

SECTION 11

CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

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SECTION 11

CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

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SECTION 11

CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

LIST OF REVISIONS DURING PERMIT TERM

REV.		DATE
NUMBER	REVISION DESCRIPTION	APPROVED

SECTION 11 CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

The cultural, historic, and archeological resources information covers the No Name Permit (NNP) Area of the Navajo Transitional Energy Company (NTEC) mining lease. Information concerning the nature and location of cultural, historic, and archaeological resources and properties, including survey and study reports submitted as part of this permit application package will be maintained as confidential under applicable law. Confidential cultural resources information is provided to and maintained by the Office Surface Mining Reclamation and Enforcement (OSM) separately from non-confidential information.

NNP permitting activities relating to cultural, historic, and archeological resources and properties on NTEC's leasehold have been, and will be, conducted in compliance with all applicable federal, state, and tribal laws, including without limitation: the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Navajo Nation Cultural Properties Act, the Navajo Nation Policy to Protect Traditional Cultural Properties (NNTCP), the Navajo Nation Guidelines for the Treatment of Historic, Modern, and Contemporary Abandoned Sites (NNTCS), and the Navajo Nation Policy for the Protection of Jishchaa': Gravesites, Human Remains, and Funerary Items (NNJGH). NTEC will operate in compliance with these statutes, regulations, and policies as applicable.

Pursuant to NHPA and its implementing regulations, NTEC plans to enter into a Section 106 Programmatic Agreement in 2026/2027 for the NNP area (Appendix 11.A). The Programmatic Agreement (PA) will be initiated by OSM as the lead federal agency responsible for the preparation of the National Environmental Policy Act (NEPA) document for the NNP. The PA will establish protocols and procedures for compliance with NHPA, its implementing regulations, and other applicable statutes and regulations. NTEC will comply with the terms and conditions of the PA.

11.1 Cultural, Historic, and Archeological Resources Information

This section describes the multiple surveys and inventories that were completed to describe the nature of cultural, historic, and archeological resources listed or eligible for listing on the National Register of Historic Places (NRHP) and known archeological sites within the NNP area. These surveys and inventories made recommendations on what cultural resource sites should be considered eligible for listing in the NRHP, and those recommendations will be submitted to OSM and the Navajo Nation Historic Preservation Department (NNHPD), and other parties to the PA in order for NNHPD to make the final determination of what sites are NRHP-eligible based on the data within the reports and the recommendations of the cultural resource professionals.

Ethnographic Study

An ethnography study of NNP Area 4 South and Area 5 of the NTEC lease, including a 1-mi buffer zone around those areas, was conducted in 2006 and finalized in 2007 by the Navajo Nation Archaeology Department (NNAD), and was submitted to NNHPD (Chavez and Tsosie 2008). This study, among other studies and inventory work, was conducted for use in the NHPA Section 106 compliance process, and for other purposes including compliance with NAGPRA and NNJGH. This ethnographic report was completed and submitted to NNHPD for their review and for NNHPD to determine what cultural resources should be considered for nomination to the NRHP. The 10 January 2008 report, entitled *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, is confidential, and is included in the CONFIDENTIAL cultural resources appendix (Appendix 11.B).

The ethnographic report contains locations of culturally sensitive areas, sacred/religious places (traditional cultural properties [TCPs]), and burials within the project area and identified through ethnographic research. All TCPs were evaluated and recommended as eligible for nomination to the NRHP, and were evaluated in consideration of AIRFA, NNTCP, and NNTCS. The identified burials are not considered NRHP-eligible. Management of these burials has not been decided at this time.

Class I Review

The Division of Conservation Archaeology (DCA) of the San Juan County Museum Association conducted a Class I cultural review on 27 April 2006 entitled, *An Overview of The Cultural Resources of BHP Billiton's Navajo Mine Area 4 North, Area 4 South, and Area 5, San Juan County, New Mexico* (DCA Report No. 05-DCA-180) (Division of Conservation Archaeology 2006). This report is confidential and is included in the CONFIDENTIAL cultural resources appendix (Appendix 11.C). The purpose of this Class I review was to review existing data sources to identify information on prior studies and previously recorded cultural resources within the NNP area of Area 4 South and Area 5 and a 1-mi buffer. The existing information was used to summarize the regional cultural history and the existing data within the NNP area. The primary data sources for this review were the records of the New Mexico Cultural Resources Information System (NMCRIS), files of NNHPD in Window Rock, Arizona, and files of the Bureau of Land Management, Farmington Field Office in Farmington, New Mexico. Ancillary data sources included records maintained by NTEC, DCA, the San Juan County Archaeological Research Center and Library at Bloomfield, New Mexico, the Office of Contract Archeology at the University of New Mexico, Albuquerque, and Alpine Archaeological Consultants, Montrose, Colorado.

