

American Flat Road/Lucerne Access Right-of-Way Amendment

Finding of No Significant Impact

DOI-BLM-NV-C020-2013-0005-EA

August 1, 2016



Introduction

Comstock Mining, LLC has applied to the Bureau of Land Management (BLM), Sierra Front Field Office to amend their existing right-of-way (ROW) grant (NVN 091237) issued on July 6, 2012. The ROW amendment (ROWA) would authorize the construction, maintenance, and use the American Flat and Lucerne Haul roads across public land segments between the Lucerne Pit and heap leach processing facility in American Flat. The Proposed Action would designate the Lucerne Haul Road as “exclusive use” by haul trucks for public safety. The Proposed Action would also authorize the reclamation of an abandon road that leads to the former United Comstock Merger Mill in American Flat. The purpose of the Project is to provide a long-term and safe road network across public land segments that can accommodate haul trucks in order to deliver ore from the Lucerne Pit to a heap leach processing facility, both located on private lands.

The BLM has prepared a Final Environmental Assessment (FEA) in accordance with the National Environmental Policy Act (NEPA) and to assist the Authorized Officer in deciding whether to grant the proposed ROWA (Proposed Action). The FEA evaluated the Proposed Action and two alternatives.

Background

On May 21, 2012, the BLM issued a “Notice to Cease and Desist” letter to Comstock Mining Inc. for alleged use and development of public land without authorization, prevention or obstruction of free passage or transit over or through public lands in violation of Federal Land Management Policy Act of 1976 (United States Code [U.S.C.] 1701 et seq.), the Act of February 25, 1885 (43 U.S.C. 1063), and the regulations at 43 Code of Federal Regulations (CFR) 2808.10 (“What is Trespass?”) and 9239.2-5 (“Settlement and Free Passage of Public Lands Not to be Obstructed”). On June 6, 2012, the BLM issued a “Notice of Trespass” letter to Comstock Mining Inc. and assigned the trespass to BLM case file NVN 091117. These notices involved the use of the American Flat Road between State Route 342 and Comstock Mining Inc. heap leach processing facility in American Flat, the Lucerne Haul Road and “bypass road” through “Lot 51¹,” and a segment of public land north of the Lucerne Pit.

On June 25, 2012, Comstock Mining, LLC² submitted to the BLM a SF-299 application (“Application for Transportation and Utility Systems and Facilities on Federal Lands”) for their

¹ “Lot 51” is a Storey County designation for Assessor Parcel Number 002-131-001 (Gold Hill Townsite, Block 8, Range D, Lot 51). According to a BLM Cadastral survey completed in May 2016, the legal description for “Lot 51” is T16N, R21E, Section 5, Lot 24 and Section 6, Lot 13 for approximately 23.76 acres.

² Comstock Mining, LLC is the wholly-owned subsidiary of Comstock Mining Inc. Since the entity of Comstock Mining Inc. (Inc.) owns all of the entity of Comstock Mining, LLC (LLC), all activity that happens in LLC rolls up to Inc. They are treated as one consolidated company for tax purposes and for Security and Exchange Commission reporting purposes as the consolidated ownership is the same. BLM records also include “Northern Comstock LLC,” a wholly-owned subsidiary of Comstock Mining Inc.

use of the American Flat Road. On July 2, 2012, the BLM sent correspondence to Comstock Mining, LLC for the processing fee for the requested right-of-way (ROW), and also sent the unsigned ROW grant to Comstock Mining, LLC for their signature.

On July 6, 2012, the BLM notified Comstock Mining Inc. that it had satisfied the conditions to resolve the trespass case, and the case file (NVN 091117) was closed. Also on July 6, 2012, the BLM issued an “interim³” ROW to Comstock Mining, LLC for their use of the American Flat Road through December 31, 2014 (Figure 10 of the Final Environmental Assessment [FEA]). The ROW (NVN 091237⁴) authorized Comstock Mining, LLC to transport ore from their mining operation in the Billie the Kid and Lucerne pits, to their existing heap leach processing facility located in American Flat. The ROW was approved under several conditions including: Comstock Mining, LLC was permitted to use highway-approved vehicles only; and Comstock Mining, LLC was not authorized to conduct any new construction, expansion, restriction of access to the public, or addition to existing berms/creation of new berms along the American Flat Road. A condition of the ROW was that Comstock Mining, LLC would submit a new ROW application in order to make modifications or improvements to the roads subject of NVN 091237. This ROW amendment (ROWA) would be to provide long-term and comprehensive access across public land segments to mining on private lands.

