

SECOND AMENDED PROGRAMMATIC AGREEMENT

Between

Office of Surface Mining Reclamation and Enforcement,

Bureau of Indian Affairs,

Bureau of Land Management,

United States Environmental Protection Agency,

United States Army Corps of Engineers,

Navajo Nation Tribal Historic Preservation Officer,

Advisory Council on Historic Preservation,

Navajo Transitional Energy Company, LLC, and

BHP Billiton Mine Management Company

Regarding

Management of Historic Properties at

**Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South
Realignments**

This Programmatic Agreement (“Agreement”) is between the Office of Surface Mining Reclamation and Enforcement, Western Region (OSMRE), the U.S. Bureau of Indian Affairs (BIA), the U.S. Bureau of Land Management (BLM), United States Environmental Protection Agency (USEPA), United States Army Corps of Engineers (USACE), Navajo Nation Tribal Historic Preservation Officer (NNTHPO), the Advisory Council on Historic Preservation (ACHP), Navajo Transitional Energy Company, LLC (NTEC), and BHP Billiton Mine Management Company (MMCo).

RECITALS

WHEREAS, NTEC, Arizona Public Services Company (APS), Public Service Company of New Mexico (PNM) and MMCo are proponents of the Four Corners Power Plant and Navajo Mine Energy Project (“Project”) whose purpose is to facilitate on-going operations at the Four Corners Power Plant (FCPP) and on NTEC’s Navajo Mine lease and associated properties to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern U.S., using a reliable and readily available and permitted fuel source; and

WHEREAS, APS and PNM are invited signatory parties to the Agreement; and

WHEREAS, NTEC proposes to mine a portion of Area IV North, Area IV South, and to continue to mine in Area III, and to permanently realign Burnham Road (as shown in Attachment A to this Agreement), which are within NTEC's lease boundary on the Navajo Reservation southwest of Farmington in northwestern New Mexico. NTEC's activities are termed the "Mine Project" for mining in Area III, Area IV North, and Area IV South (including both the Navajo Mine Surface Mining Control and Reclamation Act of 1977 (SMCRA) Permit Area and the proposed Pinabete SMCRA Permit Area) and the completed realignment of Burnham Road North and the eventual realignment of Burnham Road South; and

WHEREAS, the Mine Project includes the following primary components that would be operated for the anticipated life of the project:

- Open pit surface coal mining and related activities (under the Navajo Mine SMCRA Permit and the proposed Pinabete Permit Area which includes portions of Area IV North and Area IV South),
- Reclamation activities,
- Mining infrastructure (e.g., roads, facilities, powerlines),
- Realignment of Burnham Road South, the application or proposal for which will be submitted in the future in advance of planned mining activities in the areas traversed by the existing Burnham Road; and

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act (NHPA), OSMRE, the NINTHPO, the USACE, BIA, BLM, and BHP Navajo Coal Company (BNCC) were signatory parties to an Amended Programmatic Agreement governing permitted mining, reclamation, and related activities in Area III and Area IV North of BNCC's mine lease (2011 Amended Programmatic Agreement); and

WHEREAS, through the execution of this Second Amended Programmatic Agreement ("Agreement" or "APA"), OSMRE, NINTHPO, USACE, USEPA, BIA, BLM, and NTEC seek to amend the 2011 Amended Programmatic Agreement, in accordance with its terms, to accommodate certain project modifications; and

WHEREAS, OSMRE is the lead Federal agency responsible for ensuring compliance with Section 106 of the NHPA and under the Indian Lands Program, would need to approve, pursuant to the SMCRA, the mining permit for the proposed coal mining and therefore is a Signatory to this Agreement; and

WHEREAS, the Navajo Nation, acting through its Historic Preservation Department, has assumed the role of the NINTHPO pursuant to Section 101(d)(2) of the NHPA, as amended, and therefore the NINTHPO is a Signatory to this APA; and

WHEREAS, the USACE would need to approve, pursuant to Section 404 of the Clean Water Act, a permit(s) for the proposed mining in Areas III, IV North and IV South, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the USEPA would need to approve a revised Section 402 National Pollutant Discharge Elimination System (NPDES) permit, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BIA: (a) has approved a realignment of a portion of the Burnham Road, now completed (BIA Road N-5028) (“Burnham Road North”); (b) would need to evaluate and approve a realignment of another portion of the Burnham Road to be proposed in the future (“Burnham Road South”) as depicted on Attachment A; and (c) has applications for rights-of-way renewal pending for certain roads, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BLM would need to approve new Resource Recovery and Protection Plan(s) pursuant to BLM regulations and the Indian Mineral Leasing Act, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, as the result of a series of transactions, NTEC is now the lessee of the Navajo Mine Lease and holds the Navajo Mine SMCRA Permit and will be the Pinabete SMCRA Permit permittee in the event OSMRE determines to grant that permit; and

WHEREAS, MMCo and NTEC have entered an agreement under which MMCo will be serving as the mine manager for a period of time, and pursuant to which MMCo has certain obligations to NTEC to pursue the issuance of federal permits and approvals required for operation of Navajo Mine for periods after July 6, 2016; and

WHEREAS, NTEC (and its predecessor), as the proponent of the Mine Project, has provided information for mapping the Mine Project area and the Area of Potential Effects (APE) as determined by OSMRE in consultation with NNTHPO, agencies, and other Consulting Parties, and, using qualified outside consultants as specified in this Agreement, stands ready to undertake inventory work, to assist in evaluating eligibility, to assist in seeking to resolve adverse effects on historic properties, and fund activities related to the identification, evaluation, and treatment of adverse effects, and has been invited to participate as a Signatory to this Agreement; and

WHEREAS, this Agreement shall apply to all activities, including short-term construction and long-term operation, mining, reclamation and all related activities authorized and associated with the Mine Project including all modifications and revisions; and

WHEREAS, Section 106 of the NHPA and its implementing regulations for *Protection of Historic Properties*, Title 36, Code of Federal Regulations, Part 800 (36 CFR 800), require a Federal Agency with direct or indirect jurisdiction over a Federal, federally assisted, or federally permitted or approved undertaking to take into account the effects of the undertaking on historic properties included in or eligible for the National Register of Historic Places (NRHP), and, prior to approval of an undertaking, to afford the ACHP, Consulting Parties, and other interested parties a reasonable opportunity to comment on the undertaking (the Section 106 review process); and

WHEREAS, the ACHP has elected to participate in the Section 106 process; and

WHEREAS, during the previous 2011 Amended Programmatic Agreement, in addition to the participation of, and consultation with, NNTHPO, OSMRE sought consultation with tribes through correspondence and telephone inquiries; and

WHEREAS, prior to the execution of this Agreement, OSMRE (and its predecessor agency, the United States Geological Service, or USGS) has completed certain steps to comply with Section 106 of the NHPA in order to permit mining activities in Area III as memorialized in a 1978 Memorandum of Agreement, as amended, and related correspondence; and

WHEREAS, in accordance with the terms and conditions of the original 2011 Amended Programmatic Agreement, which this Agreement is intended to amend and supersede, OSMRE and other parties have complied with, and substantially completed the work required by, Stipulations in this Agreement for significant portions of Area IV North (as reflected in a November 9, 2009 letter referenced in Attachment G); and

WHEREAS, prior to the execution of this Agreement, OSMRE, NNTHPO and other parties have completed certain steps to comply with Section 106 of the NHPA relating to Navajo Mine activities; and

NOW, THEREFORE, the Signatories to this Agreement shall fulfill the following stipulations during the Burnham Road South realignment, and construction, operation, mining, reclamation and all related activities in Areas III, IV North and IV South. This will take into account the effects of the Mine Project on archaeological, historical, and Traditional Cultural Properties (TCPs) listed in or eligible for inclusion in the NRHP or otherwise subject to consideration under the Native American Graves Protection and Repatriation Act (NAGPRA), The Navajo Nation Policy for the Protection of Jishchaa, and related Federal and Navajo Nation cultural resources policies and regulations (Attachment B).

