APPENDIX B

AMENDED PROGRAMMATIC AGREEMENT

AMENDED
PROGRAMMATIC AGREEMENT
between
Office of Surface Mining Reclamation and Enforcement,
United States Army Corps of Engineers, Bureau of Indian Affairs,
Bureau of Land Management,
Navajo Nation Tribal Historic Preservation Officer,
Advisory Council on Historic Preservation,
and BHP Navajo Coal Company
regarding
Coal Mining and Related Operations in Areas III and IV North and the Burnham Road Realignment, Navajo Mine

WHEREAS, BHP Navajo Coal Company (BNCC) proposes to mine Area IV North and to continue to mine in Area III, and to permanently realign Burnham Road which (as shown in Attachments 1a and 1b to this Agreement) are within BNCC's lease boundary on the Navajo Reservation southwest of Farmington in northwestern New Mexico. These activities are termed the PROJECT for this agreement and

WHEREAS, mining in the 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) and

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act (NHPA), the Office of Surface Mining Reclamation and Enforcement (OSM), the Navajo Nation Tribal Historic Preservation Officer, which is the Director of the Navajo Nation Historic Preservation Department (NNTHPO), and BNCC were signatory parties to a Programmatic Agreement governing proposed mining, reclamation, and related activities in Area IV North of BNCC's mine lease (2007 Programmatic Agreement); and

WHEREAS, through the execution of this Amended Programmatic Agreement (APA), OSM, NNTHPO, and BNCC seek to amend the 2007 Programmatic Agreement, in accordance with its terms, to accommodate certain project modifications; and

WHEREAS, OSM is the lead Federal agency responsible for ensuring Section 106 of the NHPA and under the Indian Lands Program, would need to approve, pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the mining permit for the proposed coal mining and therefore is a Signatory to this APA; and

WHEREAS, the United States Army Corps of Engineers (USACE) would need to approve, pursuant to Section 404 of the Clean Water Act, a permit for the proposed mining in Areas III and IV North, has agreed to participate in the compliance process described in this APA, and therefore is a Signatory to this Agreement; and

WHEREAS, the Bureau of Indian Affairs (BIA) would need to approve (or renew its approval) of the proposed realignment of a portion of the Burnham Road (BIA Road N-5028) as depicted

on Attachment 1b, has agreed to participate in the compliance process described in this APA, and therefore is a Signatory to this Agreement; and

WHEREAS, the Bureau of Land Management (BLM) would need to approve a proposed amendment to BNCC's Resource Recovery and Protection Plan pursuant to BLM regulations and the Indian Mineral Leasing Act, has agreed to participate in the compliance process described in this APA, and therefore is a Signatory to this Agreement; and

WHEREAS, the Navajo Nation, acting through its Historic Preservation Department, has assumed the role of Tribal Historic Preservation Officer (NNTHPO) pursuant to Section 101(d)(2) of the National Historic Preservation Act, as amended, and therefore is a Signatory to this Agreement; and

WHEREAS, BNCC, as the proponent of the PROJECT has agreed to provide information concerning the map of the project area and the area of potential effects (APE) as determined by OSM in consultation with NNTHPO, cooperate with agencies to inventory, 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 PROJECT including all modifications and revisions;

WHEREAS, the Advisory Council on Historic Preservation elected not to participate in the 2007 Programmatic Agreement APA; 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 (National Register), and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation (ACHP), certain consulting parties, and other interested parties a reasonable opportunity to comment on the undertaking (the Section 106 review process); and

WHEREAS, as with the previous 2007 Programmatic Agreement, in addition to the participation of, and consultation with, NNTHPO, OSM has sought consultation with the Hopi Tribe, Pueblo of Acoma, Pueblo of Laguna, Pueblo of Zuni, and Ute Mountain Ute Tribe through correspondence and telephone inquiries; and

WHEREAS, the Hopi Tribe expressed an interest in consultation (meeting notification and attendance), after which OSM invited the Hopi Tribe to participate in the development of this APA, and also invited the Hopi Tribe to be an Invited Signatory to this Agreement;

WHEREAS, prior to the execution of this Agreement, OSM (and its predecessor agency) 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 2007 Programmatic Agreement, which this Agreement is intended to amend and supersede, OSM 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 2); and

WHEREAS, prior to the execution of this Agreement, BIA and NNTHPO have completed certain steps to comply with Section 106 of the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act, including prior consultation concerning cultural resources potentially affected by the proposed Burnham Road realignment; and

NOW, THEREFORE, the Signatories to this Agreement shall fulfill the following stipulations as the Burnham Road realignment, and Areas III and IV North construction, operation, mining, reclamation, and all related activities are planned, constructed, and operated in order to take into account the effects of the PROJECT on archaeological, historical, and traditional cultural resources listed in or eligible for inclusion in the National Register of Historic Places or otherwise subject to consideration under the Native American Graves Protection and Repatriation Act and related cultural resource policies and regulations.

