

SECTION 10

LAND USE

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SECTION 10

LAND USE

LIST OF EXHIBITS

EXHIBIT

NUMBER

EXHIBIT TITLE

10.1-1	Prohibited, Limited, and Unsuitable Lands
10.1-2	Buildings, Roads, and Other Man-Made Structures
10.2-1	Previously Mined Areas

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SECTION 10

LAND USE

LIST OF REVISIONS DURING PERMIT TERM

REV. NUMBER	REVISION DESCRIPTION	DATE APPROVED
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SECTION 10 LAND USE

This section of ~~BHP Navajo Coal Company's Navajo Transitional Energy Company's (BNCNTEC)~~ Pinabete Mine Plan permit application package addresses areas where surface coal mining is prohibited, limited, or unsuitable and pre-mine land uses.

10.1 Prohibited, Limited, and Unsuitable Lands

10.1.1 Lands Where Mining is Prohibited

Mining in the Pinabete Mine Plan permit area (permit area) will not occur on lands within the boundaries of national parks, national wildlife refuges, national trails, national wilderness preserves, wild and scenic rivers, and/or national recreation areas designated by Congress, as those lands described in 30 CFR 761.11(a). Lands meeting these descriptions do not occur within or adjacent to the permit area.

Mining activities in the permit area will not occur within 300 feet of any public buildings, schools, churches, community or institutional buildings, and/or public parks. The Tiis Tsoh Sikaad (Burnham) Chapter House, located south of the Brimhall Wash, is the nearest community building and is located approximately 6.5 miles from the southern permit boundary ([Exhibit 10.1-1](#)).

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Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulations (30 CFR 761.11) prohibit mining within 100 feet of a cemetery, unless the cemetery is relocated in accordance with all applicable laws and regulations. ~~BNCNTEC~~ has identified possible burial locations within the permit area during the ethnographic and other surveys and studies completed to meet the requirements of 30 CFR 779.12(b) and other related applicable regulations. This information is found in Section 11 (Cultural, Historic, and Archaeological Resources) of this permit application package. Information related to cultural, historic, and archeological sites must be maintained in strict confidentiality in accordance with 30 CFR 773.6(d)(3)(iii) and other related applicable regulations. Detailed information on such resources is found within the confidential portions of Section 11 (Cultural, Historic, and Archaeological Resources). These burials may be relocated, pursuant to the Navajo Nation policy for the Protection of Jishchaa': Gravesites, Human Remains, and Funerary Items (NNJGH) and other applicable laws and regulations. Following all applicable laws and regulations and in consultation with affected parties, ~~BNCNTEC~~ may relocate and reinter burials and associated funerary items. If relocation of the burial sites is not feasible under applicable law, ~~BNCNTEC~~ will follow all applicable laws and regulations to protect these areas. Further discussions on the presence and treatment of cultural, historic, and archeological resources are presented in confidential portions of Section 11 (Cultural, Historic, and Archaeological Resources).

10.1.2 Lands Where Mining is Limited

10.1.2.1 Federal Lands Within the National Forest System

Mining activities in the permit area will not occur on any federal lands within the National Forest System.

10.1.2.2 Public Parks and National Register Listed Historic Places

There are no publically owned parks within or adjacent to the permit area that would be adversely affected by mining activities.

There are no National Register of Historic Places (NRHP) listed historic properties within or adjacent to the permit area that would be adversely affected by mining activities. Cultural resources that may be eligible for inclusion on the NRHP are discussed in Section 11 (Cultural, Historic, and Archaeological Resources).

10.1.2.3 Public Roads

Approximately ~~3.44.6~~ mi of the existing Burnham Road, BIA 5082, crosses through the Pinabete permit area ([Exhibit 10.1-2](#)). The Burnham Road is a Bureau of Indian Affairs (BIA) road that does not have a recorded right-of-way. Of the 4.6 miles of the Burnham Road within the permit area, approximately 2.8 miles would be impacted by mining operations. BNCNTEC has developed a 2.7-mile realignment of the Burnham Road which will move away from mining operations. This ~~3.4 mi~~ segment of the Burnham Road is to be relocated in accordance with 30 CFR 761.11(d) and 761.14. Further discussion on the realignment and use of the Burnham Road is presented in Section 40 (Environmental Protection), Section 23 (Roads), and Section 30 (Post Mining Land Use).