Comstock Mining, LLC began its use of the American Flat Road under the approved ROW on July 6, 2012. On August 2, 2012, Comstock Mining, LLC commenced surface mining in the Billie the Kid Pit, and hauled ore northbound on State Route 342 with 16.5-ton haul trucks⁵. Haul trucks then traveled southwest on the American Flat Road to an existing heap leach processing facility in American Flat. On February 13, 2013, the BLM allowed a Class 1 Color-of-Title (COT) claim⁶ to proceed for a parcel known as “Lot 51” (NVN 091521). As a result, Comstock Mining, LLC shifted all haul traffic from northbound State Route 342 to the existing Lucerne Haul Road (non-exclusively) through “Lot 51,” then onto the American Flat Road southwest to their heap leach processing facility (Figure 10 of the FEA). Comstock Mining, LLC also changed the type of haul truck from 16.5-ton haul trucks to 38-ton articulated trucks.

Comstock Mining, LLC currently uses the American Flat Road for employee, service, and utility vehicles between State Route 342 and “Lot 51.” Their existing administrative offices are located on the American Flat Road on Comstock Mining, LLC owned land, just west of State Route 342 (Figure 2 of the FEA). Although authorized under their existing ROW, Comstock Mining, LLC

³ Under Title V of the Federal Land Management Policy Act, a ROW may be authorized up to 30-years.

⁴ BLM documents and databases continue to use multiple versions of serial numbers for case files. Differences in serial number nomenclature will occur throughout this document, and one use may be slightly different than one found in the case file or on the Master Title Plats.

⁵ All haul truck capacities are based on empty gross vehicle weight.

⁶ A Class 1 COT claim is non-discretionary. In 1953 the United States Congress amended the 1928 act which directed Class 1 COT claims to be mandatory.

does not currently haul mined ore on the portion of the American Flat Road between State Route 342 and “Lot 51.”

On July 11, 2012, and amended on August 3, 2012, Comstock Mining, LLC submitted to the BLM a ROWA application and draft plan of development (POD). In the ROWA and as described in the final POD (FPOD) (CM, 2016), Comstock Mining, LLC requested authorization from the BLM to construct, maintain, and use the existing Lucerne Haul Road across public land segments and to designate it as an exclusive use road for public safety (Proposed Action). The Proposed Action also included proposed modifications to the existing American Flat Road through the separation of haul traffic from public traffic for public safety, and reclamation of an existing road to the former United Comstock Merger Mill in American Flat no longer in use (Figure 2 of the FEA).

On June 4, 2014, Comstock Mining, LLC submitted to the BLM a SF-299 application to renew ROW NVN 091237. The original ROW was renewed on October 6, 2014 without changes and was extended until December 31, 2017. The extension of the “interim” ROW issued on July 6, 2012 was determined to be necessary by the BLM due to the lengthy time involved with the compliance of the ROWA under the National Historic Preservation Act (NHPA).

The Project is located in Gold Hill, Storey County, Nevada, legally described as Township 16 North, Range 21 East (T16N, R21E), Sections, 5, 6, 8, 9, and 16 (within), Mount Diablo Base and Meridian (Figure 1). The location of the Project Area for the Proposed Action, which encompasses approximately 88 acres of public and private lands, is depicted in Figure 2 of the FEA.

The Project Area has a long history of modern mining activities, including open pit mining, haul road construction, modification and use, and mining exploration activities. Portions of the American Flat Road have likely existed in one form or another since the 1920’s (the time of the operation of the United Comstock Merger Mill). Photographic records and aerial imagery have documented the existence of the American Flat Road since 1978. At that time Houston Oil and Minerals Corp. (HOM) processed mined ore from the Imperial Mine located in Gold Hill with their 1,000-ton processing facility in American Flat⁷. Other operators that continued to construct, modify, and use the road system in the Project Area included United Mining Corp. between 1983 and 1985 (which also operated the HOM mill), Oliver Hills Mining Company in 1991, and The Plum Mining Co., LLC in 1999. The “bypass road” through “Lot 51” was constructed by The Plum Mining, Co., LLC in 1999 as a part of their mining operation in the

⁷ Prior to November 26, 1980, mining and exploration activities were not subject regulations under 43 CFR 3809 (45 Fed. Reg. 78,902). Therefore, mining and exploration activities were not subject to Notice requirements until that time, and were not subject to compliance under the National Environmental Policy Act (NEPA) or NHPA.

