

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT, SIERRA FRONT FIELD OFFICE  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND COMSTOCK MINING, LLC  
REGARDING  
THE AMERICAN FLAT ROAD/LUCERNE HAUL ROAD RIGHT-OF-WAY**

**WHEREAS**, the Bureau of Land Management, Sierra Front Field Office (BLM) plans to issue a Right-of-Way grant amendment for The American Flat and Lucerne Haul Road Right-of-Way (henceforth the Undertaking) pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 USC § 1761); and

**WHEREAS**, the Undertaking consists of an exclusive use haul road to be segregated from the American Flat Road, to haul ore from Comstock Mining, LLC's (Proponent) mining operations in Gold Canyon to their processing facility located in American Flat; and

**WHEREAS**, the BLM has defined the Undertaking's area of potential effect (APE) as all geographic areas within which the Undertaking may have direct or indirect effects to historic properties (Attachment 1, APE Maps). The APE for ground disturbance has been determined to be a 500 foot (ft.) wide corridor, or 250 ft. on either side of the Right-of-Way centerline. The total linear distance of the corridor is approximately 1.8 miles. The APE for ground disturbance occupies 178 acres. The BLM also defined an APE for visual effects to historic properties within the viewshed of the project. The boundary of the viewshed APE is one mile from the proposed action unless otherwise obstructed by natural topographic features. The viewshed APE totals approximately 2,160 acres; and

**WHEREAS**, unrelated to this undertaking, the Proponent has voluntarily implemented mitigation measures for effects to three historic properties on private lands that fall within the APE for the Undertaking, these mitigation measures are not subject to compliance with Section 106 of the NHPA, these activities are ongoing as described in the report entitled *An Historic Properties Treatment Plan for Three Historic Properties in the Keystone-Justice Claim Group* and; and

**WHEREAS**, a cultural resources inventory completed for the Undertaking's APE has identified twelve historic properties. The BLM has determined that the Undertaking may have an adverse effect to eight historic properties within the APE,

CrNV-03-1489/4371, 26ST602: Justice Shaft and ore bin (criteria A and C),  
CrNV-03-4378, 26ST609: Justice Mine – shaft and features (criteria A, C, and D),  
CrNV-03-4408, 26ST611: Historic prospecting and domestic artifacts (criterion D),  
CrNV-03-8903, 26ST618: Prehistoric lithic scatter (criterion D),

CrNV-03-8907, 26ST475: Historic Keystone Cut (criterion D),  
CrNV-03-8910, 26ST623: Historic Gold Hill Cemetery (criteria A, C, and D),  
CrNV-03-8914, 26ST627: Historic Con Chollar Mill (criteria A, C, and D),  
CrNV-03-8915, 26ST628: Historic residential feature and artifacts (criteria A and D),

and has consulted with the State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800 and Section 106 of the National Historic Preservation Act (54 USC § 306108); and

**WHEREAS**, in accordance with Stipulation 5.b.2 of the 2012 *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 National Historic Preservation Act*, the BLM has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination and has invited the ACHP to participate in resolution of adverse effects in accordance with 36 CFR § 800.10(b), with the ACHP choosing to participate pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, the BLM has consulted with the Washoe Tribe of Nevada and California and the Yerington Paiute Tribe on the Undertaking, and has invited both tribes to participate in resolution of adverse effects, with both tribes choosing not to participate; and

**WHEREAS**, the Undertaking is located in the Virginia City National Historic Landmark, and in accordance with Section 110 of the NHPA (54 U.S.C. 306107) and 36 CFR § 800.10(c), the BLM has invited the National Park Service (NPS) to participate in resolution of adverse effects, with the NPS choosing not to participate; and

**WHEREAS**, the BLM has consulted with the Comstock Historic District Commission (CHDC), the Comstock Cemeteries Foundation (CCF), Storey County, and Larry Wahrenbrock (Individual) regarding the effects of the Undertaking on historic properties and has invited them to sign this Memorandum of Agreement (MOA) as Concurring Parties; and

