0031

OK

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

March 15, 2007

Certified Return Receipt
7004 2510 0004 1824 2901

Norman Cooeyate, Governor
Pueblo of Zuni
P.O. Box 339
Zuni, New Mexico 87327

Subject: Requesting Comments on Section 106 Determinations and Protection Measures for Lila Canyon Extension, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task #2741, Outgoing File

Dear Mr. Cooeyate:

Yesterday the Utah Division of Oil Gas and Mining called Mr. Jonathan Damp as a follow-up to the letter sent on February 6, 2007 concerning Section 106 and the proposed project described below. Mr. Damp suggested that the Division send the same packet of information to you that we had sent to his office. Please contact us if you have any questions or would like to comment on this proposed project.

In accordance with 36 CFR Part 800.2 (a), Pete Rutledge, Chief, Program Support Division at the Western Regional Coordinating Center, Office of Surface Mining (OSM), delegated the legal authority to the Utah Division of Oil, Gas & Mining (the Division) to act on behalf of OSM and conduct Section 106 regarding federal undertakings. The Division assumes the role of agency official with the continued assistance from OSM. Accordingly, we are requesting your comments on the proposed Lila Canyon Extension effects and site eligibility determinations, and review of and comments on the proposed protection measures as per Section 106 of the National Historic Preservation Act, as amended, and its implementing regulation at 36 CFR Part 800.

The enclosed map (Attachment 1) illustrates that the proposed Lila Canyon Extension of the Horse Canyon Mine is located in Emery County, Utah (7.5 Minute USGS Quadrangle map is Lila Point). The legal description for the proposed extension is: T16S R14E Sections 10, 11, 12, 15, 14, 13, 22, 23, 24, 26, and 25, and in T16S R15E Sections 19 and 30 (SLBM). The proposed extension area is about 4,660 acres, which includes approximately 42 acres of surface disturbance for the facility site. The Bureau of Land Management (BLM), School and Institutional Trust Lands Administration, and Josiah Eardley are surface landowners and BLM is the subsurface owner.

The Division reviewed reports of archaeological inventories previously conducted of the proposed surface facility site (Montgomery 1998) and transportation and utility corridors (Montgomery 1998). The Division then began consultation and advisement communications with Emery and Carbon counties, OSM, BLM, Public Lands Policy Coordination Office, Southern Utah Wilderness Alliance (SUWA), Dr. Everett Bassett (Transcon Environmental – the Division's archaeology consultant), Utah State Historic Preservation Office (SHPO), and certain tribes. Since then, we have learned from Dr. John Fritz (Division Chair of Humanities, Salt Lake Community College) that your tribe may also have interest in the area of consideration.

As part of the consultation efforts, the Division identified the *area of potential effect* (APE I and II; Attachment 2), the course of additional identification efforts, and measures that would avoid, minimize, or mitigate possible adverse effects. The Division determined that it was prudent to conduct an additional surface archaeological inventory of the area of potential subsidence (APE II). Montgomery Archaeological Consultants conducted this inventory during the summer of 2006.

In summary, there are three prehistoric sites that were previously determined as eligible for inclusion in the National Register of Historic Places within or adjacent to the proposed extension area. One prehistoric site (42EM2517) may be susceptible to impacts caused by vandalism (Montgomery 1998). The BLM would implement the mitigation plan for 42EM2517 as directed in the Memorandum of Agreement (MOA, 2007) prior to construction of the facility site. The other two eligible sites (42EM2255 and 42EM2256) are subject to potential subsidence (Jendresen et al. 2006; Miller 1991). The Programmatic Agreement (PA, 2007) addresses related protection measures for archaeological resources such as these two sites.

There are four recorded sites within or adjacent to the extension area that were previously determined as not eligible. These sites include one prehistoric site (42Em1121) and three historic sites (42Em1335, 42Em1337, and 42Em1339). There are also five isolated finds that exist within or adjacent to the extension area that were previously recommended as not eligible. The Division concurs with the previously mentioned determinations.