STIPULATIONS

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

A. OSM, in consultation with NNTHPO, has established the APE, as defined at 36 CFR 800.16(d). The APE is depicted in Attachment 1b.

B. Under the direction of OSM and the NNTHPO, the project proponent (BNCC), through qualified outside consultants, has conducted extensive inventory work for the identification of cultural resources within the APE as of the date of this Agreement.

C. OSM, in consultation with NNTHPO, shall conduct, or shall ensure that BNCC shall conduct, any further inventory work determined by OSM and NNTHPO to be necessary or appropriate within the APE, *see* Attachment 1b.

D. For any newly indentified National Register-eligible sites or other sites identified and evaluated since the 2007 Programmatic Agreement, OSM shall ensure any additional Treatment Plan(s) that may be necessary are prepared and distributed pursuant to Stipulation 7.

Stipulation 2. Evaluation of Historic Properties for Eligibility

A. In consultation with the NNHTPO, OSM has made determinations of eligibility for the National Register of sites considered in accordance with the 2007 Programmatic Agreement, as summarized in Attachments 3a and 3b. **[NOTE: These attachments would be the tables listing the sites and including other relevant information. How should the tables be organized? One could be for all archeological sites, and the second would be for any TCP sites? The attached draft tables take on this format. Of course, there are other possible organizational approaches.]**

B. When making any further determinations of eligibility for the National Register of newly discovered, reported, or reevaluated sites that may be necessary, OSM shall consult with the Signatories to this Agreement and take into account their concerns, including

consideration of the traditional cultural values of historic properties as expressed by any consulting tribes which execute this Agreement as Invited Signatories. OSM shall consult with the NNTHPO to seek consensus determinations of the National Register eligibility of properties identified on the Navajo Reservation.

C. If the NNTHPO or other Signatories to this Agreement disagree with the 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 National Register 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 APA shall be construed to require OSM to reconsider eligibility determinations made under the 2007 Programmatic Agreement.

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

A. As summarized in Attachments 3a and 3b, OSM, in consultation with NNTHPO and BNCC have applied the criteria of adverse effect (36 CFR 800.5) to certain National Register-listed or National Register-eligible properties located within the APE.

B. OSM, in consultation with NNTHPO and other Signatories to this Agreement, shall continue to apply the criteria of adverse effect (36 CFR 800.5) to National Register-listed or National Register-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 historic properties.

C. Nothing in this Agreement shall be construed to require OSM to reconsider adverse effect determinations made under the 2007 Programmatic Agreement.

Stipulation 4. Responsibilities of Federal Agencies and Project Proponents

A. In accordance with 36 C.F.R. § 800.2(a)(2), the USACE, BIA, and BLM designate OSM to serve as the lead federal agency to act on their behalf to fulfill their responsibilities under Section 106 of the National Historic Preservation Act, as amended. OSM and NNTHPO shall coordinate as necessary to ensure that each of their respective responsibilities are clearly defined.

B. BNCC shall be responsible for coordinating with either OSM or NNTHPO regarding the PROJECT.

Stipulation 5. Project Modifications

If development designs further expand or modify the APE or modify the nature of potential effects, the BNCC shall undertake supplemental inventory to identify any historic properties in the expanded or modified APE and assess effects. OSM shall consult with the NNTHPO about the National Register-eligibility of any newly identified cultural resources, about the effect of the project on any National Register-listed or National Register-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 BNCC's mine lease, including without limitation Area III, OSM's predecessor, the Advisory Council, the New Mexico State Historic Preservation Officer (predecessor to NNTHPO under Section 106 of the National Historic Preservation Act), and Utah International, Inc. (BNCC's predecessor), those agencies complied with the then existing requirements of Section 106 of the National Historic Preservation Act and its implementing regulations. Compliance is demonstrated by the December 12, 1984 letter from OSM's Mr. Allen D. Klein to Utah International's Mr. R.C. Diederich, and the July 1, 1986 letter from OSM's Mr. Melvin L. Shilling to Utah International's Mr. John Grubb.

B. As summarized in Attachments 3a and 3b, OSM, NNTHPO, and BNCC consulted, identified minimization, avoidance, and mitigation measures to resolve adverse effect determinations, and implemented measures to resolve adverse effects concerning certain historic properties in Area IV North as memorialized in the November 9, 2009 letter from OSM to Mr. Ron Maldonado of NNTHPO, described in Attachment 2.

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 in Areas III and IV North not already addressed as shown in Attachments 3a and 3b or that may be identified in the future.

