

ACCOMMODATION AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 1997, by and between The Hopi Tribe ("the Tribe"), acting by and through the Hopi Tribal Council, and \_\_\_\_\_ ("the Resident(s)").

THE TRIBE HEREBY AGREES to accommodate the Resident(s) in the manner and according to the terms set forth on this page and in the attached Exhibits A through G, consisting of 35 pages, consecutively numbered as 1 through 35, all of which are incorporated herein and made a part hereof as if again set forth in full and all of which shall be read together as a single fully integrated agreement (collectively, "the Accommodation Agreement"). In the event of any inconsistency between or among any of the attached Exhibits, the later documents shall control the earlier documents.

THE RESIDENT(S) HEREBY AGREE(S) to abide by the terms of the Accommodation Agreement. This Accommodation Agreement is the entire agreement between the Resident(s) and the Tribe.

IN WITNESS WHEREOF, the parties have executed this Accommodation Agreement, which shall become effective as of the foregoing date when signed by the Hopi Tribe and the Resident(s) and approved by the United States Department of the Interior.

THE HOPI TRIBE

THE RESIDENT(S)

By \_\_\_\_\_  
Hopi Tribal Chairman  
Date signed \_\_\_\_\_

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THE UNITED STATES HEREBY AGREES to support this Accommodation Agreement and to perform its duties as set forth in the attached Exhibits.

THE UNITED STATES  
Approved pursuant to 25 U.S.C. § 415

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date signed \_\_\_\_\_

THE NAVAJO NATION HEREBY AGREES to support this Accommodation Agreement.

THE NAVAJO NATION

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date signed \_\_\_\_\_



## AGREEMENT

This agreement ("Agreement") is made by and between the Hopi Tribe, acting by and through the Hopi Tribal Council, the HPL Navajo(s) signing this Agreement, the Navajo Nation ("Nation"), and the United States.

The purpose of this Agreement is to provide for the accommodation of elderly and traditional Navajo residents of the Hopi Partitioned Lands ("HPL") who wish to remain there and to set forth the terms and conditions of that accommodation. It is being offered pursuant to the direction of the United States Court of Appeals for the Ninth Circuit that the parties to the Manybeads and New Construction cases reach by negotiation and voluntary agreement a final settlement of certain issues relating to the 1974 Navajo-Hopi Land Settlement Act and because the Hopi Tribe is desirous of ending the dispute among the parties over relocation. This Agreement is premised upon the request of the HPL Navajos that they be allowed to stay on the HPL. All of the parties to this Agreement want to enter into an era of friendship and believe that the accommodation detailed herein will lead to that goal.

Who is eligible: The persons eligible to enter into this Agreement include all adult eligible Navajos,

as defined in Section III.A. of the October 30, 1992 Agreement in Principle, who currently reside on the HPL. In addition, those persons' children and descendants who reside on the HPL, as well as the spouses of those children and descendants, are eligible to enter into this Agreement. The children and descendants become eligible upon attaining majority. At that point, if they desire to remain on the HPL they must agree to do so under the terms and conditions of this Agreement and become a signatory to it. In so doing, they will be entitled to all of the protections and benefits of the Agreement.

Pursuant to Section II.I. of the October 30, 1992 Agreement in Principle, if the HPL Navajo signing this Agreement desires to voluntarily leave the HPL and to transfer his/her rights under this Agreement to another eligible person who resides at the same location, he/she is free to do so. For purposes of determining whether a person resides at the same location, a temporary absence from the HPL to attend school, work, illness, military service, or the like will not be taken into account. The only condition on the transfer is that, if the person to whom the rights are to be transferred is not a current signatory to the Agreement, the transfer would not become effective until the person agreed to abide by and signed the Agreement. Should the HPL Navajo signing

this Agreement attempt to assign, sublet, or transfer in any fashion his/her rights under this Agreement to an ineligible person or to an eligible person who does not reside at the same location, this Agreement will automatically terminate as to that person.

Accommodation:

The accommodation being made available to the HPL Navajo signing this agreement consists of four parts. These are a) homesite, b) farmland, c) grazing, and d) use of the HPL. Each of these is discussed below.

A. Homesite: As part of the accommodation, a homesite ("homesite") is being made available to the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL to be used as their principal residence. It is available for their use and the use of their guests. The homesite is comprised of a three-acre area on the HPL and is designated more specifically in Attachment A. This is the same amount of land that is made available to the Hopi tribal members who move to the HPL. The homesite can be enlarged, where necessary, to ensure that all family members at a particular site are included within it. Such enlargement is subject to approval by the Hopi Tribe.

Within the homesite, the HPL Navajo signing this Agreement is free to repair, restore and enlarge any

existing structure. He/she is also free to reconstruct any existing structure that is destroyed. In addition, he/she is free to construct additional structures that are related to his/her residential, farming, grazing, or traditional use of the homesite. In order to construct additional structures for these uses, the HPL Navajo signing this Agreement need only submit an application to the Hopi Tribe, which the Hopi Tribe agrees to process and grant within seven (7) days. The HPL Navajo signing this Agreement is not required to fence off the homesite area, but is responsible for protecting his/her property from livestock.

In addition to being able to repair and construct structures, the HPL Navajo signing this Agreement is free to continue any use he/she is currently making of the homesite, with the one exception that it may not be used for burial of human remains. The HPL Navajo signing this Agreement shall also be allowed to engage in any additional use subject to the following limited exceptions: 1) all uses of the homesite must be in compliance with federal, state and Hopi tribal laws and ordinances; 2) mining and commercial business activity is not allowed; 3) any well must be authorized by the Hopi Tribe before it is drilled; 4) the homesite must be kept in a healthful and sanitary manner and in good

condition; and 5) no toxic or hazardous materials may be kept on, or disposed of in, the homesite.