There are three newly recorded sites (42Em3623, 42Em3622, and 42Em3659), which are historic in nature and considered common. The Division determined and the SHPO concurred, that these three sites are not eligible because they do not meet any of the National Register Criteria. The Division has not identified other sites within the boundaries of APE I or II.

The Division considers that the proposed Lila Canyon Extension would have an "*adverse effect*" on cultural resources. The Division, BLM, and OSM prepared a DRAFT PA (2007; Attachment 3) and a DRAFT MOA (2007; Attachment 4) as measures to protect, avoid, or mitigate known and unknown archaeological resources. Both documents, as well as BLM's coal lease stipulations relating to archaeology, would become conditions to the permit. The SHPO concurs that these protection measures are appropriate for this extension.

We have enclosed SHPO's consultation response for the Lila Canyon Extension for your information. We are requesting your comments on the proposed Lila Canyon Extension effects and site eligibility determinations, and review of and comments on the proposed protection measures. We are also requesting any comments or concerns you may have regarding any culturally significant plant, other natural resources, or Traditional Cultural Properties you may have knowledge of in the proposed action area.

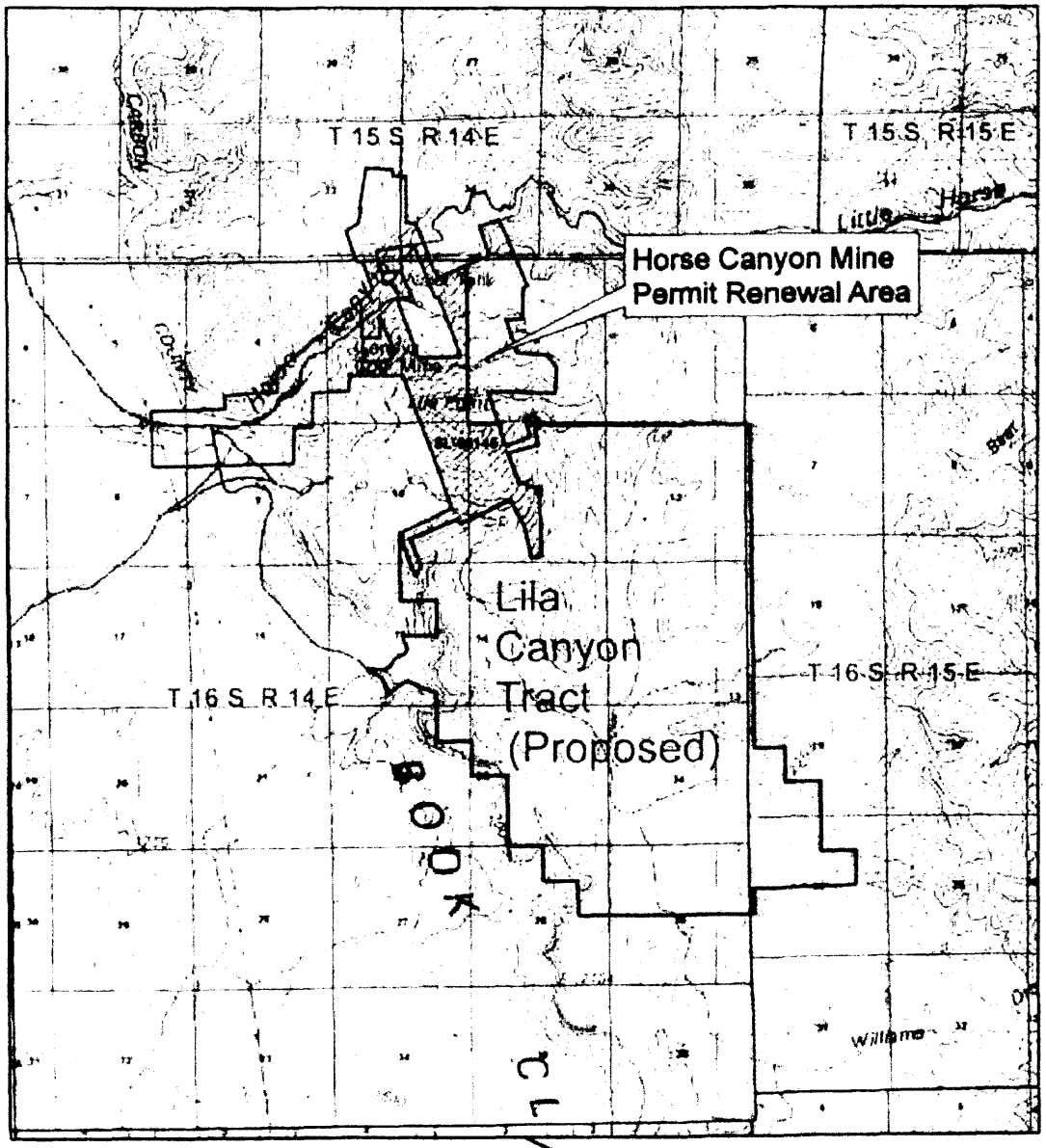
If you have any questions or concerns, or would like to request copies of the survey reports, please contact me at (801) 538-5306. If for any reason you are unable to contact me, please feel free to contact Pamela Grubaugh-Littig (801) 538-5268 or Jerriann Ernstsen (801) 538-5214.

