proposed at UTM Zone 12 680934E 3980464N. Immediately upstream of this location is a bend in the waterway and there is a fringe wetland along this section. At the actual proposed crossing location there is not a fringe wetland, although there is some wetland very close.

4. The additional length of the project is improvement of an existing road. Improvements of any existing culverted crossings are possible under Nationwide Permit 3 for maintenance and repair as long as the improvements are similar in design and dimension.

5. The data collected on 1 Dec 94 indicate that both of the above crossings are waters of the U.S. and activities in these waters are subject to regulation pursuant to Section 404.

6. The proposed route is above the Headwaters location in this watershed. The proposed road crossings can be constructed under nationwide permit 26. To use this nationwide permit there are several conditions that must be met. A water quality certification must be obtained from the San Francisco EPA office for these crossings. The crossings must pass the anticipated high water flows and the material used must not erode during and after construction. The above are a few highlighted conditions. The project must meet all of the general and 404 only conditions as found in the regulations.
CESWA-CO-R
SUBJECT: Proposed BIA N31(2) road construction in unnamed creek and Tohdildonih Wash near Navajo, McKinley County, New Mexico, Authorization No. 94-00353

7. Point of contact at the San Francisco EPA Water Quality Section is Mike Monroe, US EPA Water Quality Section (W3-1), 75 Hawthorn Street, San Francisco, CA 94105, phone (415)744-1963.

Encl

LOUIS E. CLARKE
Project Manager
MEMORANDUM FOR Andrew J. Rosenau, Chief, Regulatory Branch

SUBJECT: Wetland delineation on Navajo Route 31 (N31), McKinley County, New Mexico, Action No. 1994-00353.

1. The Bureau of Indian Affairs, Branch of Roads, Navajo Area Office, has requested a wetland delineation on N31.

2. On November 17, 1994, Ms. Cassandra D'Antonio requested Luke Deswood, Area Road Engineer, Fort Defiance Agency, to stake out the right-of-way boundaries of the wetland areas on N31. This staking should be completed by the end of November, 1994.

3. Therefore, we are requesting Mr. Louis Clarke contact Ms. D'Antonio with a day he is available to accompany her out to N31 to delineate the wetlands, preferably during the first two weeks in December. Also, an additional intent of this trip should be to provide the BIA with information concerning the feasibility of shifting the proposed alignment either north or south of the wetland areas, whichever direction would have a minimizing impact on these areas.

4. We appreciate your cooperation in this matter. If you need additional information or have any questions, please contact either me at extension 1970, or Ms. D'Antonio at extension 2187.

Mark C. Harberg
Chief, Environmental Section

CF:

CESWA-COR
ATTN: Louis Clarke
MEMORANDUM FOR Chief, Environmental Section

SUBJECT: Proposed road construction in Bowl Canyon Creek and Tohdildonih Wash near Navajo, McKinley County, New Mexico, Authorization No. 94-00353

1. On 11 Jul 94 Mr. Louis Clarke accompanied Mr. Phil Clayton and Ms. Cassandra D’Antonio on a field investigation of the proposed N31(2) route and the alternative route.

2. The proposed route makes several crossings where there is not an existing crossing. The western most crossing is over an unnamed drainage at UTM Zone 12 680840E 3980480N. This area is populated with Scirpus americanus and Elymus elymoides. Another crossing located at UTM Zone 12 682560E 3979000N crosses Tohdildonih Wash where Bowl Canyon Creek flows in. This area is populated with Scirpus americanus, Juncus effusus, Eleocharis palustris, Polypogon monspeliensis, and Juncus torreyi. Both of these areas contain soil with strong red parent material that obscures redoximorphic characters. The soil in the unnamed drainage still contained some moisture even during this time of the year. The Tohdildonih Wash is perennial and contained flowing water.

3. The data collected on 11 Jul 94 indicate that both of the above crossings contain wetlands subject to regulation pursuant to Section 404. In addition, there are several other drainage crossings that do not contain wetlands. These drainages are also waters of the U.S. and activities in these waters are therefore regulated.

4. The alternative route uses an existing improved road. This existing road contains several culverted crossings which may need to be improved. If the improvements are similar in design and dimension, all the improvements maybe accomplished under nationwide permit 3 for maintenance and repair.

5. Both the proposed and alternative routes are above the Headwaters location in this watershed. The proposed route could impact less than an acre of wetland and the proposed road crossings could be constructed under nationwide permit 26. To use this nationwide permit there are several conditions that must be met. A water quality certification must be obtained from the San Francisco EPA office for these crossings. The crossings must pass the anticipated high water flows and the material used must not erode during and after construction. The above are a few highlighted conditions. The project must meet all of the general and 404 only conditions as found in the regulations.
CESWA-CO-R
SUBJECT: road construction in Bowl Canyon Creek near Navajo, McKinley County, New Mexico, Authorization No. 94-00353

6. Point of contact at the San Francisco EPA Water Quality Section is Gary Wolinzky, US EPA Water Quality Section (W3-1), 75 Hawthorn Street, San Francisco, CA 94105, phone (415)744-1935.

ANDREW J. ROSENAU
Chief, Regulatory Branch

Nationwide Permit 3
Nationwide Permit 26
November 15, 1993

Construction and Operations Division
Regulatory Branch

Mr. Burton Lesser
Bureau of Indian Affair
Navajo Area Office-Branch of Road
P. O. Box 1060
Gallup, New Mexico 87305-1060

Dear Mr. Lesser:

This is in reference to your letter dated October 5, 1993 regarding your proposed bridge construction N31 (2)-Navajo to Mexican Springs on the Navajo Indian Reservation over the Tohdildonih Wash near Navajo, McKinley County, New Mexico (Action No. 199300339).

Regulations pursuant to Section 404 of the Clean Water Act (Appendix A to 33 CFR 330) describe Nationwide Permit No. 26 for discharges of dredged or fill materials into headwaters and isolated waters of the United States, including wetlands. A summary of Nationwide Permit No. 26 and a brochure describing the Corps regulatory program are enclosed for your information.

The described project includes a discharge into headwaters. Your project can be constructed provided it does not result in the loss of more than one acre of waters of the United States. The party responsible for the project must insure compliance with all conditions of the permit.

For discharges which cause the loss of one to ten acres of such waters, notification is required in accordance with General Condition No. 13. Discharges resulting in the loss of more than ten acres of these waters will require an individual Section 404 permit. The acreage of loss of waters of the U.S. includes the filled area plus waters of the U.S. that are adversely affected by flooding, excavation or drainage as a result of the project.

No work can be performed in any wetland (affecting over 1/2 acre) or perennial surface water of New Mexico under this nationwide permit until the permittee has notified the U.S. Environmental Protection Agency, and has received approval of
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo To Asaayi Lake Junction, McKinley County, New Mexico

Appendix H
Cultural Resources Documentation
March 26, 1993

Mr. Wilson Barber, Area Director
Bureau of Indian Affairs-Navajo Area Office
P.O. Box 1060
Gallup, NM 87301

RE: Cultural Resource "clearance" for Navajo Route 30/31 (N30/31)

Dear Mr. Barber:

The Navajo Nation Historic Preservation Department (HPD) has reviewed the case file for the subject undertaking pursuant to your recent request and the Public Law 93-638 archaeology services contract with the Bureau of Indian Affairs (BIA). We find that the consultation required under Section 106 of the National Historic Preservation Act of 1966 (as amended) was completed as of the date the final signature was applied to the Memorandum of Agreement (October 24, 1989), written for this undertaking. The Memorandum of Agreement (MOA) serves as the cultural resource "clearance" document for the proposed undertaking, and the project may proceed according to the stipulations outlined in the MOA. Based on this finding, the BIA may initiate the process of acquiring the necessary right-of-way(s) for the N30/31 road corridor at any time.