B. Farming: As part of the accommodation, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL are free to use up to ten acres of farmland for their personal use. This is the same amount of farmland that is available to Hopi tribal members who wish to farm on the HPL. To the extent possible, the farmland made available to the HPL Navajo signing this Agreement will be located at or near that person's homesite. As with the homesite, the HPL Navajo signing this Agreement is not required to fence this area, but is responsible for protecting it from livestock. This farmland is to be used for agricultural purposes only. It shall not be used for grazing, corrals, mining, residential or other purposes.

C. Grazing: As part of the accommodation, grazing on the HPL is being made available to HPL Navajos who sign Agreements and the members of their immediate families who reside on the HPL. This grazing is to occur on land outside the homesite and farmland and is dependent on the HPL Navajo obtaining a validly issued current grazing permit from the Hopi Tribe. Just as with Hopi tribal members who have valid grazing

permits, the grazing of the HPL Navajos will be regulated pursuant to Hopi Ordinance 43.

As an initial matter, the Hopi Tribe is making a total of 2,800 sheep units year long ("SUYL") available for use by all of the HPL Navajos entering into Agreements. Each HPL Navajo is entitled to be allocated a portion of the 2,800 SUYL. To the extent that an HPL Navajo wishes to use his/her allocated SUYL to graze animals other than sheep, he/she can apply to the Hopi Tribe for permission to do so. That allocation is to be done by the Nation or its designee on or before November 1 of each year. Once the allocation is done, the Hopi Tribe will issue an annual grazing permit to each allocatee by December 1 of each year which will become effective on January 1. To the extent possible, the SUYL permitted to an HPL Navajo will be in a range unit or portion thereof near that person's homesite.

To the extent that an HPL Navajo desires to obtain more SUYL than he/she has been allocated, he/she is free to apply to the Nation for a permit off the HPL or to the Hopi Tribe for further SUYL on the HPL. In evaluating a request for additional SUYL, the Hopi Tribe will look to the grazing capacity of the land, its condition, and any other requests or land use needs. In addition, the parties to this Agreement will work



cooperatively to increase the amount of grazing capacity on the HPL.

D. Use of the HPL: As part of the accommodation, and in addition to the homesite, farmland, and grazing discussed above, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL may continue the traditional uses they are currently making of the HPL. This would include, for instance, the collection of herbs for personal or traditional use, access to religious shrines, the construction of temporary structures, and the gathering of dead wood for fire. The only limits placed on these uses are the ones set forth by the Hopi Tribe in its ordinances and permit systems, which apply to HPL Navajos and Hopi tribal members alike and are designed to protect the land and its resources. For instance, persons wishing to construct temporary structures may do so after applying to the Hopi Tribe and receiving a permit. These permits, which have been regularly granted in the past, will require, as they have in the past, that the structure be dismantled within a set period of time. Similarly, the collection of firewood is subject to Hopi Ordinance 47, which requires that the wood not be green and that a permit be obtained. HPL Navajos should

consult the Hopi Tribe to determine if a particular use requires a permit or is otherwise regulated.

In addition to making use of the HPL, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL are entitled, consistent with the Hopi Tribe's Constitution and laws, to the same access to infrastructure and resources as members of the Hopi Tribe residing on the HPL. This would include any future utility service provided on the HPL. To the extent that all applicable laws and regulations have been complied with, including the Hopi Comprehensive Land Use Plan, the HPL Navajo signing this Agreement is free to contract with a third party to provide utility services or other infrastructure related to any allowable use of the homesite, farmland, or grazing privileges.

**E. Terms and Conditions:**

1. **Jurisdiction:** The HPL Navajo signing this Agreement and all other persons (minors and guests) occupying his/her homesite are subject to the jurisdiction of the Nation and its courts with regard to issues which are entirely Navajo-related, which would include probate, domestic relations, child custody and adoption, tribal benefits and services. Otherwise, they are subject to the civil and criminal jurisdiction of

the Hopi Tribe and the Hopi Tribal Court while they reside on the HPL.

Issues regarding the interpretation of this Agreement are subject to the Hopi Tribe's jurisdiction and will be resolved in the Hopi Tribal Courts. In any case in Hopi Tribal Court involving the HPL Navajo signing this Agreement, regardless of whether it involves this Agreement, that person shall be entitled to the same due process Hopi Tribal members receive under Hopi law and shall be treated fairly and equitably.

The Hopi Tribe's jurisdiction shall extend to all present and future laws, regulations, ordinances, guidelines and restrictions adopted, enacted, or imposed by the Hopi Tribal government. The Hopi Tribe agrees that any changes to the Comprehensive Land Use Plan which become effective after the date of this Agreement shall not reduce or change to the detriment of the HPL Navajo signing this Agreement the terms of this Agreement unless the change is agreed to by the Hopi Tribe and that person.

2. Term: In the past, the Hopi Tribe has welcomed people from other tribes to its land, if those people were willing to abide by the Hopi Tribe's laws. Those people have stayed a long time. If the HPL Navajos living on the HPL abide by the Hopi Tribe's

laws, this Agreement could bring peace and provide a way to live together on this land for a long time. With this in mind, the provisions of this Agreement shall run from the date in the first line on page one of this Agreement to midnight seventy-five years from that date unless the Agreement is terminated earlier for a reason described in the section entitled "Termination and Surrender." At any time after 2046, the HPL Navajos signing this Agreement are free to apply to the Hopi Tribe to extend the term of the Agreement. In evaluating whether to extend the Agreement, the Hopi Tribe may consider the relationship among the parties, their needs, and whether the Agreement has worked. There is nothing to stop the Agreement from being extended assuming all parties are desirous of doing so.

3. Compensation: The Hopi Tribe is entitled to compensation for its loss of use of part of the HPL. Provision of that compensation by the Navajo Nation is a necessary part of this Agreement. Unless and until the compensation for this accommodation is agreed to separately with the Nation, its payment will be guaranteed pursuant to 25 U.S.C. § 640d-15(a). That compensation is part of the consideration for this Agreement. If the Nation fails to make payment when due of the agreed to compensation, which failure continues for thirty (30) days after demand in writing has been

made by the Hopi Tribe upon the Nation for payment, this Agreement is terminated without recourse effective immediately.