Sincerely,

Mary Ann Wright
Associate Director, Mining

an
attachments
O:\007013.HOR\FINAL\LetTribeLila3152007NCooeyate.doc

Attachment 1: Map of area showing the permit area.



Horse Canyon Mine - Map 1

C0070013
Carbon County, Utah
March 2006

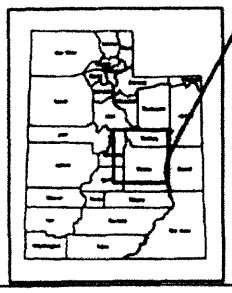
Township 15 South Range 14 East
Township 16 South Range 14 East

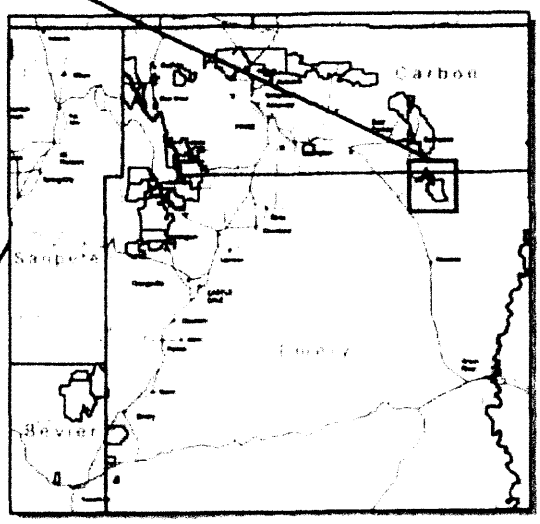
P:\GROUPS\COAL\WP\C0070013.HOR\GIS\Map1.pdf

