

**SECTION 11**

**CULTURAL, HISTORIC AND ARCHEOLOGICAL RESOURCES**

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**CULTURAL, HISTORIC AND ARCHEOLOGICAL RESOURCES**

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**SECTION 11**

**CULTURAL, HISTORIC AND ARCHEOLOGICAL RESOURCES**

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## **11 CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES**

### **11.1 Cultural, Historic, and Archeological Resources Information**

The cultural resources information in this chapter covers Areas 1, 2, 3, and 4 North, industrial sites, and right-of-ways associated with Navajo Transitional Energy Company (NTEC) mining lease (see [Exhibit 11-1](#)). 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 are understood to be confidential under applicable law.

Archaeological actions on the Navajo Mine leasehold have taken place in phases corresponding to the sequence of mining activities. Permitting activities on NTEC's mining lease have been and will be conducted in compliance with all applicable federal laws, including without limitation: National Historic Preservation Act (NHPA) of 1966 (Public Law 98-655), the Archaeological Resources Protection Act (ARPA) of 1979 (Public Law 96-96), and the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (Appendix 11.A). In addition, NTEC intends to comply with the appropriate, applicable Navajo Nation policies, statutes and guidelines to the extent they are not inconsistent with applicable federal law.

### **11.2 Cultural**

At the onset of mining activities on the mining lease, NTEC (formerly BNCC, BHP, Utah Construction & Mining Co., and Utah International Inc. (UII)) and Arizona Public Service Company (APS) obtained the services of the Museum of New Mexico's Laboratory of Anthropology to conduct an archaeological survey of the Area 1 and Area 2 prior to any land disturbances associated with the start of the Four Corners Power Plant and Navajo Mine. The northern portion of this area was cleared (reflecting approval) in June 1961 and the report from this initial survey was completed in 1962 (Greminger and Sciscenti, 1962). Area 2 was subsequently cleared on August 25, 1969.

An archaeological survey (Reher, 1977) was conducted for Areas 3, 4 North, 4 South and 5 from September 1973 to December 1974. In this survey, 718 archaeological sites were identified; 153 of those sites were determined eligible for listing on the National Register of Historic Places (NHRP).

The archaeological compliance actions taken by NTEC and its consultants from 1961 to 2008 have resulted in the completion of NTEC's obligations under its permits and in the completion of OSM's (and other federal agency) obligations under applicable cultural resources management statutes and regulations within NTEC's mining lease lands from Area 1 to Area 4 North. [Table 11-1](#) summarizes the archaeological actions with compliance completion dates, the principle agency involved, area clearance granted, and principle consultant involved in the major mitigation projects.

Artifacts and records from these mitigation and research activities that have not been returned to the Navajo Nation are maintained at the Museum of New Mexico, University of New Mexico in Albuquerque, New Mexico, or at the San Juan County Museum in Bloomfield, New Mexico.

In 2004, Navajo Mine contracted with San Juan County Museum Association's Division of Conservation Archaeology (DCA) to perform an updated inventory/evaluation of archaeological sites and historic properties within the Area 4 North portion of the Navajo Mine lease area. DCA reviewed the literature and conducted field inventories to re-locate and characterize 57 sites previously identified within this area (Hogan and Winter, 1983; Reher, 1977). As part of its work, DCA identified 16 new sites of varying potential significance. A total of 73 archaeological or cultural resources sites were located and/or identified during the evaluation project (Meininger and Wharton, 2004).

Based on the review of the DCA report, and in coordination with OSM, the Navajo Nation Historic Preservation Department (NNHPD) issued a Cultural Resources Compliance Form that outlined the Effects and Conditions of Compliance of the proposed project to conduct mining and related operations throughout Area 4 North of the Navajo Mine lease. Of the total 73 cultural resources located in the proposed mine area, OSM, in coordination with NNHPD, determined that 21 were not eligible for listing on the National Register of Historic Places (NRHP) and 52 were NRHP eligible. In addition to the cultural resource or archaeological sites, one Traditional Cultural Property (TCP), also determined not eligible for the National Register, 4 burial locations, and 2 In-use sites were identified. OSM, in coordination with NNHPD, determined that a thorough ethnographic study, a data recovery plan, and additional testing were required to mitigate the adverse effects of the proposed mining impact.