4. Termination and Surrender: All of the parties to this Agreement are committed to making it work. This section deals with the possibility that there may be problems and spells out the situations in which the Agreement can be terminated as to one or more of the signatories to it. Other than 1) the failure of the parties to reach an agreement on an extension of the term, 2) an attempt to transfer rights under this Agreement to an ineligible person or to an eligible person who does not reside at the same location, or 3) the failure of the Nation to pay the agreed to compensation in a timely manner, which are each described above, this Agreement can be terminated in only four circumstances. These are listed below. In each of those circumstances the affected HPL Navajos will be given notice of the proposed termination and an opportunity to challenge the validity of the termination in the Hopi Tribal Courts. The notice must be in writing and must specify the reasons for the termination. It must be sent by certified mail to the HPL Navajo signing this Agreement at his/her last known mailing address or, if the mailing address is not known, by posting the notice in a prominent place at the

homesite. The termination becomes effective 90 days after date of delivery of the notice unless the HPL Navajo signing this Agreement files an action within that 90-day period in the Hopi Tribal Courts contesting the termination. In such a case, the judge of the Hopi Tribal Court who heard the challenge would determine the date on which the termination, if upheld, would become effective.

The four ways in which this Agreement can be terminated are: (1) upon the HPL Navajo signing this Agreement no longer using the homesite as his principal residence for a continuous period of more than two years; (2) upon conviction, and, if it occurs, an appeal, of the HPL Navajo signing this Agreement in a court of competent jurisdiction for the violation of any crime referenced in 18 U.S.C. § 1153 (or its counterpart in Hopi Ordinance No. 21) or section 3.3.13 of Hopi Ordinance No. 21 (child molesting); (3) upon three convictions, and, if they occur, appeals, within a fifteen-year period of the HPL Navajo signing this Agreement in a court of competent jurisdiction for the violation of any combination of the following sections of Hopi Ordinance No. 21: section 3.3.17 (cutting green timber), section 3.3.44 (impersonation of a public officer), section 3.3.46 (injuring fences), section 3.3.47 (injury to public property), section 3.3.52

(maintaining a public nuisance), section 3.3.54 (malicious mischief), section 3.3.56 (misbranding), section 3.3.63 (polluting streams), and section 3.3.73 (tampering with communications); section 108.C.1.a of Hopi Ordinance 43; or the Hopi Woodland and Wildlife Ordinances; or (4) upon the HPL Navajo signing this Agreement using the homesite or his/her farmland for a commercial business or mining activity. No termination shall occur under subparagraph (1) above unless all HPL Navajos who reside at the homesite give it up, but the Agreement shall be terminated with respect to the HPL Navajo who no longer principally resides at the homesite, and similarly under subparagraphs (2) and (3) a conviction or convictions against one HPL Navajo shall terminate only that resident's rights under this Agreement.

This Agreement will not be terminated for a violation by the HPL Navajo signing this Agreement of Section 3.3.82 (wrecked, junked, or unserviceable vehicles) of Hopi Ordinance 21. To ensure that this section is complied with, the Nation agrees that, if the HPL Navajo signing this Agreement is convicted of a violation of this section, it will assist that person in removing, and if necessary guarantee the removal of, the offending property within thirty (30) days of entry of judgment on the conviction.

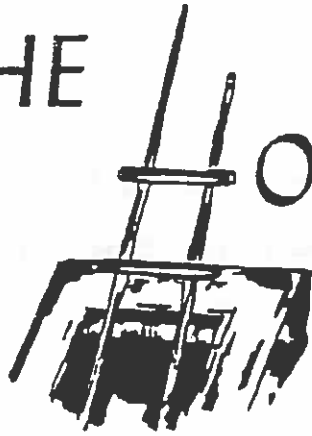
The HPL Navajo signing this Agreement will, upon sixty (60) days after termination of this Agreement immediately surrender the homesite to the Hopi Tribe and vacate the HPL. The HPL Navajo signing this Agreement is entitled to remove all of his/her property within those sixty (60) days. To the extent that it has not been removed prior to the expiration of those sixty days, the property will be deemed forfeited and abandoned. The HPL Navajo signing this Agreement may surrender this Agreement at any time by means of a written instrument verified before a notary public or before a judge of the Hopi Tribal Courts. Any person residing at the homesite who does not vacate the HPL within sixty days after termination of this Agreement is subject to eviction which will be effected by the United States and the Hopi Tribe.

5. Relocation Benefits Waived: By signing this Agreement, the HPL Navajo signing this Agreement agrees and acknowledges that, after three (3) years from the date of this Agreement, with the exception of temporary emergency relocation assistance (as set forth in 25 C.F.R. § 700.175), any and all rights he/she would have to relocation benefits as more fully defined in 25 U.S.C. § 640d are waived. If the HPL Navajo signing this Agreement decides to exercise his/her relocation benefits after signing this Agreement, he/she must



vacate the homesite as soon as a relocation dwelling is made available or within three years from the date of the Agreement, whichever is sooner.

THE



# HOPI TRIBE

Ferrell H. Secakuku  
CHAIRMAN

September 6, 1995

Wayne Taylor Jr.  
VICE-CHAIRMAN

Lee Phillips, Esquire  
Big Mountain Legal Office  
Post Office Box 1509  
Flagstaff, Arizona 86002

Dear Lee:

On behalf of the Hopi Tutsqua Team and the Hopi Tribal Council, I am writing you in your capacity as legal representative for the Navajo families seeking an accommodation from the Hopi Tribe. The purpose of this letter is to clarify several issues that have been discussed between members of the Hopi Tutsqua Team and the Navajo families concerning the Accommodation Agreement ("Agreement") offered by the Hopi Tribal Council to the families last year. It is the Hopi Tribe's intention that this letter be read in conjunction with the Agreement, which is attached hereto, and that the clarifications are binding on the Hopi Tribe during the one-year period from the date of the enactment of the authorizing legislation or until October 2, 1996, whichever is earlier, and also with respect to any Agreement that is signed.