If you have any questions about our finding, please call Eric van Hartesveldt or me at (602) 871-6437. Do not hesitate to contact us if we can further assist you in obtaining the right-of-way(s) for this road project.

Sincerely,

[Signature]

Alan Downer, Director
Historic Preservation Department
P.O. Box 2898
Window Rock, AZ 86515

xc: Wilfred Frazier (BIA-NAO-BOR Area Road Engineer)
Burton Lesser (BIA-NAO-BOR Highway Engineer)
Luke Deswood (BIA-NAO-BOR Fort Defiance Agency Road Engineer)
Victoria Joe (BIA-NAO-BCPM Project Contract Administrator)
Nina Svidler (HPD Supervisory Archaeologist)
October 26, 1989

Mr. John Stein
Staff Archaeologist
Bureau of Indian Affairs
Navajo Area Office
P.O. Box 1060
Gallup, NM 87305-1060

REF: Memorandum of Agreement regarding the N30-31 Road Project

Dear Mr. Stein:

The enclosed Memorandum of Agreement regarding the N30-31 Road Project, Mexican Springs to Navajo, New Mexico, has been accepted by the Council. This action constitutes the comments of the Council required by Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and the Council's regulations. A copy of this Agreement has been sent to the New Mexico State Historic Preservation Officer.

The Council appreciates your cooperation in reaching a satisfactory resolution of this matter.

Sincerely,

Claudia Nissley
Director, Western Office of Project Review

Enclosure
AND THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER REGARDING THE TREATMENT OF HISTORIC PROPERTIES ON NAVAJO ROUTE N30-31 PURSUANT TO 36 CFR 800.6(a)

WHEREAS, the Navajo Area Office, Bureau of Indian Affairs (NAO/BIA) has determined that the construction of Navajo Route N30-31 between Mexican Springs, New Mexico and Navajo, New Mexico will have an effect on 16 identified historic properties eligible for inclusion in the National Register of Historic Places (Appendix A), and has consulted with the New Mexico State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800 regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Navajo Nation Historic Preservation Officer (NNHPO) participated in consultation and has been invited to concur in this Memorandum of Agreement; and

WHEREAS, NAO/BIA has sought public comment on the effects of the undertaking to historic properties through consultation with local chapters to be served by Navajo Route N30-31; and

WHEREAS, 7 of the identified properties have historic components that render them eligible for inclusion in the National Register and 10 have prehistoric components that render them eligible (as listed in Appendix A); and

WHEREAS, ethnographic investigations of the historic components have been completed; and

WHEREAS, portions of 3 of the prehistoric components are in imminent danger of destruction through erosion, weathering, road grading, and vehicular traffic (as listed in Appendix A); and

WHEREAS, archaeological survey of realignments, borrow pits, and other portions of the undertaking that are currently in the planning stages may result in the identification of additional historic properties; and

WHEREAS, previously unidentified historic properties may be discovered during implementation of the undertaking; and

WHEREAS, mitigation of effect to the historic properties should be organized so as to allow for continuity in the project work schedule, continuity in project personnel, and efficient use of project funding;

NOW, THEREFORE, NAO/BIA and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.
NAO/BIA will ensure that the following measures are carried out.

1. NAO/BIA will seek the comments of interested Native American groups pursuant to the Archeological Resources Protection Act (ARPA) (PL96-95) and its implementing regulations (36 CFR Part 296), and the American Indian Religious Freedom Act (AIRFA), and consider Native American views regarding recovery, analysis and disposition of human remains and grave goods, taking into account the Advisory Council on Historic Preservation (the Council) policy statement of September 27, 1988. The Navajo Nation Policy and Procedures Concerning the Protection of Cemeteries, Grave Sites and Human Remains (ACMA-39-86) (Appendix B) shall be adhered to as part of the following Data Recovery Plans.

2. NAO/BIA shall ensure the development of three plans for the recovery of archeological data from the historic and prehistoric components. The first Data Recovery Plan (for emergency excavations) shall address the recovery of archeological data from the portions of the prehistoric components in the existing roadbed that are threatened by immediate destruction through erosion and road grading, in accordance with the Plan for Recovery of Data from Structures and Features within Existing Roadbeds on the N30-31 Project by Mark B. Sant, attached hereto as Appendix C. Data recovery shall consist of the complete excavation of all structures and features in the existing roadbed. NAO/BIA shall ensure that this Data Recovery Plan is implemented as soon as possible after the completion of the Section 106 review process and prior to the undertaking.

The second Data Recovery Plan shall address the recovery of archeological data from the historic components, based on ethnographic data already recovered from the same components. NAO/BIA shall ensure that this Data Recovery Plan is implemented as soon as possible after the completion of the Section 106 review process and prior to the undertaking.

The third Data Recovery Plan shall address the recovery of archeological data from the remaining portions of the prehistoric components within the N30-31 right-of-way. This Data Recovery Plan shall incorporate information (including chronometric dates, artifact analyses, and architectural analyses) from the emergency excavations and shall use this information in conjunction with information derived from the testing phase (completed in June 1989) to justify a sampling plan based on the research design. A sample of the remaining components shall be excavated. NAO/BIA shall ensure that this Data Recovery Plan is implemented after the completion of the Section 106 review process and prior to the undertaking. This Data Recovery Plan shall comprise the third and final phase of data recovery.
All three Data Recovery Plans shall be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37), and take into account the Council's publication, Treatment of Archeological Properties (Advisory Council on Historic Preservation, 1980). The Data Recovery Plans shall specify at minimum:

A. the property, properties, or portions of properties where data recovery is to be carried out;

B. any property, properties, or portions of properties that will be destroyed without data recovery;

C. the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;

D. the methods to be used in analysis, data management, and dissemination of data, including a schedule;

E. the proposed disposition of recovered materials and records;

F. a proposed schedule for the submission of progress reports to NAO/BIA and the SHPO.

The Data Recovery Plans shall be submitted by NAO/BIA to the SHPO, the NNHPO, and the Council for 30 days review. Unless the SHPO, the NNHPO or the Council object to the Data Recovery Plans within 30 days after receipt of each plan, the NAO/BIA shall ensure that they are implemented.

3. NAO/BIA shall ensure that all supervisory archeologists (Principal Investigator, Project Director) employed during data recovery meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9). Experience and education requirements for archeologists employed as crew chiefs or lab supervisors are outlined in Section C4.C of the contract (Appendix D).

4. NAO/BIA shall ensure that an archeological survey of realignments, borrow pits, and other portions of the undertaking that are currently in the planning stages is conducted, in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and taking into account the National Park Service publication: The Archeological Survey: Methods and
the survey, meeting the standards of the SHPO and the NNHPO, shall be submitted to the SHPO and the NNHPO for review and approval.

NAO/BIA shall evaluate properties identified through the survey in accordance with 36 CFR 800.4(c). If the survey results in the identification of properties that are eligible for the National Register, NAO/BIA shall comply with 36 CFR 800.5. The second and third Data Recovery Plans (outlined in stipulation 3) shall address the recovery of data from these properties.