In 2005, Navajo Mine contracted Ecosystem Management, Inc (EMI) to draft a data recovery and treatment plan to conduct a thorough ethnographic study for Area 4 North, to survey the proposed Burnham Road realignment, and to conduct additional eligibility testing in that area. The data recovery plan provided a framework for the mitigation and testing of 47 previously recorded archaeological sites located within Area 4 North (Burlison, Phippen, and Yost 2006). This plan provided methodology for formal data recovery at 12 sites and testing at 35 sites to determine whether or not additional data recovery was warranted.

EMI subcontracted the prescribed ethnographic study to Dinetahdoo CRM. A plan was made for gathering ethnographic information, based on the review of the local literature, field visits to Navajo archaeological sites in Area 4 North, and preliminary contacts with members of the families using the project area. This plan was submitted to and approved by OSM, in coordination with NNHPD, in 2006. Officials of the chapters that encompass the project area were consulted: Nenahnezad, Burnham, San Juan, Upper Fruitland, Sanostee, and Newcomb chapters. Individuals were identified for ethnographic interview by using data from the chapter contacts, historical users of the area, and individuals identified in previous ethnographic interviews. All together 36 people within six chapters were contacted. Nineteen individuals were taken on field visits to old family sites and or camps,

and portions of interviews were conducted on those site visits. The results of the ethnographic study were presented in the publication “Each Place Brings Stories” that was submitted to NNHPD in 2007 (Kelley et al 2007).

EMI also conducted a cultural resources Class III survey of the proposed Burnham Road realignment, including on and off lease segments of the realignment. In the survey area, four cultural resource sites were located (Burlison 2006). Based on the review of EMI’s report, OSM, in coordination with NNHPD, issued a Cultural Resources Compliance Form that outlined the Effects of the project and the Conditions of Compliance. All four sites were determined to be eligible for inclusion to the NRHP; three of the sites could be avoided by rerouting and one required mitigation. Mitigation work for the one site was completed in 2007 (Honeycutt 2008).

During the spring of 2007, EMI conducted evaluative investigations at 33 sites in Area 4 North. Subsurface testing was conducted at 19 sites and detailed mapping and artifact analysis was conducted at the remaining 14 sites. The results of the testing indicated that 7 sites should be further mitigated according to the data recovery plan. In addition, it was recommended that the sites dating to the Navajo period should be considered as part of an eligible historic landscape (Johnson et al, 2007).

A Programmatic Agreement (PA) for Area 4 North was developed, approved, and executed by OSM, NNHPD, and NTEC. The PA identifies participating parties, clarifies their roles and responsibilities, and establishes a process for consultation, review and compliance when taking into account effects of cultural properties by a federal undertaking in association with Section 106 of the National Historic Preservation Act of 1966. In this case, the PA is an agreement between the proponent (NTEC), the federal agency (OSM), and the Navajo Nation Historic Preservation Office (NNHPD). The Advisory Council on Historic Preservation chose not to participate in the PA. Various tribes were consulted during the process of developing the PA. The PA contains 17 stipulations, including on-going commitments such as project modifications, treatment of American Indian remains and cultural objects, distributions of sensitive cultural resources information, unanticipated discoveries, dispute resolutions, damage of known historic properties, curation, professional qualifications and permits, amendments and terminations, and duration.

In 2007, Navajo Mine contracted Ecosphere Environmental Services to mitigate 6 of the 12 sites initially identified for data recovery. Under subcontract, Woods Canyon Archaeological Consultants, Inc. (Woods Canyon) completed the mitigation work at these sites. The mitigation of this work was conducted under the approval of an ARPA permit issued by the Bureau of Indian Affairs and a Navajo Nation Class C permit. As the fieldwork on this project was nearing completion, the results of EMI’s testing were finalized. Based on the results of the testing, the contract for mitigation was expanded by 13 more sites; to include the 7 additional sites and the remaining 6 sites. Mitigation work was completed in May of 2008 and a preliminary report on the findings was submitted in October of 2008 to NNHPD (Honeycutt 2008). The technical report is in draft form and has been submitted to NNHPD.