Permit Area
Proposed Mine Plan Modification (Tan shown)
Federal Lease Areas

0 0.3 0.6 1.2 Miles
1:48,000

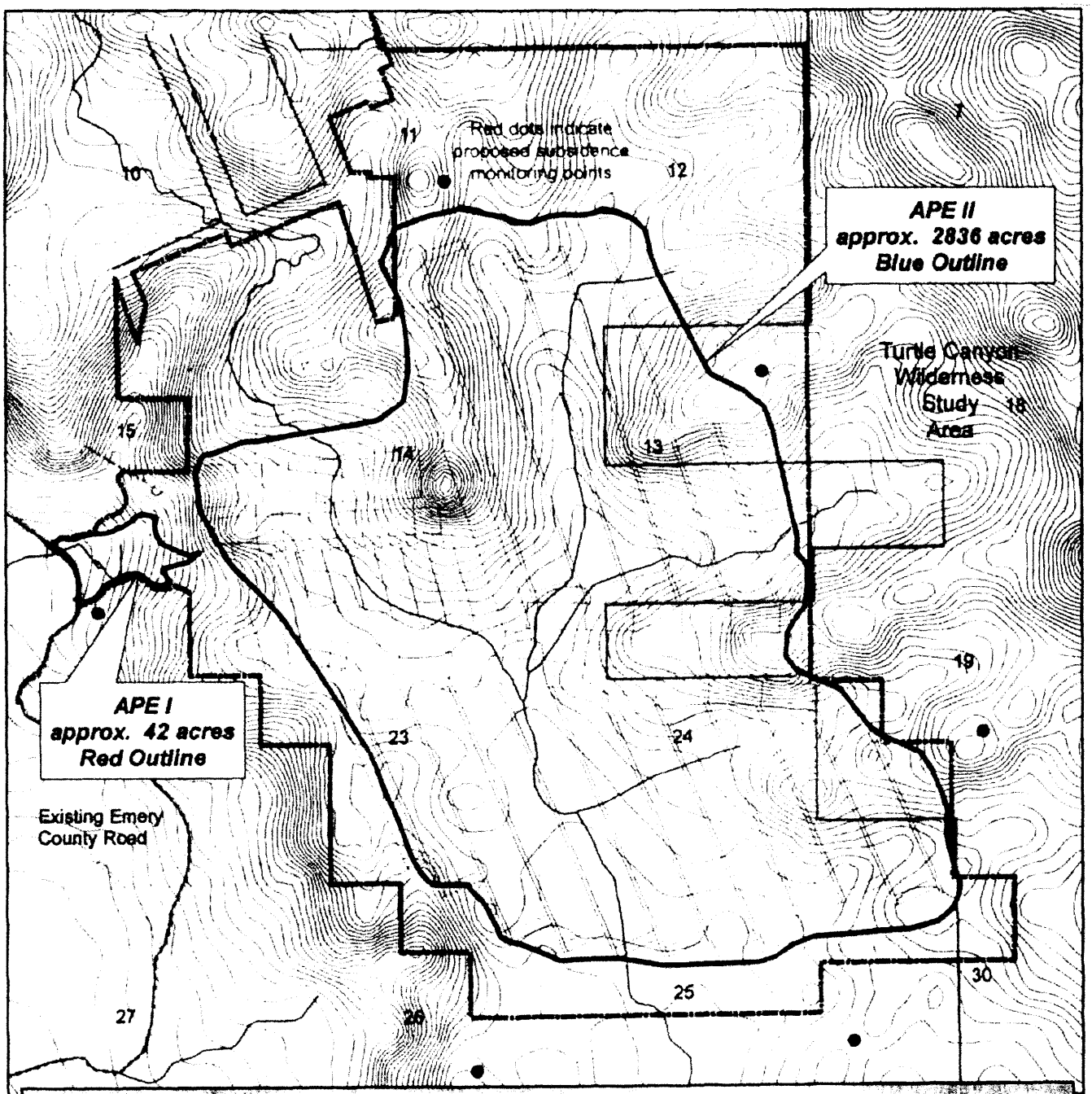
State of Utah





Locator Map

Attachment 2: Map of area of potential effect (APE I and II).



Lila Canyon Project - Map 2

Legend

Layer

- CONTOUR
- INDEX CONTOUR
- DISTURBED
- LAYOUT
- OLD PERMIT
- PERMIT
- ROAD
- PROPOSED SECTION
- VBA
- SUBSIDENCE

N

0 0.25 0.5 1 Miles

Utah Oil Gas and Mining

Attachment 3: DRAFT Programmatic Agreement.