5. After completion of the fieldwork component of the final phase of the data recovery program provided for in stipulation 3, NAO/BIA will ensure that all 16 historic properties in Appendix A and any additional properties from which data has been recovered as part of this memorandum of agreement are graded under the supervision of an archeologist or archeologists meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9). At a minimum, such supervision will include recording and reporting of major features or artifact concentrations uncovered, and recovery/curation of a sample of uncovered remains where practicable. Any burials exposed during controlled grading shall be treated in accordance with stipulation 1.

6. Previously unidentified historic properties discovered during implementation of the undertaking shall be treated according to a Discovery Plan to be developed by NAO/BIA and submitted to the SHPO, the NNHPO, and the Council for review.

7. NAO/BIA shall ensure that the curation of all materials and records resulting from the data recovery program conducted at the 16 historic properties is in accordance with 36 CFR Part 79 and is approved by the NNHPO. Any Native American concerns about curation standards and facilities will be taken into account.

8. NAO/BIA shall ensure that all draft final archeological reports resulting from actions pursuant to this agreement will be provided to the SHPO, the NNHPO, and the Council for 30 days review. If the SHPO, the NNHPO, or the Council sends review comments to NAO/BIA within 30 days after the receipt of each report, NAO/BIA shall ensure that these comments are addressed in the final report. NAO/BIA shall ensure that all final archeological reports resulting from actions pursuant to this agreement will be provided to the SHPO, the NNHPO, and the Council. NAO/BIA shall ensure that all such reports are responsive to contemporary professional standards, and to the Department of the
9. At any time during the implementation of the measures stipulated in this Agreement, should an objection be raised by a member of the public, NAO/BIA shall take the objection into account and consult as needed with the objecting party to resolve the objection.

10. Should the SHPO, Council, or NNHPO object within 30 days to any aspect of this undertaking related to historic preservation issues, NAO/BIA shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, NAO/BIA shall request the further comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by NAO/BIA in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the NAO/BIA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

11. Any party to this Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, NAO/BIA will comply with 36 CFR 800.4 through 800.6.
acceptance by the Council, and implementation of its terms, evidence that the Navajo Area Office, Bureau of Indian Affairs has afforded the Council an opportunity to comment on the Navajo Route N30-31 from Mexican Springs, New Mexico to Navajo, New Mexico construction project and its effects on historic properties, and that the Navajo Area Office, Bureau of Indian Affairs has taken into account the effects of the undertaking on historic properties.

U.S.D.I. BUREAU OF INDIAN AFFAIRS

By: [Signature] Area Director, Navajo Area Office Date: 9/21/89

NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

By: [Signature] State Historic Preservation Officer Date: 9/25/89

Concur:

NAVAJO NATION HISTORIC PRESERVATION OFFICER

By: [Signature] Navajo Nation Historic Preservation Officer Date: 9/29/89

ACCEPTED for the Advisory Council on Historic Preservation

By: [Signature] Executive Director Date: 10/24/89
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix I
Scoping Letter, Project Description and Maps, and Scoping Letter Responses
Dear Sir or Madam:

The U.S. Army Corps of Engineers, Albuquerque District, is working with the Bureau of Indian Affairs, Navajo Area Office, to prepare an Environmental Assessment (EA) for Navajo Route 31, from the intersection of N12 to the N30/N31 intersection. The Corps is seeking early coordination in determining the scope and level of analysis for this EA. Potential difficulties confronting this action can be most conveniently identified and resolved through early exchange of information, and it is hoped that you or your agency will take this opportunity to identify any issues of concern. This process will allow for the development of the best practicable project. Your comments should be specific. Supporting information, data, or references should be provided with your comments, if possible. If you do not respond to this letter, we will assume that you or your agency have no concerns regarding this project.

Enclosed you will find a project description for the reconstruction of existing road N31, purposes and alternatives, and maps. If you wish to make written comments regarding this Navajo Nation road project, please submit them by December 15, 1993, to:

Ms. Patricia Barlow-Irick
Albuquerque District, Environmental Section
U.S. Army Corps of Engineers
P.O. Box 1580
Albuquerque, New Mexico 87103

If you require additional information, please contact Ms. Barlow-Irick at (505) 766-6569. Thank you very much for your help and cooperation in assisting us with this EA.

Sincerely,

James A. White
Chief, Planning Branch

Enclosures
**Purpose**

The purpose of this project is to provide passage over the southern portion of the Chuska Mountains, to provide access to fishing and timber areas in the Chuska Mountains, and to provide improved western access to the Mexican Springs Chapter House.

**Elements**

- Realignement
- Bridge construction
- Grading
- Improved drainage

**Alternatives**

1. As proposed.
2. No action.
3. Using existing alignment.
4. Using 150' width.
5. Gravel road.

**PROJECT DESCRIPTION**

The project is a reconstruction of the existing roadway, Navejo Route 31 (N31). N31 serves the Navejo and Tohatchi communities by providing transportation to farmers, the timber industry, and ranchers using the high grasslands on top of the Chuska Mountains. The project has been in the planning stages since 1974, and in the design stages since 1980. Considered a recreational and scenic byway, N31 reconstruction is scheduled to begin in fiscal year 1994.

Reconstruction of N31 will occur in two phases. The first phase will begin from Navejo Route 12, four miles north of Navejo, New Mexico, and will run 8.34 miles to the east, having a proposed right-of-way width of 150 feet. The second phase will begin where the first phase left off and run 2.67 miles east to the N30/N31 intersection. Total length of both phases of reconstruction will be 11.02 miles.

Existing conditions consist of a 22-foot roadway width, a dirt surface, and a current traffic volume of 178 vehicles per day (vpd). The road has very sharp curves and high embankment fills that have become unstable. A bridge is proposed over the Tohidildon Wash near the base of the mountain. The improvements consist of grading, drainage, bridge construction, flattening of steep vertical grades for improved sight distances, adjusting horizontal alignment, widening roadway width to 28 feet, and new asphalt surfacing for a projected traffic volume of 215 by the year 2013.

**SUMMARY DATA**

<table>
<thead>
<tr>
<th>LENGTH</th>
<th>WIDTH</th>
<th>LOCATION</th>
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<tbody>
<tr>
<td>11.02 miles</td>
<td>150'</td>
<td>N12 to N30 east.</td>
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</table>

**ADDITIONAL DATA**

- COUNTY: McKinley County, NM
- NEAREST P.O. AND ZIP CODE: Navejo, NM 87328
- 7.5' QUADRANGLE MAPS: Buelle Park, NM and Todilto, NM
- DRAINAGE: Squirrel Springs Wash, Bowl Canyon Creek, Tohidildon Wash, Puerco River Basin, and Lower Colorado Basin.
- ELEVATION/ MAXIMUM: 7500 feet MINIMUM: 7,215 feet
- PROXIMITY TO WATER RESOURCES: Tohidildon Wash (Intermittent Stream)
- GENERAL HABITAT: Ponderosa Pine Conifer Forest
GENERAL LOCATION OF NAVAJO ROAD PROJECT N31

Construction of new roadway from N12 to N30 near Squirrel Springs including grading, drainage, asphalt surfacing and construction of a bridge over Tohdilidonih Wash.
December 3, 1993

Ms. Patricia Barlow-Irick  
Albuquerque District, Environmental Section  
U.S. Army Corps of Engineers  
P.O. Box 1580  
Albuquerque, New Mexico 87103

Dear Ms. Barlow-Irick:

Navajo Forest Products Industries (NFPI) is in receipt of your letter of November 24, 1993 requesting comments on the proposed reconstruction of existing road N31 from Squirrel Springs to Navajo, New Mexico. We offer the following comments.