STIPULATIONS

Stipulation 1. The Area of Potential Effect and Identification of Historic Properties

- A. OSMRE, in consultation with the NNTHPO, and other Consulting Parties has established the APE, as defined at 36 CFR 800.16(d). For the Navajo Mine the APE includes mining areas and a one mile buffer around these areas for the additional consideration of TCPs (Attachment A).
- B. Under the direction of OSMRE and with the NNTHPO, and other Consulting Parties, through qualified outside consultants, NTEC (or its predecessor in interest) has conducted extensive inventory work for the identification of cultural resources within the APE, including archaeological and ethnographic investigations and surveys, as of the date of this Agreement.

Stipulation 2. Evaluation of Historic Properties for Eligibility

- A. In consultation with the NNTHPO, OSMRE has made determinations of eligibility for listing on the NRHP of sites identified through inventory work considered in accordance with the 2011

Amended Programmatic Agreement (Area III and Area IV North), and the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South), as summarized in Attachment C. OSMRE and the Consulting Parties have reviewed and finalized the determinations of eligibility for potential TCPs within the APE and outside the Mine Lease boundaries.

- B. When making determinations of eligibility for the NRHP of reported, newly discovered, or reevaluated sites (that may be necessary), OSMRE shall consult with the NNTHPO to seek consensus determinations of the NRHP eligibility of properties identified on the Navajo Mine. OSMRE also shall consult with the Signatories to this Agreement and take into account their views.
- C. If the NNTHPO or other Signatories to this Agreement disagree with OSMRE determinations of eligibility, OSMRE shall consult with the objecting party or parties to resolve the objection. If a resolution cannot be agreed upon, OSMRE shall forward the required documentation to the Keeper of the NRHP for a final determination pursuant to regulations for *Determinations of Eligibility for the National Register of Historic Places* (36 CFR 63).
- D. Nothing in this Agreement shall be construed to require OSMRE to reconsider eligibility determinations made under the 2011 Amended Programmatic Agreement or its predecessor agreements, including without limitation the 1978 Memorandum of Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 3. Determination of Effect and Adverse Effect of the Project on Historic Properties

- A. As summarized in Attachment C, in consultation with NNTHPO, NTEC, and review by Consulting Parties, OSMRE has applied the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE.
- B. OSMRE, in consultation with NNTHPO and other Consulting Parties who are Signatories to this Agreement, shall continue to apply the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE. OSMRE shall provide a review opportunity for all Signatories to this Agreement in accordance with Stipulation 7 to comment on effects to eligible and listed properties.
- C. Unless mining plans change which would result in a change to the APE, (Stipulation 5) nothing in this Agreement shall be construed to require OSMRE to reconsider effect or adverse effect determinations made under the 2011 Amended Programmatic Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 4. Responsibilities of Federal Agencies and Project Proponents

- A. OSMRE, as a result of its permitting responsibilities, is the lead federal agency under Section 106 of the NHPA, as amended. OSMRE and NNTHPO shall coordinate as necessary to ensure that each of their respective responsibilities is clearly defined.
- B. NTEC and MMCo shall be responsible for communicating with OSMRE and/or NNTHPO regarding compliance with this Agreement, recognizing that NTEC is responsible for any obligations of the Mine Project proponents.

Stipulation 5. Project Modifications

If development designs or changes in designs, including without limitation the submittal of a specific proposal for the realignment of Burnham Road South, require expansion or other modification of the APE or materially modify the nature of potential effects, NTEC shall retain qualified outside consultants to undertake supplemental inventory work in newly defined portions of the APE, to identify any historic properties in the expanded or modified APE, and to provide recommendations on eligibility and assess effects. OSMRE shall consult with the NNTHPO on the NRHP-eligibility of any newly identified cultural resources, about the effect of the project on any NRHP-eligible properties, and about treatment to avoid, reduce, or mitigate any identified adverse effects, in a manner consistent with Stipulations 1, 2, and 3.

Stipulation 6. Resolution of Adverse Effects

- A. In accordance with the 1978 Memorandum of Agreement, as amended, relating to prior construction, mining, reclamation and all related activities on NTEC's mine lease, including without limitation Area III, OSMRE's predecessor, the ACHP, the New Mexico State Historic Preservation Officer (predecessor to NNTHPO under Section 106 of the NHPA, and Utah International, Inc. (BNCC and NTEC's predecessor), complied with the then existing requirements of Section 106 of the NHPA and its implementing regulations. Compliance is demonstrated by the December 12, 1984 letter from OSMRE's Mr. Allen D. Klein to Utah International's Mr. R.C. Diederich, and the July 1, 1986 letter from OSMRE's Mr. Melvin L. Shilling to Utah International's Mr. John Grubb (Attachment G).
- B. As summarized in Attachments C and D, OSMRE, NNTHPO, and NTEC consulted, and identified minimization, avoidance, and mitigation measures to resolve adverse effect determinations, and implemented measures to resolve adverse effects concerning certain historic properties within the APE.
- C. OSMRE, NNTHPO, and the other Signatories shall consult and identify minimization, avoidance, and mitigation measures to resolve any other adverse effect determinations concerning any other historic properties within the APE, not already addressed as shown in Attachments C and D or that may be identified in the future.
- D. If any of the Consulting Parties who execute this Agreement as Invited Signatories advise OSMRE and/or NNTHPO of concerns about effects on properties to which they ascribe traditional religious or cultural significance, OSMRE in consultation with the NNTHPO shall seek to consult with them about possible measures to resolve the adverse effects.

- E. For additional mining, or related activity of the Mine Project, OSMRE and NNTHPO shall guide NTEC in development of plans to resolve adverse effects, including without limitation treatment plans (Treatment Plans). Treatment Plan(s) shall conform to federal requirements (Attachment B), and the Navajo Nation's policies under the Navajo Nation Cultural Resources Protection Act (CMY-19-88), and will address any adverse effects, the resolution of which is agreed to be appropriate, on historic properties, including traditional cultural properties. The nature of the treatment may vary for the various types of affected historic properties, and separate Treatment Plans may be developed for different portions of the APE or for different types of historic properties. Treatment Plan(s) shall:
1. Be consistent with the Secretary of the Interior's Standards and Guidelines, as amended and annotated (http://www.cr.nps.gov/local-law/arch_stnds_0.htm), and other applicable ordinances, regulations, and policies of the Navajo Nation; and
 2. Describe the properties to be affected by mining and associated operations and the nature of those effects; and
 3. Identify the significant values of the properties within relevant historic contexts, as defined in NRHP Bulletin 16 (How to Complete the NRHP Registration Form) and Navajo regulation and guidance, and how those values would be affected; and
 4. Specify any measures to avoid, reduce, or mitigate adverse effects on those significant values.
 5. Specify safety and related protocols to facilitate access by Navajo Nation members who have an identifiable interest in Navajo TCPs and burial sites on the Mine Lease, provided such access does not interfere with operations and activities on the Mine Lease.
- F. OSMRE, in consultation with the NNTHPO, shall review draft Treatment Plan(s). On approval of the Treatment Plan(s), NTEC shall proceed to implement the Final Treatment Plan(s).
- G. OSMRE shall distribute the approved the Final Treatment Plan(s) to all parties to this agreement pursuant to Stipulation 7.
- H. OSMRE in conjunction with NNTHPO shall ensure that the Treatment Plan(s) is implemented and completed.
- I. Many of the affected historic properties are likely to be archaeological sites and if avoidance is not feasible, treatment, if any, is likely to involve studies to recover and preserve important archaeological materials and information. Treatment Plan(s) that involves archaeological data recovery shall specify at a minimum:
1. Research questions and goals that are derived from relevant historic contexts, as applicable to the region in which the project is located, and which can be addressed through data recovery and archival studies, along with an explanation of their relevance and importance; and