DRAFT AS OF February 2, 2007

February 2, 2007

PROGRAMMATIC AGREEMENT AMONG OFFICE OF SURFACE MINING (OSM), DIVISION OF OIL GAS AND MINING (OGM), BUREAU OF LAND MANAGEMENT (BLM), AND UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO) REGARDING THE LILA CANYON EXTENSION OF THE HORSE CANYON MINE

(C/007/0013)

UNDERTAKING: Proposed Lila Canyon Extension of the Horse Canyon Mine.

STATE: Utah

AGENCY: Division of Oil Gas and Mining (OGM)

WHEREAS, the Office of Surface Mining (OSM) is required by 30 CFR Part 746 to prepare and submit to the Secretary of the Interior (Secretary), which the Secretary has in turn delegated to the Assistant Secretary, Land and Minerals Management, a decision document recommending approval, disapproval, or conditional approval of mining plans for coal mining operations on lands containing leased Federal coal; and

WHEREAS, as codified at 30 CFR Part 944, the Utah Division of Oil, Gas, and Mining (OGM) has assumed primacy for the regulation of coal mining operations containing Federal lands in Utah and issues mining permits for such lands; and

WHEREAS, the United States Department of the Interior, Bureau of Land Management (BLM) has a program, which leases coal within public lands and a surface owner of a portion of the proposed project area (4660 acres; Exhibit A). UtahAmerican Energy, Inc. (UEI), Josiah Eardley, and School and Institutional Trust Lands Administration own other portions of the property (fee) within this 4660 acres; and

WHEREAS, this Agreement is intended to encompass coal mine permitting and Secretarial mining plan approvals for the Area of Potential Effect (APE; Exhibit B) of the Lila Canyon Extension of the Horse Canyon Mine; and

WHEREAS, UEI has applied for a permit by application for the Lila Canyon Extension of the Horse Canyon Mine to mine coal and OGM is required by R645-300.133.600, R645-300.113, and R645-301 rules and the requirements of the state and federal coal programs to comply with

the National Historic Preservation Act in issuing the permit; and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have defined the APE as areas subject to direct surface disturbance (42 acres; APE I) and areas subject to potential subsidence (approximately 2835 acres; APE II) that may effect recorded cultural or historical resources; and

WHEREAS, reasonable and good faith identification efforts per 36 CFR 800.4(b) have been conducted within the APE I (Class III) and APE II (Class II) for cultural and historical resources and the results reviewed by the OSM, OGM, BLM, and SHPO to determine the eligibility of such resources and the potential effects of the undertaking per 36 CFR 800.5(b); and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have determined that development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations will have an Adverse Effect on site 42EM2517; and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have determined that development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations, such as subsidence, may have effects on resources not identified during identification efforts for the project, and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have determined that the effects on cultural or historical resources from development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations cannot be fully determined; and

WHEREAS, the appropriate tribes (Attachment 1) have been consulted regarding their concerns about potential effects to cultural and/or religious sites (Traditional Cultural Properties and sacred/respected places); and

WHEREAS, Emery and Carbon Counties and Southern Utah Wilderness Association (SUWA), consulting parties, have been consulted regarding their concerns about potential effects to cultural or historic resources; and

WHEREAS, OGM in conjunction with OSM and BLM has notified the Advisory Council on Historic Preservation (Council) and has invited the Council's comments and participation in the review for this undertaking pursuant to 36 CFR § 800;

NOW, THEREFORE, Pursuant to 36 CFR 800.14, the OSM, OGM, BLM, and SHPO agree this Agreement shall be implemented in accordance with the following stipulations to take into account the effects that mining operations of the Lila Canyon Extension of the Horse Canyon Mine may have on cultural or historic resources.

Stipulations

1. **Lead Agency.** Upon approval, the LA will be OGM. OGM, as the agency official, will continue to consult and coordinate with OSM, BLM, and SHPO on archaeological matters covered under this Agreement. BLM's coal lease stipulation relating to archaeology, BLM's MOA, as well as this Agreement will become conditions to the permit.