**WHEREAS**, the regulations at 36 CFR § 800.6(c)(1-3) identify three types of signatories to this agreement: Signatories, Invited Signatories and Concurring Parties, which are referred to collectively as the Parties; and

**WHEREAS**, any Invited Signatories that sign this MOA shall have the same rights with regard to seeking amendment or termination as other Signatories per 36 CFR § 800.6(c)(2)(i); and

**WHEREAS**, the Parties agree that this MOA may be signed in counterparts and the executed MOA, and each signature, will be effective and binding as if all Parties had signed the same document.

**NOW, THEREFORE**, the BLM, the SHPO, the ACHP, and the Proponent agree that the Undertaking shall be implemented in accordance with the following stipulations in order to resolve adverse effects of the Undertaking on historic properties.

## STIPULATIONS

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

### **I. Roles and Responsibilities**

- A. The Field Manager for the Sierra Front Field Office is the BLM Authorized Officer for the Undertaking. The Field Manager, or designee, is the point of contact for the BLM.
- B. The President of the Proponent, or designee, is the point of contact for the Proponent.
- C. The State Historic Preservation Officer, or designee, is the point of contact for the SHPO.
- D. The Proponent shall be responsible for all expenses associated with carrying out the provisions of this MOA, except for costs incurred by the Parties during fulfillment of the responsibilities assigned to them in this MOA. The Proponent is responsible for costs incurred by the BLM in accordance with the cost recovery agreement between the Proponent and the BLM.
- E. The BLM, in coordination with the Proponent and in consultation with the SHPO, shall ensure that all work undertaken to satisfy the terms of this MOA meets the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44742, September 23, 1983) (Standards) and takes into consideration the ACHP's Section 106 Archaeology Guidance (2009; available online at [www.achp.gov/archguide](http://www.achp.gov/archguide)), the *BLM Nevada Guidelines and Standards for Archaeological Inventory, 5<sup>th</sup> edition* (BLM Guidelines) or any subsequent edition issued by the BLM, and any other applicable guidelines or standards.
- F. The BLM, in coordination with the Proponent and in consultation with the SHPO, shall ensure that ethnographic, historic, architectural, and archaeological work conducted pursuant to this MOA is carried out by or under the direct supervision of persons meeting qualifications set forth in the *Secretary of the Interior's Professional Qualifications Standards* (currently available at [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) and who have been permitted for such work, as necessary, by the BLM Nevada State Office.
- G. The curation of all cultural materials encountered during controlled archaeological investigations for the Undertaking is the responsibility of the BLM (36 CFR §79). The

Proponent shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 USC § 470) on Federal lands and with the Nevada Revised Statutes (NRS) 381 for private lands. The Proponent is responsible for all expenses associated with the curation of cultural materials.

## **II. Measures Common to All Historic Properties within the APE**

- A. Except where addressed through specific mitigation measures below, existing roads within the boundaries of historic properties will not be expanded beyond the current footprint, inclusive of existing berms and travel surfaces. This means that no new ground disturbance will take place within historic properties, except where specifically addressed below.
- B. Construction or modification of road corridors and/or berms within 50 meters of historic properties will require that an archaeological monitor be present during ground disturbing activities.
- C. Avoidance of historic properties
  - 1. Upon execution of the MOA, and prior to initiating surface disturbing activities associated with the Undertaking, the Proponent shall place temporary construction fencing around all historic properties that may be directly affected, creating a buffer of 30 meters, except where fencing would block existing travel corridors, in which case the fencing would be placed along the edge of the road.
  - 2. The Proponent shall monitor all avoidance areas at least once per week to ensure that all flagging or fencing remains intact and that no unauthorized disturbances have occurred within the avoidance areas. The Proponent shall report any such disturbances to the BLM within 24 hours of discovery.
  - 3. All avoidance areas will be maintained in place until a Notice to Proceed (NTP) in accordance with Stipulation IV is issued for work within the boundary of the historic property or construction has been completed for the project. The avoidance areas will be updated by the Proponent's archaeological consultant, in coordination with the BLM, during project implementation to reflect any changes resulting from the receipt of a NTP or the identification of an unanticipated discovery.
- D. Archaeological monitoring and reporting
  - 1. For the purposes of this MOA, archaeological monitoring is defined as on-the-ground, close-up observation of construction-related ground disturbance by a