NFPI is the primary purchaser of timber offered for sale by the Navajo Nation. Timber is processed at our sawmill at Navajo, New Mexico which is located at the terminus of the proposed project. As stated in your letter, one of the main purposes of the project is to provide improved access for timber harvesting in the southern Chuska Mountains. We are in support of this project and urge its timely completion. In order for this road and bridge to meet their purpose of the transportation of timber, their design should accommodate current legal load limits in New Mexico of 80,000 pounds gross vehicle weight. Distribution of the load as per current statute is 12,000 lbs. on the steering axle, 34,000 lbs. on the tandem drive axle, and 34,000 lbs. on the trailer tandem axle. Additionally, slope of the roadbed should not exceed 6% and curves should accommodate the full length of a loaded log truck. For safety of motorists in passing loaded log trucks we urge that the right-of-way be adequately cleared of trees and other obstructions to provide adequate line of sight distance where the terrain permits.

We appreciate this opportunity to comment on this worthwhile project.

Sincerely,

Edward S. Richards  
General Manager

Edward S. Richards  
General Manager
Ms. Patricia Barlow-Irick  
Albuquerque District, Environmental Section  
U.S. Army Corps of Engineers  
P.O. Box 1580  
Albuquerque, New Mexico 87103

Dear Ms. Barlow-Irick:

Thank you for the opportunity to comment on the scope and level of analysis that you afforded this office via your letter of November 24, 1993. At this time we have no comments regarding Navajo Route 31. Please note that this project is in the State of New Mexico which is outside of our jurisdiction. I have forwarded your letter to our New Mexico Division Office so that they will have an opportunity to comment.

Sincerely yours,

E. A. Wueste  
Division Administrator

---

Stephen D. Thomas, CET  
ENVIRONMENTAL COORDINATOR  
(602) 379-3648  
FAX 379-3608  
FTS 261-3646  
FAX 281-3608
Mr. James A. White
Chief, Planning Branch
Department of the Army, Albuquerque District
U. S. Corps of Engineers
P. O. Box 1580
Albuquerque, New Mexico 87103-1580

Dear Mr. White:

We acknowledged your request, by letter dated November 24, 1993, for a coordinated effort in the preparation of an Environmental Assessment for the Navajo Nation, Route 31, from the intersection of N12 to the N30/N31 intersection. We have forwarded your request to the Bureau of Indian Affairs, Branch of Roads in the Fort Defiance Agency, and requested that their office respond directly to you.

If you have any questions, please contact Mr. Melvin McKenzie, Branch of Real Estate Services, at the above address or telephone number (602) 871-5151, Ext. 5340.

Sincerely,

[Signature]

ACTING Area Director
Ms. Patricia Barlow-Irick  
Albuquerque District Environment Section  
U.S. Army Corp of Engineers  
P.O. Box 1580  
Albuquerque, New Mexico 87103

Subject: EA for Navajo Route 31 and 5001

Dear Mr. Barlow-Irick:

This is in reference to Department of Army's letter dated November 24, 1993. Please note the following while preparing Environmental Assessments reports for N31 and N5001:

1) Additional rights-of-way required for the projects such as additional width, realignment of the road(s), etc. would require approval of the Resources Committee of the Navajo Nation Council.

2) Borrow material/aggregate obtained from Navajo land for the projects would require sand and gravel permit(s) to be approved by the Resources Committee.

Please call me at (602) 871-6587.

Sincerely,

MINERALS DEPARTMENT

Akhtar Zaman  
Director
Ms. Patricia Barlow-Irick  
Albuquerque District, Environmental Section  
U.S. Army Corps of Engineers  
P.O. Box 1590  
Albuquerque, New Mexico  87103  

RE: LOCATION OF WATER LINES ON NAVAJO ROUTE 31  
NAVAJO, NEW MEXICO

Dear Ms. Barlow-Irick:

The Navajo Tribal Utility Authority’s Engineering Department has reviewed your request for information concerning the reconstruction of Navajo Route 31, from the Intersection of N12 to the Intersection of N30/N31.

Presently, we do not own or operate water or wastewater lines in the area of your proposed road project. NTUA’s existing water/wastewater lines are mainly concentrated at the rural town of Navajo, New Mexico and continue south towards Fort Defiance, Arizona. Therefore, we will not be submitting our as-built of water and wastewater lines for your road project.

If you have any questions, please feel free to call me at (602) 729-5721, ext 2341.

Sincerely,

Bernitta Tsosie  
Drafter

cc: Chrys Uhlig, NTUA, Engineering & Operations Division  
    Mel Apache, NTUA, Right of Way Department
Ms. Patricia Barlow-Irick  
Albuquerque District, Environmental Section  
U.S. Army Corps of Engineers  
P. O. Box 1580  
Albuquerque, New Mexico 87103  

RE: Environmental Assessment for Navajo Route 31, McKinley County, New Mexico  

Dear Ms. Barlow-Irick:  

The Navajo Area Office Branch of Environmental Quality is in receipt of the scoping letter submitted by James A. White, Chief, Planning Branch, Army Corps of Engineers. The letter addresses an environmental assessment for the referenced project. The enclosed document is submitted for your information.  

If you have any questions, please contact Ms. Minnie Mann, Environmental Specialist, at (505) 863-8286. Thank you.  

Sincerely,  

[Signature]  

Acting Assistant Area Director  

Enclosure
REPLY TO
ATTN OF:

Acting Assistant
Area Director, Navajo

SUBJECT:

Environmental Assessment for BIA Route Construction Project
Route N30 & N31

TO:

Superintendent, Fort Defiance Agency
ATTN: Agency Realty Specialist

The referenced environmental assessment has been reviewed by the Branch of Environmental Quality Services. A cursory review of the document identified the following deficiencies:

1. The document should provide a specific project description. A layout of proposed realignments and the changes in right-of-way width needs to be presented.

2. Please provide a legible location map with appropriate labels.

3. The document mentions there are no threatened and endangered species in the study area. Please provide references.

4. The road alignment had not been determined during the preparation of the EA document. This section needs to be updated.

5. The proposed borrow areas should be identified specifically on a topographic map and a specific description provided in the EA document. The appropriate permits and landusers' consents should be obtained and incorporated in the environmental assessment.

Technical review will continue when the new information is received. If you have any questions, please contact Leonard Robbins, Area Environmental Quality Officer at (505) 863-8286. Thank you.

cc: BLesser, NAO, Branch of Roads
Ms. Patricia Barlow-Irick  
Albuquerque District, Environmental Section  
U.S. Army Corps of Engineers  
P.O. Box 1580  
Albuquerque, New Mexico 87103  

Dear Ms. Barlow:

This is in response to the Chief, Planning Branch’s letter dated November 24, 1993 concerning the preparation of the Environmental Assessment (EA) for the proposed road reconstruction on Navajo Route 31 (N31), beginning from Navajo Route 12 to the intersection of Navajo Routes N30 and N31.

The Department of Water Resources Management is concerned with all activities that use or may affect the water resources of the Navajo Nation. In order to ensure the proper management and protection of those water resources, the Navajo Nation requires that all water use be permitted through our office. It is our understanding that a water use permit and the Navajo Nation Water Code have been sent to you so that you may see what type of information is needed. If not, please notify our office so that we may send the appropriate documents.