2. Fieldwork and analytical methods that are appropriate for the collection of the requisite data to address the defined research questions; and
 3. The level of effort to be expended on the treatment of each property, including rationale and methods for proposed sampling; and
 4. Strategies for distributing and/or archiving collected information to both professional and nonprofessional audiences, including a proposed schedule of reports or media products (if multiple related studies are conducted to recover data, the strategies for distributing information shall include the preparation of a synthesis to integrate the results of the multiple related studies); and
 5. Methods and procedures for addressing any human remains and cultural objects pursuant to Stipulation 8, including plans of action or burial agreements as warranted; and
 6. Qualifications of the study team; and
 7. Obtainment of any necessary cultural resource permits.
- J. If mining and related activities remain unchanged, nothing in this Agreement shall be construed to require OSMRE to reconsider or require further treatment or other steps to resolve adverse effects for historic properties considered previously in Section 106 consultations relating to activities at Navajo Mine and ancillary facilities.

Stipulation 7. Review, Comment, and Consultation

- A. Plans prepared in accordance with this Agreement shall be consistent with Secretary of the Interior standards and guidelines for preservation planning and the Navajo Nation Cultural Resources Protection Act.
- B. OSMRE in conjunction with the NNTHPO shall consider any comments on draft plans or any other requests for consultation or comment from Signatories provided within thirty (30) calendar days, and request the project proponent to make appropriate revisions. OSMRE shall submit final documents to the NNTHPO and other parties to this Agreement for reference.
- C. If any Signatory does not respond within thirty (30) calendar days of any request for consultation, OSMRE will consider that Signatory to have waived its consultation right concerning that request or to have agreed with the agency recommendation.

Stipulation 8. Treatment of American Indian Remains and Cultural Objects

The treatment of American Indian remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found on the Navajo Reservation shall be addressed in accordance with the *Navajo Nation Policy for the Protection of Jishchaá: Gravesites, Human Remains, and Funerary*

Items (Jishchaá Policy), and in a manner that is consistent with the NAGPRA and its implementing regulations (43 CFR 10).

Stipulation 9. Authorization of Construction and Mining

- A. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in Area III of the Mine Lease.
- B. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in the portion of Area IV North of the Mine Lease permitted for mining and related activities under the Navajo Mine SMCRA Permit.
- C. Following implementation of Treatment Plans that may be determined to be necessary or appropriate for other Mine Project areas as approved pursuant to Stipulation 6 of this Agreement, OSMRE may, in its discretion, authorize the initiation of construction, mining, reclamation and other activities in those areas covered by a fully implemented Treatment Plan(s).

Stipulation 10. Confidentiality

The distribution of sensitive information about the locations and nature of inventoried historic properties shall be limited as provided for by Section 304 of the NHPA, 36 CFR 800.11(c), and Section 9(a) of the Archaeological Resource Protection Act (ARPA), 16 USC 470hh (a); regulations implementing the Surface Mining Control and Reclamation Act (30 CFR 773.6(d) (3) (iii)), and the Navajo Nation Privacy Act at 2 N.N.C. Section 85. Pursuant to this stipulation, the Consulting Parties to this Agreement agree to appropriately control the distribution of any confidential information they may receive as a result of their participation in this Agreement.

Stipulation 11. Unanticipated Discoveries

If potential historic properties or cultural objects are unexpectedly discovered during project implementation by activities other than archaeological testing or data recovery excavations conducted pursuant to a Treatment Plan, they shall be treated as discoveries. All work that might adversely affect the discovery shall cease and the Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties (Attachment E) shall be implemented.

Stipulation 12. Damage of Known Historic Properties

If known historic properties are affected, directly or indirectly, in a manner that was not anticipated or authorized, the damages shall be treated as violations of the ARPA; the Navajo Nation Cultural Resources Protection Act, as applicable; and SMCRA. The project proponent shall cease all work at the site of the damage and immediately notify NNTHPO. In turn, NNTHPO shall coordinate with the proper

law enforcement agency, which will conduct an investigation and pursue criminal penalties or civil assessments as warranted. OSMRE inspectors may become involved as necessary.

Stipulation 13. Curation

All cultural materials collected from the Navajo Reservation lands in conjunction with inventory and treatment activities, including without limitation all potential historic properties, will remain the property of the Navajo Nation. OSMRE and the NNTHPO shall ensure that artifacts and records resulting from the inventory and treatment programs are curated in accordance with 36 CFR 79, except for the disposition of human remains, funerary objects, sacred objects and objects of cultural patrimony, which shall be determined in consultation pursuant to Stipulation 8. NTEC will pay reasonable curation costs at a NNTHPO-approved facility.

Stipulation 14. Professional Qualifications and Permits

OSMRE shall ensure that all historic preservation work pursuant to this Agreement is conducted by or under the supervision of a person or persons meeting the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR 61), and in accordance with all required permits including those required under the ARPA and the Navajo Nation Code.

Stipulation 15. Dispute Resolution

Should any Signatory Party to this agreement object in writing to any actions proposed or carried out pursuant to this Agreement, OSMRE shall notify the NNTHPO and consult with this party to resolve the objection. If OSMRE determines that the objection cannot be resolved, OSMRE shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:

1. Advise OSMRE that the ACHP concurs in the proposed response to the objection; or
2. Provide OSMRE with recommendations that the agency shall take into account in reaching a final decision regarding the dispute; or
3. Notify OSMRE that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. OSMRE shall take into account any ACHP comments made under this provision.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibility of OSMRE to carry out all actions under this Agreement that is not the subject of the dispute will remain unchanged.

Stipulation 16. Amendments and Termination

- A. Any Signatory to this Agreement may request that it be amended by informing OSMRE in writing of the reason for the request and the proposed amendment language, whereupon OSMRE shall inform the other Signatories and request their views concerning the proposed amendment. All

Signatories must agree to any amendment before it can take effect, and such agreement shall not be unreasonably withheld.

- B. In the event that the terms of the Agreement cannot be, or are not being carried out, the Signatories shall consult to seek amendment of the Agreement. If an agreement cannot be reached on an amendment, any Signatory may terminate the Agreement pursuant to 36 CFR 800.6(c) (8). OSMRE then shall either seek to negotiate a memorandum of agreement under 36 CFR 800.6(c) or request and consider the comments of the ACHP, pursuant to 36 CFR 800.7(a).