Billie the Kid Pit⁸. The road through “Lot 51” (aka “Lucerne Haul Road”), in use today by Comstock Mining, LLC, was originally constructed in 2005 by The Plum Mining, Co. LLC. The configuration of the Lucerne Haul Road through “Lot 51” has existed in its current alignment since 2006. The construction of the heap leach processing facility in American Flat currently in use by Comstock Mining, LLC occurred between 2003 through 2004 by The Plum Mining Co., LLC.

Other modern activities in the Project Area include: public access via the American Flat Road for sightseeing at the former United Comstock Merger Mill in American Flat, the Virginia and Truckee (V&T) Railroad, the Gold Hill (Masonic) Cemetery; and access to several private residences located in American Flat.

Land tenure in the Project Area is highly fragmented and title is clouded due to decades of mining patents being issued to various operators. Rectangular shaped mining patents have left many public land segments fragmented and discontinuous. The BLM has previously identified all public lands (approximately 19,000 acres) within Storey County as available for disposal (conveyance out of federal ownership) in the Carson City Field Office Consolidated Resource Management Plan (BLM, 2001). Disputes regarding the ownership of lands in Storey County occur on an intermittent basis. On July 13, 2016, BLM completed a Class 1 Color-of-Title (COT) claim for a 23.76-acre parcel known as “Lot 51,” which is located in the Project Area. The conveyance under the COT was for the surface rights to “Lot 51.” Additional public lands in the Project Area would be conveyed out of federal ownership as a part of “Restoring Storey County,” included in the National Defense Authorization Act, enacted into law on December 19, 2014. The result of this land conveyance would transfer out of federal ownership approximately 1,745 acres in Storey County, including 12 acres of public lands within the Project Area (Figure 20 of the FEA).

Determination

On the basis of the information contained in the *American Flat Road/Lucerne Haul Road Final Environmental Assessment* (DOI-BLM-NV-C000-2013-0005-EA), I have determined that the Proposed Action does not constitute a “major federal action” having a significant effect on the human environment. Therefore an Environmental Impact Statement would not be required.

This finding is based on my consideration of the Council on Environmental Quality criteria for significance (40 CFR 1508.27), both with regard to the *context* and *intensity* of the impacts described in the FEA, which is hereby incorporated by reference.

⁸ Revised 43 CFR 3809 regulations (65 Fed. Reg. 69,998) became effective on January 20, 2001. Prior to that time, mining could occur on public lands under a Notice. Mining activities under a Notice did not require compliance under the NEPA or NHPA. As a result of these regulations, effective in 2003 a Plan of Operations must be submitted for mining activities on public lands.

Context

The Project Area consists of the American Flat and Lucerne Haul roads and a road that leads to the former United Comstock Merger Mill in American Flat. The American Flat and Lucerne Haul roads lie in between an existing heap leach processing facility located to the west in American Flat, and an open pit mine located southeast and adjacent to State Route 342 (all on private lands) (Figure 2 of the FEA). Modern mining operations, consisting of open pit mining, haul road construction, modification, use, and processing mined material, have been occurring in the Project Area since at least 1978, in addition to those mining activities of earlier ‘historic’ periods. These activities have included access across public land segments to mining and exploration activities on private lands not subject to the Mining Act (3809 regulations) or BLM decision-making. Exploration and mining activities occurred in the Project Area prior to the BLM establishing regulations to govern such activities. In addition, largely due to clouded and fragmented land ownership patterns in the Project Area, exploration, road use and modifications have also occurred in trespass on public lands.