Nevada BLM-permitted archaeologist who is empowered, in a discovery situation, to stop all activities in the immediate vicinity (30 meters) of the discovery to ensure protection of the discovery. The archaeological monitor watches for any kind of archaeological materials that are exposed during ground-disturbing construction activities.

2. Archeological monitors report directly to the Proponent's archaeological consultant on a daily basis. The Proponent's archaeological consultant will provide weekly summary letters by email to the BLM for the preceding week's activities.
3. Any discovery of archaeological resources will be handled in accordance with Attachment 2, *Post-Review Discovery Plan*.

### **III. Specific Mitigation and Avoidance Measures**

#### **A. Mitigation of Effect to Historic Property CrNV-03-1489/4371**

CrNV-03-1489/4371 is located within the Undertaking's APE and is bisected by the Lucerne Haul Road. Unrelated to activities involving the Undertaking, mitigation measures have been developed and implemented on private lands in this property. It will not be possible for the Undertaking to avoid the historic property; therefore additional mitigation measures will be necessary. Mitigation measures, including feature stabilization and interpretive materials, are defined in Attachment 3, *Historic Properties Treatment Plan for Mitigation of Historic Sites within the Comstock Mining, LLC Right-of-Way Permit, Storey County, Nevada*.

#### **B. Mitigation of Effect to Historic Property CrNV-03-4378**

CrNV-03-4378 is located within the Undertaking's APE and is bisected by the Lucerne Haul Road. Unrelated to activities in the scope of this Undertaking, mitigation measures have been developed and implemented on private lands within this property. It will not be possible for the Undertaking to avoid the property, therefore additional mitigation measures will be necessary. Mitigation measures for this property, including data recovery, documentation, and the development of educational materials, are defined in Attachment 3.

#### **C. Mitigation of Effect to Historic Property CrNV-03-4408**

CrNV-03-4408 is located within the Undertaking's APE and within planned ground disturbance for road modification. The property will be adversely affected by the Undertaking. Mitigation measures for this property, including data recovery, are

defined in Attachment 3.

D. Mitigation of Effect to Historic Property CrNV-03-8903

CrNV-03-8903 is located within the Undertaking's APE and within planned ground disturbance for road modification. This property will be adversely affected by the Undertaking. Mitigation measures for this property, including data recovery, are defined in Attachment 4, *Data Recovery Plan for Prehistoric Resource CrNV-03-8903 for Comstock Mining LLC's Right-of-Way Permit, Storey County, Nevada*.

E. Specific Measures to Avoid Effects to Historic Property CrNV-03-8907

CrNV-03-8907 is located within the Undertaking's APE and is bordered by the Lucerne Haul Road. Unrelated to activities in the scope of this Undertaking, the intact, contributing element of this property was capped and preserved in place. The area was later subject to reclamation and re-vegetation actions. The contributing element of this property will remain capped and preserved in place, and will be avoided by the Undertaking.

F. Specific Measures to Avoid Effects to Historic Property CrNV-03-8910

Due to the presence of historic waste rock and the unknown depth of the original ground surface, an archaeological monitor will be present during all initial grading, and all associated ground disturbance activities within **50 meters** of CrNV-03-8910, regardless of depth. Following notification to BLM, the Proponent will invite representatives of the CCF to be present during archaeological monitoring in the vicinity of this property. The slope below this property will be stabilized through construction of a rock retaining wall to prevent erosion. Construction of the retaining wall may proceed only after review and approval by the CHDC.