D. For each additional mining, or related activity of the PROJECT, OSM shall ensure that BNCC prepares a Treatment Plan(s), conforming to the Navajo Nation's policies under the Navajo Nation Cultural Resources Protection Act (CMY-19-88), that will address the effects of the component on historic properties, including traditional cultural properties, as discussed in National Register Bulletin 38. The nature of the treatment may vary considerably for the various types of affected historic properties, and separate Treatment Plans may be developed for different types of historic properties. The 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 the Area IV North mining project, and the nature of those effects; and

3 Identify the significant values of the properties within relevant historic contexts, as defined in National Register Bulletin 16, and how those values would be affected; and

4. Specify measures to avoid, reduce, or mitigate adverse effects on those significant values.

E. BNCC shall provide OSM or NNTHPO a final Treatment Plan(s) for review and comment. OSM or NNTHPO shall distribute the final Treatment Plan(s) to the parties to this Agreement for review in accordance with Stipulation 7.

F. If any of the consulted tribes who execute this Agreement as Invited Signatories advise OSM or NNTHPO of concerns about effects on properties to which they ascribe traditional religious or cultural significance, OSM or NNTHPO shall consult with them about possible measures to resolve the adverse effects.

G. OSM or NNTHPO shall distribute the final Treatment Plan(s) to all parties to this agreement pursuant to Stipulation 7.

H. OSM or NNTHPO shall ensure that the Treatment Plan(s) is implemented.

I. Many of the affected historic properties are likely to be archaeological sites and if avoidance is not feasible, treatment is likely to involve studies to recover and preserve important archaeological materials and information. A Treatment Plan(s) that involves archaeological data recovery shall specify:

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 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. Any necessary cultural resource permits.

Stipulation 7. Review, Comment, and Consultation

Plans prepared in accordance with this Agreement shall be consistent with guidelines of the Secretary of the Interior, NNTHPO, and any other permitting authorities. OSM shall consider any comments to the draft plans provided within working 30 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.

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 Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and its implementing regulations (43 CFR 10). Known cultural objects and related sites in the APE that may constitute sites or objects subject to the provisions of NAGPRA or the Jishchaá Policy have already been addressed in a fashion consistent with this Stipulation.

Stipulation 9. Authorization of Construction and Mining

A. For purposes of compliance with cultural resources management requirements, including without limitation NHPA Section 106 and NAGPRA, BNCC 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 NHPA Section 106 and NAGPRA, BNCC is authorized to recommence construction, mining, reclamation, and all related activities in the portions of Area IV North that are the subject of BNCC's 2011 Area IV North SMCRA Permit Revision Application.

C. For purposes of compliance with cultural resources management requirements, including without limitation NHPA Section 106 and NAGPRA, BNCC is authorized to commence construction and all related activities associated with the realignment of Burnham Road as BNCC has applied to OSM and BIA to undertake.

D. Following acceptance of implementation of any further Treatment Plan(s) (Stipulation 6.E) that may be determined to be necessary or appropriate for PROJECT areas not addressed in Stipulation 9 A, B, and C, OSM may, at its discretion, and pending compliance with all other applicable laws and regulations, including the Navajo Nation Cultural Resources Protection Act, which requires NNTHPO approval of all undertakings on the Navajo Reservation, authorize the initiation of construction, mining, reclamation and/or other activities on Area IV North lands where provisions of any Treatment Plan(s) has (have) been satisfactorily implemented.

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 National Historic Preservation Act, 36 CFR 800.11(c), and Section 9(a) of the Archaeological Resource Protection Act and Navajo Nation requirements. Pursuant to this stipulation, the participants 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 archaeological resources 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 Archaeological Resources (Attachment 5) 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 Archaeological Resources Protection Act , 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 will remain the property of the Navajo Nation. OSM 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 and cultural objects, which shall be determined in consultation pursuant to Stipulation 8. BNCC will pay acceptable curiation costs.

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 Archaeological Resource Protection Act and the Navajo Code.

Stipulation 15. Dispute Resolution

Should any Signatory 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 the Signatory to resolve the objection. If OSM determines that the objection cannot be resolved, that agency shall forward all documentation relevant to the dispute to the Advisory Council. Within 30 days after receipt of all pertinent documentation, the Advisory Council shall either:

1. Advise OSM that the Advisory Council 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 Advisory Council comments made under this provision.

Any recommendation or comment provided by the Advisory Council 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 are 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 the amendment before it can take effect.

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 it 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 Advisory Council, 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 Areas III and IV North mining remains in operation 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.

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Execution of this Agreement, filing of the Agreement with the Advisory Council 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 Area IV North mining on historic properties protected under Section 106 of the National Historic Preservation Act, and has afforded the Advisory Council an opportunity to comment pursuant to that Act.