Class II and Class III Surveys and Inventories

A Class II survey and Class III inventory were conducted for eligibility evaluation of cultural, historic, and archeological resources and properties within Areas 4 South and 5 between 1 November, 2006 and 16 April 2008. The final report is entitled, *The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV South and Area V of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad/San Juan and Burnham Chapters, Shiprock Agency, San Juan County, New Mexico*, (DCA Technical Report No. 07-DCA-001). Concurrent with the Class II survey, the Class III inventory was performed of lands that would be subject to surface disturbance required for the collection of baseline resource data necessary to meet certain OSM Surface Mining Control and Reclamation Act (SMCRA) and related permitting requirements.

The confidential report, included in CONFIDENTIAL cultural resources appendix (Appendix 11.D), details the results of the Class II and Class III survey work. The Class II work within the report details the location and eligibility evaluation of 144 previously recorded historic properties (Reher 1977), 54 newly identified historic properties, 54 isolated occurrences, and 4 in-use areas. The details of the Class III survey work within the confidential report are results of the inventory of 563 proposed areas of minor surface disturbance and associated access roads used to collect baseline data.

The investigation involved the location and eligibility verification of known historic properties through Class II inventory in order to make recommendations as to the eligibility status/cultural resource significance of the properties with regard to the National Register of Historic Places (NRHP [36 CFR 60]), the provisions of the Archaeological Resources Protection Act (ARPA) of 1979 (P.L. 95-96), the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95-341), and other applicable statutes and regulations which provide guidance with respect to the treatment of certain properties or resources. Newly recorded historic properties encountered during the survey and inventory work were also presented and evaluated. Based on the eligibility evaluations, a strategy to mitigate the adverse effects of the proposed mining is presented in the CONFIDENTIAL cultural resources appendix (Appendix 11.D).

As a result of the Class II and III inventory, 198 historic properties, 4 in-use sites, and 54 isolated occurrences (“isolates”) were evaluated, and 166 of those have been determined to be eligible or potentially eligible for inclusion on the NRHP. The research potential for 32 historic properties has been exhausted through site recordation and therefore were recommended as not eligible for inclusion on the NRHP. Thirty-five of the properties merit or may merit protection under the provisions of AIRFA. Although the “isolates” meet or may meet the 50-year guideline, they do not meet “criterion d” in that their research potential has been exhausted through comprehensive in-field recordation. Criterion d is one of four criteria (Criteria a, b, c, and d) for evaluation that is defined under the provisions of the NRHP (U.S. Department of the Interior, National Park Service 2002). None of the isolates represent NRHP-eligible properties. The in-use sites appear to be

NRHP eligible under criterion d because of their research potential to provide important information on local and/or regional history; however, they are less than 50 years in age and are therefore recommended as ineligible for the NRHP.

Research Design and Treatment Plans

A draft research design and treatment plan prepared by the Center for Desert Archaeology (CDA) for Areas 4 South and 5 (Reed, Benally, and Sliva 2009; Appendix 11.E). This mitigation plan was developed from the data and eligibility evaluations obtained during the Class II and Class III inventories completed by DCA for Areas 4 South and 5 (Meininger and Wharton 2009). This research design includes mitigation recommendations for sites in the southern portion of the permit area. This document will require modification to serve as a basis for data recovery for the permit area.

11.2 Cultural, Historic, and Archeological Resources Information Collection and Analysis

The ethnographic study was conducted by NNAD for the purposes of the Section 106 compliance process for a previous NEPA process that includes the NNP area (Chavez and Tsosie 2008)

The Class I cultural review was conducted by DCA, for the purposes of BIA to develop a previous EIS within the NNP area. The Class I review was administered by Larry L. Baker, Executive Director for DCA. The report was prepared by Jason Meininger (Project Director), Larry Baker (Principal Investigator), and DCA Projects Manager, Lyn Wharton. The report details the findings of the review of existing data sources within the NNP area (Division of Conservation Archaeology 2006).