Stipulation 17. Duration

OSMRE and NNTHPO and the Signatory Parties shall review this Agreement in January every five years after its execution as long as mining and related operations continue in any of Area III, Area IV North, and Area IV South to determine whether the Agreement needs to continue and whether any changes and/or termination may be needed. If at any other time the Signatories agree that the goals of the Agreement have been fulfilled, the Agreement may be terminated by mutual consent.

Stipulation 18. Execution

- A. Execution of this Agreement, filing of the Agreement with the ACHP pursuant to 36 CFR 800.6(b) (1) (iv), and implementation of its terms is evidence that OSMRE have taken into account the effects of mining in Area III, Area IV North, and Area IV South on historic properties protected under Section 106 of the NHPA, and has afforded the ACHP an opportunity to comment.
- B. On execution of this Agreement, all prior agreements regarding compliance with NHPA Section 106 and its implementing Agreements are superseded and replaced by this Agreement.

SIGNATORY PARTY

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

By Erwin J. Barabergen Date 12/18/2014
Acting Regional Director, Western Region

SIGNATORY PARTY

BUREAU OF INDIAN AFFAIRS

By  Date 12/19/2014
Sharon Pinto, Director, Navajo Region

SIGNATORY PARTY

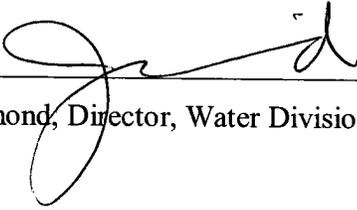
BUREAU OF LAND MANAGEMENT

By Victoria Barr Date 12/16/14

Victoria Barr, Farmington District Manager

SIGNATORY PARTY

U.S. ENVIRONMENTAL PROTECTION AGENCY

By  Date 12/30/2014
Jane Diamond, Director, Water Division, Pacific Southwest Office

SIGNATORY PARTY

U.S. ARMY CORPS OF ENGINEERS

By Allan Steinle Date 2 Dec 14

Allan Steinle, Regulatory Division Chief, Albuquerque District

SIGNATORY PARTY

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By  Date 12-22-14

Ron Maldonado, Acting Tribal Historic Preservation Officer

SIGNATORY PARTY

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By  Date 2/23/15

for John M. Fowler, Executive Director

SIGNATORY PARTY

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

By _____ Date _____
Chief Executive Officer

SIGNATORY PARTY

BHP BILLITON MINE MANAGEMENT COMPANY

By Pat Risner Date 12/8/14
Pat Risner, Director

INVITED SIGNATORY PARTIES

ARIZONA PUBLIC SERVICE COMPANY

By _____ Date _____

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____ Date _____

ATTACHMENTS

Attachment A - Navajo Mine Location and APE Map

Attachment B - Regulations and Guidelines

Attachment C - Archaeological Sites within the Mine Lease Area APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment D - Traditional Cultural Properties (TCPs) within the APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment E – Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

Attachment F - Definitions

Attachment G - List of Documents Reflecting Prior Compliance Efforts

Attachment B - Regulations and Guidelines

American Indian Religious Freedom Act (AIRFA; 42 USC 1996 and 1996a)

Archaeological Resources Protection Act (ARPA; 16 USC 470, 43 CFR 7)

BLM 8110 Manual: Identifying and Evaluating Cultural Resources

National Historic Preservation Act (NHPA); (16 USC 470 et seq.)

National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992; 1998)

Native American Graves Protection and Repatriation Act (NAGPRA; 25 USC 3001; 43 CFR 10)

Navajo Nation Cultural Resources Protection Act (NNCRPA) (CMY-19-88)

Navajo Nation Policy for the Disposition of Cultural Resource Collections

NHPA Implementing Regulations (36 CFR Part 800)

The ACHP's guidance on conducting archaeology under Section 106 (2009)

The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

The Navajo Nation Policy for the Protection of Jishchaa'

The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983)

Using Section 106 to Protect Historic Properties (2011)

Attachment E

Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

In the event that unanticipated potential historic properties are discovered during implementation of mining activities within the APE, or should known historic properties be inadvertently affected in a manner that was not anticipated, the following procedures shall be implemented:

1. The project proponent(s) and contractor(s) shall immediately halt all activities in the vicinity of the discovery and take steps to stabilize and protect the discovered resource until it can be evaluated.
2. The project proponents shall immediately notify NNTHPO and OSMRE, and arrange for an archaeologist with appropriate expertise to document and preliminarily assess the find and formulate a recommendation regarding whether the discovery is NRHP-eligible and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required pursuant to the Archaeological Resources Protection Act and the Navajo Nation Cultural Resources Protection Act. The assessment shall address the following factors:
 - A. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
 - B. The spatial extent of the resource. This may require additional testing, mapping, or inspection.
 - C. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
 - D. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
3. If the preliminary evaluation concludes that the find is not a type of resource protected by Federal laws or Navajo Nation laws and policies, the evaluating archaeologist shall document that conclusion and provide documentation to NNTHPO and OSMRE. If OSMRE concurs, they may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
4. If the preliminary evaluation concludes that a discovery is a type of resource that may be eligible for the NRHP or protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, the evaluating archaeologist shall provide that documentation and recommendations to the NNTHPO and OSMRE.

- A. OSMRE shall evaluate the discovery in consultation with the NNTHPO, and if they concur that the find is not eligible for the NRHP, no further action shall be required, and OSMRE may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
 - B. If OSMRE and NNTHPO concur that the find is eligible for the NRHP or is protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, they shall review the applicability of any relevant Treatment Plan. If they determine that a plan is appropriate, OSMRE shall ensure that the project proponents implement the plan to treat the discovery. If OSMRE and NNTHPO conclude that the plan is not applicable, OSMRE shall ensure that the project proponents prepare and implement a supplemental plan to resolve the adverse effects. The supplemental plan shall be reviewed and revised pursuant to Stipulation 8 except that the period of review by the participating parties shall be limited to 5 days. The project proponents shall not resume the activity that resulted in the discovery in the vicinity of the discovery until NNTHPO and OSMRE has determined that the adverse effect has been resolved and has authorized resumption of the activity.
5. Any discoveries of human remains, funerary objects, sacred objects and objects of cultural patrimony shall be treated pursuant to Stipulation 8.

Attachment F

Definitions

Concurring Parties: An invited Consulting Party to this PA that agrees with the content of the PA. The refusal of a concurring party to sign the PA does not invalidate this PA as noted in 36 CFR Part 800.6(c) (3). Concurring parties may not terminate the PA.

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 CFR Part 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by OSMRE in regards to a Project's effect upon a historic property as defined in 36 CFR Part 800.

Determination of Eligibility: A determination made by OSMRE in regards to a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 60 and 36 CFR Part 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 CFR Part 800.16(g)).

Environmental Impact Statement: An analysis of a major federal action's environmental impacts conducted consistent with the National Environmental Policy Act (NEPA).

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the NRHP criteria (see 36 CFR Part 800.16(1) (1)).

Invited Signatory: OSMRE has invited PNM and APS to be signatories to this PA pursuant to 36 CFR Part 800.6(c) (2). The refusal of any invited signatory to sign the PA does not invalidate the PA.

Signatory Parties: All signatories to this PA, other than Concurring Parties, which includes OSMRE, BLM, BIA, USEPA, USACE, NNTHPO, NTEC, and MMCo.

Treatment Plan: A plan developed in consultation with the parties to this Agreement that identifies the minimization and mitigation measure for historic properties located within the APE that will be adversely affected by the Project.