\* \* \*

1. In the section on eligibility, the Agreement states that persons who enter into the Agreement "will be entitled to all of the protections and benefits of the Agreement." To the extent that there are additional protections and benefits in the October 30, 1992 Agreement in Principle ("AIP"), persons who enter into the Agreement are entitled to those as well, as long as they do not conflict with provisions of the Agreement.

2. In the section on use of the homesite, there are several issues:

A. With regard to the three-acre area to be assigned to HPL Navajos signing the Agreement, the

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area will be drawn in such a manner so as to include the eligible families residing at the homesite and will not be an arbitrary square or rectangle.

B. Although it is not specifically stated in the Agreement, all structures related to residential, farming, grazing or Navajo ceremonial use which are currently at the homesite shall remain permitted, as set forth in the AIP.

C. In addition to constructing new permanent structures at a homesite, any HPL Navajo signing an Agreement will be allowed to construct temporary structures at the homesite as long as they are related to the residential, farming, grazing, or traditional use of the homesite.

D. The Agreement states that HPL Navajos signing the Agreement will be "free to continue any use he/she is currently making of the homesite." As such, current uses of the HPL by HPL Navajos are not considered to be commercial business activities. Thus, to the extent that HPL Navajos are currently engaged in grazing, farming, weaving, jewelry making, and the like, those uses are protected and are not subject to the prohibition of commercial business activities.

E. The Agreement prohibits the keeping of toxic or hazardous materials at the homesite. This prohibition does not include keeping fuel that is to be used at the homesite and that is stored and used in a safe manner.

3. In the section on farming use, the Agreement contemplates that orchards will be counted as part of the allowable farmland acreage.

4. In the section on grazing use, there are several issues:

A. With regard to substituting horses and cattle for sheep, the Agreement states that an individual can apply to the Hopi Tribe for permission to do so. This application should occur after the individual's allocation has been made so the appropriate mix of animals can be determined. For the purpose of

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substitution, the Hopi Tribe will use a 4-1 ratio for cattle and a 5-1 ratio for horses.

B. To assist the Hopi Tribe in evaluating the grazing capacity of the land, the Tribe is planning a grazing study with the BIA to be conducted this fall. In addition, the Tribe will continue to request that grazing studies be done on a periodic basis in the future.

C. The grazing permits are annual permits which must be reallocated and reissued each year to take account of any changes in allocation. As such, the permits are not transferable between years. To the extent that a permit holder becomes unable during a given year to continue using his/her permit, the Hopi Tribe will work with the individual and his/her family to assure continuity of grazing for the remainder of that year.

5. In the use of the HPL section, there are several issues:

A. To the extent that there is confusion about the purpose of permits and fees generally, the Hopi Tribe does not regulate religion and does not charge religious fees or require religious permits. What the Hopi Tribe regulates, however, is activities on its Reservation, such as grazing, hunting, and collection of firewood. These regulations are general, apply to everyone on the Reservation, Hopi and Navajo, and are not based on any religious precepts.

B. With regard to dismantling permitted temporary structures which are located away from the homesite, the Hopi Tribe will consider requests to leave certain structures to be dismantled by nature. Such requests must be made at the time the permit is requested, and the permit will contain the applicable conditions concerning cleanup and removal.

C. With regard to the collection of green boughs, access will be on the same basis for HPL Navajos as it is for Hopi Tribal members. Currently, a permit is required pursuant to Ordinance 47. The Tribal Council is reconsidering whether to make green boughs

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September 6, 1995  
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accessible for ceremonial use without a permit and also what methods should be established for collection.

D. As regards herbs and plants, the Agreement already states that the collection of herbs and plants for personal or traditional use does not require a permit. The herbs and plants may not be collected for sale or commercial use. The Hopi Tribe expects this situation to continue for as long as the gathering does not create problems in terms of erosion or supply. If such a situation arises, limitations may have to be imposed. The Hopi Tribe hopes that the families will work with it to ensure that this situation is avoided. Assuming that the people collecting the herbs and plants give each other common courtesy and respect, collection for personal or traditional use will continue to be unregulated.

E. With regard to collection of firewood, a permit is required. These permits will be available to HPL Navajos on the same basis as they are for Hopi Tribal members. These permits will be limited to available resources, which should be sufficient if everyone is respectful of each others needs.

F. With regard to implementing the current Hopi Comprehensive Land Use Plan, the Hopi Tribe will consider whatever input, including maps, the HPL Navajos signing this Agreement are interested in providing.

G. Pursuant to the AIP, the United States is to provide the Manyheads plaintiffs with notice of proposed government fencing and construction projects on the HPL and to otherwise comply with Section 106 of the NHPA. In addition, the Hopi Tribe will provide to you, as the legal representative of the HPL Navajo families, copies of any notice it sends to the Navajo Nation regarding projects involving federal funds.

6. With regard to the term of the Agreement, the Hopi Tribe does not currently have the authority to lease for more than two twenty-five-year periods. The Hopi Tribe intends to obtain that authority from the United States Congress. The HPL Navajos will have until one year from the date of the enactment of that authorizing legislation or until October 2, 1996, whichever is earlier, to sign the Agreement.

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September 6, 1995  
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7. In terms of a dispute resolution mechanism, the Hopi Tribe believes that the current mechanisms it has in place will provide the necessary due process and will ensure fair results. Moreover, in the interest of better communications and understanding, the Hopi Tribe will, prior to beginning any formal proceeding to enforce the Agreement or permits issued to the HPL Navajos, meet with the affected individuals to discuss concerns.

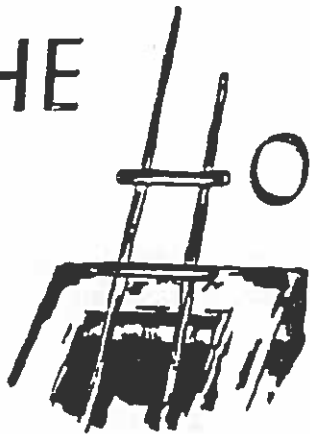
Please let me know if you have any questions.

