

**MEMORANDUM OF AGREEMENT
BETWEEN THE
THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT
MOAB FIELD OFFICE
AND
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
LISBON VALLEY MINING COMPANY'S MINE PLAN OF OPERATIONS MODIFICATION,
SAN JUAN COUNTY, UTAH**

WHEREAS, pursuant to the Federal Land Policy and Management Act of 1976 as amended (43 U.S.C. § 35), the General Mining Act of 1872 as amended (30 U.S.C. § 22), and the implementing regulations for Surface Mining found at 43 CFR § 3809 the Bureau of Land Management (BLM) is considering approval of a modified Plan of Operations (PoO) that would allow the Lisbon Valley Mining Company (the Applicant) to expand its existing mining operations (the Project); and

WHEREAS, pursuant to the Safe Drinking Water Act of 1974 (42 U.S.C. § 300f et seq) the United States Environmental Protection Agency (EPA) is considering an Aquifer Exemption for the Project; and

WHEREAS, the EPA designated the BLM to act as the lead federal agency for compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. § 306108) pursuant to 36 CFR § 800.2(a)(2). As lead agency, the BLM will sign this agreement as the agency official signatory. The EPA may choose to use this outcome to document its compliance with Section 106 of the NHPA; and

WHEREAS, three action alternatives were analyzed in an Environmental Impact Statement (EIS) that was completed under the National Environmental Policy Act (43 U.S.C. § 1638). Alternative B (the Proposed Action) would include the development of the new Lone Wolf open mining pit, an associated waste rock storage, a new heap leach pad, three in-situ recovery (ISR) wellfields, and supporting facilities. Alternative C would include the development of the new Lone Wolf open mining pit and associated waste rock storage, and Alternative D would include the development of three ISR wellfields. See Appendix A for maps and expanded descriptions of the Alternatives; and

WHEREAS, the BLM has determined that approval of the modified PoO is an "undertaking" as defined by 36 CFR § 800.16(y) with the potential to affect properties eligible for or included in the National Register of Historic Places (historic properties) and is, therefore, subject to review under Section 106 of the NHPA; and

WHEREAS, the BLM, in consultation with the Utah State Historic Preservation Office (SHPO), has defined the Project's Area of Potential Effects (APE) as a physical APE totaling 2,292.8 acres which includes a 30-meter buffer around all newly proposed development, and a 90-meter buffer around the newly proposed open pit mine, and a visual APE totaling 3,575.8 encompassing a 0.5-mile buffer surround the physical APE in Lower Lisbon Valley, minus areas removed through a viewshed analysis that are not visible from the newly proposed expansion. See Appendix A for maps defining the physical and visual APEs; and

WHEREAS, the BLM has made a reasonable and good faith effort to identify historic properties within the APEs, including literature reviews, Class III surveys (U21HQ0848, U22HQ0949, U24HQ0068, U24HQ0635, and U25UX0359), and requests for Tribal input through consultations to identify historic properties and/or areas of traditional cultural importance within these areas; and

WHEREAS, based on these identification efforts the BLM has determined that depending on the selected alternative, the undertaking could potentially result in an adverse effect to up to thirty (30) historic properties. The BLM is developing this memorandum of agreement (Agreement) to resolve adverse effects to historic properties pursuant to 36 CFR § 800.6(b)(1)(iv). See Appendix B for a table listing the affected historic properties by alternative; and

WHEREAS, the Advisory Council on Historic Preservation (the Council) has not participated in consultation because the undertaking does not exceed the thresholds outlined in Stipulation 7 of the BLM *National Programmatic Agreement among the Bureau of Land Management, The Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers regarding the Manner in which the BLM will meet its Responsibilities under the NHPA* (2025). The BLM will submit a copy of the executed agreement as pursuant to 36 CFR § 800.6(b)(1)(iv) and § 800.11(f); and

WHEREAS, pursuant to 36 CFR 800.2(c)(2), the BLM has engaged in consultation with the Hopi Tribe, the Pueblo of Jemez, the Pueblo of Tesuque, the Pueblo of San Felipe, the Pueblo of Zuni, the Ute Mountain Ute, the Uintah Ouray Ute, the Southern Ute, the Navajo, and the Paiute Indian Tribe of Utah and have invited them to participate in the development of this Agreement, and will continue to consult with these interested Indian Tribes throughout the process; and