Attachment G

List of Documents Reflecting Prior Compliance Efforts

1. Fetterman, Jerry. 2011. Cultural Resource Investigations within Area IV North, BHP Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Volume I: Introduction and Preceramic Occupations; Volume 2: Anasazi Occupations; Volume 3: Navajo Occupations;
2. November 9, 2009 Letter from Brenda A. Steele, OSMRE, to Ron Maldonado, NNTHPO, regarding compliance with 2007 Programmatic Agreement, including signed acknowledgment by NNTHPO and OSMRE concerning fulfillment of 2007 Programmatic Agreement Stipulations;
3. Honeycutt, L. 2008. Preliminary Report on Excavation of 19 Sites, Lease Area IVN, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
4. Johnson, J. Harris, N., Yost, S.W., Messerli, T.F. & Shine, T. 2007. NRHP Eligibility Testing at 33 Sites Located within Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 745), Ecosystem Management Inc.;
5. Kelly, K., Francis, H., Martin, R., Torrez-Nez, J. and Bernard M. 2007. Each Place Brings Stories. Navajo Mine, Area IV North Cultural Resources Intensive Data Recovery Project, Navajo Ethnography Sub-Project. Dine'tahdoo CRM, Farmington, New Mexico;
6. Fetterman, J. 2007. Cultural Resource Summary and Site Specific Recommendations for Phase II Investigations within Lease Area IV North, BHP-Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Woods Canyon Archaeological Consultants, Inc. Prepared for BHP Navajo Mine;
7. March 07, 2008 Cultural Resources Compliance Form, NNPHD No. HPD-06-843-Revised, Project Title: Cultural Resource Survey of 188 Acres (76 hectares) for Proposed Realignment of Burnham Road, within and outside the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County New Mexico;
8. Programmatic Agreement for Area IV North, executed in June and August, 2007, and attachments;
9. Burluson, R. 2006. Cultural Resources Survey of 188 Acres (76 hectares) for a Proposed Realignment of Burnham Road, Within the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County, New Mexico, (EMI Report Number 685a), Ecosystem Management, Inc;

10. Burleson, R., Phippen, R. and Yost, S.W. 2006. Data Recovery and Treatment Plan For 47 Sites Located on Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 685), Ecosystem Management, Inc.;
11. Chavez, L. 2006. An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Areas IV-North, IV-South, and V, San Juan County, New Mexico for URS Corporation in Conjunction with BHP, Navajo Nation Archaeology Department, Window Rock;
12. June 08, 2005, Cultural Resources Compliance Form, NNHPD No. HPD-04-1252, Project Title: The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
13. Meininger, J. and L. Wharton. 2004. The Eligibility Evaluation of Cultural Resources Location Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, New Mexico, (DCA Technical Report No. 04-DCA-114) Larry L. Baker, Executive Director, San Juan County Museum Association, Division of Conversation Archaeology;
14. Mietty, T. 1997. The On-Site Inspection and Eligibility Evaluation of Twenty-Three Sites Located in Area IV North of BHP World Mineral's Navajo Mine, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, Prepared by Division of Conservation Archaeology;
15. July 01, 1986 Letter from Melvin L. Shilling, OSMRE Mining Analysis Division, to John W. Grubb, Utah International, Inc. (predecessor to BNCC), providing approval for continued mining activities at Dixon Pit in the area of a "possible" human burial SJC-1345;
16. December 12, 1984 Letter from Allen D. Klein, Administrator, OSMRE Western Technical Center, to Mr. R.C. Diederich, Utah International, Inc. (predecessor to BNCC) providing archaeological clearance and authorizing mining operations in Area III, subject to limited conditions;
17. Hogan, P. and J. Winter. 1983. Economy and Interaction Along the Lower Chaco River. University of New Mexico, Office of Contract Archaeology;
18. York, F. E. 1980. An Historic Ethnography of Navajo Sites on the UII Lease. In Human Adaptations in a Marginal Environment: The UII Mitigation Project: Archaeological Report of the Mitigation of Eight Archeological Sites in Mining Area III of the Utah International, Inc. on Navajo Reservation Land for the Utah International, Inc., edited by James L. Moore and Joseph C. Winter. Office of Contract Archaeology. University of New Mexico, Albuquerque;
19. Moore, James L. and J. Winter. 1980. Human Adaptations in a Marginal Environment: The UII Mitigation Project. Office of Contract Archaeology. University of New Mexico Albuquerque.

20. Memorandum of Agreement between Advisory Council on Historic Preservation, the United States Geological Survey (predecessor for these purposes to OSMRE), and the New Mexico State Historic Preservation Officer (predecessor to NNTHPO for these purposes), ratified March 1, 1978 by the Advisory Council, as amended; and
21. Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The Coal Gasification (CGP) Survey. Charles Reher, editor. University of New Mexico Press.

Area of Potential Effect
Navajo Mine

PROJECT BOUNDARIES

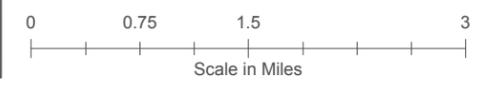
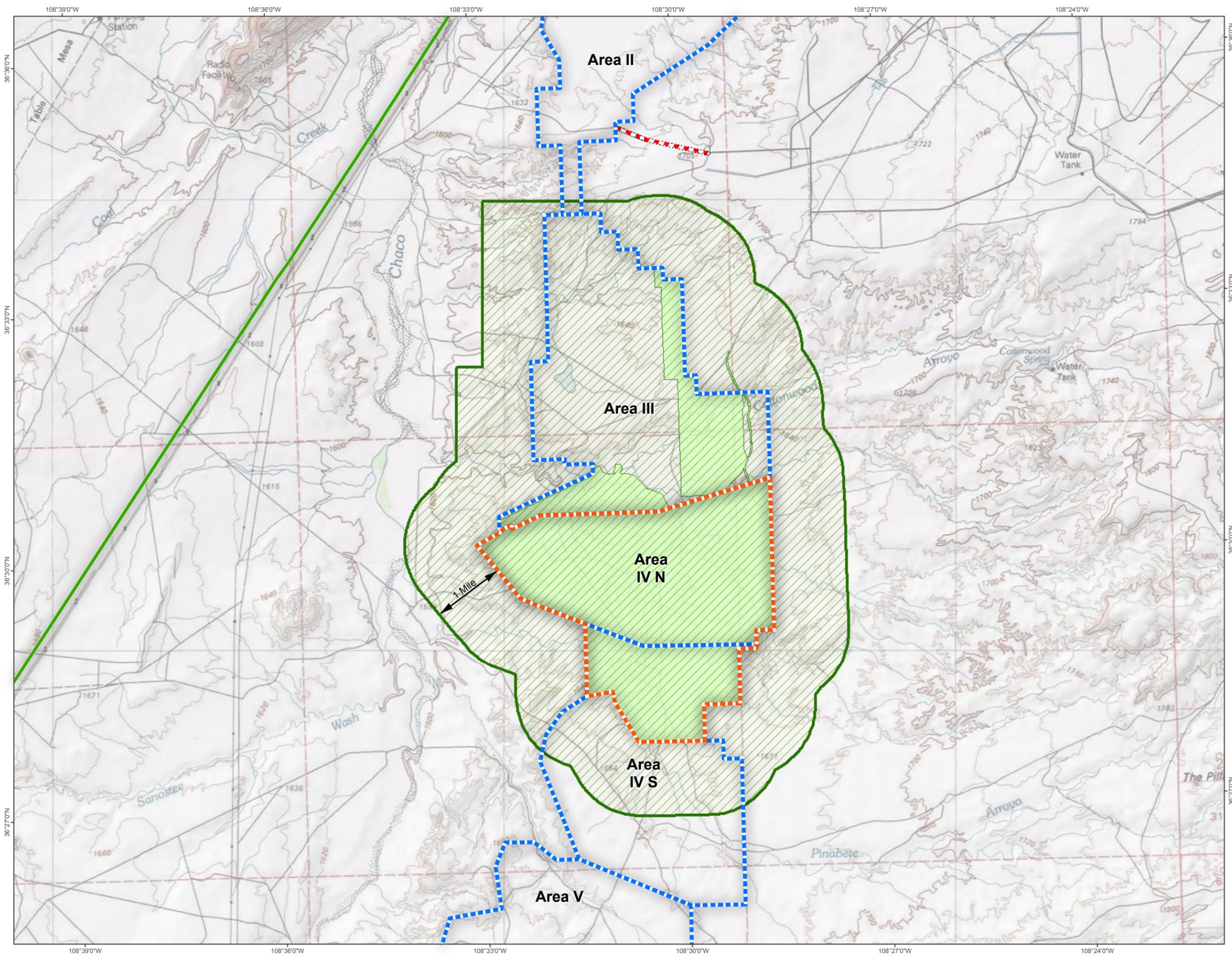
- Navajo Mine Lease Area 
- Pinabete Mine Permit Boundary 