Sincerely,



Ferrell Secakuku  
Chairman  
Hopi Tribal Council

THE



# OPI TRIBE

Ferrell H. Secakuku  
CHAIRMAN

September 8, 1995

Wayne Taylor Jr.  
VICE-CHAIRMAN

Albert Hale, President  
Herb Yazzie, Attorney General  
Claudeen Bates Arthur, Chief  
Legislative Counsel  
The Legislative Branch  
The Navajo Nation  
Post Office Box 3390  
Window Rock, Arizona 86515

Dear President Hale, Attorney General Yazzie, and  
Chief Legislative Counsel Arthur:

At the request of David Lombardi and yourselves, the Hopi Tribe has reviewed the maps you sent us of the two homesites and the customary land use areas and has the following comments.

First, with regard to the homesite maps, as the Hopi Tutsqua Team has indicated on several occasions, each three-acre area will be drawn so as to include the eligible families residing at the homesite and will not be an arbitrary square or rectangle, such as the areas currently drawn on the maps. The Office of Hopi Lands has not visited either of the mapped sites for the purpose of determining whether the maps accurately depict the location of the various structures at the site. Such visits, among other things, would be necessary before a final decision on location could be made. Assuming that the map is correct, however, it appears that it is possible to design a three-acre homesite for the existing structures at both locations. We have taken the liberty of making a suggested boundary for each site on the maps and are returning those to you.

With regard to the customary use areas, it is worth noting that under the Accommodation Agreement the three-acre homesite, the farming area, and whatever grazing is allocated and permitted to the homesite resident will be for the exclusive use of the homesite resident. Thus, the residents at a particular site will be able to prevent others from engaging in activities on

President Hale, Attorney  
General Yazzie, Chief  
Legislative Counsel Arthur  
September 8, 1995  
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their homesite or their farmland, and will be able to graze in their designated area without competition from other grazers.

The Accommodation Agreement allows the homesite residents to continue their traditional uses of the HPL, such as, for example, the collection of herbs and plants for personal use. Similarly, the Accommodation Agreement does not prevent the homesite residents from visiting shrines or sacred sites at locations on the HPL other than their homesite or farming area. These uses of the HPL are not exclusive, however, and are subject to Hopi Ordinances. To avoid conflicts, the Hopi Tribe has agreed to consider whatever input, including maps such as these, the homesite residents care to provide as it implements its current Comprehensive Land Use Plan.

I hope this allays the concerns of the families.

Sincerely,



Ferrell Secakuku,  
Chairman  
Hopi Tribal Council

Enclosures



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LEE BROOKE PHILLIPS  
THOMAS W. DEAN

TEL: (520) 770-1360  
FAX: (520) 774-1268

October 2, 1995

The Honorable Ferrell H. Secakuku  
Chairman of the Hopi Tribe  
P.O. Box 123  
Kykotsmovi, AZ 86039

RE: NAVAJO FAMILIES RESPONSE TO HOPI TRIBE'S SEPTEMBER 6, 1995  
PROPOSAL

Dear Chairman Secakuku:

I am writing as the legal representative of the Navajo families living on the HPL. The purpose of this letter is to respond to your letters of September 6, 1995 and September 8, 1995 which contain the Hopi Tribe's offer to accommodate the religious concerns raised by my clients and discussed with your Hopi Tutsqua Team during several meetings this past summer. The Navajo Families Mediation Team has voted to accept the Hopi Tribe's proposed accommodation and to go forward at this time and begin the one year trial period. The Navajo families agree to do this with the understanding that the clarifications to the Accommodation Agreement in your letters and in this letter form the basis for the parties proceeding with this process.

It is the intention of the Navajo families that this letter be read in conjunction with the proposed Accommodation Agreement and your letters and that the clarifications contained in all three letters be binding during both the one year period that my clients will have to accept and sign the Accommodation Agreement and also with respect to any final agreement that is signed by the parties.

There are several specific clarifications which my clients ask that I communicate to you and the Hopi Tribe. These clarifications are based on the discussions and agreements that occurred during our meetings with your Tutsqua Team this past summer.

1. It must be clear that this Agreement is made in good faith and in order to provide for the accommodation of traditional Navajo families living on the HPL. The Agreement is made because the parties do not want to continue to be in conflict. Rather, they wish for a relationship that is respectful and helpful. The Agreement offers an opportunity to bring peace to this troubled land for the benefit of both

1 CERTIFIED BY THE STATE BAR OF ARIZONA AS A CRIMINAL LAW SPECIALIST

Tribe. This Agreement has been made pursuant to the direction of the United States Court of Appeals for the Ninth Circuit, in the Manlyheads v. United States of America case, that the parties reach by negotiation and voluntary agreement a final settlement of certain issues relating to the 1974 Navajo-Hopi Land Settlement Act.

The agreement reflects the respect that members of the Hopi Tribe and Navajo Nation have for each other and the acknowledgment by each of the sincerity of the traditional beliefs of the other, the importance of those beliefs in defining each Tribe's way of life, and the desire of both peoples to preserve their respective cultures and ways of life in the future. It is understood that the United States will specifically acknowledge the sincerity and importance of the religious beliefs of members of the Hopi Tribe and the Navajo Nation and the significance of the Navajo and Hopi religions.