The Class II survey, the Class III inventory of select areas of proposed ground disturbance within Area 4 South and Area 5, and eligibility evaluation were conducted between 1 November, 2006 and 16 April, 2008 by DCA. The surveys and inventories were conducted in order to evaluate the current status and condition of previously recorded historic properties and newly identified historic properties, as well as to verify or determine eligibility status with regard to the National Register of Historic Places (NRHP [36 CFR 60]), the provisions of the Archaeological Resources Protection Act (ARPA) of 1979 (P.L. 95-96), and the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95-341). The project area, Area 4 South and 5 of the NTEC lease, is located wholly within the Navajo Reservation south of the current Navajo Mine and Pinabete Permit area and north of the community of Burnham in the Nenahnezad/San Juan and Burnham chapters, Shiprock Agency, San Juan County, New Mexico, and is under the jurisdiction of the Navajo Nation (Tribal Trust Land). The surveys and inventories were completed under the authority of Navajo Nation Cultural Resources Inventory Permit No. B-06718.

The Class I, II, and III surveys and inventories were administered by Larry L. Baker, Executive Director, and Lyn Wharton, DCA Projects Manager, San Juan County Archaeological Research Center and Library. The

fieldwork was conducted by Jason Meininger (Project Director), Larry Baker (Principal Investigator), field supervisors, and DCA staff archaeologists. San Juan College Cultural Resources Management Program (SJC CRMP), Farmington, New Mexico and Woods Canyon Archaeological Consultants (WCAC), Yellow Jacket, Colorado provided field assistance to DCA.

NTEC anticipates that further NHPA Section 106 compliance work may be appropriate as part of OSM's review of this permit application package (PAP). Any mitigation to sites will comply with NHPA Section 106 and other applicable regulations following appropriate consultation.

References

- Chavez, Loretta, and Lenora Tsosie. 2008. An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Area IV North, IV South, and V, San Juan County, New Mexico for URS Corporation in Conjunction with BHP (URS Job No. 23444264, Work Order No. 3) (Final Report). Navajo Nation Archaeology Department, Shiprock, New Mexico.
- Division of Conservation Archaeology. 2006. An Overview of the Cultural Resources of BHP Billiton's Navajo Mine Area 4 North, Area 4 South, and Area 5, San Juan County, New Mexico. DCA Report No. 05-DCA-180. San Juan County Archaeological Research Center and Library, Bloomfield, New Mexico.
- Meininger, Jason, and Lyn Wharton, 2009. The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV South and Area V of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad/San Juan and Burnham Chapters, Shiprock Agency, San Juan County, New Mexico. Division of Conservation Archaeology Technical Report No. 07-DCA-001. (Final Report). San Juan County Archaeological Research Center and Library, Bloomfield, New Mexico.
- Reed, Paul F., Karen Benally, and R. Jane Sliva, 2009. Archaic, Anasazi, and Navajo Landscapes Through Time in the Lower Chaco River Area: A Cultural Resources Research Design and Treatment Plan for BHP Navajo Coal Company's Mine Lease Areas Four South and Five. Center for Desert Archaeology Technical Report No. 2009-101. Tucson, Arizona.
- Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The CGP Survey. University of New Mexico Press, Albuquerque, New Mexico.
- U.S. Department of the Interior, National Park Service, Cultural Resources. 2002 How to Apply the National Register Criteria for Evaluation Bulletin. Available online at: <http://www.nps.gov/nr/publications/bulletins/nrb15/> (Verified 30 January 2009).

Appendix 11.A

Section 106 Programmatic Agreement for the No Name Permit Application Package

PROGRAMMATIC AGREEMENT

Between

Office of Surface Mining Reclamation and Enforcement,

Navajo Nation,

Bureau of Indian Affairs, and

Navajo Transitional Energy Company, LLC

Regarding

Management of Historic Properties at

Navajo Mine No Name Permit, Areas IV South and V

This Programmatic Agreement (“Agreement”) is between the Office of Surface Mining Reclamation and Enforcement, Western Region (OSM), the Navajo Nation, the Bureau of Indian Affairs, Navajo Region (BIA), and Navajo Transitional Energy Company, LLC (NTEC).

RECITALS

WHEREAS, NTEC has applied for a new surface coal mining permit pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for the existing lease Area IV South (outside of the Pinabete permit) and Area V for the purpose of supplying coal to the Four Corners Power Plant to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern United States and potential other future buyers; and

WHEREAS, NTEC proposes to mine a portion of Area IV South and Area V (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 IV South (only the portion south and outside of the previously permitted Pinabete permit) and Area V; 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,
- Reclamation activities,
- Mining infrastructure (e.g., roads, facilities, powerlines),

WHEREAS, OSM 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 Heritage and Historic Preservation Department (NN HHPD), has assumed the role of the Navajo Nation Tribal Historic Preservation Officer (NNTHPO) pursuant to Section 101(d)(2) of the NHPA, as amended, and therefore the Navajo Nation and NNTHPO are a Signatories to this Agreement; and