A specific concern on this project is the type of water use, the exact location of the water source or diversion, the point of water use, and the rate and total quantity of water use. The water permit process does not commence until the projects are closer to commencement. It must be stressed, however, to potential permitees that this process takes time, and therefore should be initiated as soon as possible. In order to allow for proper review, the permits must be filed with our office at least thirty (30) days before water use is scheduled to begin.

The project description indicates that the road will be widened to 28 feet and that the improvements will include drainage and vertical grade modifications. The Department is concerned with the effects of these changes on surface water drainage in their vicinity. The EA should address potential hydrologic and geomorphologic effects of activities such as paving, culvert placement, and other drainage modifications on surface drainage near the project site.
The Department of Water Resources Management is also tasked with watershed restoration. One of the principal causes of watershed degradation on the Navajo Reservation is erosion. This project will have to deal with unstable embankment fills. Erosion control should be addressed as part of any EA.

The opportunity to submit comments for the EA process is genuinely appreciated. If you have any questions or desire additional information, please feel free to contact me at (602) 729-4004.

Sincerely,

George J. Roussos, P.E.
Head Engineering Planning
Department of Water Resources Management

xc: Teresa Showa
chrono/file
NAVAJO TRIBAL UTILITY AUTHORITY
AN ENTERPRISE OF THE NAVAJO TRIBE

16 December 1993

Ms. Patricia Barlow-Irick
Albuquerque District, Environmental Section
U.S. Army Corps of Engineers
Post Office Box 1580
Albuquerque, New Mexico 87103

RE: Proposed Road Project, BIA Route 31

Dear Ms. Barlow-Irick,

We have reviewed your map showing the proposed project description for Navajo Route 31 and provide the following information and use.

The reconstruction of existing road N31 will cross NTUA's existing single phase overhead powerline at seven (7) locations and a possible reroute along the road. Enclosed are quadrangle and right-of-way map indicating the crossing areas for your information.

If you require additional information, please contact Mr. Gene Wilson, Junior Engineer with Engineering/Operations Division at 602/729-5721, Extension 2333.

Sincerely,

Mfel Apachee
Right-of-Way Agent
Engineering/Operations Division

MA/bt
Enclosures

xc: Gene Wilson
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo To Asaayi Lake Junction, McKinley County, New Mexico

Appendix J
Comments to the Draft EA

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has an agreement with the Bureau of Indian Affairs (BIA), Navajo Area Office, Branch of Roads, to conduct National Environmental Policy Act (NEPA) compliance activities for road construction projects such as the proposed Navajo Route 31(2) (N31[2]) project. This work is being conducted in accordance with Memorandum of Agreement No. AG2N0000992, dated May 5, 1992, as amended. The Corps received comments to the N31(2) draft Environmental Assessment for the BIA from the following:

Navajo Nation Fish and Wildlife Department
U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office

Comments from these agencies are attached (Appendix J). The BIA concurred with the minor comments and the EA was edited appropriately. The agencies more specific comments are noted below with a BIA response. Other typographical and minor editorial changes were made to the EA that did not alter the EA content.
Appendix J
Comments to the Draft EA

From: Navajo Nation Fish and Wildlife Department (NFWD).
(letter dated February 26, 1999)

NFWD Comment 1.1 Project Description: This comment is in regard to right-of-way fencing.

BIA Response: The BIA concurs that all right-of-way fencing be designed to allow for the movement of wildlife. This is noted in Section 1.1 as well as Section 4.4.

NFWD Comment 3.6.2 Wildlife: This comment indicates that elk, mule deer and turkey were omitted from the draft EA as occurring in the project area.

BIA Response: The BIA concurs. These species were included in Section 3.6.2.

GENERAL NOTE: In order to shorten the Section 3.6.3 heading: Listed, Proposed, and Candidate Species, the heading was changed to Special Status Species.

NFWD Comment 3.6.3 Listed, Proposed, and Candidate Species: This comment refers to species lists that were reviewed in preparation of the EA and on specific wording concerning several special status species.

BIA Response: The BIA concurs. Due to the long and delayed planning for this project, several (updated) versions of species lists were reviewed in preparation of the EA. The most current species lists were used to prepare the Final EA. The Section 3.6.3 text was edited slightly for clarification.

GENERAL NOTE: In order to have a continuous numerical sequence, the number for Table 3.3 has been changed to Table 1.

NFWD Comment Table 3.3: This comment refers to three NESL Group 3 (threatened) species that were inadvertently left out of Table 3.3, now Table 1.
BIA Response: The BIA concurs. The three NESL Group 3 species were added to Table 1 and to the text of Section 3.6.3.

NFWD Comment 4.4: This comment refers to deer wintering in pinyon-juniper habitat.

BIA Response: The BIA concurs and added text to Section 4.4 regarding the deer.

NFWD Comment 4.4.1: This comment refers to specific wording concerning the consultation on conservation measures to be coordinated between the BIA-NAO-BOR, their project contractor, USFWS, and NFWD concerning mitigation to avoid impacts to the Golden Eagle and the American Peregrine Falcon.

BIA Response: The BIA concurs. The Section was edited slightly to briefly describe the management and mitigation for these species.

From: Navajo Nation Fish and Wildlife Department (NFWD).
(letter dated August 24, 1999)

NFWD Comment: This letter comments specifically in regard to BIA’s agreement to conservation measures to protect the Navajo Threatened Golden Eagle.

BIA Response: The BIA concurs. The specific dates for the “critical nesting period” for the Golden Eagle were added to the final EA text in Section 4.4.1 and Section 6.4, Item No. 6.
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix J
Comments to the Draft EA

From: U.S. Fish and Wildlife Service (USFWS), New Mexico Ecological Services Field Office

USFWS Comment Section 2.2: This comment is in regard to the existing N31 route that is
identified as the Alternative Alignment in the draft EA.

BIA Response: BIA-NAO-BOR’s goal is to improve the road system for the Navajo
Nation according to the Master Road Plan. The system is lagging behind
the rest of the United States and the Southwest by 60 percent.
Improvements would construct and/or rehabilitate roads of the Navajo
Reservation system to bring them into compliance with modern highway
design and safety standards such as sight and recovery zone distances,
alignment and drainage requirements, guardrail, right-of-way fencing, and
safe side-road access points. The portion of the existing N31 route
identified as the Alternative Alignment currently does not meet the modern
requirements, is costly to maintain because of it’s location, and as noted in
the EA, it would be too costly to bring that roadway into compliance. For
further clarity, portions of Section 2.2 were edited.

USFWS Comment Section 4.12: This comment is in reference to the relocation of existing
power lines.

BIA Response: This paragraph has been edited slightly for clarity.

USFWS Comment Section 6.4: This comment refers to the consultation and coordination to
be conducted to avoid impacts to the American Peregrine Falcon.

BIA Response: The BIA concurs and, as already noted in Section 4.4.1, has edited Section
6.4, Item No. 6. This comment refers to the commitment to which BIA-
NAO-BOR has agreed that requires consultation and coordination to be
conducted during project construction between BIA-NAO-BOR, their
project contractor, USFWS, and NFWD concerning conservation measures
to be followed to avoid impacts to the American Peregrine Falcon (and for
the Navajo Nation, the Golden Eagle) as well as any threatened or endangered species.

**USFWS Comment Section 6, Summary:** This comment refers to the latest guidance (reference) for raptor protection on power lines.