In addition to the mitigation work, Woods Canyon was tasked to investigate the location of historic human burials in Area 4 North. As a result of the ethnographic study, the locations of 10 human burials were claimed to exist. Investigations include surface inspection of locations, metal detector investigations, hand test units in the potential areas of the burial, and in the case of two locations mechanical testing. The investigations located probable evidence of burials (2) at one location in Area 4 North. In accordance with Navajo Nation Jishchaa' Policy, the closest lineal descendants were interviewed and it was their desire to leave the graves where they are located. A fence has been built around the location of the burials and proposed mining activities will avoid the location. A confidential report on the investigations was written and filed with NNHPD.

In July of 2007, a meeting was held with representatives from NNHPD, Navajo Mine, Woods Canyon, and EMI to discuss mitigation plans associated with the proposed historic landscape. It was decided to produce a web-based product that presents the results of the survey, excavation, and ethnographic data. In addition, a cultural landscape study was written as part of the technical report submitted to NNHPD.

DCA and the Ethnographic Study identified a Traditional Cultural Property (TCP), TCP1, within the Area 4 North lease area. Ethnographic interviews were conducted with the individuals and their families familiar with the TCPs.

NTEC has and will comply with the American Indian Religious Freedom Act (AIRFA), the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and the adopted 1996 Navajo Nation Policy for the Protection of Jishchaa': Gravesites, Human Remains, and Funerary Items, to the extent it is consistent with NAGPRA. A copy of policy is located in [Appendix 11-A](#). A confidential exhibit of possible human burial locations within and adjacent to Navajo Mine Permit Area is kept on file at Navajo Mine and the Office of Surface Mining/Western Regional Coordinating Center (OSM/WRCC). As stated above, the PA contains several on-going commitments which NTEC will also comply with, such as, Stipulations 7 and 11 of the PA. Stipulation 7 provides for the review of plans and reports by the parties to the PA. Stipulation 11 addresses the treatment of unanticipated discoveries encountered during project implementation. The original Area 4 North Cultural Resources Programmatic Agreement (PA) was amended to note modifications to the Area of Potential Effects, clarify the mitigation status, and bring in additional participating agencies. The revised Amended PA contains the ongoing requirements of the original PA.

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Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The CGP Survey. The University of New Mexico Press, Albuquerque NM. 164 pp.

Scheick, Cherie L. 1988. Archaic, Puebloan, and Navajo Land Use and Occupation Along the Middle Chaco River. Southwest Archaeological Consultants Technical Report No. 181.

Table 11-1 Navajo Mine Archaeological Clearance

Clearance Area	Acres	Clearance Approval	Clearance Date	Project Documentation <sup>1</sup>
1. Mining Area 1 <sup>2</sup> and Industrial Complex.	5307.60	Museum of New Mexico (MNM) <sup>3</sup>	06/61	Report: "Archaeology of the 4 Corners Power Project", Greminger & Sciscenti, 1962.
2. Mining Area 2.	3391.10	MNM	08/25/69	Recommendation from MNM to NPS after survey finds no arch. sites.
3. The "Neck", North of Area 3.	160.00	National Park Service (NPS).	12/16/76	Report: "Archaeological Survey of the 160 ac. part of Area 3 of the Navajo Mine Leasehold known as "the Neck"", conducted for UII, Cultural Resources Management Prog., New Mexico State Univ.
4. NW Corner of Area 3.	661.80	NPS.	06/26/81	Report: "Human Adaptations in a Marginal Environment, The Mitigation Project, 1980, Office of Contact Archaeology (OCA), UNM.
5. SW Corner of Area 3.	1583.74	NPS.	12/10/79	11/27/79 letter from OCA to NPS recommending clearance.
6. Eastern Side of Area 3.	2709.70	NPS.	09/25/81	08/27/81 letter from UII to NPS requesting clearance based on CGP survey.
7. 106 acres on Eastern Side of Area 3 plus most of the Southern part of Area 4 North.	4247.20	Office of Surface Mining (OSM).	12/12/84	Report: "Economy and Interaction Along the Lower Chaco River", OCA, May 1983.