G. Specific Measures to Avoid Effects to Historic Property CrNV-03-8914

Road modifications proposed as part of the Undertaking have the potential to affect CrNV-03-8914 through movement of sediment downslope onto the property. During the initial grading activities for modifications to the road, an archaeological monitor will be present to ensure no impacts to CrNV-03-8914 occur. Instead of using a center crown design, the road will be graded so as to drain water to the north side, away from the property, to limit future deposition of sediment onto the property.

Following the modification of the road corridor, a guard rail will be installed on the south side of the road for safety purposes and to serve as a physical barrier to prevent inadvertent expansion of the road and berms from future road use and maintenance. Construction of the guard rail may proceed only after review and approval by the

CHDC.

H. Mitigation of Effect to Historic Property CrNV-03-8915

CrNV-03-8915 is currently undercut by the existing road, and stabilization measures are not feasible. Mitigation measures for this property, including data recovery and development of educational materials, are defined in Attachment 3.

**IV. NOTICES TO PROCEED (NTP)**

Upon execution of the MOA, the BLM may issue a NTP to the Proponent for individual construction activities or areas under any of the following conditions:

- A. The BLM has determined that the construction activities or areas are not inside a historic property and avoidance/monitoring measures defined in Stipulation II.B and II.C have been implemented in the vicinity of historic properties; or
- B. The Proponent, through the archaeological consultant, has implemented the Historic Properties Treatment Plan (HPTP) for the historic property and:
  - 1. The fieldwork phase of the HPTP has been completed (fieldwork for the purpose of this MOA is defined as on-the-ground activities involving the historic property including data recovery, photographic, and/or land survey documentation); and
  - 2. The BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and
  - 3. The BLM has provided an electronic copy of the summary to SHPO; and
  - 4. The SHPO has reviewed the summary and concurs or does not respond within five working days of receipt, the BLM shall assume concurrence and issue the NTP for construction inside that historic property.
- C. The Proponent shall not begin any ground disturbing activities within the boundary of any historic property until a NTP is issued for work within the boundary of that historic property.

## V. POST-REVIEW DISCOVERIES

Stipulations of this MOA are intended to identify and mitigate adverse effects to historic properties. Unplanned discoveries of buried cultural resources are not anticipated; however, if there is an unplanned discovery, the BLM will ensure that the provisions in Attachment 2 are met.

## VI. MONITORING AND REPORTING

A. Any Signatory or Invited Signatory may monitor actions carried out pursuant to this MOA. To the extent practicable, monitoring activities should minimize the number of monitors involved in the undertaking. The Proponent is responsible for ensuring that archaeological monitoring defined in Stipulation II of this MOA, is carried out.

### B. Reporting

1. A draft report of treatment or other mitigation activities will be due to the BLM from CM's contractor within 12 months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
2. BLM should review and comment on any report submitted by contractors within 60 calendar days of receipt.
3. The BLM shall submit the results of treatment efforts, including discovery situations, treatment plans for historic property discoveries, and treatment reports to the SHPO, and to the Tribe(s) for prehistoric properties, for a 30-calendar-day review and comment period.
4. If the Tribe(s) or SHPO fail to respond to the BLM within thirty (30) calendar days of the receipt of a submission, the BLM shall presume concurrence with the findings and recommendations as detailed in the submission and proceed accordingly.
5. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this MOA will be provided to the SHPO. The BLM will also ensure that these reports will be provided to the Tribe(s) for prehistoric properties, as long as a data-sharing agreement is in place. The BLM shall notify the other Parties that final reports are available for review in-person at the BLM office, but shall not provide copies. All such reports shall be consistent with contemporary professional standards and the *Department of Interior's Formal Standards for Final Reports of Data Recovery Programs* (48 Federal Register 44716-44740).

6. Parties to this MOA will keep confidential any information about the location and character of historic properties, and will not disseminate information about the location or character of historic properties revealed to them as the result of participation in this MOA. The BLM may withhold information about the location and character of historic properties in accordance with 36 CFR § 800.11(c).