The following documents are in a separate file on this disk:

- **Attachment 1a – General Navajo Mine Location Map**
- **Attachment 1b – Area IV North Mining – Permit Area and APE Map**
- **Attachment 2 – 2009 Letter from OSM**
- **Attachment 3a - Archeological Sites within 800 ac. Project Area – Status Table**
- **Attachment 3b - Traditional Cultural Properties (TCP) Sites within 1 Mile of Project Area – Status Table**

Attachment 4

Listing of Relevant 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, OSM, to Ron Maldonado, NNTHPO, regarding compliance with 2007 Programmatic Agreement, including signed acknowledgment by NNTHPO and OSM 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, Farmgington, 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 Copany'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. Burleson, 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 Ehtnographic 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, Preapared by Division of Conservation Archaeology.

15. July 01, 1986 Letter from Melvin L. Shilling, OSM 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, OSM 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 Mexixo, 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 fo 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 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;

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.

Attachment 5

Plan for Treatment of Unanticipated Discoveries of Archaeological Resources

In the event that unanticipated archaeological resources are discovered during implementation of Area IV North mining, or should known archaeological resources 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 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 National Register-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 National Register 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 National Register, 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 National Register 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 and their associated or cultural items shall be treated pursuant to Stipulation 8.

Attachment 1a

Shiprock
64
Waterflow
Fruitland
Kirtland
Farmington
San Juan River
Cottonwood Arroyo
170
N36
Morgan Lake
Ojo Amarillo
Area I
Area II
Area III
Area IV North
The Hogback
Chuco River
San Juan County
491
Cottonwood Arroyo
371
Little Water
Sanostee Wash
Tocito Wash
Tocito
Tocito Lake
N 5
Burnham
Brimhall Wash
Captain Tom Wash
Navajo Indian Reservation
7100
7250

Coal Lease Boundary
SMCRA Permit Boundary
Perrenial Stream/River
Intermittent Stream
US Highway
State Highway
Major Rd
Local Rd
BLM
Indian
Private
State

0 1.25 2.5 5
Miles

1:300,000

BNCC Area IV North
Mine Plan Revision

Vicinity Map

SAN JUAN COUNTY, NEW MEXICO

Date: 6/9/2011

Coordinate System: NAD 1927 StatePlane New Mexico West FIPS 3003Projection: Transverse Mercator

Name: Fig1_1_VicinityMap.mxd

Attachment 1b

Area III

Burnham Road Realignment

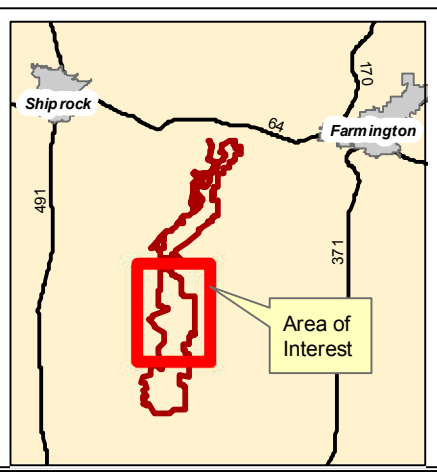
1 mile Buffer Area

Area III
Project Area

Area IV North
Project Area

Area IV North

Area IV South



Legend

- Lease Boundary
- Current SMCRA Permit Boundary
- APE for TCPs
- APE for Archeological Sites

N

0 0.5 1 Miles

1:41,684

BHP NAVAJO COAL COMPANY

Area of Potential Effects
for
Amended Programmatic Agreement

Date: 7/26/11

Attachment 2

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, Colorado 80202-3050

NM-0003

November 9, 2009

Mr. Ron Maldonado
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, AZ 94125

09-11-09-10

RE: Programmatic Agreement for Area IV North

Dear Mr. Maldonado:

On April 17, 2007, BHP Navajo Coal Company (BNCC) submitted to the Office of Surface Mining (OSM) a Programmatic Agreement (PA) for Area IV North Mining (OSM ID No. 07/05/03-08) as directed by the Navajo Nation Historic Preservation Department (NNHPD). Pursuant to the Section 106 consultation process, the NNHPD directed the BNNC to enter into a PA prior to commencement of mining activities in Area IV North. The PA (Enclosure 1) contained 17 stipulations. Also included with the submittal was a Data Recovery and Treatment Plan (DRTP) developed and completed for 47 sites by Ecosystem Management, Inc., (EMI) in December 2006.

The PA Stipulation 7 included requirements for signatories, which included two tribes (Hopi and Ute Mountain Ute), three Pueblos (Acoma, Laguna and Zuni), and the Advisory Council of Historic Preservation to review and comment. Copies of the PA were sent to all parties for review in accordance with the Stipulation. The Advisory Council elected not to participate and no comments were received from the tribes and pueblos. The PA was signed by OSM, Navajo Nation Tribal Historic Preservation Officer (NNTHPO) and BNCC on August 20, 2007.

The scope of work split the project into two phases. The initial phase focused on sites identified in the 2006 DRTP and possible burials identified in a formal ethnographic study for Area IV North. The latter phase included the mitigation of remaining identified archaeological sites.