Table 11.1 (Continued)

Clearance Area	Acres	Clearance Approval	Clearance Date	Project Documentation <sup>1</sup>
8. 27 EQ Areas.	842.00	OSM.	12/07/88	Report: "Archaic, Puebloan, and Navajo Land Use and Occupation Along the Middle Chaco River", Southwest Archaeological Consultants Inc. (SAR).
9. Block "B".	820.00	OSM.	02/10/92	Approval letter from OSM/WSC to BHP. OSM in receipt of 2/5/92 submittal of the Navajo Nation Historic Preservation Officer & the State Historic Preservation Officers, 1/7/92 concurrence with DCA's 8/5/91 report "Archaeological Testing & Evaluation Report" for site NM-H-21-162.
10. Block "D".	19.50	OSM.	10/12/93	Approval letter from OSM/WSC to BHP, based upon review of "Preliminary Data Recovery Report for Site LA 88815", DCA, August 1993.
11. Block "A"	210.8	NNHPD	06/18/96	Approval by NNHPD for sites in Block A via OSM with effects/Conditions of Compliance to include a testing plan and a data recovery plan in consultation with NNHPD.

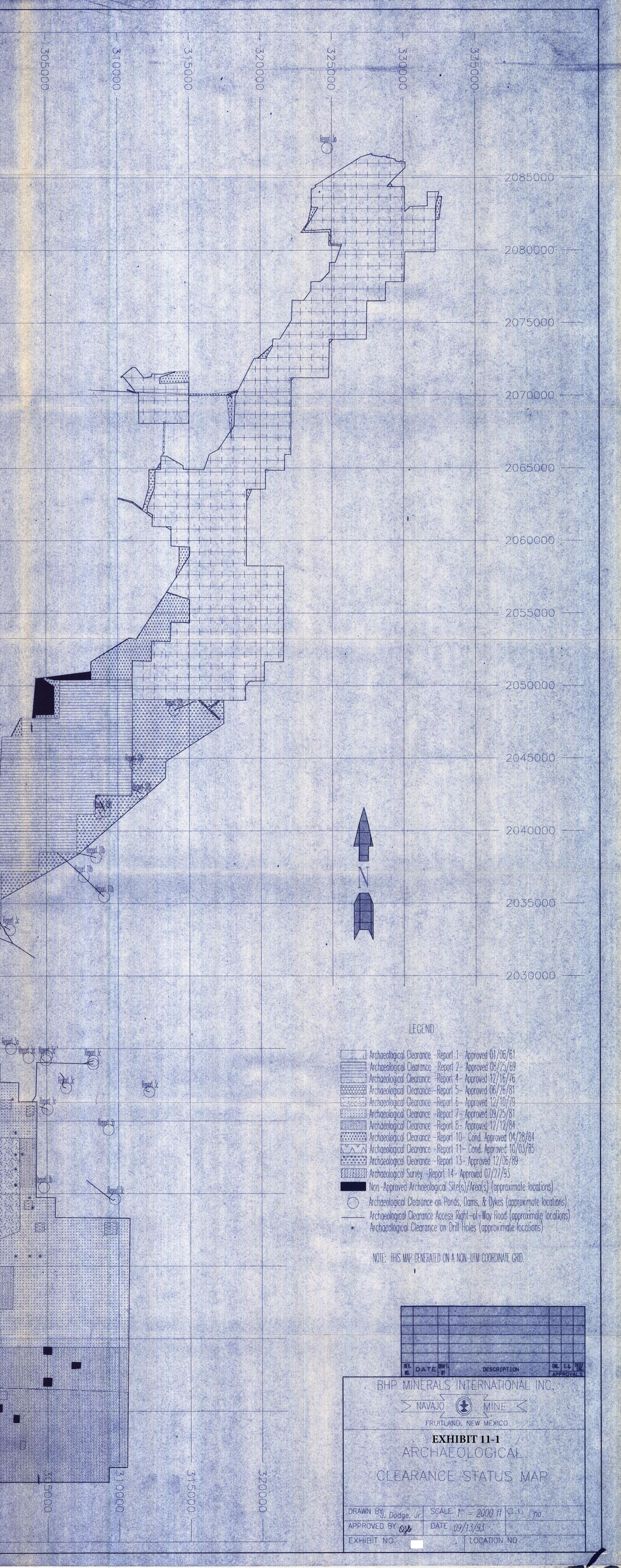
Table 11.1 (Continued)