TRANSMISSION LINES

- 345kV 

AREA OF POTENTIAL EFFECT

- TCP APE 
- Mining Related Disturbance Area 
- Area III Road 



Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-1. Archaeological sites in Navajo Mine Area III.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
LA 19325	Navajo Nation	Previously recorded multiple structures	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19327	Navajo Nation	Previously recorded multiple structures	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19334	Navajo Nation	Previously recorded hogan and cairn	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19374	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19375	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19411	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19412	Navajo Nation	Previously recorded lithic and ceramic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19413	Navajo Nation	Previously recorded artifact scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19414	Navajo Nation	Previously recorded artifact scatter and features	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19437	Navajo Nation	Previously recorded artifact scatter and features	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19439	Navajo Nation	Previously recorded artifact scatter and features	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
LA 19439A	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19463	Navajo Nation	Previously recorded artifact scatter with features	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19464	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19480	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19508	Navajo Nation	Previously recorded hogans and features	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19509	Navajo Nation	Previously recorded hogan and wall	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19511	Navajo Nation	Previously recorded structures	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19515	Navajo Nation	Previously recorded rock ring	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19516	Navajo Nation	Previously recorded artifact scatter and habitation	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19553	Navajo Nation	Previously recorded artifact scatter and multiple residence	Anasazi	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19554	Navajo Nation	Previously recorded habitation and features	Navajo	Eligible	Eligible	Mitigated; No further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
LA 19596	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19599	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
LA 19605	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Mitigated; No further work	Eligible
NM-H-29-105	Navajo Nation	Previously recorded habitation	Navajo	Eligible	Eligible	Tested 2007; Avoided	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-2. Archaeological sites in Navajo Mine Area IV North.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-28-2	Navajo Nation	Previously recorded artifact scatter	Anasazi	Not eligible	Eligible	Data recovery conducted 2008; avoided	Eligible
NM-H-28-4	Navajo Nation	Previously recorded habitation/ field house	Anasazi	Eligible	Eligible	Data recovery conducted 2008; no further work	Eligible
NM-H-28-174	Navajo Nation	Previously recorded habitation and feature	Anasazi/ Navajo	Eligible	Eligible	Tested 2007; Data recovery conducted 2008; no further work	Eligible
NM-H-29-31	Navajo Nation	Previously recorded feature	Unknown	Eligible	Not eligible	No further work	Not eligible
NM-H-29-32	Navajo Nation	Previously recorded features	Unknown	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-33	Navajo Nation	Previously recorded features	Unknown/ possible Navajo	Not eligible	Not eligible	Tested 2007; No further work	Not eligible ¹
NM-H-29-34	Navajo Nation	Previously recorded artifact scatter and multiresidence habitation complex	Anasazi/ Navajo	Eligible	Eligible	Tested 2007; data recovery conducted 2007; avoided	Eligible
NM-H-29-35	Navajo Nation	Previously recorded habitation	Navajo	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-29-80	Navajo Nation	Habitation	Anasazi	Eligible	Eligible	Tested 2007; Data recovery conducted 2007; no further work	Eligible
NM-H-29-81	Navajo Nation	Rockshelter/ temporary camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-82	Navajo Nation	Cairn	Possible Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-83	Navajo Nation	Cairn	Possible Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-84	Navajo Nation	Cairn	Possible Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-85	Navajo Nation	Cairn	Possible Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-86	Navajo Nation	Cairn	Possible Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-87	Navajo Nation	Shepherders camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-88	Navajo Nation	Habitation	Anasazi	Eligible	Eligible	Data recovery conducted 2008; no further work	Eligible
NM-H-29-89	Navajo Nation	Mining test pits	Recent Anglo-Euro/ American Mining	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-29-90	Navajo Nation	Shepherders camp	Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible ¹
NM-H-29-91	Navajo Nation	Previously recorded Wagon road and masonry wall support	Navajo	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-29-92	Navajo Nation	Previously recorded features	Navajo	Eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-29-93	Navajo Nation	Previously recorded coal mine shaft/ test pit	Unspecified historic	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-29-94	Navajo Nation	Previously recorded water control check-dams	Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-95	Navajo Nation	Previously recorded water control earthen dam	Unknown	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-29-96	Navajo Nation	Previously recorded habitation	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-97	Navajo Nation	Previously recorded multi-residence habitation complex	Navajo	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-29-98	Navajo Nation	Previously recorded habitation	Navajo	Not eligible	Eligible	Tested 2007; no further work	Eligible
NM-H-29-99	Navajo Nation	Previously recorded ceramic scatter and pastoral residence	Anasazi/ Navajo	Eligible	Eligible	Data recovery conducted 2008; no further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-29-100	Navajo Nation	Previously recorded seasonal ranching habitation	Navajo	Not eligible	Not eligible	No further work	Not eligible
NM-H-29-101	Navajo Nation	Previously recorded sandstone quarry	Unknown	Not eligible	Not eligible	No further work	Not eligible
NM-H-29-102	Navajo Nation	Previously recorded temporary camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-103	Navajo Nation	Previously recorded temporary camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work; avoidance	Not eligible ¹
NM-H-29-104	Navajo Nation	Previously recorded feature	Unknown	Not eligible	Not eligible	No further work	Not eligible
NM-H-29-106	Navajo Nation	Previously recorded habitation	Navajo	Not Eligible	Not Eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-107	Navajo Nation	Previously recorded single residence habitation	Navajo	Eligible	Eligible	Tested 2007; data recovery conducted 2008; no further work	Eligible
NM-H-29-108	Navajo Nation	Previously recorded storage structure	Anasazi	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-29-109	Navajo Nation	Previously recorded feature	Navajo	Not eligible	Not eligible	No further work	Not eligible
NM-H-29-110	Navajo Nation	Previously recorded habitation	Anasazi	Eligible	Eligible	Avoided, outside of mine boundary.	Eligible
NM-H-29-111	Navajo Nation	Previously recorded sheep camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-29-112	Navajo Nation	Previously recorded water control features	Navajo	Not eligible	Not eligible	No further work	Not eligible
NM-H-29-113	Navajo Nation	Previously recorded features	Unknown	Not eligible	Not eligible	No further work	Not eligible
NM-H-36-22	Navajo Nation	Previously recorded lithic scatter and lithic and ceramic scatter	Anasazi	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-36-23	Navajo Nation	Previously recorded temporary camp and burial	Unknown	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-36-24	Navajo Nation	Previously recorded artifact scatter with features	Archaic/ Anasazi	Eligible	Eligible	Data recovery conducted 2008; no further work	Eligible
NM-H-36-25	Navajo Nation	Previously recorded lithic scatter	Archaic	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-36-26	Navajo Nation	Previously recorded artifact scatter and sheep herders camp	Anasazi/ Navajo	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-36-28	Navajo Nation	Previously recorded fieldhouse and pastoral habitation	Anasazi/ Navajo	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-36-29	Navajo Nation	Previously recorded buried pueblo	Anasazi	Eligible	Eligible	Tested 2007; data recovery conducted 2008; no further work	Eligible
NM-H-36-30	Navajo Nation	Previously recorded feature	Unknown	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-36-31	Navajo Nation	Previously recorded activity area and habitation	Anasazi/ Navajo	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-36-76	Navajo Nation	Lithic scatter	Unknown	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-36-77	Navajo Nation	Temporary camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-36-78	Navajo Nation	Lithic scatter and feature	Unknown/ Navajo	Not eligible	Not Eligible	Tested 2007; no further work	Not eligible
NM-H-36-79	Navajo Nation	Petroglyph panel	Navajo	Eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-36-80	Navajo Nation	Lithic scatter and cairn markers	Unknown/ Navajo	Not eligible	Eligible	Tested 2007; no further work	Eligible
NM-H-36-81	Navajo Nation	Previously recorded lithic scatter and shepherders camp	Unknown/ Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-36-82	Navajo Nation	Previously recorded activity areas	Archaic	Eligible	Eligible	Data recovery conducted 2007; no further work	Eligible
NM-H-36-83	Navajo Nation	Previously recorded lithic scatter	Unknown	Not eligible	Not eligible	No further work	Not eligible
NM-H-36-84	Navajo Nation	Previously recorded temporary camp	Navajo	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-36-85	Navajo Nation	Previously recorded water control dams	Unknown recent	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-36-86	Navajo Nation	Previously recorded lithic scatter and temporary camp	Unknown/ Navajo	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-36-87	Navajo Nation	Previously recorded shepherders camp	Navajo	Not eligible	Eligible	Ethnography conducted 2007; no further work	Eligible
NM-H-37-46	Navajo Nation	Previously recorded lithic scatter	Archaic	Not eligible	Not eligible	No further work	Not eligible
NM-H-37-47	Navajo Nation	Previously recorded ceramic and lithic scatter	Anasazi	Not eligible	Not Eligible	Tested 2007; no further work	Not eligible
NM-H-37-48	Navajo Nation	Previously recorded ceramic and lithic scatter	Anasazi	Eligible	Eligible	Tested 2007; data recovery conducted 2008; avoided	Eligible
NM-H-37-49	Navajo Nation	Previously recorded shepherders camp	Navajo	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-37-50	Navajo Nation	Previously recorded lithic scatter and habitation	Unknown/ Navajo	Not eligible	Eligible	Tested 2007; no further work	Eligible
NM-H-37-51	Navajo Nation	Previously recorded shepherders camp	Navajo	Not eligible	Not eligible	Ethnography conducted 2007; no further work	Not eligible
NM-H-37-52	Navajo Nation	Previously recorded lithic scatter	Unknown	Not eligible	Not eligible	Tested 2007; no further work	Not eligible ¹
NM-H-37-53	Navajo Nation	Previously recorded ceramic scatter	Anasazi	Not eligible	Not eligible	No further work	Not eligible
NM-H-37-54	Navajo Nation	Previously recorded activity area	Navajo	Not eligible	Not eligible	No further work	Not eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