Enclosure 2 is a bibliography that lists projects and reports related to Navajo Mine Area IV North.

On February 11, 2008, OSM sent the ethnography report "Each Place Brings Stories" to NNTHPO. In accordance to PA Stipulation 10, the Pueblo of Acoma and Pueblo of Zuni Cultural Resource Enterprise were informed that the Ethnography report had been sent to NNTHPO. The letter stated that if the signatories were interested in the report, they would have to contact NNTHPO to obtain copy of report due to confidential nature of the report.

On October 2008, BNCC submitted "Preliminary Report on Excavation of 19 Sites" to the NNTHPO. At that time, the NNTHPO agreed to review the report in accordance with the Stipulation 10 of the Programmatic Agreement Mining area.

OSM has determined that BNCC has completed all the necessary identification and mitigation/data recovery activities for the Area IV North. Stipulations 1, 2, 3, 4, 6, 7 of the PA have been fulfilled. The PA remains in place for Stipulations 5, 8, 10, 11 Attachment 2 of the PA, 12, 13, 14, 15, 16 and 17. Upon NNHPO's approval and implementation of Stipulation 9 by the Office of Surface Mining, BHP, BNCC can commence mining activities in Area IV North.

If you agree please sign the following signature page and return to OSM.

Please call me at 303-293-5046 if you have any questions.

Sincerely,

Brenda A. Steele

Brenda A. Steele, Mine Coordinator
Navajo Mine Team

Enclosures

Area IV North Programmatic Agreement

Signatories acknowledge fulfilment and remaining stipulations listed in the Programmatic Agreement between the OSM, NNTHPO and BNCC representative.

Office of Surface Mining Reclamation and Enforcement

By: _____ Date: 11/9/05

Title: Acting Manager, Program Support Division

Navajo Nation Tribal Historic Preservation Officer

By: _____ Date: 2-7-11

Title: Program Manager NAVAJO NATION HPD-CRCS

BHP Navajo Coal Company

By: _____ Date: _____

Title: _____

Attachment 3a

SECTION 106 COMPLIANCE STATUS FOR AREA IV NORTH:
ARCHAEOLOGICAL AND HISTORICAL PROPERTY MATTERS

--DRAFT - SUBJECT TO REVISION--

Site Number	Site Type	In New 800 Acre Project Area?	In Already Disturbed Area?*	NRHP Recommendations			Mitigation Recommendations		EMI Additional Survey (7/06)	Woods Canyon Mitigation Phase 1 = 2007, Phase 2 = 2007-8	2011 Woods Canyon Recommendations
				DCA (10/04)	NNHPD (5/05)	EMI (6/07)	DCA (10/04)	NNHPD (5/05)			
28-177	Navajo Multi-habitation	Road Reroute	No			Yes			Test	Phase 2	No Further Work
29-112	Navajo historic water control feature	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-113	Unknown isolated features	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-31	Unknown isolated feature	Yes	No	Yes	No		Mitigate	No Further Work			No Further Work
29-33	Navajo limited activity - Rock shelter	Yes	No	Yes	Yes	No	Mitigate	Test			No Further Work
29-81	Navajo temp camp	Yes	No	No	Yes	No	No Further Work	Test			No Further Work
29-82	Navajo historic? Isolated cairn	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-84	Navajo historic? Isolated cairn	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-89	Navajo Historic mine test pit	Yes	No	No	Yes		No Further Work	Ethno			No Further Work
29-91	Navajo historic wagon road wall	Yes	No	No	Yes		No Further Work	Ethno			No Further Work
29-93	Navajo? Historic mine shaft/test pit	Yes	No	No	Yes		No Further Work	Ethno			No Further Work
29-94	Navajo historic check dam	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-95	Navajo historic earthen dam	Yes	No	No	No		No Further Work	Ethno			No Further Work
29-106	Navajo Habitation	Yes	Yes	Yes	Yes	No	Mitigate	Test			No Further Work
29-107	Navajo multi-habitation	Yes	Yes	Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
29-108	Anasazi Habitation - previously excavated	Yes	Yes	Yes	Yes	No	Mitigate	Test			No Further Work
29-109	Navajo isolated feature	Yes	Yes	No	No		No Further Work	Ethno			No Further Work
29-111	Navajo camp	Yes	Yes	No	Yes	No	No Further Work	Test			No Further Work
29-32	Navajo limited activity - Rock	Yes	Yes	No	Yes	No	No Further Work	Test			No Further Work
29-83	Navajo historic? Isolated cairn	Yes	Yes	No	No		No Further Work	Ethno			No Further Work
29-85	Navajo historic? isolatedcairn	Yes	Yes	No	No		No Further Work	Ethno			No Further Work
29-86	Navajo historic? Isolated cairn	Yes	Yes	No	No		No Further Work	Ethno			No Further Work
29-88	Anasazi and Navajo habitation	Yes	Yes	Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
28-174				Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
28-175						No			Avoided		No Further Work
28-176						No			Test - Avoided?		No Further Work
28-178 or 36-123?						No			Test - Avoided?		No Further Work
28-2				Yes	Yes		Mitigate	Data_Recovery		Phase 2	No Further Work
28-4				No	Yes		No Further Work	Data_Recovery		Phase 2	No Further Work
29-100				No	No		No Further Work	No Further Work			No Further Work
29-101				No	No		No Further Work	Ethno			No Further Work
29-102				No	Yes	No	No Further Work	Test			No Further Work