Clearance Area	Acres	Clearance Approval	Clearance Date	Project Documentation <sup>1</sup>
12. Area 3 Lowe Pit	111.41	BIA 11/02/99	11/2/99	Approval by NNHPD for A Cultural Resources Inventory of a Proposed Surface Addition to the Navajo Mine Area III Lowe Pit with No historic properties affected Cultural Resources Compliance Form signed and issued by BIA
13. Area 4 North	4500	, BIA 06/08/05	06/08/05	NNHPD HPD-04-1252 Cultural Resources Compliance Form signed and issued by NNHPD via BIA. Effect/Conditions of Compliance to test 33 sites and mitigate 19 sites including ethnographic study completion prior to mining activities within the project area. The Eligibility evaluation of Cultural Resources for A4N submitted in 2004, Data Recovery and Treatment plan for 44 Sites submitted in 2006. Data Recovery and Treatment plan for 47 Sites submitted in 2006. NRHP Eligibility testing report for 33 sites submitted in 2007, Ethnography <i>Each Place Brings Stories</i> submitted in 2007, Preliminary Report on Excavation of 19 Sites in Area 4N completed in 2008. All material submitted to NNHPD.
Burnham Road Realignment	188	BIA 12/27/07	03/07/08	NNHPD HPD-06-843 Revised Cultural Resource Survey of 188 Acres for a Proposed Realignment of Burnham Road, within and outside the Navajo Mine Lease Area. Cultural Resource Survey submitted to NNHPD in 2006.
TOTAL:	25594.85			

<sup>1</sup>All documentation, correspondences, reports, etc., have been submitted to OSM/WSC and are maintained as confidential.

<sup>2</sup>Acres reflecting Mining Area 1 only.

<sup>3</sup>The Museum of New Mexico in 1961 certified the "clearance" since no clearances were required at that time.



LEGEND

- Archaeological Clearance - Report 1 - Approved 01/06/61
- Archaeological Clearance - Report 2 - Approved 08/25/69
- Archaeological Clearance - Report 4 - Approved 12/16/76
- Archaeological Clearance - Report 5 - Approved 06/26/81
- Archaeological Clearance - Report 6 - Approved 12/10/79
- Archaeological Clearance - Report 7 - Approved 09/25/81
- Archaeological Clearance - Report 8 - Approved 12/12/84
- Archaeological Clearance - Report 10 - Cond. Approved 04/28/84
- Archaeological Clearance - Report 11 - Cond. Approved 10/03/85
- Archaeological Clearance - Report 13 - Approved 12/06/89
- Archaeological Survey - Report 14 - Approved 07/27/93
- Non-Approved Archaeological Site(s)/Area(s) (approximate locations)
- Archaeological Clearance on Ponds, Dams, & Dykes (approximate locations)
- Archaeological Clearance Access Right-of-Way Road (approximate locations)
- Archaeological Clearance on Drill Holes (approximate locations)

NOTE: THIS MAP GENERATED ON A NON-UTM COORDINATE GRID.

REV. NO.	DATE	DRAFT BY	DESCRIPTION	ENG. E.C. DATE	ENG. DATE

BHP MINERALS INTERNATIONAL INC.

NAVAJO MINE

FRUITLAND, NEW MEXICO

**EXHIBIT 11-1**

**ARCHAEOLOGICAL**

**CLEARANCE STATUS MAP**

DRAWN BY <i>J. Dodge, Jr.</i>	SCALE 1" = 2000 ft	C.I. <i>na</i>
APPROVED BY <i>[Signature]</i>	DATE <i>09/13/93</i>	
EXHIBIT NO. <input type="text"/>	LOCATION NO. <input type="text"/>	

**Appendix 11.A**

Native American Graves Protection and Repatriation Act  
As Amended

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# Native American Graves Protection and Repatriation Act

## AS AMENDED

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This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001,  
Definitions

## Section 2

For purposes of this Act, the term—

(1) "**burial site**" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "**cultural affiliation**" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "**cultural items**" means human remains and—

(A) "**associated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "**unassociated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

# Native American Graves Protection and Repatriation Act

(C) “**sacred objects**” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “**cultural patrimony**” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “**Federal agency**” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “**Federal lands**” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “**Hui Malama I Na Kupuna O Hawai’i Nei**” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “**Indian tribe**” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

# Native American Graves Protection and Repatriation Act

(8) “**museum**” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “**Native American**” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “**Native Hawaiian**” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) “**Native Hawaiian organization**” means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “**Office of Hawaiian Affairs**” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “**right of possession**” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to