2. **Treatment of Site 42EM2517.** The BLM shall draft a Memorandum of Agreement for mitigation of 42EM2517 (Attachment 2). UEI will assure that a mitigation plan for 42EM2517 is prepared, approved, and implemented in accordance with the BLM MOA. Consultation with tribes and consulting parties will occur during this process. BLM will take into account comments and concerns received from the tribes and consulting parties. The MOA will become an attachment to this Agreement subsequent to the official signing of the MOA.

3. **Monitoring of Subsidence.** UEI will conduct annual fly-over subsidence monitoring beginning when subsidence is likely to occur (during full extraction) and continue for a minimum of five years after mining ceases or until subsidence stabilizes, which ever comes later. The accuracy of this survey will be within plus or minus 6" horizontally and vertically. UEI will provide an accurate map showing the subsidence isopachs to OGM. UEI will initiate and coordinate with OGM to ensure that a qualified archaeologist will examine the location of the mapped-subsided areas relative to previous archaeological inventories and known archaeological sites within fourteen (14) days of the mapped identification of the subsidence. Depending on the location of subsidence in relation to previous archaeological inventories and known sites, the following stipulations will apply (to each subsidence event):

    a. **Previously Inventoried and No Sites.** If subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur within an area that has undergone previous archaeological inventory, and no sites are present within the area of subsidence, or no sites eligible to the National Register of Historic Places are present in the area of subsidence, no further work will need to be done. UEI (or their consulting archaeologist) will notify OGM regarding this determination within fourteen (14) days of making the determination, and OGM will provide the information to OSM, BLM, and SHPO.

b. **Previously Inventoried and Known Sites.** If subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur within an area that has undergone previous archaeological inventory, and known archaeological sites, previously determined eligible to the National Register of Historic Places are present in the subsidence area, UEI will have a qualified archaeologist examine the effects of subsidence upon the site(s) in question within fourteen (14) days of making this determination. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline.

UEI's archaeologist will provide a report, for review by OGM, OSM, and BLM in a timely manner that makes recommendations regarding whether or not the effects of subsidence are adverse. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of the effects of subsidence. OGM will then consult with the SHPO regarding the effects determination. If the effect is determined to be adverse, procedures following 36 CFR 800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.

c. **Not Previously Inventoried.** If subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur within an area that has not undergone previous archaeological inventory, UEI will have a qualified archaeologist conduct a field examination of the subsidence area within fourteen (14) days of making this determination. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline. Depending on the presence or absence of sites in the subsidence area, the following stipulations will apply (to each subsidence event):

i. **No Sites.** If no sites are present within the area of subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts), UEI's

archaeologist will make a recommendation of No Historic Properties Affected to OGM in a timely manner. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of the effects of subsidence. OGM will then consult with the SHPO regarding the effects determination per 36 CFR 800.4(c).

ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts), UEI's archaeologist will provide a report and make recommendations of eligibility and effect to OGM (per 36 CFR 800.4(c)(2) and 36 CFR 800.5) regarding the site(s) and subsidence effects on the site(s) in a timely manner. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of eligibility of the site(s) and the effects of subsidence on the site(s). OGM will then consult with the SHPO regarding the effects determination. If the effect to any site eligible to the National Register of Historic Places is determined to be adverse, procedures following 36 CFR 800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.

d. **Time Lines.** In all cases, signatories of this Agreement will be afforded thirty (30) calendar days, following receipt of reports/consultation requests, to respond to the OGM.

e. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.