WHEREAS, the BIA is the Federal agency responsible for land management in conjunction with the THPO for undertakings conducted on Indian Lands and has a federal Indian trust responsibility to protect tribal treaty rights, lands, assets, and resources, and therefore is a Signatory to this Agreement; and

WHEREAS, NTEC, 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 OSM 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 is 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 declined to participate in the Section 106 process; and

WHEREAS, in addition to the participation of, and consultation with the Navajo Nation and NNTHPO, OSM sought consultation with Indian tribes (Pueblo of Acoma, Hopi Tribe, Kiowa Tribe, Pueblo of Laguna, Pueblo of Ohkay Owingeh, Santa Ana Pueblo, Southern Ute Tribe, Pueblo of Tesuque, Ute Mountain Ute Tribe, Pueblo of Zia, and Pueblo of Zuni) through correspondence and one Indian tribe, the Southern Ute Tribe responded deferring to the NNTHPO; and

WHEREAS, prior to the execution of this Agreement, OSM, NNTHPO and other parties have completed certain steps to comply with Section 106 of the NHPA relating to No Name Permit activities; and

NOW, THEREFORE, the Signatories to this Agreement shall fulfill the following stipulations during the construction, operation, mining, reclamation and all related activities in Area IV South and Area V. 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. OSM, in consultation with the NNTHPO, and other Consulting Parties has established the APE, as defined at 36 CFR 800.16(d). For the No Name Permit Area 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 OSM 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.
- C. Due to the presence of intermittent occupants of the No Name Permit Area (primarily for grazing), NTEC shall be responsible for conducting ethnographic/oral history interviews with the intermittent occupants of the No Name Permit Area prior to their departure from lease Areas IV South and V in consultation with OSM and NNTHPO. Interviews are intended to document current land use and occupancy patterns and do not constitute additional archaeological inventory or a re-evaluation of the adequacy of cultural resource surveys previously completed within the APE.

Stipulation 2. Evaluation of Historic Properties for Eligibility

- A. In consultation with the NNTHPO, OSM has made determinations of eligibility for listing on the NRHP of sites identified through inventory work considered in accordance with the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South and Area V), as summarized in Attachment C. OSM 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), OSM shall consult with the NNTHPO to seek consensus determinations of the NRHP eligibility of properties identified on the Navajo Mine No Name Permit. OSM 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 OSM determinations of eligibility, OSM shall consult with the objecting party or parties to resolve the objection. If a resolution cannot be agreed upon, OSM 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. For TCPs identified in Attachment D as 'Pending' eligibility at the execution of this Agreement, OSM shall continue consultation with NNTHPO to determine eligibility. Pending status shall not delay or prevent mining-related activities, provided that NTEC shall observe reasonable

avoidance measures as recommended, and in consultation with NNTHPO, around any Pending TCP located within the APE until a final determination is made. If mining is scheduled to occur within the vicinity of a Pending TCP before a final determination is reached, OSM shall either complete the determination, or proceed pursuant to Stipulation 2.C, sufficiently in advance of the SMCRA disturbance schedule to that portion of the Permit Area to avoid operational delay.

- E. Nothing in this Agreement shall be construed to require OSM to reconsider eligibility determinations made under the 2015 Second Amended Programmatic Agreement for Navajo Mine and Pinabete Permit, 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 and Area V).

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, OSM has applied the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE.
- B. OSM, 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. OSM 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 OSM to reconsider effect or adverse effect determinations made under the 2015 Second Amended Programmatic Agreement for Navajo Mine and Pinabete Permit, 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. OSM, as a result of its permitting responsibilities, is the lead federal agency under Section 106 of the NHPA, as amended. OSM and NNTHPO shall coordinate as necessary to ensure that each of their respective responsibilities is clearly defined.
- B. NTEC shall be responsible for communicating with OSM 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 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. OSM 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 2015 Second Amended Programmatic Agreement for Navajo Mine and Pinabete Permit, the 2011 Amended Programmatic Agreement or its predecessor agreements, including 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, Area IV North, and Area IV South (portion within the Pinabete Permit and north of the No Name Permit), OSM'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 and continues to comply with the then existing requirements of Section 106 of the NHPA and its implementing regulations for mining areas outside of the No Name Permit area.
- B. As summarized in Attachments C and D, OSM, 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. OSM, 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 OSM and/or NNTHPO of concerns about effects on properties to which they ascribe traditional religious or cultural significance, OSM 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, OSM 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. OSM, in consultation with the NNTHPO, shall review and approve draft Treatment Plan(s). On approval of the Treatment Plan(s), NTEC shall proceed to implement the Final Treatment Plan(s).
- G. OSM shall distribute the approved the Final Treatment Plan(s) to all parties to this agreement pursuant to Stipulation 7.
- H. OSM 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 from NN HHPD and BIA, as applicable.
- J. If mining and related activities remain unchanged, nothing in this Agreement shall be construed to require OSM 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 Stipulation 6 of 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. OSM 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. OSM 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, OSM 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 Native American Remains and Cultural Objects