WHEREAS, the project includes lands administered by the Utah School and Institutional Trust Land Administration (SITLA), an agency in the State of Utah that has a responsibility to comply with Utah Code Annotated (UCA) § 9-8-404 and Utah Administrative Code (UAC) R850-60 on lands owned or controlled by SITLA. SITLA intends to employ this Agreement to address applicable requirements for actions resulting from this Agreement involving land administered by SITLA. SITLA, however, does not waive its independent state statutory jurisdiction to make final decisions concerning its lands, and is not bound in its leasing or other approval authority by actions taken, or determinations made, concerning other lands, and has therefore been invited by BLM to be an invited signatory to this agreement; and

WHEREAS, UCA § 9-8a-404 and agency specific rules under this statute contain legally enforceable restrictions or conditions to ensure that effects to historic properties are taken into account and that efforts are made to avoid, minimize and/or mitigate adverse effects; and

WHEREAS, the Applicant is subject to Section 6(a) of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. § 470ee(a)), has participated in the development of this agreement, has been assigned responsibilities in implementation of the agreement and has therefore been invited by the BLM to be an invited signatory to this agreement; and

WHEREAS, the BLM has consulted with and invited the following agencies and organizations with local jurisdiction or a demonstrated interest in the undertaking to participate in the development of this agreement including San Juan County, the Utah Public Lands Policy Coordinating Office (PLPCO), Utah Division of Oil, Gas, and Mining (DOGM), Three Step Hide-a-Way Resort, and the Utah Rock Art Research Association; and

WHEREAS, San Juan County, PLPCO, and DOGM participated in the development of this Agreement and have been invited to sign as concurring parties to this agreement; and

NOW, THEREFORE, the BLM and the SHPO agree that the proposed undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the undertaking on historic properties and comply with Section 106 of the NHPA.

DEFINITIONS

Unless otherwise noted, the terms used in this Agreement are consistent with the definitions found in the NHPA (54 U.S.C. § 300301–21), applicable regulations relating to *Protection of Historic Properties* (36 CFR § 800.16), *Determinations of Eligibility for Inclusion in the National Register of Historic Places* (36 CFR § 60.3), and the BLM Manual Section 8100—*The Foundations for Managing Cultural Resources*.

STIPULATIONS

The BLM shall ensure that the following measures are carried out:

I. Tribal Consultation and Coordination with the Native American Graves Protection and Repatriation Act and Inadvertent Discoveries on Non-Federal Lands

- a. In accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*) (NAGPRA), the BLM consulted with the Hopi Tribe, the Pueblo of Jemez, the Pueblo of Tesuque, the Pueblo of San Felipe, the Pueblo of Zuni, the Ute Mountain Ute, the Uintah Ouray Ute, the Southern Ute, the Navajo, and the Paiute Indian Tribe of Utah on the development of a Plan of Action (POA) pursuant to 42 CFR § 10.4(b). The POA outlines the protocols for the protection and treatment of human remains and cultural items which may be inadvertently discovered on Federal lands during activities that are associated with this undertaking, including potential data recovery, testing, excavation and the construction and operation of the Project. A copy of the POA is included as Appendix C. In addition, the BLM will continue to consult with interested Tribes regarding the implementation of this Agreement pursuant to 36 CFR § 800.2(c)(2).
- b. If human remains are inadvertently discovered on non-federal land, they will be subject to the requirements of UCA §9-8a-309, §9-9-403, and §76-9-704(3). Pursuant to UCA §76-9-704, and regardless of land ownership, a person who fails to report the finding of a dead human body in any stage of decomposition, including ancient human remains, to local law enforcement may be charged with a Class B misdemeanor.

II. Measures to Resolve Adverse Effects

The historic properties potentially affected will depend on which alternative is selected in the Record of Decision (see Appendices A and B).

Alternative B

If Alternative B is selected (development and operation of a new open pit mine, associated waste rock pile, new heap leach pad, and three ISR wellfields), up to thirty (30) historic properties may potentially be adversely affected. Three additional historic properties are located within 30 meters of proposed construction, and measures may be needed to either avoid or minimize effects. The historic properties consist primarily of lithic scatters, a petroglyph panel, two historic homesteads, and a historic corral (see Appendix B for a list of the sites and the source of the possible impacts). Adverse effects will be resolved through the development and implementation of a Historic Property Treatment Plan (Treatment Plan) which will be included as Appendix D.