## **VII. DURATION**

This MOA will expire if its terms are not carried out within five years from the date of its execution. Prior to such time, the BLM may consult with the Parties to reconsider the terms of the MOA and amend it in accordance with Stipulation IX below.

## **VIII. DISPUTE RESOLUTION**

Should any Signatory or Invited Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA 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 ACHP with copies to the Parties. The ACHP shall provide the BLM with its advice on the resolution of the objection within 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 ACHP and the Parties and provide them with a copy of this written response. The BLM will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the 30-day time 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 provide them and the ACHP with a copy of such written response.

C. Carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

## **IX. AMENDMENTS**

This MOA 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 is filed with the ACHP.

## **X. TERMINATION**

If any Signatory or Invited Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and Invited Signatories to develop an amendment per Stipulation IX, above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

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

Execution of this MOA by the BLM, the SHPO, the ACHP, and CM and implementation of its terms evidence that the BLM has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

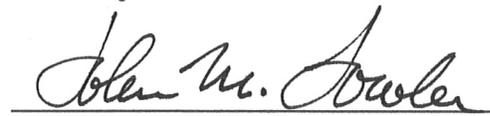
**Bureau of Land Management, Sierra Front Field Office**

 Date 12/17/15  
Bryant Smith, Acting Field Manager, Sierra Front Field Office

**Nevada State Historic Preservation Officer**

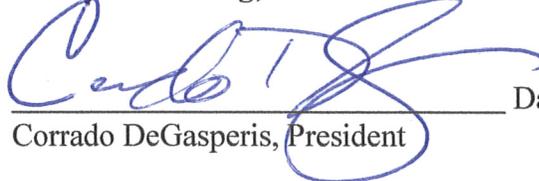
 Date 12/22/15  
Rebecca L. Palmer, State Historic Preservation Officer

**Advisory Council on Historic Preservation**

 Date 2/17/16  
John M. Fowler, Executive Director

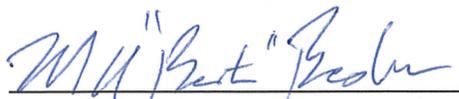
**INVITED SIGNATORIES:**

**Comstock Mining, LLC**

 Date 11/20/15  
Corrado DeGasperi, President

**CONCURRING PARTIES:**

**Comstock Historic District Commission**

 Date 12/14/15  
Michael "Bert" Bedeau, Administrator, Comstock Historic District

**Comstock Cemeteries Foundation**

\_\_\_\_\_ Date  
Candace Wheeler, Executive Director

**Storey County**

\_\_\_\_\_ Date  
Pat Whitten, County Manager

**Larry Wahrenbrock**

\_\_\_\_\_ Date  
Individual

RECEIVED

DEC 21 2015

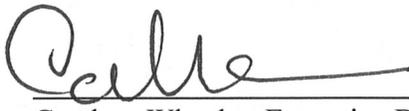
BUREAU OF LAND MANAGEMENT

**CONCURRING PARTIES:**

**Comstock Historic District Commission**

\_\_\_\_\_ Date  
Michael "Bert" Bedeau, Administrator, Comstock Historic District

**Comstock Cemeteries Foundation**

 \_\_\_\_\_ Date 12/15/15  
Candace Wheeler, Executive Director

**Storey County**

\_\_\_\_\_ Date  
Pat Whitten, County Manager

**Larry Wahrenbrock**

\_\_\_\_\_ Date  
Individual

### **Attachment List**

Attachment 1 – APE Maps

Attachment 2 – Post-Review Discovery Plan

Attachment 3 – *Historic Properties Treatment Plan for Mitigation of Historic Sites within the Comstock Mining, LLC Right-of-Way Permit, Storey County, Nevada (CRR 3-2643.3)*

Attachment 4 - *Data Recovery Plan for Prehistoric Site CrNV-03-8903 for Comstock Mining LLC's Right-of-Way Permit, Storey County, Nevada (CRR 3-2643.2)*