The treatment of Native American 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 proceed with construction, mining, reclamation, and all related activities in Area IV South of the Mine Lease permitted for mining and related activities under the No Name SMCRA Permit.
- B. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to proceed with construction, mining, reclamation, and all related activities in the portion of Area V of the Mine Lease permitted for mining and related activities under the No Name 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, OSM 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. NTEC shall identify a protective buffer a minimum of 100 feet around the discovery. All work that might adversely affect the discovery shall cease within the buffer 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. OSM 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. Curation activities will be subject to the Navajo Nation's Policy for the Disposition of Cultural Resource Collections (2008). OSM 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 and documented curation costs at an NNTHPO-approved facility consistent with 36 CFR 79 and the Navajo Nation's Policy for the Disposition of Cultural Resource Collections (2008). Reasonable costs refers to costs typically charged by comparable curation facilities in the region for comparable collections.

NTEC shall request to the Navajo Nation, through NNTHPO, and NNTHPO shall identify one or more NNTHPO-approved curation facilities willing and able to accept materials collected under this Agreement, shall maintain a current list of approved facilities, and shall provide written notice to NTEC of any changes in approved-facility status within a reasonable timeframe.

Upon completion of analysis and documentation of materials collected under a Treatment Plan, NTEC shall notify NNTHPO that the materials are ready for transfer to curation. NNTHPO shall, within ninety (90) calendar days of such notice, either (i) coordinate acceptance of the materials at an NNTHPO approved curation facility, or (ii) provide written direction to NTEC regarding interim disposition of the materials.

If materials are not accepted by an approved facility or direction is not provided within the 90-day period, NTEC shall continue to store the materials in a manner consistent with 36 CFR 79 standards to the extent reasonably practicable. Any additional storage costs incurred beyond the 90 day period shall be subject to consultation among OSM, NNTHPO, and NTEC to determine an appropriate path forward, including identification of an appropriate curation facility or other disposition consistent with applicable law and policy.

NTEC's good-faith interim storage of materials pending transfer, conducted in accordance with 36 CFR 79 standards to the extent reasonably practicable, shall not constitute a violation of this Agreement, ARPA, or the Navajo Nation Cultural Resources Protection Act.

Stipulation 14. Professional Qualifications and Permits

OSM 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, OSM shall notify the NNTHPO and consult with this party to resolve the objection. If OSM determines that the objection cannot be resolved, OSM 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 OSM that the ACHP concurs in the proposed response to the objection; or
2. Provide OSM with recommendations that the agency shall take into account in reaching a final decision regarding the dispute; or
3. Notify OSM that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. OSM 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 OSM 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 OSM in writing of the reason for the request and the proposed amendment language, whereupon OSM 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). OSM 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

OSM 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 IV South and Area V to determine whether the Agreement needs to continue and whether any changes and/or termination may be needed. The review will be in tandem with the review of the 2015 Second Amended Programmatic Agreement for Navajo Mine and Pinabete Permit for as long as that Agreement is in effect and the first review of this Agreement may be earlier than five years from execution in order to align the review of both Agreements together. 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

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 OSM have taken into account the effects of mining in Area IV South Area V on historic properties protected under Section 106 of the NHPA, and has afforded the ACHP an opportunity to comment.

SIGNATORY PARTY

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

By MARCELO CALLE Digitally signed by MARCELO
CALLE
Date: 2026.06.15 16:12:18 -06'00' Date _____
Regional Director, Western Region

SIGNATORY PARTY

Bureau of Indian Affairs

By DEBORAH SHIRLEY Digitally signed by DEBORAH SHIRLEY
Date: 2026.07.07 15:38:04 -06'00' Date _____
Regional Director, Navajo Region

SIGNATORY PARTY

NAVAJO NATION

By

Date

JUN 30 2026

Dr. Buu Nygren, President

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By

Date

06/22/20

Tribal Historic Preservation Officer

SIGNATORY PARTY

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

By  Date 7-8-2026
General Manager

ATTACHMENTS

Attachment A – No Name Permit Area 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)