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There are numerous two-track unimproved roads that traverse portions of the permit area. These roads are not public roads as defined in 30 CFR 761.5. Based on ~~BNCNTEC~~'s investigations, these roads have not been designated as public roads by the Navajo Nation or any applicable jurisdictional authority, and are not maintained with the use of public funds similar to other public roads in the area. These roads are primarily utilized by Navajo Nation members with customary use rights in the area and public use is infrequent. These unimproved roads do not meet road construction standards for other public roads in the area.

~~BNCNTEC~~ has identified, through discussions with the grazing permittees, roads that are used to access claim use areas (CUAs). Where feasible, these two-track roads will be retained to allow access to CUAs. Further discussion on the protection of public and other roads is presented in Section 40 (Environmental Protection).

10.1.2.4 Occupied Dwellings

SMCRA regulations (30 CFR 761.11) prohibit mining within 300 feet of occupied dwellings unless certain regulatory conditions are met. SMCRA regulations (30 CFR 761.5) also define an occupied dwelling as any building that is currently being used on a regular or temporary basis for human habitation. While the lands within the permit area are used primarily for grazing purposes, permittees may have occupied dwellings within their respective CUAs or within approved homesite leases granted by the Navajo Nation

Land Department. There are no homesite leases and one occupied dwelling located within the permit area. Mining operations, including ground-clearing activities such as blasting and excavation, would require either removing or relocating the dwelling or limiting access to existing dwelling. The location of the dwelling is presented on [Exhibit 10.1-2](#). Until the occupied dwelling is removed or relocated, mining activities will not be pursued within 300 feet of any occupied dwellings.

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The Navajo Nation Land Department manages and maintains the homesite lease information. [BNCNTEC](#) is presenting this information to the best of its knowledge and cannot warranty the accuracy of the information. As [BNCNTEC](#) is made aware of changes to the homesite lease information, this section and associated exhibits will be updated accordingly.

[BNCNTEC](#) will comply in a timely fashion with the applicable requirements of Navajo Nation laws respecting activities impacting homesites, grazing, and CUAs.

10.1.3 Valid Existing Rights Documentation

[BNCNTEC](#) is not pursuing a demonstration of valid existing rights at this time. [BNCNTEC](#) is applying for a new surface coal mining permit, and is therefore subject to prohibitions and limitations as discussed in 30 CFR 761.11. [BNCNTEC](#) may pursue an exemption, as provided in 30 CFR 761.12, in the future, if lands fall under the protection of 761.11 or 30 USC 1272(e), and after the [BNCNTEC](#) permit application package has been approved.

10.1.4 Existing Operation Exemption Documentation

[BNCNTEC](#) is not applying for an existing operation exemption; therefore this section is not applicable.

10.1.5 Lands Unsuitable for Mining

The Pinabete permit application package will be permitted under the Indian Lands Program. This section is not applicable.

10.1.6 Prohibited, Limited, and Unsuitable Lands Information Collection and Analysis

Prohibited, limited, and unsuitable lands were analyzed from various sources including, but not limited to, public domain geographical information system (GIS) files, interviews with local residents and government officials, and employees with knowledge of the area. Names of the persons or organizations responsible for the collection and analysis of the information in Section 10.1 are listed below Section 10.2.4. People or organizations responsible for the collection and analysis of cultural resources are provided at the end of Section 11 (Cultural, Historic, and Archaeological Resources).

10.2 Pre-mining Land Use

The primary land use in the permit area and adjacent areas prior to coal mining activities is characterized as very low intensity livestock grazing, with few scattered dwellings and primitive roads crossing the area. The existing land use exhibits much of the character of traditional Navajo society, which is based on rangeland resources and livestock, principally sheep, goats, cattle, and horses. Limited rainfall within the area mainly produces rangeland plants which are useful to the Navajo people, primarily for livestock grazing. Further information on land productivity is provided in Section 15 (Vegetation).