As detailed in Section 5.2.1 of the FEA, there have been the following modern mining activities in the Project Area since 1978:

1. In 1977, the Houston Oil and Minerals (HOM) acquired the New York Mine. In 1978 work occurred to reopen access to the underground workings. HOM acquired the leases on all of the Gold Hill properties held by the Union Pacific Railroad and later by Minerals Engineering Co. In July 1978, HOM announced that operations at the Imperial Mine in Gold Hill would begin. Ore would be processed at a newly constructed 1,000-ton processing facility (known as the “Comstock Mill”) in American Flat⁹. The mill site (approximately five acres) consisted of a secondary crusher, agitator pond and eight other buildings. HOM constructed the American Flat Road between State Route 342 and their site (just east of Comstock Mining, LLC’s existing heap leach processing facility), including the ancillary road to the south of the existing road, in 1978 as a part of their operations.

In February 1980, massive rock slides occurred in the high wall of the open pit, causing excavation to be suspended. To continue to operate, the pit would have to be expanded east and State Route 342 would have to be relocated. Although these activities were approved by the Storey County Planning Commission, in February 1981 the plans were abandoned;

⁹ Prior to January 1, 1981, mining and exploration activities were not subject regulations under 43 CFR 3809. Therefore, mining and exploration activities were not subject to Notice requirements until that time, and were not subject to compliance under the NEPA or NHPA.

2. In early 1983, United Mining Corp. obtained the HOM holdings (the Comstock Mill and mining claims NMC 189979, NCM 10291, NCM 15110-15115) and restarted mining operations at the New Savage Mine. In April 1985, stating that the mill was operating at a loss because of the drop in gold and silver prices, United Mining Corps closed its operations (Smith, 1998). Between August and October 2006, the abandoned HOM structures were removed from public lands and the former tailings impoundment was reclaimed by El Paso Corp. Concrete, scrap metal, glass, plastic, etc. were buried on site;
3. On July 8, 1991, the BLM approved an Environmental Assessment (EA) for a Plan of Operations for Oliver Hills Mining Company (NVN 069300, N37-89-008P). The Plan was for the Billie the Kid and Lucerne Cut Project. The project included the removal of mined material from the Billie the Kid Pit, with waste rock placed into the Lucerne Cut Pit, and ore would be processed at the Haywood Process Facility in Moundhouse, Nevada. The project also included the construction and widening of an existing haul road (the existing haul road that is in use by Comstock Mining, LLC) (BLM, 1991);
4. In 1998 under Notice (N30-98-020N, reassigned as N 70048 in 2002) The Plum Mining Co., LLC began to conduct exploration activities (18 drill holes) on public lands proximal to the unpatented mining claims in the Billie the Kid Pit (NMC 108773) and Hartford-Lucerne Fractions (NMC 41460 and NMC 416042)¹⁰. The Notice N 70048 was amended in January and September 1999 for the development of a small open pit mine on the Billie the Kid mining claim¹¹. The amendments included the construction of haul road segments, one that would cross through “Lot 51” (now called the “bypass road,” different than the haul road currently used by Comstock Mining, LLC) and tie into the HOM road and American Flat Road under ROW N 56178. The “bypass road” through “Lot 51” was constructed by The Plum Mining Co., LLC in 1999 under Notice N30-98-020N;
5. In January 2001, The Plum Mining Co., LLC notified the BLM of its intent to conduct exploration activities on public lands under Notice (N 74191) in T16N R21E, Section 5;
6. In November 2003, GoldSpring Inc. acquired The Plum Mining Co., LLC and the “Billie the Kid Project,” which included the Billie the Kid, Lucerne and Hartford pits, as well as a 40-acre private land parcel in American Flat. In November 2003, The Plum Mining Co., LLC began construction of the heap leach processing facility in American Flat and improved the existing haul road through “Lot 51” leading to the Lucerne and Hartford pits;

¹⁰ Unpatented mining claims NMC 41460 and NMC 416042 are currently held by Comstock Mining, LLC.

¹¹ Revised 43 CFR 3809 regulations became effective on January 20, 2001. Until that time, mining could occur on public lands under a Notice. As a result of these regulations, a Plan of Operations must be submitted for mining activities on public lands. Prior to this regulation, mining activities under a Notice did not trigger compliance under the NEPA or NHPA.