2. Children and descendants of the eligible adult Navajos are also eligible for the accommodation. In addition, final decisions regarding eligibility for the accommodation, homesites, farming and grazing will be made during the one year period and prior to the final acceptance and signing of the individual Accommodation Agreements by the Navajo families.
3. All existing structures which belong to eligible Navajo families and are related to residential, farming, grazing or Navajo ceremonial use shall remain permitted as part of the Accommodation Agreement.
4. The Agreement states that each Navajo family signing the Agreement will be "free to continue any use he/she is currently making of the homesite." Your letter of September 6, 1995 further states that "thus to the extent that HPL Navajos are currently engaged in grazing, farming, weaving, jewelry making and the like, those uses are protected and are not subject to the prohibition of commercial business activities." We want to clarify that other traditional uses such as non-commercial child care or the provision of traditional medical services shall not be considered commercial uses as well.
5. The prohibition on keeping toxic or hazardous materials on the homesite would not include fuel and other materials which are used for general residential purposes and that are stored and used in a safe manner.
6. The Accommodation Agreement provides that my clients who accept and sign the Agreement would have the right to use up to ten acres of land for farming. The September 6, 1995 letter further provides that "the Agreement contemplates that orchards will be counted as part of the allowable farmland acreage." We want to clarify that all existing traditional Navajo farming including cultivated fruit trees and vines are included as part of the farmland acreage.
7. It is my clients' understanding that grazing shall be made available to each eligible families' homesites. With regard to the issue of substituting horses and cattle for sheep, we want to be clear that to the extent that Navajo families wish to use his/her allocated SUYL to graze animals other than sheep, that he/she may do so

using the conversion factors of one goat- to one sheep, four sheep- to one cow, and five sheep- to one horse. It is understood that the Navajo families would make this request as part of their application so that the appropriate mix of animals can be determined.

8. The first grazing study will be conducted and completed prior to the expiration of the one year period so that the parties will be aware of the actual current grazing capacity of the land. Further that the Hopi Tribe and the United States will agree to conduct periodic grazing studies so as to provide reasonably current information for use by the parties in the development and application of the grazing program. Finally, that the parties will all agree to work cooperatively to increase the amount of grazing capacity on the HPL.
9. Concerning the transferability of grazing permits, it is understood that the grazing permits are annual permits which must be reallocated and re-issued each year to take account of any changes in allocation. It is also understood that a process will be established to assure continuity of grazing by the immediate families of permittees who may die or become disabled during a particular grazing year by allowing for the transfer of the grazing permit from the head of household to their eligible family members who continue to live under the terms of the Accommodation Agreement.
10. To the extent that the Hopi Tribe requires hunting permits or other similar permits, it must be clear that neither the application for the permit nor payment of any related fees would be deemed a waiver by the Navajo families or the Navajo Nation of any treaty rights which may exist as to the United States.
11. With regard to dismantling permitted temporary structures which are located away from the homesite, it must be clear that certain structures will be allowed to be dismantled by nature such as the "Yei Bi Gham" in the "Yei Bi Chai" ceremony, the "Imashjini" in the Fire Dance ceremony, the Host Hogan of the "Enemy Way" ceremony, structures blessed with white corn and partially dismantled or burnt burial hogans, and that the permit will indicate this exception.
12. With regard to the collection of green boughs, your letter of September 6, 1995 provides that the Navajo families will be given the same right to collect green boughs as is given to Hopi Tribal members. We understand that a permit is currently required pursuant to Ordinance #47, but may not be required in the future. It should be clear that because of the religious exception involved in the collection of green boughs, that a special permit would be provided to the Navajo families without fee and on the same basis as it is for Hopi Tribal members until the permit issue can be reconsidered by the Hopi Tribal Council.
13. It is our understanding that each homesite will be provided a firewood permit, that no fee is required and that the permits shall be granted on the same basis as for Hopi Tribal members.
14. Navajo families will be guaranteed the same access to infrastructure and other resources as are members of the Hopi Tribe on the HPL. Further, that to the

extent that all applicable laws and regulations have been complied with, the Navajo families will be free to contract with third parties to provide utility services or other infrastructure, including social services, educational and community facilities, related to any allowable use of their homestead, farmland or grazing privileges.

15. The Hopi Tribe has agreed to provide notice of proposed government fencing and construction projects on the HPL and otherwise comply with Section 106 of the NHPA. It is our understanding that the notice which the Hopi Tribe will provide to the Navajo families, through their legal representative, will continue to be the 30 day written notice that has previously been provided pursuant to the Atakali v. United States decision, 746 F Supp.1395 (D. Ariz. 1990).

With regard to the implementation of the Hopi Tribe's Comprehensive Land Use Plan, it is our understanding the Hopi Tribe will cooperate with the Navajo families in preserving access to Navajo sacred places on the HPL. It is also our understanding that the Hopi Tribe agrees to work with us to identify and protect existing sacred sites, burial sites and other similar places significant to either the Hopi or Navajo. In addition that the Hopi Tribe will consider any maps and other written input submitted by the Navajo families as the Hopi Tribe implements its land use plan or engages in future construction or demolition that may affect the sacred areas.

16. The Hopi Tribe has previously agreed in the Agreement In Principle that any eligible Navajo would be entitled to enter into the Accommodation Agreement with the Hopi Tribe "within one year after congressional enactment effectuating the Agreement." AIP Section III (L). In your letter of September 6, 1995 you now state that "the HPL Navajos will have until one year from the date of the enactment of that authorizing legislation or until October 2, 1996, whichever is earlier to sign the agreement." Under these new terms it appears that the one year period could end as early as October 2, 1996. To avoid any confusion among my clients, I request that the Hopi Tribe agree that the Navajo families will have until one year from the date from the enactment of the congressional legislation but no later than December 31, 1996, unless otherwise agreed to by the parties.

This would allow the Navajo Family Representatives and us to have from October 2, 1995 to December 31, 1995 to return to the HPL communities and to make all of the HPL families aware of these final clarifications. The Hopi Tribe could also seek the necessary congressional authorization during this period. The one year period would then run from January 1, 1996 to December 31, 1996. If families wanted to sign an agreement prior to December 31, 1995, they would of course be free to do so. At the same time, we could work with the Office of Hopi Lands to finalize the details of the homesteads, farming and grazing. Maps/documents will need to be developed and approved by the parties which will identify and demonstrate each Navajo families' homestead, farming and grazing areas. These maps/documents will be incorporated with the individual agreements that are signed by the parties.

17. It is our understanding that the United States Congress will have to pass legislation

authorizing this Agreement and that this will occur as soon as possible. In the event Congress does not or will not pass such legislation it is our understanding that the Agreement as written cannot take effect.