The permit area and the **BNCCNTEC** mine lease are located wholly within the boundaries of the Navajo Nation. Individuals and families are granted permits by the BIA to use this land for grazing. Claims to land use are based on traditional (claim) use rights and grazing permits. Grazing permits issued by the BIA Agency Superintendent, based on recommendations of the Navajo Nation's District Grazing Committee, entitle the permittee to a range area (allotment) of sufficient size to graze a specified number of animals. Original grazing permits established by the BIA were limited to 10 head of horses or 350 sheep units (minimum 10 to maximum 350) annually per allotment. The actual grazing capacity within each CUA was based on allotment acreage. These CUAs are presented on ~~Exhibit 6.1-2~~**Exhibit 6.1-2**~~Exhibit 6.1-2~~. The BIA is the legal holder of this information; **BNCCNTEC** is presenting the boundaries to the best of its knowledge. As **BNCCNTEC** is made aware of changes to the CUA boundaries, this exhibit will be updated.

Most other potential pre-mining lands uses within the permit area are limited due to numerous factors. The lack of irrigation and the limiting soil conditions restrict the suitability of lands for agricultural and forestry uses. Fish and wildlife habitats are limited by the lack of forage species and perennial water resources. Residential and industrial land uses are limited by the lack of sufficient infrastructure in the permit area. Pre-mining land use features are presented on [Exhibit 10.1-2](#) and [Exhibit 10.2-1](#).

Pre-mining surface and ground water uses within the permit area are discussed in Section 18 (Water Resources).

There is a historical record of coal mine development in the vicinity of and including the permit area. **BNCCNTEC** currently operates the Navajo Mine, which is adjacent to the northern permit boundary of the Pinabete permit area. Coal was also mined south of the **BNCCNTEC** mining lease within the CONSOL lease area at the Burnham Mine from 1980 to 1984. Several other smaller mines have been operated in the area over the past 60 years, although none remain active. Cultural resource studies indicate the presence of historic coal mining activities by the general public in the area for more than 200 years. Locations of previously mined areas within and adjacent to the permit area are identified on [Exhibit 10.2-1](#).

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10.2.1 Pre-mining Land Capability and Productivity

The pre-mining land capability and productivity within the permit area are discussed in the previous sections and in Section 15 (Vegetation).

10.2.2 Land Use Policies and Plans

BNCCNTEC is submitting this permit application package for a mining permit from the Office of Surface Mining Reclamation and Enforcement (OSM) under laws and regulations established by SMCRA, the National Environmental Policy Act (NEPA), and the Navajo Nation.

The proposed action is in accordance with the Bureau of Land Management's (BLM) minerals objective and guidance in the 2003 Farmington Resource Area Resource Management Plan (RMP) (BLM 2003) and the Albuquerque District Proposed Resource Management Plan Amendment/Final Environmental Impact Statement, Oil and Gas Leasing and Development (BLM 1991). The objective of the BLM minerals program is, to provide for the public use of leasable, locatable, and saleable minerals consistent with the laws that govern these activities.

10.2.3 Utilities

There are no known oil or gas wells in the permit area. There are several historic water wells, which have been used for livestock watering. Groundwater monitoring well locations and completion information are described in Section 18 (Water Resources). There are no existing right-of-ways identified in Section 6 (Land Ownership).

Two powerlines currently exist in the permit area. One powerline enters the permit area along the eastern permit boundary and continues in a northwest direction to supply residential electricity to the occupied dwelling in the eastern half of this resource area. The other existing powerline located in Area 4 North was constructed to facilitate mining and is discussed further in Section 22 (Support Facilities). The location of each of these powerlines and dwelling are presented on [Exhibit 10.1-2](#).

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10.2.4 Pre-mining Land Use Information Collection and Analysis

BNCCNTEC employees responsible for the collection of information in Section 10 are listed below.

Personnel

Persons or organizations responsible for data collection, analysis, and preparation of this permit application package section:

Kent Applegate

Vivie Melendez

BHP Navajo Coal Navajo Transitional

Energy Company

BHP Billiton Mine Management

Company (disclosed agent)

Farmington, NM

References

- Bureau of Land Management (BLM). 1991. Albuquerque District Proposed Resource Management Plan Amendment/Final Environmental Impact Statement: Oil and Gas Leasing and Development. Albuquerque Field Office. Albuquerque, New Mexico.
- Bureau of Land Management (BLM). 2003. Farmington Resource Management Plan. Farmington Field Office. Farmington, New Mexico.