7. On February 23, 2004, The Plum Mining Co., LLC filed an application to install an above ground temporary, four-inch water pipeline from an existing well (on public land), to The Plum Mining Co., LLC new heap leach processing facility being constructed on nearby on private lands (located in T16N R21E, Section 6, in use today by Comstock Mining, LLC). On March 23, 2004, the BLM issued a categorical exclusion for the ROW, and on April 15, 2004, the amended ROW grant (N 78108) was issued for the water pipeline and well. The grant for the water pipeline was for six months and the well for 30 years. The ROW for the water pipeline expired on October 15, 2004. Construction of the heap leach facility was completed in 2004. At the same time, The Plum Mining Co., LLC requested a modification to their existing Storey County Special Use Permit to include year round processing in American Flat, and year-round mining in the Lucerne Pit, in addition to their on-going mining in the Billie the Kid Pit;
8. In July of 2008, the Nevada Division of Environmental Protection modified Reclamation Permit (#0196) to The Plum Mining Co., LLC which was originally issued in September of 2000. The BLM's case file for The Plum Mining Co., LLC was closed in June 2009.
9. On November 20, 2008, and amended on December 11, 2008, GoldSpring Inc. filed an exploration Notice (NVN 086559), after-the-fact, with the BLM for 29 drill holes and 21 drill pads in T16N R21E, Sections 5 and 8. These areas are on public land adjacent to, and east of State Route 342. The Notice would cover exploration between April 2008 and November 2010. Late in 2008 the BLM determined that the Notice was incomplete. During a compliance inspection in September 2010, the BLM determined that exploration was no longer occurring, however all surface reclamation activities had not been completed. A total of 2.57 acres of surface disturbance occurred on public land. In 2010 GoldSpring Inc. changed its name through a merger acquisition of Comstock Mining Inc., a wholly owned subsidiary; and
10. On July 6, 2012, the BLM issued a ROW for Comstock Mining, LLC's use of the American Flat Road under ROW NVN 091237 (Figure 2 of the FEA). Under this ROW, Comstock Mining, LLC has been able to haul mined ore from the Lucerne Pit to their heap leach processing facility in American Flat. From July 2012 until February 2013, 16.5-ton highway-approved haul trucks transported material from the Lucerne Pit northbound on State Route 342 onto the American Flat Road, then west to Comstock Mining, LLC's existing heap leach processing facility in American Flat. Since February 2013, Comstock Mining, LLC has been hauling mined ore on the Lucerne Haul Road (non-exclusively) through "Lot 51" using 38-ton articulated haul trucks.

Commencing on August 2, 2012, Comstock Mining, LLC has been operating their heap leach processing facility on private lands in American Flat. At that time, Comstock Mining, LLC conducted surface mining activities in the Billie the Kid Pit. After concluding surface mining there, Comstock Mining, LLC proceeded to conduct surface mining activities in the adjacent Lucerne Pit. In early 2016 Comstock Mining, LLC secured all required permits necessary to conduct underground mining.

Recently there have been several initiatives taken to resolve the long-term land tenure conflicts in the Project Area and Storey County. Once completed, these land use tenure adjustments would decrease the amount of public lands within the Project Area. Recent efforts include:

1. In 2013, the BLM Nevada State Cadastral confirmed the Block 8, Range D, Lot 33 town lots were patented in December 1872 and February 1873, respectively. Approximately 297 feet of the American Flat Road cross through the town lots. During a case file review, the BLM was unable to locate these patents in the Public Land Survey System (PLSS). According to the BLM Nevada State Cadastral, the townsite that encompasses the patents is not tied to the PLSS. In 2014, Comstock Mining, LLC renovated the Con Chollar and Overman mine buildings and uses them for administrative purposes. The official land tenure status of the town lots (to be depicted as “private property” on BLM land status maps) would be resolved as a part of the “Restoring Storey County” (see #3 below) (Figure 20 of the FEA).
2. On February 13, 2013, the BLM Nevada State Office allowed Comstock Mining, LLC’s Class 1 COT claim to proceed for “Lot 51,” which is located at the intersection of the American Flat Road and Lucerne Haul Road (Figure 20 of the FEA). The result of the COT claim determination allowed for the removal of haul trucks from State Route 342 and Comstock Mining, LLC’s use onto the non-exclusive Lucerne Haul Road through “Lot 51.” Approximately 860 feet of the American Flat Road and 1,485 feet of the Lucerne Haul Road are within “Lot 51.” A Class 1 COT claim is non-discretionary. In May 2016 the BLM completed the Cadastral survey of “Lot 51.” On July ##, 2016, after receiving the fair market value less equity, the BLM issued a patent for “Lot 51” to Northern Comstock LLC. The conveyance under the COT was for the surface rights to “Lot 51.”
3. On December 19, 2014, the National Defense Authorization Act for Fiscal Year 2015 was signed into law (Public Law [PL] 113-291). Included in the National Defense Authorization Act for Fiscal Year 2015 is Section 3009 (d), a provision affecting public lands managed by the BLM. Under Section 3009 (d) (3) the BLM shall convey to Storey County through a “quitclaim deed” all surface rights of the United States in and to the federal land within the conveyance boundary. The boundary of this conveyance area