4. **Discoveries in APE I and II.** Should unanticipated cultural or historic resources be observed within the APE during, but not limited to, UEI's quarterly ground-water monitoring, annual fly-over subsidence monitoring, OGM's field visits, construction of any mine-related structures or features, future archaeological surveys conducted within the permit area, or otherwise brought to OGM attention, UEI will notify OGM within 24 hours of the discovery. UEI will immediately implement protection measures to prevent harm of the discovery while OGM evaluates the discovery and consults with the signatories of this Agreement. OGM will notify the signatories of this Agreement of said resources within fourteen (14) days of resource discovery. OGM may consult with the signatories of this Agreement, if needed, to make evaluations. If determined appropriate, OGM will require UEI to record the discovery, conduct additional evaluations as necessary, and provide supporting reports. OGM, in consultation with OSM and BLM, as appropriate, will make determinations of eligibility and effect regarding the discovery.

   a. **No Historic Properties Affected or No Adverse Effects.** If a determination of No Historic Properties Affected or No Adverse Effects is made, OGM will consult with the SHPO regarding the determination following 36 CFR 800.4-5.

   b. **Adverse Or Potentially Adverse**. If effects to a site that is determined via this process to be eligible to the National Register of Historic Places are determined adverse or potentially adverse, the signatories of this Agreement will reconvene to recommend and draft appropriate measures to avoid, minimize, or mitigate adverse effects.

   c. **Time Lines.** In all cases, signatories of this Agreement will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.

   d. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.

5. **Expedited Treatment.** In the case of unanticipated discoveries and where timing is critical, the signatories may mutually agree to the Expedited Treatment (described below) for such discoveries. Potential human burial discoveries will be subject to the provisions of the Native American Graves Protection and Repatriation Act.

6. **Funding of Work.** UEI will fund and implement any future and all cultural or historic resources fieldwork, analysis, and monitoring, required under this Agreement.

7. **Amendment to this Agreement.** Any signatory to this Agreement may request that it be amended, whereupon the signatories will consult to reach agreement on amendments, which will be executed in the same manner as the original agreement.

8. **Objections.** Should any signatory to this Agreement object within thirty (30) days to any activity pursuant to this Agreement, the OGM will consult with the objecting signatory to resolve the objection. If the OGM determines the objection cannot be resolved, the OGM will forward all documentation relevant to the dispute to Advisory Council on Historic Preservation (ACHP). Within thirty days after the receipt of all pertinent documentation, ACHP will either:

    a. Provide the OGM with recommendations, which the OGM will take into account in reaching a final decision regarding the dispute; or

    b. Notify the OGM that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the OGM in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; the OGM's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.

9. **Termination.** Any signatory to this Agreement may terminate it by providing thirty (30) days notice to the other signatories. In the event of termination, the OGM will comply with 36 CFR Part 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.

10. **Term of Agreement.** This Agreement will remain in effect for the life of the mine and through final reclamation and bond release from its date of execution by the signatories. This stipulation applies to UEI or any coal mine permit successor of the proposed (or amended) extension area. Any new Permittee will accept all provisions within this Agreement.

11. **Permit Changes.** Subsequent additions, deletions or other changes to the permit that may affect cultural resources will be handled in compliance with the normal Section 106 consultation process as described in 36 CFR 800, and amended into this Programmatic Agreement and/or its attachments.

12. **Expedited Treatment.** For any incidental discovery where the OSM, OGM, and BLM agree that timing is critical because of mining activities, the agencies may invoke the following expedited treatment option:

    a. OGM will notify OSM, BLM, and SHPO of the need for expedited treatment.

    b. OGM will determine the potential eligibility of the site/property in question as well as appropriate treatment for the site, keeping OSM, BLM, and SHPO informed of the process.

    c. OGM will submit a decision memo to OSM, BLM, and SHPO, including contractor's report where applicable.

    d. In the event that the discovery involves human burial remains or materials, the provisions of the Utah Burial Protection Act and, where applicable, the Native American Graves Protection and Repatriation Act will still apply.