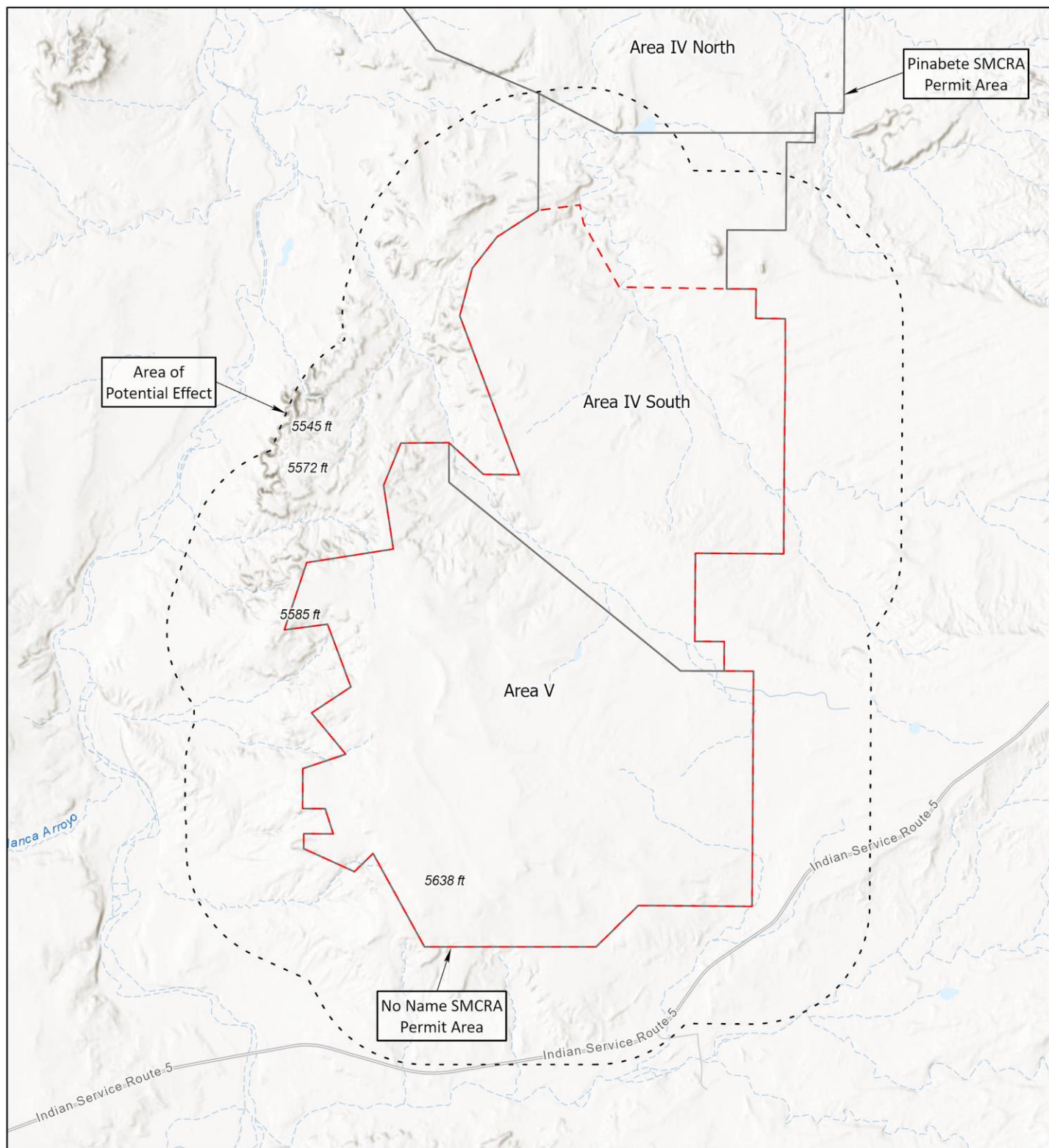
Attachment D - Traditional Cultural Properties (TCPs) within the APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

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

Attachment F - Definitions

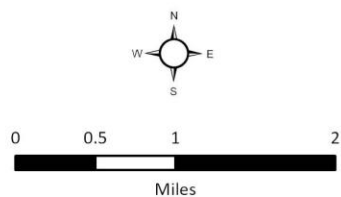
Attachment G - List of Documents Reflecting Prior Compliance Efforts

ATTACHMENT A. No Name Permit Area Location and APE Map



Legend

- No Name SMCRA Permit Area
- Area of Potential Effect
- Pinabete SMCRA Permit Area



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': Gravesites, Human Remains, and Funerary Items

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 C. Archaeological Sites and In-Use Areas within the No Name Permit Area – Status Table.