includes approximately 1,745 acres of public lands in Gold Hill and Virginia City. The conveyance of lands by quitclaim deed would be subject to valid existing rights. The southern portion of this conveyance area includes the northern portion (approximately 2,435 feet) of the American Flat Road, between “Lot 51” and State Route 342 (approximately 12 acres in the Project Area) (Figure 20 of the FEA). The timeframe for this conveyance is unknown, although Congress expressed a sense that the conveyance should be completed in 18-months (June 19, 2016).

Comstock Mining, LLC’s existing heap leach processing facility occupies approximately 80 acres of private lands. The existing mining operations in the Billie the Kid and Lucerne pits consists of approximately 75 acres of private lands (Figure 2 of the FEA).

The Project Area for the ROWA has been described as approximately 88 acres of public and private lands (Figure 2 of the FEA). Of those approximately 38 acres (or 43 percent) is privately-owned. Upon the conclusion of the land conveyance described in #3 above, the public lands within the Project Area would decrease by approximately 12 acres (or 13 percent). As a result of this future land tenure adjustment, overall public lands within the Project Area would decrease from approximately 50 acres (or 57 percent) to approximately 38 acres (or 41 percent).

The Project Area is within the boundaries of the Virginia City National Historic Landmark and National Historic District¹² (Figure 15 of the FEA). Similar to the Project Area, the land tenure in the Virginia City National Historic Landmark and National Historic District is fragmented and discontinuous. Approximately 64 percent (10,389 acres) of the land area in the Virginia City National Historic Landmark is in public ownership, and 43 percent (14,656 acres) of the land area in the larger Virginia City National Historic District is in public ownership. The largest community in the Virginia City National Historic Landmark and National Historic District is Virginia City itself, with a population of 855 people. Smaller communities are located in Gold Hill and Silver City. National Landmark status carries with it a higher-level of recognition than does the National Register (“National Historic District”). Properties designated as National Historic Landmarks are of national significance and exceptional importance to America’s history. The National Register also recognizes nationally significant properties, but it also includes properties deemed significant at the State and local levels.

The Virginia City National Historic Landmark was officially designated by the Secretary of the Interior on July 4, 1961 and it included Virginia City, “The Divide,” Gold Hill, Silver City, and Dayton. When the National Register of Historic Places (NRHP) was established with the passage of the NHPA in 1966, the Virginia City Historic District was automatically included by

¹² The terms “National Historic District” and “National Register District” are interchangeable and refer to the same geographic location. These terms have also been combined into “National Register Historic District” which also refers to the same geographic location.

virtue of its landmark status. In 1991 the National Register period of significance was extended until 1942, however the National Park Service did not amend/expand the Virginia City National Historic Landmark boundary. As a result, the Virginia City National Historic District and National Historic Landmark boundaries and periods of significance differ.

Intensity

1) Impacts that may be both beneficial and adverse.

The BLM has analyzed and disclosed the beneficial and adverse effects from the Proposed Action and other alternatives in Section 4.0 of the FEA. Under the Proposed Action, a segment of the American Flat Road for approximately 912 feet would be realigned and constructed to segregate haul-traffic on the proposed exclusive use Lucerne Haul Road from public traffic. Currently public traffic heading southwest on the American Flat Road to access the V&T Railroad, to visit the former United Comstock Merger Mill in American Flat, and private residences in American Flat intermix with 38-ton haul trucks. Due to conditions imposed by the BLM in granting ROW NVN 091237, Comstock Mining, LLC is prevented from making road modifications. Granting the ROWA would allow for comprehensive and long-term access for mining-related traffic and the public accessing American Flat.