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28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

25 U.S.C. 3002,  
Ownership

25 U.S.C. 3002(a),  
Native American  
human remains and  
objects

## Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

# Native American Graves Protection and Repatriation Act

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

25 U.S.C. 3002(b),  
Unclaimed Native  
American remains and  
objects

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

25 U.S.C. 3002(c),  
Intentional excavation  
and removal of Native  
American human  
remains and objects

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

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25 U.S.C. 3002(d),  
Inadvertent discovery  
of Native American  
remains and objects

(d)(i) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

25 U.S.C. 3002(e),  
Relinquishment

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

# Native American Graves Protection and Repatriation Act

18 U.S.C. 1170,  
Illegal trafficking  
in Native American  
human remains and  
cultural items

## Section 4

(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

### Section 1170

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

25 U.S.C. 3003,  
Inventory for human  
remains and associ-  
ated funerary objects

25 U.S.C. 3003(a),  
In general

25 U.S.C. 3003(b),  
Requirements

## Section 5

(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b)(1) The inventories and identifications required under subsection (a) of this section shall be—

# Native American Graves Protection and Repatriation Act

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “**documentation**” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

25 U.S.C. 3003(c),  
Extension of time for  
inventory

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

25 U.S.C. 3003(d),  
Notification

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

# Native American Graves Protection and Repatriation Act

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

25 U.S.C. 3003(e),  
Definition of  
inventory

(e) For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

25 U.S.C. 3004,  
Summary for unassociated  
funerary objects,  
sacred objects, and  
cultural patrimony

## Section 6

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

25 U.S.C. 3004(a),  
In general

25 U.S.C. 3004(b),  
Requirements for the  
summary

(b)(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

# Native American Graves Protection and Repatriation Act

(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 U.S.C. 3005,  
Repatriation

25 U.S.C. 3005(a),  
Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

## Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

# Native American Graves Protection and Repatriation Act

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b),  
Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

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25 U.S.C. 3005(c),  
Standard for  
repatriation

(c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

25 U.S.C. 3005(d),  
Sharing of information  
by Federal agencies  
and museums

(d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

25 U.S.C. 3005(e),  
Competing claims

(e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

25 U.S.C. 3005(f),  
Museum obligation

(f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

25 U.S.C. 3006,  
Review committee

## Section 8

25 U.S.C. 3006(a),  
Establishment

(a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].

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25 U.S.C. 3006(b),  
Committee  
membership

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

25 U.S.C. 3006(c),  
Committee  
responsibilities

(c) The committee established under subsection a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

# Native American Graves Protection and Repatriation Act

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

25 U.S.C. 3006(d),  
Admissibility of  
records

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013].

25 U.S.C. 3006(e),  
Recommendations  
and report

(e) The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

25 U.S.C. 3006(f),  
Committee access

(f) The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

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25 U.S.C. 3006(g),  
Duties of the  
Secretary, regulations,  
and administrative  
support

(g) The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

25 U.S.C. 3006(h),  
Annual report to  
Congress

(h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

25 U.S.C. 3006(i),  
Committee  
termination

(i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

25 U.S.C. 3007,  
Penalty assessment,  
museums

## Section 9

(a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

25 U.S.C. 3007(a),  
Penalty

25 U.S.C. 3007(b),  
Amount of penalty

(b) The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

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25 U.S.C. 3007(c),  
Legal actions to  
recover penalties

(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

25 U.S.C. 3007(d),  
Authority to issue  
subpoenas

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 U.S.C. 3008,  
Grants

## Section 10

25 U.S.C. 3008(a),  
Grants to Indian tribes  
and Native Hawaiian  
organizations

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

25 U.S.C. 3008(b),  
Grants to museums

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

25 U.S.C. 3009,  
Limitations on apply-  
ing the Act

## Section 11

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

# Native American Graves Protection and Repatriation Act

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 U.S.C. 3010,  
Special relationship  
between the Federal  
Government and  
Indian tribes and  
Native Hawaiian  
organizations

## Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 U.S.C. 3011,  
Regulations

## Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

25 U.S.C. 3012,  
Authorization of  
appropriations

## Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 U.S.C. 3013,  
Judicial jurisdiction  
and enforcement

## Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.