**BIA Response:** The BIA concurs and has added the updated reference to Section 6, Summary, Item 9.
Harold Riley, Acting Area Road Engineer
Branch of Roads, Navajo Area Office
Bureau of Indian Affairs
P. O. Box 1060
Gallup, NM 87301-1060

Attention: Gary Morrison

SUBJECT: Navajo to Asaayi Lake Junction Road, N31(2)

Mr. Riley,

Thank you for the opportunity to review the draft environmental assessment (EA) for the subject action (U.S. Army Corps of Engineers, May 1998). On behalf of the Navajo Fish and Wildlife Department (Department) I apologize for not getting these comments to you sooner, as we discussed at our 14 December 1998 meeting. Another commitment delayed our response.

1.1 PROJECT DESCRIPTION, page (6)2, paragraph (4)5
What are the plans regarding fencing? The Department has no comments on fencing on this segment of N31. However, wildlife habitat changes from grassland to woodland/forest about ½ mile from the end of project, and there is an associated increase in wildlife occurrence and use. Fencing along N30 or N31 east of this area may negatively impact various wildlife species. The Department recommends no fencing or a fence design that will allow wildlife movement through the right-of-way if those roads are improved.

1.2 PURPOSE AND NEED, (6)3, (6)1
This description of N31 as serving Tohatchi does not correspond with the description of the project and its location (see INTRODUCTION, and Figures 1.3a and 1.3b). The project as described would not serve Tohatchi directly because it would end over ten miles from that community. Are there plans to improve the entire route? The Department recommends against projects being segmented for the purposes of environmental planning. The National Environmental Policy Act (NEPA) states that proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single document (40 CFR 1502.4(a); see also §1508.25). This is important because it allows for a full assessment of impacts and development of a full range of alternatives. Building half a road precludes certain options when considering alternatives for the second half. This
may result in limiting options for the development of avoidance or mitigation measures. I realize that these comments may be coming late in the planning process. If funding deadlines limit changes to the EA at this stage, please consider these suggestions for future projects.

1.2.1 Chapter Concerns, Disputes..., §4, §1, line (§7)

Are planning expenditures considered "irretrievable resources" pursuant to the NEPA? One purpose of the analysis of environmental consequences in the NEPA is to identify any irreversible or irretrievable commitments of resources that would occur if an action would be implemented (§1502.16). Also, the NEPA states that no action concerning a proposed action shall be taken which would limit the choice of reasonable alternatives (§1506.1(a)(2)). Therefore, planning expenditures should not be used to justify the selection of any alternative. This comment also applies to subsection 2.3 (§12) with respect to the archaeological clearances and road design.

3.6.2 Wildlife, §18, §2-4

Rocky Mountain elk, Merriam's turkey and mule deer were identified in the 28 October 1992 data response from the Navajo Natural Heritage Program (NNHP). These species occur in the vicinity of the project's east end where there is coniferous woodland and mixed conifer forest.

3.6.3 Listed, Proposed, and Candidate Species, §1

The NNHP identified 27, not 46, species. Eighteen of these 27 species are candidates for Tribal listing or are other types of species of concern, and have no legal status with respect to endangered species law. The remaining nine are both Tribally and Federally listed species.

*Aquila chrysaetos* (Golden Eagle), §19

The breeding season is 01 February to 15 August. There are at least two territories encompassing five known nests within one mile of the road. Two nests are within ¼ mile of the road. The location of raptor nests is considered sensitive by the Department and should only be used for assessment of impacts and development of avoidance/mitigation measures. The location of nests should only be described in general terms in public documents (e.g., "...close enough to the project to be of concern") and nest locations should not be mapped. Only project personnel with a need to know should have access to locational information.

*Empidonax traillii extimus* (Southwestern Willow Flycatcher)

The breeding range of this subspecies is basically restricted to the southwestern U.S.
Falco peregrinus (American Peregrine Falcon), Ø20
The breeding season is 01 March to 15 July. There is a known eyrie within ¼ mile of the road. See the comment on nest confidentiality under the Golden Eagle subsection.

Mustela nigripes (Black-footed ferret)
The described density of prairie dog burrows in the project area is below the criteria set for defining a prairie dog town (U.S. Fish and Wildlife Service Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act). Therefore, formal ferret surveys are not warranted. However, because prairie dog colonies are dynamic and three years have elapsed since surveys, it would be prudent to check the known colony within one year of construction.

Strix occidentalis lucida (Mexican Spotted Owl), Ø21
Critical Habitat was withdrawn for this species. If there is a lapse of more than one full year between the original two-consecutive-year surveys and the start of construction, then follow-up surveys are typically required. However, if there is no potential nesting or roosting habitat within ¼ mile of the project (one mile for blasting activities) then further surveys are not necessary.

TABLE 3.3, Ø24
Pursuant to the 28 October 1992 data response from the Navajo Natural Heritage Program there are at least three other listed species with potential to occur on or near the project area. These species are Dendragapus obscurus (blue grouse; NESL group 3), Rana pipiens (northern leopard frog; NESL group 3), Speyeria nokomis nokomis (western seep fritillary; NESL group 3). The status of these species changed since the 1992 response. Also, a population of Allium gooddingii (Goodding’s onion; NESL group 3; ESA candidate) was discovered about 2 miles from the east end of the project, in a tributary of Little Water Creek, since 1992. All of these species should have been covered in the biological surveys already conducted for this project.

In general, the Department recommends that data responses older than two years be updated. Attached is the updated Navajo Endangered Species List.

4.4 BIOLOGICAL RESOURCES, Ø29, 1, L6,7
Although the Department does not anticipate the impact to be significant, deer winter in piñon-juniper woodlands and may be directly impacted by clearing of this vegetation type during the winter months.

4.4.1 Listed, Proposed, and Candidate species
Golden Eagle, Ø29
With respect to the site management plan, based on our 14
December 1998 meeting, it is our understanding that the BIA will be providing the Department with a copy of a 7.5' topographic map with the road and station numbers plotted. The Department will then identify areas around nest sites where construction activities should be avoided, or minimized to the extent possible, during the breeding season. The Navajo Natural Heritage Program will also be monitoring nests to determine activity. If a nest is not active a given year then there will be no need to modify construction activities near that nest.

The EA should include the conclusion of the site management plan regarding impacts and a general description of mitigation.

**Mexican Spotted Owl, L4**

It appears this statement contains a typographical error. C30, L1,2

See comments under "Strix occidentalis lucida (Mexican Spotted Owl)" above.

**Peregrine Falcon**

The EA should include the conclusion of the site management plan regarding impacts and a general description of mitigation.

I hope these comments are of use to the Branch of Roads. The Department looks forward to working with the BIA and the Army Corps of Engineers on the site management plans for the Golden Eagle and the Peregrine Falcon. If you have any questions or would like to meet to discuss our comments please call me at (520) 871-7060.

[Signature]

John Nystedt, Wildlife Biologist

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**CONCURRENCE**

Gloria M. Tom, Director
SUBJECT: Navajo to Asaayi Lake Junction Road, N31(2)

Mr. Frazier,

As discussed at our meeting on December 14, 1998 the Department has identified segments of N31(2) close enough to known Golden Eagle nests to be of concern for construction during the breeding season, February 1 through July 15. The following measures should be implemented to minimize negative impacts to Golden Eagle nesting.