Under the Proposed Action, Comstock Mining, LLC would address a blind curve which poses a hazard to public safety. North bound traffic on the American Flat Road must stop before processing near the intersection of the Gold Hill (Masonic Cemetery). Comstock Mining, LLC would modify the current roadbed to allow for a greater line of sight, improving the safe use of the road for the public.

Since August of 2012, Comstock Mining, LLC has hauled mined material from the Lucerne Pit to a heap leach processing facility in American Flat with 16.5-ton or 38-ton haul trucks. Round trips per day would decrease from up to 118 round trips per day under the No Action/Current Management Alternative to up to 100 round trips per day with 60-ton haul trucks under the Proposed Action. Haul-traffic causes displacement of wildlife species that may be present in the Project Area. The Project Area has low quality wildlife habitat and there are no sensitive biological resources present. Haul road modifications could cause approximately 49 acres of disturbance in the Project Area, which has been subject to disturbances from mining-related activities for several decades.

Road modifications have the potential to adversely affect eight historic properties within the Project Area. The BLM has resolved these adverse effects through execution of a Memorandum of Agreement (MOA) under the NHPA.

Under the Proposed Action, Comstock Mining, LLC would continue to utilize public land segments to move mined materials to their processing facility. Under the BLM's mandate to provide for multiple uses of public lands, including opportunities for land use authorizations, there would be a beneficial socioeconomic effect under the Proposed Action by continuing to allow for access across public land segments for mining in private lands.

2) The degree to which the proposed action affects public health or safety.

Comstock Mining, LLC is subject to the requirements by the Nevada Mine Safety and Health Administration (MSHA). The MSHA requires Comstock Mining, LLC to maintain an Emergency Response Plan in case of accidental spills. The MSHA requires Comstock Mining, LLC to maintain control, warning and directional signs along the American Flat Road and Lucerne Haul Road. The Proposed Action addresses safety concerns regarding use of the American Flat Road by the public and mine-related traffic through modification of the road near the intersection with the Gold Hill (Masonic) Cemetery where a blind curve exists. Currently all northbound traffic on the American Flat Road must stop before proceeding because of the blind curve. The Proposed Action also addresses safety concerns by separating public use from haul truck traffic through the construction of a new alignment of the American Flat Road and the designation of the Lucerne Haul Road for exclusive use purposes. The Proposed Action addresses a road previously used to access the former United Comstock Merger Mill in American Flat, which would be reclaimed. This road currently abuts the American Flat Road, and would also abut the proposed Lucerne Haul Road. Due to safety concerns (public traffic merging onto an exclusive use haul road near a curve), the road would be reclaimed and alternative access into American Flat would continue to be provided to the public.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The Project Area is within the Virginia City National Historic District and National Historic Landmark. There are no park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas such as Areas of Critical Environmental Concern, within the Project Area. The Project Area has been subjected to decades of modifications of its character through mining and exploration activities.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The BLM has established that its federal responsibility is limited to a ROWA, and that Comstock Mining, LLC's open pit mine has "independent utility." The BLM has detailed in Sections 4.0

and 5.0 of the FEA that the consequences from the construction, modification, and use the road system are well-known. The effects from the Proposed Action are not highly controversial¹³.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The BLM has detailed in Sections 4.0 and 5.0 of the FEA the potential effects from the Proposed Action. There are no unique or unknown risks presented by the use, modification and construction of an exclusive use haul road across public land segments, or modifications to an existing road to allow for safe public access and segregation from haul traffic.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The BLM has received a ROWA application from Comstock Mining, LLC. There are no other reasonably foreseeable ROW requests before the BLM in the Project Area or vicinity. Approval of this ROWA does not establish a precedent for future actions with significant effects. Any new future action subject to BLM decision-making would be evaluated for significant effects on their own merit. At that time the BLM would determine the appropriate level of compliance with the NEPA.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Since August of 2012, Comstock Mining, LLC has been operating a heap leach processing facility in American Flat, and conducting open pit mining in the Billie the Kid and Lucerne pits. Mined ore has been transported in 16.5-ton or 38-ton haul trucks from the Lucerne Pit to processing facility via a haul road that crosses public land segments under an existing ROW (Figure 10 of the FEA). As described in Section 2.2.2, a reasonable¹⁴ non-federal alternative exists for Comstock Mining, LLC to continue to operate without BLM authorization. The BLM has disclosed the effects from Comstock Mining, LLC's non-federal actions in Section 5.0 of the FEA, to the extent information is publically available.