SECTION 106 COMPLIANCE STATUS FOR AREA IV NORTH:
ARCHAEOLOGICAL AND HISTORICAL PROPERTY MATTERS

--DRAFT - SUBJECT TO REVISION--

Site Number	Site Type	In New 800 Acre Project Area?	In Already Disturbed Area?*	NRHP Recommendations			Mitigation Recommendations		EMI Additional Survey (7/06)	Woods Canyon Mitigation Phase 1 = 2007, Phase 2 = 2007-8	2011 Woods Canyon Recommendations
				DCA (10/04)	NNHPD (5/05)	EMI (6/07)	DCA (10/04)	NNHPD (5/05)			
29-103				Yes	Yes	No	Mitigate	Test			No Further Work
29-104				No	No		No Further Work	Ethno			No Further Work
29-105				Yes	Yes	No	Mitigate	Test			No Further Work
29-110	Anasazi habitation			Yes	Yes	Outside B	Mitigate	Test			No Further Work
29-34	Navajo multi-habitation			Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
29-35				Yes	Yes		Mitigate	Data_Recovery		Phase 2	No Further Work
29-80				Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
29-87				No	Yes	No	No Further Work	Test			
29-90	Modern Navajo limited activity			No	No		No Further Work	Ethno			No Further Work
29-92				Yes	Yes		Mitigate	Ethno			No Further Work
29-96				No	Yes	No	No Further Work	Test			No Further Work
29-97				Yes	Yes		Mitigate	Data_Recovery		Phase 2	No Further Work
29-98				No	Yes	No	No Further Work	Test			No Further Work
29-99	Navajo Multi-habitation			Yes	Yes		Mitigate	Data_Recovery		Phase 2	No Further Work
32-22				Yes	Yes	No	Mitigate	Test			No Further Work
36-23				Yes	Yes	No	Mitigate	Test			No Further Work
36-24	Archaic and Navajo camp			Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
36-25				Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
36-26				Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
36-28				Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
36-29				Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
36-30				Yes	Yes	No	Mitigate	Test			No Further Work
36-31				Yes	Yes		Mitigate	Data_Recovery		Phase 2	No Further Work
36-35				Yes	Yes	Outside B	Mitigate	Test			No Further Work
36-76				Yes	Yes	No	Mitigate	Test			No Further Work
36-77				No	Yes	No	No Further Work	Test			No Further Work
36-78	Prehistoric artifact scatter			No	No	No	No Further Work	Test			No Further Work
36-79				Yes	Yes		Mitigate	Ethno			No Further Work
36-80				Yes	Yes	No	Mitigate	Test			No Further Work
36-81				Yes	Yes	No	Mitigate	Test			No Further Work
36-82	Archaic scatter			Yes	Yes		Mitigate	Data_Recovery		Phase 1	No Further Work
36-83				No	No		No Further Work	No Further Work			No Further Work
36-84				No	Yes		No Further Work	Ethno			No Further Work
36-85				No	Yes		No Further Work	Ethno			No Further Work
36-86				No	Yes		No Further Work	Ethno			No Further Work
36-87				No	Yes		No Further Work	Ethno			No Further Work
37-46				No	No		No Further Work	No Further Work			No Further Work
37-47	Anasazi limited activity			Yes	No	No	Mitigate	Test			No Further Work
37-48				Yes	Yes	Yes	Mitigate	Test		Phase 2	No Further Work
37-49				No	Yes	No	No Further Work	Test			No Further Work
37-50				Yes	Yes	No	Mitigate	Test			No Further Work
37-51				No	No		No Further Work	Ethno			No Further Work
37-52				No	Yes	No	No Further Work	Test			No Further Work
37-53				No	No		No Further Work	No Further Work			No Further Work
37-54				No	No		No Further Work	No Further Work			No Further Work