A) Schedule construction activities from July 16 to January 31. If this is not practicable, then:
   B) minimize construction activities during the breeding season, with an emphasis on heavy construction; and
   C) avoid the period February 1 through May 15, during which nesting eagles are particularly sensitive to disturbance.

Four territories neighbor N31(2); two of these overlap each other. Segments, within which the above measures should be implemented, are identified by station number below:

Sensitive Threatened Species Information Withheld

This information is confidential and should be used only on a need-to-know basis. The Navajo Natural Heritage Program is monitoring these territories, contingent on funding. If a territory is not active then the above measures need not be implemented that year. To check the status of eagle nests contact David Mikesic at (520) 871-7638. For other questions call John Nystedt at 871-7060.

Gloria M. Tom, Director

xc: Gary Morrison, Planning Engineer, BIA Branch of Roads
    Leonard Robbins, Environmental Specialist, BIA Environmental Services
    Greg Everhart, Biologist, U.S. Army Corps of Engineers
    File: Chrono
for ENVIRONMENTAL ASSESSMENT:

CONSTRUCTION OF NAVAJO ROUTE 31
Project N31(2) 1, 2 & 4, From Navajo Route 12 at Green Knobs 4.5 Miles North of Navajo
To Asaayi Lake Junction, McKinley County, New Mexico

Appendix J
Comments to the Draft EA

From: U.S. Fish and Wildlife Service (USFWS), New Mexico Ecological Services
Field Office

USFWS Comment Section 2.2: This comment is in regard to the existing N31 route that is
identified as the Alternative Alignment in the draft EA.

BIA Response: BIA-NAO-BOR's goal is to improve the road system for the Navajo
Nation according to the Master Road Plan. The system is lagging behind
the rest of the United States and the Southwest by 60 percent.
Improvements would construct and/or rehabilitate roads of the Navajo
Reservation system to bring them into compliance with modern highway
design and safety standards such as sight and recovery zone distances,
alignment and drainage requirements, guardrail, right-of-way fencing, and
safe side-road access points. The portion of the existing N31 route
identified as the Alternative Alignment currently does not meet the
modern requirements, is costly to maintain because of its location, and as
noted in the EA, it would be too costly to bring that roadway into
compliance. For further clarity, portions of Section 2.2 were edited.

USFWS Comment Section 4.12: This comment is in reference to the relocation of existing
power lines.

BIA Response: This paragraph has been edited slightly for clarity.

USFWS Comment Section 6.4: This comment refers to the consultation and coordination to
be conducted to avoid impacts to the American Peregrine
Falcon.

BIA Response: The BIA concurs and, as already noted in Section 4.4.1, has edited Section
6.4, Item No. 6. This comment refers to the commitment to which BIA-
NAO-BOR has agreed that requires consultation and coordination to be
conducted during project construction between BIA-NAO-BOR, their
project contractor, USFWS, and NFWD concerning conservation.
measures to be followed to avoid impacts to the American Peregrine Falcon (and for the Navajo Nation, the Golden Eagle) as well as any threatened or endangered species.

USFWS Comment Section 6, Summary:  This comment refers to the latest guidance (reference) for raptor protection on power lines.

BIA Response: The BIA concurs and has added the updated reference to Section 6, Summary, Item 9.
Greg Everhart  
U.S. Army Engineer District  
Attention: CESPA-EC-R  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109-3435

Dear Mr. Everhart:

This responds to a letter from the U.S. Army Corps of Engineers (Corps) dated April 28, 1999, requesting U.S. Fish and Wildlife Service (Service) review of the Draft Environmental Assessment (DEA) entitled Construction of Navajo Route 31, Project: N31(2) 1, 2, & 4, McKinley County, New Mexico. The Corps prepared the DEA under agreement with the Bureau of Indian Affairs (BIA), Navajo Area Office. In addition, the Corps on behalf of the BIA, has requested concurrence with the determination that the proposed project is "not likely to adversely affect" the American peregrine falcon (Falco peregrinus anatum). The project calls for reconstruction and minor realignment, improved safety and drainage features, and a new alignment for a portion of the existing Navajo Route 31 (N31). Specifically, the proposed action involves the reconstruction and widening of 3 miles of the existing N31 route and the construction of a new roadway segment 4.2 miles in length, to include a bridge over an ephemeral drainage known as Tohdildonih Wash. The project is located 4.5 miles north of Navajo, New Mexico extending east for 7.22 miles to Asaayi Lake Junction, within Navajo Tribal Lands, McKinley County, New Mexico.

According to the information provided in the DEA, species-specific surveys were performed to address federally-listed species of potential occurrence in McKinley County, as per our letter dated December 14, 1993. With the exception of the federally-endangered peregrine falcon, no other federally-listed species were present and/or are likely to be affected by the proposed action. With regard to the peregrine falcon, it is our understanding that conservation measures would be implemented during all phases of construction to ensure no adverse impacts occur to this species. Such measures include monitoring of the known sites, conducting presence/absence surveys, and temporary cessation of construction activities near active nesting sites. Specifically, the Bureau of Indian Affairs (BIA) agrees that if peregrine falcons are found breeding/nesting within one-half mile of construction activities during the critical nesting period (March 1 to July 15) construction would be stopped. Therefore, contingent upon application of these conservation measures, the Service concurs with the BIA that
federally-listed species are "not likely to be adversely affected" by the project, as proposed.

With regard to the DEA, the Service provides the following specific comments in further consideration of important fish and wildlife resources, including federally-listed species.

Page 13, Section 2.2, Alternative Alignment

This section implies that, regardless of which alternative is chosen, the existing (alternative) route would remain open to (and therefore maintained for) local traffic. Because the preferred alternative calls for a completely new segment involving habitat impacts to currently undisturbed areas and may facilitate future potential development in/near sensitive areas and, since the existing route will be maintained and kept open anyway; it appears that the alternative (existing) route would provide the least long-term impacts to important fish and wildlife resources.

Page 42, Section 4.12, Utility Adjustments

This indicates that existing power lines would require relocation prior to constructing the roadway, but the effects of which would be assessed before work commences. Please be advised that, under the Endangered Species Act, all interrelated activities should be addressed concurrently. Therefore, utility adjustments should be evaluated for the current project. Provided that such electrical utilities occur immediately adjacent to the preferred route and are designed in accordance with the latest guidance to prevent raptor electrocutions, these utilities do not appear to pose adverse effects on federally-listed species potentially occurring within the project area.

Page 48, Section 6.4, Biological Resources

This section should include an item ensuring coordination of construction activities with respect to peregrine falcon management plans or surveys by the BIA. Specifically, the final EA should document the commitment to stop construction if peregrine falcons are found breeding/nesting within one half-mile of construction activities during the nesting period from March 1 to July 15 (as stated by the Corps in the April 28, 1999, letter to this office).

Page 50, Section 6.7, Summary, Item 9

This item should be updated to include the latest guidance for construction of electrical power lines: Suggested Practices for Raptor Protection on Power Lines - The State of the Art in 1996 by the Avian Power Line interaction Committee. The document may be requested from the Raptor Research Foundation at 12805 St. Croix Trail, Hastings, Minnesota 55033, phone (612) 437-4359 or JMFITZPTRK@aol.com.

The Service looks forward to receiving copies of the yearly peregrine falcon survey reports and the revised Environmental Assessment, when they are available. For
Mr. Greg Everhart

further coordination/assistance or if you have any questions, please contact Carol Torrez of my staff at (505) 346-2525, ext. 115.