Table C-1. Archaeological sites and In-use Areas in No Name Permit Area.

Site #	Land Ownership	Description	Affiliation	NRHP Eligibility Recommendation from Applicant	NRHP Determination by OSMRE	Action Recommended	THPO Concurrence with OSMRE Findings
NM-H-36-157	Navajo Nation	Isolated Feature	Unknown	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-158	Navajo Nation	Habitation	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-159	Navajo Nation	Sweat Lodge	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-160	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-161	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-162	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-163	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-165	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-166	Navajo Nation	Multicomponent Habitation and Feature	Anasazi and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-167	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-168	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-169	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-171	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-172	Navajo Nation	Feature	Unknown	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-173	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-174	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-175	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-176	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-177	Navajo Nation	Shrine	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-178	Navajo Nation	Field House	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-179	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-180	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-181	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-182	Navajo Nation	Feature	Unknown	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-183	Navajo Nation	Field House	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-184	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-185	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-186	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-187	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-188	Navajo Nation	Habitation/Field House	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-189	Navajo Nation	Activity Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-190	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-191	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-192	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-193	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-194	Navajo Nation	Water Retention	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-195	Navajo Nation	Multicomponent Isolated Features	Unknown and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-197	Navajo Nation	Multicomponent Activity Area and Habitation	Anasazi and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-200	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-201	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-202	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-203	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-204	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-205	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-206	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-207	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-208	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-209	Navajo Nation	Multicomponent Camp and Activity Area	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-210	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-211	Navajo Nation	Stock Pond	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-212	Navajo Nation	Habitation	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-213	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-214	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-215	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-216	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-217	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-218	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-219	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-221	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-222	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-223	Navajo Nation	Multicomponent Habitation and Features	Anasazi and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-225	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-226	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-227	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-228	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-229	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-230	Navajo Nation	Multicomponent Artifact Scatter and Habitation	Unknown and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-231	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-232	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-233	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-234	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-235	Navajo Nation	Camp	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-241	Navajo Nation	Camp	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-242	Navajo Nation	Camp	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-243	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-245	Navajo Nation	Multicomponent Artifact Scatter and Isolated Features	Anasazi and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-250	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-251	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-252	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-255	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-256	Navajo Nation	Field House	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-259	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-261	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-263	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-264	Navajo Nation	Special Use Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-266	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-267	Navajo Nation	Special Use	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-36-268	Navajo Nation	Special Use Area	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-271	Navajo Nation	Isolated Feature	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-273	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-274	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-36-276	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-7	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-44	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-45	Navajo Nation	Multicomponent Camp and Habitation	Archaic and Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-58	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-59	Navajo Nation	Habitation	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-61	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-62	Navajo Nation	Special Activity Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-37-63	Navajo Nation	Multicomponent Artifact Scatter, Camp, Habitation, and Special Use Area	Paleoindian, Archaic, Anasazi, and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-64	Navajo Nation	Limited Use Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-66	Navajo Nation	Activity Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-67	Navajo Nation	Multicomponent Camp and Special Use Area	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-68	Navajo Nation	Camp and Limited Use Area	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-69	Navajo Nation	Special Use Area	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-70	Navajo Nation	Camp	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-72	Navajo Nation	Camp	Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-73	Navajo Nation	Multicomponent Camp and Activity Area	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-74	Navajo Nation	Multicomponent Camp and Habitation	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-75	Navajo Nation	Multicomponent Camps	Archaic and Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-76	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-37-77	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-78	Navajo Nation	Multicomponent Camp and Habitation	Archaic and Anasazi	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-79	Navajo Nation	Multicomponent Camps	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-80	Navajo Nation	Multicomponent Camp and Activity Area	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-81	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-82	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-83	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-84	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-85	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-86	Navajo Nation	Camp	Unknown	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-87	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-89	Navajo Nation	Multicomponent Camp and Habitation	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-90	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible

Attachment C. Archaeological Sites and In-Use Areas within the No Name Permit Area – 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-37-97	Navajo Nation	Habitation	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-98	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-101	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-102	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-103	Navajo Nation	Camp	Archaic	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-104	Navajo Nation	Multicomponent Camp and Coal Dump	Archaic and Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
NM-H-37-105	Navajo Nation	Camp	Navajo	Eligible	Eligible	Testing/Data Recovery	Eligible
In-use Area 1 / LA 19685	Navajo Nation	Habitation	Navajo	Not Eligible	Not Eligible	Ethnographic Interview	Not Eligible
In-use Area 2 / LA 19951	Navajo Nation	Habitation	Navajo	Not Eligible	Not Eligible	Ethnographic Interview	Not Eligible
In-use Area 3 / LA 19921	Navajo Nation	Habitation	Navajo	Not Eligible	Not Eligible	Ethnographic Interview	Not Eligible
In-use Area 4 / LA 19831	Navajo Nation	Habitation	Navajo	Not Eligible	Not Eligible	Ethnographic Interview	Not Eligible

Eligibility and Data Recovery based on Navajo Nation Heritage and Historic Preservation Department Cultural Resource Compliance Form HPD-09-611-REVISED; Ethnographic Interviews for In-use areas based on 2025 OSM-THPO consultation.