Signatories

Bureau of Land Management

By:_____ Date:

Utah State Division of Oil, Gas, and Mining

By:_____ Date:

Office of Surface Mining

By:_____ Date:

Utah State Historic Preservation Officer

By:_____ Date:

ATTACHMENT 1: Tribal List

The following tribes were consulted with during the Section 106 process for the Lila Canyon extension application:

Uintah & Ouray Ute Indian Tribe, Ute Mountain Ute Tribe, Southern Ute Tribe, Eastern Shoshone Tribe, Shoshone Bannock Tribes, Northwest Shoshone Tribe, Confederated Tribes of the Goshute Reservation, Paiute Indian Tribe of Utah, Indian Peaks Band of Paiutes, Cedar Band of Paiutes, Hopi Tribe, Navajo Nation, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Zia, and Pueblo of Zuni.

ATTACHMENT 2: BLM's Memorandum of Agreement for mitigation of 42EM2517.

EXHIBIT 1: Map of Permit Area

EXHIBIT 2: Map of Area of Potential Effect

Attachment 4: DRAFT Memorandum of Agreement with mitigation plan.

DRAFT AS OF FEBRUARY 5, 2007

MEMORANDUM OF AGREEMENT FOR RECOVERY OF SIGNIFICANT INFORMATION

FOR ARCHEOLOGICAL SITE: 42EM2517

UNDERTAKING: Lila Canyon Extension Of The Horse Canyon Mine

STATE: Utah

AGENCIES: Bureau of Land Management, Price Field Office (BLM); Office of Surface Mining; Utah State Division of Oil Gas and Mining (UDOGM); Utah State Historic Preservation Office

RIGHT OF WAY GRANTEE: UtahAmerican Energy Corporation (Serial Number: UTU-77122).

Whereas, in accordance with 36 CFR Part 800, the BLM acknowledges and accepts the advice and conditions outlined in Advisory Council on Historic Preservation's (ACHP) "Recommended Approach for Consultation on the Recovery of Significant Information from Archeological Sites," published in the Federal Register on May 18, 1999; and

Whereas, the BLM has issued a right of way to UtahAmerican Energy Corporation that grants the company access to construct facilities and conduct coal mining operations and reclamation; and

Whereas, in accordance with R645-301-411.144, the UDOGM requires UtahAmerican Energy to conduct mitigation measures as described in the appended Archeological Data Recovery Plan; and

Whereas, the signatories agree that recovery of significant information from the archeological site listed above will be done in accordance with the published guidance; and

Whereas, the signatories agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from archeological sites to mitigate the adverse effects of the project to 42EM2517; and

Whereas, the signatories agree that Indian Tribes or Native Hawaiian organizations that may attach religious or cultural importance to the affected property have been consulted and have raised no objection to the work proposed; and

Whereas, to the best of signatories' knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural

patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archeological work;

Now, therefore, the BLM shall ensure that the following terms and conditions, including the appended Archeological Data Recovery Plan, will be implemented in a timely manner, as designated in the BLM Archaeology Permit and Notice to Proceed, and with adequate resources to be done in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

DRAFT AS OF February 5, 2007

OTHER TERMS AND CONDITIONS FOR 42EM2517:

- The BLM will implement the mitigation plan for 42EM2517 as directed in this Agreement, prior to construction of the facilities site.
- One of the signatories of this Agreement will ensure that the following interested parties have been consulted: Emery and Carbon Counties, Southern Utah Wilderness Alliance, and ACHP.
- The BLM will ensure that the results of the excavation and analysis stipulated in the mitigation plan for 42EM2517 will be reported and disseminated to professional peers in a timely manner, with review of the document by the involved agencies and the Utah State Historic Preservation Office. The BLM will respond to comments received on this document in a timely manner.
- Modification, amendment, or termination of this Agreement as necessary shall be accomplished by the signatories in the same manner as the original Agreement.
- Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of ACHP to assist in resolving the dispute.
- This Agreement shall be null and void if its terms are not carried out within 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Bureau of Land Management: date:

Office of Surface Mining: date:

Utah State Division of Oil Gas and Mining: date:

Utah State Historic Preservation Officer: date:

Utah American Energy Corp.: date:

[Archeological Data Recovery Plan Attached]