The BLM has determined that Comstock Mining, LLC's open pit operation has "independent utility" and is not subject to federal oversight, although the open pit operation and heap leach processing facility are subject to applicable State and county regulations. A reasonable non-federal alternative has been considered and open pit mining could continue independent of federal authorization. The BLM cannot prevent or modify the effects from the open pit mine, however they are disclosed as cumulative actions. When considering whether the Proposed

¹³ According to the Interior Board of Land Appeals (88 IBLA), the term *highly controversial* refers to "the substantial dispute as to the size, nature or effect of a major federal action, rather than to the existence of opposition to a use."

¹⁴ According to the Council of Environmental Quality, Forty Question 2a, "Reasonable alternatives are those that are practical or feasible from the technical and economic standpoint..."

Action could have significant effects, the effects from the non-federal actions that cannot be prevented or modified by BLM decision-making are not additive to the effects from the Proposed Action (40 CFR 1508.27). The BLM has determined that the use, modification and construction of an exclusive use haul road across public land segments, or modifications to an existing road to allow for safe public access and segregation from haul traffic (Proposed Action) would not cause cumulatively significant effects.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss of destruction of significant scientific, cultural, or historical resources.

The Project Area is within the Virginia City National Historic District and National Historic Landmark. Within the Direct/Indirect Effects Area of Potential Effect (APE) for the Proposed Action, 12 sites have been determined eligible for the NRHP. Eight of the 12 historic properties are located within or adjacent to the proposed disturbance area and have the potential to be adversely affected.

During public scoping in February 2013, the BLM provided the public with an opportunity to comment on preliminary APE maps, which depicted APEs for direct/indirect effects and viewshed. APE maps were also provided during the two review periods for the EA.

To resolve the potential adverse effects to the eight historic properties, the BLM has conducted extensive outreach to consulting parties (see Section 1.3 of the FEA) and the public. A draft MOA was prepared and made available for 30-days public review and comment between September 21, 2015 and October 20, 2015. The BLM did not receive any public comments on the draft MOA. On February 17, 2016, the MOA was executed by the Advisory Council on Historic Preservation, thereby concluding the Section 106 process for the Proposed Action and the resolution of potential adverse effects to eight historic properties within the Project Area. Potential significant effects to historic properties from the ROWA have been resolved.

The proposed function of the American Flat and Lucerne Haul roads (to access exploration and/or mining on private lands) has occurred during the historic (1920s to 1940s) and modern day (1978 to present) periods in the Project Area. The American Flat Road has been used to access exploration or surface mining on private lands since at least 1978. The road likely existed in the 1920s providing access to the former United Comstock Merger Mill in American Flat. The Lucerne Haul Road was constructed in 2005 by the Plum Mining Co. LLC for use in accessing exploration or mining on private lands in the Lucerne Pit. The heap leach processing facility in American Flat was constructed by The Plum Mining Co. LLC in 2004 and the American Flat and Lucerne Haul roads have been used to access the facility and nearby exploration and mining areas on private lands. The Proposed Action would not cause adverse visual, auditory, olfactory, or other indirect effects to historic properties within the overall

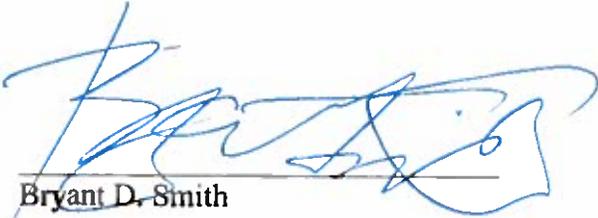
Virginia City National Historic Landmark and National Historic District (Section 4.2.1 of the FEA).

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.*

There are no endangered or threatened species, or their critical habitat, within the Project Area.

10) *Whether the action threatens a violation of federal, State, or local law or requirements imposed for the protection of the environment.*

The Proposed Action is in conformance with the Carson City Field Office Consolidated Resource Management Plan (2001). Implementation of the Proposed Action would not violate or threaten to violate any federal, State, or local law or requirement imposed for the protection of the environment.



Bryant D. Smith

Field Manager

Sierra Front Field Office

AUG 01 2016

Date