Attachment 3b

SECTION 106 COMPLIANCE STATUS FOR WITHIN 1 MILE OF 800 ACRE PROJECT AREA: TRADITIONAL CULTURAL PROPERTIES (TCP) MATTERS

--DRAFT - SUBJECT TO REVISION--

								WCAC Recommendations[1]				
	TCP Identification	**Description**	**Within Area of Direct Impact of 800 Acre Project Area**	**Within Area of Potential Effect[2]**	**Identified in DCA Report?[a]**	**Identified in Kelly Report?[b]**	**Identified in Desert Rock Report?[c]**	**Local Navajo Nation/ CRPA TCP?**	**Eligible Under NRHP/Bullet in 38?**	**Official Eligibility Determination**	**Indirect Adverse Effects**	**Resolution of Adverse Effects/ Recommended Mitigation or Accomplished Mitigation**
Within 1 mile of 800 Acre Project Area	TCP1	ntl'iz (offering place) of stones to Mother earth, rain prayer, used since 1930s	No	Yes	Yes	Yes	Yes	Yes	No	Found officially Not Eligible on 2005 Compliance Form [d]	There will be no significant change to the setting. Current mining and haul roads in Area III contribute visual and minimal auditory effects to the setting.	The possible impact has been mitigated with the concerned interviewee. [6]
	Kelley TCP 2	onion gathering area, (Ch'il/azee') used "for generations", plant medicine gathered by one individual for Windway ceremonies; Interviewees voiced no concerns about project impacts	No	Yes		Yes		Yes	No		There will be no significant change to the setting. Current mining and haul roads in Area III contribute visual and minimal auditory effects to the setting.	No Further Work
	Deenasts'aa' Bito (Wildram Spring)	location where wild sheep drank	No	Yes		Yes		No	No		This property is no longer extant.	No Further Work
	Deenasts'aa' Dah Njah (Wildram Bedground)	location where wild sheep bedded	No	Yes		Yes		No	No		There will be no significant change to the setting. Current mining and haul roads in Area III contribute visual and minimal auditory effects to the setting.	No Further Work
	Teel (Chaco Wash)	plant gathering area tied to Teehooltsodii (Holy Being Who Controls the Waters) story	No	Yes		Yes		Yes	Needs Data		There will be no significant change to the setting. Current mining in Area III contributes minimal visual and minimal auditory effects to the setting.	No Further Work
	Chavez TCP 2	lightening struck corral, ntl'iz (offering place) used from 1930s to present,	No	Yes			Yes	Yes	No		There will be no significant change to the setting. Current mining in Area III contributes minimal visual and minimal auditory effects to the setting.	No Further Work
	TCP 3	mineral gathering area used from 1930s to present	No	Yes			Yes	Yes	No		There will be no significant change to the setting. Current mining in Area III contributes minimal visual and minimal auditory effects to the setting.	No Further Work
	TCP 4	mineral gathering place used from 1930s to present	No	Yes			Yes	Yes	No		There will be no significant change to the setting. Current mining in Area III contributes minimal visual and minimal auditory effects to the setting.	No Further Work
Outside 1 mile or location unknown	TCP 5 [5]	eagle nesting area and ntl'iz (offering place) used from 1940s to present					Yes	Yes	No		There will be no significant change to the setting.	No Further Work for Current Project
	Bii' Diich'ii Dahazkani (Tangy [Spring] Mesa, Breeze Mountain) [5]	eagle taking area; and ties to early Navajo/ Mexican traditional history				Yes		Yes	Yes- Criterion A		There will be no significant change to the setting.	No Further Work for Current Project
	TCP 6 [4]	ntl'iz (offering place) used from 1930s to present					Yes				Outside the Area of Current Concern	No Further Work for Current Project
	TCP 7 [4]	hook'eeghan (death hogan/house), 1945-1993					Yes				Outside the Area of Current Concern	No Further Work for Current Project
	TCP 8 [4]	ntl'iz (offering place), 1930s to present					Yes				Outside the Area of Current Concern	No Further Work for Current Project
	TCP 9 [4]	herb gathering area, unknown beginning use, used today									Outside the Area of Current Concern	No Further Work for Current Project
	TCP 10 [4]	herb gathering area, unknown beginning use, used today					Yes				Outside the Area of Current Concern	No Further Work for Current Project
	Halii [3]	spring and ntl'iz (offering place)				Yes					Outside the Area of Current Concern	No Further Work for Current Project
	Lok'aa' Deeshjin (Cottonwood Spring) [3]	sacred place				Yes					Outside the Area of Current Concern	No Further Work for Current Project
	To Ba Jisdahi (Water That You Wait For) [3]	well and possible ntl'iz (offering place)				Yes					Outside the Area of Current Concern	No Further Work for Current Project
	Tse Achiih (Nose Rock) [3]	sacred place				Yes					Outside the Area of Current Concern	No Further Work for Current Project
	Tse Bijaatl'ool (Rock Earrings) and Lid Diyeehi (dach'iniyood)(Collecting Smoke Drove Then Out) [3]	sacred place tied to story				Yes					Outside the Area of Current Concern	No Further Work for Current Project