1. Site was initially determined eligible by NNTHPO and recommended for testing (see HPD-04-1252). Ecosystems Management, Inc. conducted testing and recommended site not eligible for NRHP (Johnson et al. 2007). NNTHPO accepted testing report.

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-3. Archaeological sites in Burnham Road.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-28-175 (Area III)	Navajo Nation	Previously recorded artifact scatter with feature	Unknown	Eligible	Eligible	Avoided	Eligible
NM-H-28-176 (Area III)	Navajo Nation	Previously recorded multiple habitation	Navajo	Not eligible	Eligible	Avoided	Eligible
NM-H-28-177 (Area III)	Navajo Nation	Previously recorded artifact scatter with features	Archaic	Eligible	Eligible	Tested 2007; Data recovery conducted 2008; no further work	Eligible
NM-H-28-178/ NM-H-36-123 (Area IV North)	Navajo Nation	Artifact scatter with features	Unknown	Not eligible	Eligible	Avoided	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-4. Archaeological sites in Navajo Mine Area IV South.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended by Applicant ¹	THPO Concurrence with OSMRE Findings
NM-H-36-35	Navajo Nation	Previously recorded activity area	Anasazi	Eligible	Eligible	Testing	Eligible
NM-H-36-50	Navajo Nation	Previously recorded multiple residence/ rock art panels	Anasazi/ Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-134	Navajo Nation	Previously recorded single residence	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-135	Navajo Nation	Previously recorded multiple residences	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-136	Navajo Nation	Previously recorded single residence	Anasazi	Eligible	Eligible	Testing	Eligible
NM-H-36-137	Navajo Nation	Previously recorded artifact scatter and features	Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-138	Navajo Nation	Previously recorded artifact scatter and features/ rock art panel	Unknown/ Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-139	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Testing	Eligible
NM-H-36-140	Navajo Nation	Previously recorded single residence	Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-141	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Eligible	Testing	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended by Applicant ¹	THPO Concurrence with OSMRE Findings
NM-H-36-144	Navajo Nation	Previously recorded multiple residence	Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-145	Navajo Nation	Previously recorded artifact scatter and features	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-146	Navajo Nation	Previously recorded lithic scatter/ artifact scatter and features	Unknown/ Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-147	Navajo Nation	Previously recorded ceremonial feature	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-150	Navajo Nation	Previously recorded artifact scatter and single residence	Anasazi/ Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-151	Navajo Nation	Previously recorded residential complex	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-152	Navajo Nation	Previously recorded features	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-153	Navajo Nation	Previously recorded artifact scatter	Archaic	Not eligible	Not eligible	No further work	Not eligible
NM-H-36-155	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Avoidance	Eligible
NM-H-36-236	Navajo Nation	Features	Navajo	Not eligible	Not eligible	No further work	Not eligible
NM-H-36-237	Navajo Nation	Artifact scatter	Unknown	Eligible	Eligible	Testing	Eligible
NM-H-36-240	Navajo Nation	Feature	Navajo	Not eligible	Not eligible	Avoidance	Not eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended by Applicant ¹	THPO Concurrence with OSMRE Findings
NM-H-36-244	Navajo Nation	Single residence and burials	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-247	Navajo Nation	Single residence/ recent trash dump	Navajo	Residence eligible/ trash dump not eligible	Eligible	Testing	Eligible
NM-H-36-248	Navajo Nation	Rock art panels	Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-36-254	Navajo Nation	Artifact scatter/ artifact scatter and features	Unknown/ Navajo	Eligible	Eligible	Testing	Eligible
NM-H-36-260	Navajo Nation	Artifact scatter and features	Anasazi	Eligible	Eligible	Testing	Eligible
NM-H-37-57	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Testing	Eligible
NM-H-37-91	Navajo Nation	Previously recorded artifact scatter and rock artifact/ artifact scatter with features and rock art	Unknown/ Navajo	Eligible	Eligible	Avoidance	Eligible
NM-H-37-92	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Testing	Eligible