18. We appreciate your agreement to meet with the affected individuals and to discuss the concerns involved in a dispute prior to beginning any formal proceeding. We understand this agreement to include at a minimum, notice of the dispute and an opportunity to be heard prior to initiation of any formal proceedings. We also share your commitment to improve communications and understandings between the Hopi Tribe and the Navajo families. We hope that the details of other methods to resolve disputes informally can also be worked out during the one year period as previously agreed in Section III, (G)(3) of the A.I.P.

My clients and I hope that this Accommodation Agreement can be the first step in ending this long and difficult issue and that it signals the beginning of a new and historic relationship between members of the Navajo Nation and the Hopi Tribe. It is now time for us to go together to the Court and seek a formal order recognizing our agreement. We also believe it will be necessary to include or incorporate the positions of the United States and Navajo Nation in the final settlement process since they both have important responsibilities under the terms of the Agreement.

Sincerely,

**LEE BROOKE PHILLIPS, P.C.**



Lee Brooke Phillips

cc: Hon. Harry R. McCue, Mediator  
Mr. David Lombardi, United States Court of Appeals Settlement Program  
Navajo Family Representatives  
Navajo Nation Mediation Team  
United States Mediation Team



Washington, D.C. 20530

October 2, 1995

David E. Lombardi, Jr.  
Chief Court Mediator  
Settlement Program  
United States Court of Appeals  
for the Ninth Circuit  
121 Spear Street  
P.O. Box 193939  
San Francisco, CA 94119-3939

Dear David:

In your letters of August 24, 1995, and September 11, 1995, you asked the United States to respond in writing by October 2, 1995, to the terms of an accommodation agreement. We address, here, the three provisions that pertain specifically to the federal government. It is the intention of the United States that this letter be read in conjunction with the Accommodation Agreement.

First, this settlement agreement reflects the respect and acknowledgment of the United States for the sincerity of the traditional beliefs of members of the Hopi Tribe and Navajo Nation and the importance of those beliefs in defining each Tribe's ways of life, and the desire of both peoples to preserve their respective cultures and ways of life in the future. The United States specifically acknowledges the sincerity and importance of the religious beliefs of members of the Hopi Tribe and the Navajo Nation and the significance of the Navajo and Hopi religions.

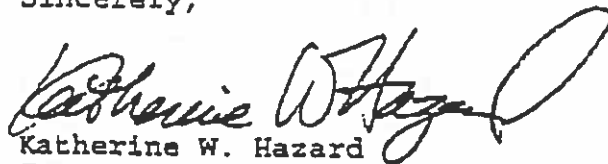
The second provision concerns the undertaking of a grazing inventory by the Bureau of Indian Affairs (BIA). Regrettably, for funding and planning reasons the BIA has not begun a grazing inventory yet this season and it is now too late to contract the work this year. However, the Department of Justice and the Department of the Interior understand the necessity of undertaking the work and Interior has made this a high priority and intends to commit resources for a study to be completed by the end of 1996, subject to the availability of appropriations. Because it is necessary to conduct the work while the vegetation is in an appropriate seasonal stage, the summer and fall of next year is the earliest time at which a study could be conducted.

Accordingly, the Department of the Interior will cooperate in obtaining periodic grazing studies, commencing in 1996, in order to provide reasonably current information for the Hopis' use in acting on applications for grazing permits. The BIA probably will not be able to complete the grazing inventory by October 2, 1996, but Interior is confident that it will be completed by the end of the year.

The third provision concerns the United States' commitment to provide the Manyheads plaintiffs with notice of proposed government fencing and construction projects on the Hopi Partitioned Lands and to otherwise comply with Section 106 of the National Historic Preservation Act. The United States' obligations are set forth in the statute and regulations, as interpreted in Attakai v. United States, 746 F. Supp. 1395 (D. Ariz. 1990). In addition, in the Agreement in Principle the United States agrees to provide the Manyheads plaintiffs notice of proposed government fencing and construction projects. We reaffirm, here, that the United States will provide written notice to a representative of the Manyheads plaintiffs. The Manyheads plaintiffs' representative to whom the United States will provide notice shall be Lee Brooke Phillips, until we are notified in writing otherwise.

We hope these assurances, the action of the Hopi Tribe, and the responses of the Navajo families and the Navajo Nation will allow the parties now to move forward with entry of a formal agreement by the court and implementation.

Sincerely,



Katherine W. Hazard  
U. S. Department of Justice  
Environment & Natural Resources Division  
P.O. Box 23795 (L'Enfant Station)  
Washington, DC 20026  
(202) 514-2110

cc: Judge Harry R. McCue



THE  
NAVAJO  
NATION

P.O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

ALBERT A. HALE  
PRESIDENT

THOMAS E. ATCITY  
VICE PRESIDENT  
**RECEIVED**

October 4, 1995

OCT 05 1995

THE NAVAJO  
CHIEF OF COURTS OFFICE

The Honorable Harry R. McCue, Mediator  
United States Magistrate Judge (Retired)  
501 W. Broadway, Suite 1770  
San Diego, California 92101

Mr. David Lombardi, Chief Circuit Court Mediator  
Settlement Program  
United States Court of Appeals  
For the Ninth Circuit  
121 Spear Street  
P.O. Box 193939  
San Francisco, California 94119-3939

Dear Judge McCue and Mr. Lombardi.

The Navajo Nation hereby responds to David Lombardi's Clarified Accommodation Agreement of August 24, 1995 and the Hopi proposal to Lee Phillips dated September 6, 1995. The negotiators for the Navajo Nation fully support the Clarified Accommodation Agreement. To the extent the Hopi proposal incorporates clarifications in the Accommodation Agreement, the negotiators for the Navajo Nation accept the changes reflected in the Hopi letter to Mr. Phillips dated September 6, 1995. In addition, the negotiators for the Navajo Nation are aware that the family representatives voted unanimously on September 26, 1995 to accept the Hopi proposal of September 6, 1995 as set forth in the letter from Lee Phillips to Ferrell Secakuku dated October 2, 1995. As expressed in Navajo Nation Council Resolution CD-107-94, the Navajo Nation fully supports the families in their decision.