Attachment D. Traditional Cultural Properties (TCPs) Within and Adjacent to the Mine Lease Area – Status Table.

Table D-1. TCPs Identified Within and Adjacent to APE on the No Name Permit.

TCP Number/ Name	Internal Ref/ TCP Desc	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 5	Eagle nesting area	Navajo	Undetermined	Area IV South	Yes	Yes	Pending	Consultation	Pending
TCP 6	Offering place	Navajo	Undetermined	Area V	Yes	No	Pending	Consultation	Pending
TCP 7/LA 19712	Death hogan house	Navajo	Undetermined	Area IV South	Yes	No	Pending	Consultation	Pending
TCP 8	Offering place	Navajo	Undetermined	Outside of Area V	No	No	Pending	No further work, not affected by mining	Pending
TCP 10	Gathering area	Navajo	Undetermined	Outside of Area V	No	No	Pending	No further work, not affected by mining	Pending
No number Teel (Chaco Wash)	Gathering area	Navajo	Undetermined	Outside of Area V	No	No	Pending	No further work, not affected by mining	Pending
No number Bii' Diich' ii Dahazkani (Tangy {Spring} Mesa Breeze Mountain)	Eagle taking area	Navajo	Undetermined	Outside of Area IV South	No	No	Pending	No further work, not affected by mining	Pending
No number Halii	Spring and offering place	Navajo	Undetermined	Outside of Area IV South	No	No	Pending	No further work, not affected by mining	Pending

Programmatic Agreement Regarding Management of Historic Properties at Navajo Mine
No Name Permit, Areas IV South and V

Attachment D. Traditional Cultural Properties (TCPs) Within and Adjacent to the Mine Lease Area – Status Table.

TCP Number/ Name	Internal Ref/ TCP Desc	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
No number Tse Achiih (Nose Rock)	Sacred place	Navajo	Undetermined	Location undetermined	No	No	Pending	No further work, not affected by mining	Pending
Tse Bijaati'ool (Rock Earrings) and a Lid Dlyeehi (Dach'Inyo od) (Collecting smoke drove them out)	Sacred place tied to story	Navajo	Undetermined	Near Chaco Wash	No	No	Pending	No further work, not affected by mining	Pending

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 consistent with the Navajo Nation Permit Packet at hpd.navajo-nsn.gov 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 OSM, 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 OSM. If OSM 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 OSM.
 - A. OSM 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 OSM

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 OSM 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, OSM shall ensure that the project proponents implement the plan to treat the discovery. If OSM and NNTHPO conclude that the plan is not applicable, OSM 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 OSM 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 OSM 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 OSM 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: OSM may invite other parties 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 OSM, NNTHPO, NTEC, and ACHP.

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. Second Amended Programmatic Agreement Regarding Management of Historic Properties at Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South Realignments, executed in February, 2015, and attachments;
2. 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;
3. Hogan, P. and J. Winter. 1983. Economy and Interaction Along the Lower Chaco River. University of New Mexico, Office of Contract Archaeology;
4. Meininger, Jason and Larry L. Baker. 2006. An Overview of the Cultural Resources of BHP Billiton's Navajo Mine Area 4 North, Area 4 South, and Area 5, San Juan County, New Mexico. San Juan County Archaeological Research Center and Library DCA Report No. 05-DCA-180, Fruitland, New Mexico.
5. Meininger, Jason and Lyn Wharton. 2009. The Eligibility Evaluation of Cultural Resources Located within Lease Area IV South and Area V of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad/San Juan and Burnham Chapters, Shiprock Agency, San Juan County, New Mexico. San Juan County Archaeological Research Center and Library, DCA Technical Report No. 07-FCA-001. Bloomfield, New Mexico.
6. Memorandum of Agreement between Advisory Council on Historic Preservation, the United States Geological Survey (predecessor for these purposes to OSM), and the New Mexico State Historic Preservation Officer (predecessor to NNTHPO for these purposes), ratified March 1, 1978 by the Advisory Council, as amended.
7. 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.