Alternative C

If Alternative C is selected (development and operation of a new open pit mine and associated waste rock storage), up to thirty (30) historic properties may potentially be adversely affected. Four additional historic properties are located within 30 meters of proposed construction, and measures may need to be taken to avoid or minimize effects. The historic properties consist primarily of lithic scatters, a petroglyph panel, two historic homesteads, and a historic corral (see Appendix B for a list of the sites and the source of the possible impacts). Adverse effects will be resolved through the development and implementation of a Treatment Plan which will be included as Appendix D.

Alternative D

If Alternative D is selected (development and operation of three ISR wellfields), up to ten (10) historic properties may potentially be adversely affected. Two additional historic properties are located within 30 meters of proposed construction and, and measures may need to be taken to avoid or minimize effects. The historic properties predominantly include lithic scatters, see Appendix B for a list of the sites and the source of the possible impacts. Adverse effects will be resolved through the development and implementation of a Treatment Plan which will be included as Appendix D.

a. Development of a Treatment Plan

Once an Alternative is selected, the Applicant will hire and fund a qualified cultural resource consultant (the Applicant's Consultant) to coordinate with the BLM in the development of a Treatment Plan which will include measures to avoid, minimize, and mitigate adverse effects to historic properties, and a post-review discovery plan as outlined under Stipulation III. The Treatment Plan will be developed in consultation with consulting parties following the consultation and review process outlined below under Stipulation II.a.i. below.

The Treatment Plan will be developed based on finalized, detailed, geographical development plans provided by the Applicant and Treatment Plan development may be phased and/or updated to allow for project variances. When feasible and prudent, measures should be put in place to avoid and minimize adverse effects. Avoidance and minimization measures may include engineering redesign, alternate placement of infrastructure (including ISR well placement), flagging, fencing, and/or archaeological and Tribal monitors. If adverse effects cannot be avoided or minimized, mitigation efforts may include a possible mix of additional site documentation, ethnographies, oral histories, historic contexts, Historic American Engineering Record documentation, LiDAR and/or photogrammetry, and education and interpretive materials like signage or video, but may discourage the use of destructive data recovery measures, and archaeological excavation, unless warranted to address an important research question about past human behavior.

i. Development of the Treatment Plan(s)

Following issuance of a Record of Decision, the Applicant's Consultant will work with the Applicant to obtain detailed geographical development plans. The Applicant's Consultant will work with the BLM to set up a meeting and invite consulting parties and interested Tribes to participate in the development of a Treatment Plan.

1. Consulting parties and interested Tribes will be invited to send a representative to a meeting with BLM prior to the development and submission of an initial draft Treatment Plan. The purpose of this meeting will be to discuss historic property treatment plan options and solicit comments from consulting parties and Tribes regarding proposed treatment options. If requested, the BLM will arrange additional government-to-government meetings and/or field visits with interested Tribes.
2. A draft Treatment Plan will be prepared by the Applicant's Consultant and submitted to BLM for distribution to consulting parties (including SHPO) and interested Tribes. Consulting parties will have 30 calendar days to review and comment on the draft Treatment Plan(s).
3. The BLM will work with the Applicant's Consultant to incorporate or address comments as appropriate. The SITLA will make final determinations

regarding the treatment of historic properties on SITLA owned lands, and once approved by the BLM, a final Treatment Plan will be submitted to the SHPO for comment. Following SHPO comment, the Treatment Plan will be finalized, added to the Agreement as Appendix D and a copy will be submitted to all consulting parties and the Council.

4. If the Treatment Plan is updated to allow for post-review discoveries, project variances or phased project development, the Treatment Plan will be amended following the process outlined above under Stipulations II.a.i.1-3.

b. Submission and Review of Treatment Deliverables

The Applicant will fund the implementation of all treatments agreed to as part of the Treatment Plan. Treatment Plan deliverables, reports, and/or other products produced as part of the Treatment Plan must adhere to the professional standards and permitting requirements outlined below under Stipulation IV.

The SITLA will review the treatment deliverables, reports, and/or other products that are developed to treat historic properties on SITLA owned lands and the BLM will be responsible for the review of all other treatment deliverables, reports, and/or other products. Once the BLM determines that prescribed mitigation deliverables are acceptable, the BLM will disseminate as appropriate for consulting parties and interested Tribes to review. Parties will have 15 days to review and comment. Comments will be considered and incorporated as appropriate before BLM determines the deliverables are final. Additional submission and/or review thresholds may be included in the Treatment Plan.

c. Project Authorization

The BLM may grant an authorization to begin construction in portions of the APE that do not contain historic properties. Authorization to proceed with construction where historic properties may be affected will be granted after the applicable treatment is finalized in the Treatment Plan, any prescribed fieldwork in and around the historic property(ies) is complete, and if appropriate, a final report(s) is accepted by the SHPO. Pursuant to Section 6(a) of the ARPA (as codified under 36 CFR § 296.4) the Applicant will be held responsible for any unauthorized damage to archaeological resources.