The most important issue to the Navajo Nation is recognition and protection of Navajo religion and the importance of those beliefs and the desire of the Navajo People and the Navajo Nation to preserve their culture and traditional way of life. As negotiators for the Navajo Nation we are charged with the responsibility of negotiating a settlement of these difficult issues with

"a special obligation to promote and protect the religious rights of the affected Navajo families." (Resolved Clause #6, CD-107-94)

Because of this charge from the governing body of the Navajo Nation, the Navajo Nation Council, it would be irresponsible for us to take an agreement to the Navajo Nation Council for approval which fails to acknowledge and protect the traditional religious rights of the Navajo families living on the Hopi Partitioned Lands or fails to recognize and protect traditional Navajo religion. Therefore it is imperative that the language recognizing and protecting Navajo



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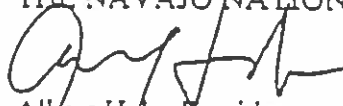
religion be included in the final agreement. We understand the families have also made this request. While there are other specific items not included in the Hopi proposal which the families have requested be included in the agreement, for the Navajo Nation, the essential issue is the acknowledgement and recognition of traditional Navajo religion without which the Nation's approval will not be forthcoming. With the language recognizing and protecting Navajo religion included and the families consent to going forward with the process, the Navajo Nation negotiators will present the agreement to the Navajo Nation Council for their formal approval. We envision entry of a consent decree by the court including the Hopi proposal dated September 6, 1995, the Lee Phillips letter clarifying and responding to the Hopi proposal, this letter and the United States letter from Katherine Hazard to David Lombardi of October 2, 1995.

Be advised that assuming all goes well, the Navajo Nation will work to provide whatever technical support and staff resources are necessary during the one year trial period to successfully implement the agreement. Once an agreement is reached, we anticipate initiating discussions with the Hopi Tribe and the United States regarding compensation to the Hopi Tribe and a phasing out of the Federal Relocation Program. We expect that the United States support for this process continues to include a commitment of federal funds to assure the implementation and thereby the success of the Agreement.

We want to express our deep appreciation to both of you for your time, effort and expertise in bringing these difficult matters to the present state.

Sincerely,

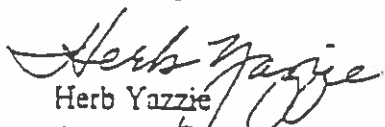
THE NAVAJO NATION NEGOTIATING TEAM



Albert Hale, President  
The Navajo Nation



Claudeen Bates Arthur  
Legislative Counsel  
The Navajo Nation



Herb Yazzie  
Attorney General  
The Navajo Nation

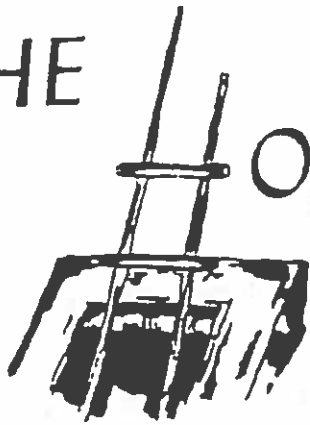
LETTER: Judge McCue & David Lombardi  
DATE: October 4, 1995  
PAGE: Three

xc: Lee Brooke Phillips, P.C.  
P.O. Box 1509  
308 N. Agassiz Street  
Flagstaff, Arizona 86001

Katherine Hazard  
Appellate Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23795  
L'Enfant Plaza Station  
Washington, D.C. 20026

The Hopi Tribe  
Ferrell H. Sekakuku  
Chairman of the Hopi Tribal Council  
P.O. Box 123  
Kykotsmovi, Arizona 86039

THE



OPI TRIBE

Ferrell H. Secakuku  
CHAIRMAN

Wayne Taylor Jr.  
VICE CHAIRMAN

November 27, 1995

Lee Phillips, Esquire  
Big Mountain Legal Office  
Post Office Box 1509  
Flagstaff, Arizona 86002

Dear Lee:

On behalf of the Hopi Tutsqua Team and the Hopi Tribal Council, I am writing you in your capacity as legal representative for the Navajo families seeking an accommodation from the Hopi Tribe. I am writing in response to your letter of October 2, 1995, for three reasons.

First, the Hopi Tribe is pleased that the Navajo families have voted to accept the Hopi Tribe's accommodation and to go forward with the one-year period at this time. I encourage you to prepare your maps and to meet with the Office of Hopi Lands quickly so that we can identify the homesites and farming areas and begin to get the individual agreements signed. Please let me know if you encounter any difficulties in this so that I can facilitate any necessary resolutions.

Second, in your letter you describe several clarifications. All but three of these are points the Hopi Tribe has already agreed to. The three issues which had not previously been agreed to are addressed here:

1. Dismantling of permitted temporary structures away from the homesite: With regard to permitted temporary structures which are located away from the homesite, the Hopi Tribe will allow temporary structures which are nonresidential to be dismantled by nature if the Navajo family complies with the other conditions of the permit. If the permitted temporary structure is residential, it will have to be dismantled within the time period set in the permit following the ceremony.
2. Date for signing individual agreements: You request that the one-year period for individual families to sign the agreements extend beyond October 2, 1996, through December 31, 1996. That extension is acceptable to the Hopi Tribe.

Lee Phillips, Esquire  
November 27, 1995  
Page 2

3. Congressional legislation: You state that Congress will have to pass legislation authorizing the Accommodation Agreement. To accomplish this, the Hopi Tribe will be asking Congress to amend the law so that it may enter into agreements of 75 years. The Hopi Tribe does not believe it is necessary to bring other pieces of the Agreement before Congress for legislation.

Finally, you reference in your letter going to court and seeking a formal order authorizing the agreement. The Hopi Tribe recognizes that the New Construction orders and the grazing injunction must be lifted. We would like to discuss further with you how best to accomplish this and what the appropriate time frame should be. We hope and trust that the families will want to join in this process so that we can remove two rulings that have created tension between us.

Sincerely,



Ferrell Secakuku,  
Chairman of the Hopi Tribe