Notes:

[1] - Evaluated for TCPs within 1 mile or less of the 2004 Permit Area (Area III & IV North)

[2] - The APE for TCPs for this table is defined as the 800 Acre Project Area plus a 1 mile buffer around that area and is subject to revision

[3] - The specific location for these TCPs from Kelley et al (2007) was not reported, but they were described as outside Area IV North

[4] - These TCPs are located more than 1 mile outside of the 2004 Permit Area (Area III & IV North)

[5] - These TCPs are located outside the 2004 Permit Area (Area III & IV North) but within a 1 mile buffer around that area

[6] - Mitigation of TCP 1 is documented by internal BNCC records

References:

[a] - 2004 Meininger, Jason and Lyn Wharton.The Eligiblity 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. Division of Conservation Archaeology. Bloomfield, New Mexico.

[b] - 2007 Kelley, Klara, Harris Francis, Rena Martin, John Torres-Nez, and Mary Bernard. Navajo Mine, Area IV NorthCultural Resources Intensive Data Recovery Project: Navajo Ethnography Sub-Project. Dinehtadoo CRM. Farmington, NM.

[c] - 2006 Chavez, Loretta. 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. (URS Job No. 23444264, Work Order No. 3). DRAFT. NNAD 06-015. Navajo nation Archaeology Department. Window Rock, AZ.
1985 Martin, Rena and Loretta Werito. Results of Oral Interviews with Alice Barber [Alice Gilmore] and Her Family. BIA Report No. Appendum--BIA NAO NTM-85-380.A35

[d] - 2005 Cultural Reources Compliance Form, Historic Preservation Department, Area IVN: NNHPD: HPD-04-1252

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By: _____ Date: 12/9/2011

Title: Manager, Program Support Division

UNITED STATES ARMY CORPS OF ENGINEERS

By: _____ Date: _____

Title: _____

BUREAU OF INDIAN AFFAIRS

By: _____ Date: _____

Title: _____

BUREAU OF LAND MANAGEMENT

By: _____ Date: _____

Title: _____

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Title: _____

BHP NAVAJO COAL COMPANY

By: _____ Date: _____

Title: _____

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By:_____ Date: _____

Title:_____

UNITED STATES ARMY CORPS OF ENGINEERS

By: Allan G. Fenile Date: 22 Nov 2011

Title: Chief, Regulatory Division, SPA

BUREAU OF INDIAN AFFAIRS

By:_____Date: _____

Title:_____

BUREAU OF LAND MANAGEMENT

By:_____ Date: _____

Title: _____

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By:_____ Date: _____

Title:_____

BHP NAVAJO COAL COMPANY

By:_____ Date: _____

Title:_____

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By:_____ Date: _____

Title:_____

UNITED STATES ARMY CORPS OF ENGINEERS

By:_____ Date: _____

Title:_____

BUREAU OF INDIAN AFFAIRS

By:_____ Date: 11/23/2011

Title: Regional Director

BUREAU OF LAND MANAGEMENT

By:_____ Date: _____

Title: _____

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By:_____ Date: _____

Title:_____

BHP NAVAJO COAL COMPANY

By:_____ Date: _____

Title:_____

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By:_____ Date: _____

Title:_____

UNITED STATES ARMY CORPS OF ENGINEERS

By:_____ Date: _____

Title:_____

BUREAU OF INDIAN AFFAIRS

By:_____ Date: _____

Title:_____

BUREAU OF LAND MANAGEMENT

By:_____ Date: 12/29/2011

Title: BLM Farmington District Manager

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By:_____ Date: _____

Title:_____

BHP NAVAJO COAL COMPANY

By:_____ Date: _____

Title:_____

12-01-05-07

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By:_____ Date: _____

Title:_____

UNITED STATES ARMY CORPS OF ENGINEERS

By:_____ Date: _____

Title:_____

BUREAU OF INDIAN AFFAIRS

By:_____ Date: _____

Title:_____

BUREAU OF LAND MANAGEMENT

By:_____ Date: _____

Title: _____

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By: [signature] Date: 12/06/11

Title: ~~[illegible]~~ THPO

BHP NAVAJO COAL COMPANY

By:_____ Date: _____

Title:_____

SIGNATORIES

OFFICE OF SURFACE MINING RECLAMATION and ENFORCEMENT

By:_____ Date: _____

Title:_____

UNITED STATES ARMY CORPS OF ENGINEERS

By:_____ Date: _____

Title:_____

BUREAU OF INDIAN AFFAIRS

By:_____Date: _____

Title:_____

BUREAU OF LAND MANAGEMENT

By:_____ Date: _____

Title: _____

NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By:_____ Date: _____

Title:_____

BHP NAVAJO COAL COMPANY

By: Pat [illegible] Date: 11/23/11

Title: Vice President