III. Post Review Discoveries

The Treatment Plan will include a post-review discovery plan consistent with the POA, the *State Protocol Agreement Between the Bureau of Land Management and the Utah State Historic Preservation Office* (the Protocol) Section IV.A., 36 CFR § 800.13, and applicable State law. The discovery plan will outline the process that will be followed and used to account for previously unidentified surface or sub-surface archeological artifacts, features, or sites (cultural resources), the means for determining eligibility, making a finding of effect, and a process for treating unanticipated effects on historic properties.

If cultural resources are discovered during project implementation, the discovery will be addressed in the manner outlined in the Treatment Plan. The POA is included as Appendix C, and if any of the cultural resources are determined to be cultural objects, the BLM shall ensure that measures outlined in the POA are followed.

IV. Professional Qualifications and Archaeological Permitting

- a. The BLM will ensure that cultural resource work undertaken by the BLM as part of this Agreement will be completed by BLM staff who meet the qualifications established by the Office of Personnel Management for a GS-0193 professional series archaeologist (BLM

Archaeologist). Archaeological consultants working on BLM administered lands to satisfy the Stipulations of this Agreement are required to work under a valid BLM Permit for Archaeological Investigations and obtain the necessary Fieldwork Authorizations.

- b. If the Treatment Plan includes data recovery, testing, or excavation, the consultant must obtain a permit under the ARPA (16 U.S.C. § 470cc). The BLM will continue consultation with interested Indian Tribes to ensure that the POA required under NAGPRA and Stipulation I adequately address any planned data recovery prior to issuing a permit under ARPA.
- c. The SITLA will ensure that cultural resources work undertaken to fulfil measures outlined in the Treatment Plan on lands owned by SITLA will be completed under the direction of a principal investigator who possesses a PLPCO permit to conduct archaeological surveys and, if archaeological excavation is required, an excavation permit pursuant to U.C.A. 9-8a-305(1)(a).
- d. All work undertaken to satisfy the terms of this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44739).

V. Confidentiality of Historic Property Information

The parties to this Agreement acknowledge that some of the historic properties covered by this Agreement may be subject to the provisions of Section 9 of the ARPA and other applicable laws, which require withholding information about the nature and location of archaeological resources. The BLM may withhold information accordingly. If the Agency Official determines that it is necessary to share sensitive information, the BLM may require data sharing agreements with parties interested in obtaining sensitive information.

VI. Monitoring and Reporting

The BLM shall provide all parties to this Agreement a digital letter report when major developments are completed pursuant to the terms of the agreement. Major developments would include but not be limited to development and finalization of the Treatment Plan, implementation of the treatments stipulated in the Plan, and when deliverables are available. Reports shall also include any proposed scheduling changes, problems encountered, and/or disputes and objections received in the BLM's efforts to carry out the terms of this Agreement.

VII. Duration

This Agreement will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time the BLM may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation XIV (Amendments) below.

XIII. Dispute Resolution

Should any consulting party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:

- a. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the Council. The Council shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The BLM will then

proceed according to this final decision.

- b. If the Council does not provide its advice regarding the dispute within the thirty (30) day period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement and provide them and the Council with a copy of such written response.
- c. The BLM's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XIV. Amendments

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories and is filed with the Council.

XV. Termination

If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XIV. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification of the other signatories.

Once the Agreement is terminated, and prior to continuing work on the undertaking, the BLM must either (a) execute an Agreement pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR 800.7. The BLM shall notify the signatories as to the course of action it will pursue.

Execution of this Agreement by the BLM and the SHPO and implementation of its terms are evidence that the BLM have taken into account the effects of this undertaking on historic properties.

**MEMORANDUM OF AGREEMENT
BETWEEN THE
THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT
MOAB FIELD OFFICE
AND
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
LISBON VALLEY MINING COMPANY'S MINE PLAN OF OPERATIONS MODIFICATION,
SAN JUAN COUNTY, UTAH**

SIGNATORY

Bureau of Land Management, Canyon Country District

NICOLLEE GADDIS-WYATT Digitally signed by NICOLLEE GADDIS-WYATT
Date: 2025.10.06 10:54:11 -06'00' _____ Date
Nicollee Gaddis-Wyatt, District Manager