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended by Applicant ¹	THPO Concurrence with OSMRE Findings
NM-H-37-93	Navajo Nation	Previously recorded artifact scatter and features	Navajo	Eligible	Eligible	Testing	Eligible
NM-H-37-94	Navajo Nation	Previously recorded artifact scatter	Archaic	Eligible	Eligible	Testing	Eligible
NM-H-37-95	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Testing	Eligible
NM-H-37-96	Navajo Nation	Previously recorded artifact scatter and features	Archaic	Eligible	Eligible	Testing	Eligible
NM-H-37-100	Navajo Nation	Previously recorded artifact scatter and features	Navajo	Not eligible	Not eligible	No further work	Not eligible

¹ Testing recommended based on Navajo Nation Historic Preservation Department Cultural Resource Compliance Forms HPD-04-1252 and HPD-09-611.

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

Table D-1. TCPs Identified Within and Adjacent to APE at Navajo Mine.¹

TCP Number	Internal Ref/ TCP Name	Affiliation	NRHP Eligibility Recommendation from Report/ Applicant	Mine Lease Area	Within APE	NN CRPA	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Finding
TCP 1	Offering area	Navajo	Not Eligible (NRHP)	Area IV North	Yes	Yes	Not Eligible (NRHP)	Mitigated	Not Eligible (NRHP)
Chavez TCP 2	Lightning-struck corral/ offering area	Navajo	Not Eligible (NRHP)	Outside of lease area	Yes	Yes	Not Eligible (NRHP)	No further work, outside buffer	Not Eligible (NRHP)
Kelley TCP 2	Onion gathering area	Navajo	Not Eligible (NRHP)	Area III	Yes	Yes	Not Eligible (NRHP)	No further work, replanted	Not Eligible (NRHP)
TCP 3	Mineral-gathering area	Navajo	Not Eligible (NRHP)	Outside of lease area	Yes	Yes	Not Eligible (NRHP)	No further work, not affected by mining	Not Eligible (NRHP)
TCP 4	Mineral-gathering area	Navajo	Not Eligible (NRHP)	Outside of lease area	Yes	Yes	Not Eligible (NRHP)	No further work, not affected by mining	Not Eligible (NRHP)
TCP 5	Eagle-nesting area/offering site	Navajo	Not Eligible (NRHP)	Outside of lease area	Yes	Yes	Not Eligible (NRHP)	Avoidance	Not Eligible (NRHP)
TCP 6	Offering site	Navajo	Not Eligible (NRHP)	Area V	No	Yes	N/A	N/A	Not Eligible (NRHP)
TCP 7	Death Hogan/ house	Navajo	Not Eligible (NRHP)	Area IV South	Yes	Yes	Not Eligible (NRHP)	Avoidance	Pending
TCP 8	Offering place	Navajo	Not Eligible (NRHP)	Outside of lease area	No	Yes	N/A	N/A	Not Eligible (NRHP)
TCP 9	Herb gathering area	Navajo	Not Eligible (NRHP)	Outside of lease area	No	Yes	N/A	N/A	Not Eligible (NRHP)

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

TCP Number	Internal Ref/ TCP Name	Affiliation	NRHP Eligibility Recommendation from Report/ Applicant	Mine Lease Area	Within APE	NN CRPA	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Finding
TCP 10	Herb gathering area	Navajo	Not Eligible (NRHP)	Outside of lease area	No	No	N/A	N/A	Not Eligible (NRHP)
Deenasts'a a' Bito	Where wild sheep drink	Navajo	Not Eligible (NRHP)	Area IV North	Yes	Yes	Not Eligible (NRHP)	No further work	Not Eligible (NRHP)
Deenasts'a a' Dah Njah	Where wild sheep bed	Navajo	Not Eligible (NRHP)	Area IV North	Yes	Yes	Not Eligible (NRHP)	No further work	Not Eligible (NRHP)
Teel (Chaco River)	Gathering area	Navajo	NRHP Criteria B	Outside of lease area	Yes	Yes	Eligible	Avoidance, ceremony with community	Eligible
Bii' Diich' ii Dahazkani (Tangy Spring Mesa Breeze Mountain)	Eagle taking area (possibly same as TCP 5)	Navajo	NRHP Criteria A	Area IV North	Yes	Yes	Eligible	Avoidance, No further work	Eligible
Halli	Spring and ntl'iz (offering place)	Navajo	Not Eligible (NRHP)	Un-known	Un-known	Yes	Pending	Pending THPO determination	Pending
Lok'aa' Deeshjin (Cottonwood Spring)	Sacred place	Navajo	Not Eligible (NRHP)	Outside of lease area	No	Yes	N/A	N/A	N/A
To Ba Jisdahi (Water that you wait for)	Well and possible ntl'iz (offering place)	Navajo	Not Eligible (NRHP)	Un-known	Un-known	Yes	Pending	Pending THPO determination	Pending

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

TCP Number	Internal Ref/ TCP Name	Affiliation	NRHP Eligibility Recommendation from Report/ Applicant	Mine Lease Area	Within APE	NN CRPA	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Finding
Tse Achiih (Nose Rock)	Sacred place	Navajo	Not Eligible (NRHP)	Un-known	Un-known	Yes	Pending	Pending THPO Determination	Pending
Tse Bijaati'ool (Rock Earrings)	Sacred place	Navajo	NRHP Criteria A	Outside of lease area	No	Yes	N/A	N/A	Eligible
Lid Dlyeehi (Dach'Inyood) (Collecting Smoke Drove them out)	Sacred place	Navajo	NRHP Criteria A	Outside of lease area	No	Yes	N/A	N/A	Eligible

† This table includes TCPs located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

Table D-2. Historic Resources/In-Use Areas Identified Within and Adjacent to APE at Navajo Mine.¹

Site #	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	Mine Lease Area	Within APE	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
IUA1	Post A.D. 1945/ Habitation Complex	Navajo	NRHP Criterion D	IV N	Yes	Not Eligible	Relocation completed	Not Eligible
IUA2	Circa A.D. 1920- Present/Habitation- Pastoral	Navajo	NRHP Criterion D	IV N	Yes	Not Eligible	Relocation completed	Not Eligible
IUA1/LA 19685	A.D. 1945 -Present. Habitation Complex	Navajo	NRHP Criterion D	IV S	Yes	Not Eligible	Relocation/ compensation prior to disturbance	Not Eligible
IUA2/LA 19951	A.D. 1945 -Present. Habitation Complex	Navajo	NRHP Criterion D	IV S	No	N/A	N/A	Not Eligible
IUA3/ LA 19921	A.D. 1945 -Present. Habitation Complex	Navajo	NRHP Criterion D	IV S	No	N/A	N/A	Not Eligible
IUA4/ LA 19831	A.D. 1945 -Present. Habitation Complex	Navajo	NRHP Criterion D	V	No	N/A	N/A	Not Eligible

¹ This table includes historic resources/in-use areas located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.