Sincerely,

[Signature]

Jennifer Fowler-Propst
Field Supervisor

cc:
Harold Riley, Chief, Road Planning/Design, BIA-Navajo Area Office, Gallup, New Mexico
Larry Benallie, Sr., Director, Navajo Fish and Wildlife Department, Window Rock, Arizona
PROPOSED RESOLUTION
OF THE RESOURCES AND DEVELOPMENT COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving the Grant of a Right-of-Way to Bureau of Indian Affairs (BIA), Division of Transportation, for the Construction, Operation and Maintenance of BIA Road Project No. N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands located within McKinley County, New Mexico

WHEREAS:

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

2. Pursuant to 2 N.N.C. § 500 B 2(a), the Resources and Development Committee shall “oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as good steward”; and

3. The Bureau of Indian Affairs (BIA), Division of Transportation, Navajo Area, Post Office Box 1060, Gallup, New Mexico 87305, has submitted an application for said Right-of-Way, attached hereto as Exhibit “A”, for the construction, operation and maintenance of BIA Road Project No. N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands within McKinley County, New Mexico; and

4. The right-of-way width varies in meters, 8,891.79 meters (29,172.306 feet) in length, consists of 45.808 hectares (113.191 acres), and the Spur road is 46 meters (150 feet) in width, 76.568 meters (251.207 feet) in length, consists of 0.352 hectares (0.870 acre), more or less, on Navajo Nation Trust lands within Protracted Sections 20, 23, 24, 26, 27, 28 & 29, Township 26 North, Range 13 East, McKinley County, New Mexico. The location is more particularly described on the map and the legal description attached hereto as Exhibit “B”; and

5. The Right-of-Way Clearance Program with Navajo Land Department has conducted the necessary land investigation, according to Mexican Springs Chapter Official all the land users identified, have consented as stated on field clearance report attached hereto as Exhibit “C”; and
6. All environmental and archaeological studies have been completed and have received appropriate clearances; and

7. Waiver of consideration was requested by the applicant because the right-of-way will benefit the Mexican Springs Chapter by serving the surrounding communities and will enhance the value of Tribal lands for the Tribe overall. However, waiver of damages is specifically not exempt and the Grantee shall be responsible for and promptly pay all such damages when they are sustained; and

8. It is in the best interests of the Navajo Nation that the right-of-way for BIA, Division of Transportation be approved for seventy-five (75) year terms of easement as requested.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of a Right-of-Way to Bureau of Indian Affairs (BIA), Division of Transportation for the construction, operation and maintenance of BIA Road Project No. N31(4)1,2&4 and N31(4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands, Mexican Springs Chapter, McKinley County, New Mexico for a seventy-five (75) year term of easement as requested. The location is more particularly described on the map attached hereto as Exhibit “B”.

2. 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 incorporated in Exhibit “D”.

3. 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 carry out the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources and Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of ___ in favor, ___ opposed and ___ abstained, this ___ day of ____________, 2012.

Presiding Chairperson

MOTIONED BY:
SECONDED BY:
WHEREAS:

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

2. Pursuant to 2 N.N.C. § 500 B (a), the Resources and Development Committee shall “oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as good steward”; and

3. The Bureau of Indian Affairs (BIA), Division of Transportation, Navajo Area, Post Office Box 1060, Gallup, New Mexico 87305, has submitted an application for said Right-of-Way, attached hereto as Exhibit “A”, for the construction, operation and maintenance of BIA Road Project No. N31(4)1,2,&4 and N31(4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands located within McKinley County, New Mexico; and

4. The right-of-way width varies in meters, 3,891.719 meters (29,172.306 feet) in length, consists of 45.806 hectares (113.191 acres), and the Spur road is 46 meters (150 feet) in width, 76.568 meters (251.207 feet) in length, consists of 0.352 hectares (0.870 acre), more or less, on Navajo Nation Trust lands within Protracted Sections 20, 23, 24, 26, 27, 28 & 29, Township 26 North, Range 13 East, McKinley County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit “A”;

5. The Right-of-Way Clearance Program with Navajo Land Department has conducted the necessary land investigation, according to Mexican Springs Chapter Official all the land users identified have consented as stated on field clearance report attached hereto as Exhibit “C”; and
6. All environmental and archaeological studies have been completed and have received appropriate clearances; and

7. Waiver of consideration was requested by the applicant because the right-of-way will benefit the Mexican Springs Chapter by serving the surrounding communities and will enhance the value of Tribal lands for the Tribe overall. However, waiver of damages is specifically not exempt and the Grantee shall be responsible for and promptly pay all such damages when they are sustained; and

8. It is in the best interests of the Navajo Nation that the right-of-way for BIA, Division of Transportation be approved.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of a Right-of-Way to Bureau of Indian Affairs (BIA), Division of Transportation for the construction, operation and maintenance of BIA Road Project No. N31(4)1,2,4 and N31(4) Spur, Bowl Lake Road and Bridge Project on, over and across Navajo Nation Trust Lands, Mexican Springs Chapter, McKinley County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit “B”.

2. 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 incorporated in Exhibit “D”.

3. 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 carry out the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources and Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of ___ in favor, ___ opposed and ___ abstained, this ____ day of ____________, 2012.

Presiding Chairperson

MOTIONED BY:
SECONDED BY:
MEMORANDUM

TO : Honorable Members
    Resources and Development Committee

FROM : Hon. Johnny Naize, Speaker
       22nd Navajo Nation Council

SUBJECT : ASSIGNMENT OF LEGISLATION

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Resources and Development Committee:

Legislation No. 0380-12

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS (BIA), DIVISION OF TRANSPORTATION, TO CONSTRUCT, OPERATE AND MAINTAIN BIA ROAD PROJECT NO. N31 (4) 1, 2 & 4 SPUR, BOWL LAKE ROAD AND BRIDGE PROJECT, WITHIN MCKINLEY COUNTY, NEW MEXICO.

As the Committee assigned to consider the legislation, Legislation No. 0380-12 must be placed on the Resources and Development Committee's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0380-12

xc:
Hon. Ben Shelly, President
The Navajo Nation
Harrison Tsoosie, Attorney General
Mark Grant, Controller
Honorable Roscoe D. Smith, Council Delegate (Prime Sponsor)
MEMORANDUM

DATE: August 29, 2012

TO: Honorable Roscoe Smith
Crystal, Fort Defiance, Red Lake, Sawmill Chapters

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

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS (BIA), DIVISION OF TRANSPORTATION, TO CONSTRUCT, OPERATE AND MAINTAIN BIA ROAD PROJECT NO. N31 (4) 1, 2 & 4 AND N31 (4) SPUR, BOWL LAKE ROAD AND BRIDGE PROJECT, WITHIN MCKINLEY COUNTY, NEW MEXICO

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislation. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign the proposed resolution where it indicates "INTRODUCED BY" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If you have further questions concerning this matter, please contact me at the Office of Legislative Counsel (928) 871-7166.

Thank you for your service to the Navajo Nation.
LEGISLATION NO: _0380-12_____ SPONSOR: Roscoe D. smith

TITLE: An Action Relating To Resources And Development; Approving The Granting Of A Right-Of- Way To The Bureau Of Indian Affairs (BIA), Division Of Transportation, To Construct, Operation And Maintain BIA Road Project NO. N31 (4) 1, 2 & N31 (4) Spur, Bowl Lake Road And Bridge Project, Within McKinley County, New Mexico

Date posted: September 05 at 2:55pm

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

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

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

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