



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Butte Field Office

106 North Parkmont

Butte, Montana 59701-9701

www.blm.gov/mt

In Reply Refer To:

2810(MTB070)
MTM-106022

July 1, 2014

Dear Reader:

The Bureau of Land Management (BLM) Butte Field Office has completed the Golden Asset Mine Road Right-of-Way Environmental Assessment, DOI-MT-B070-2013-0023-EA. The EA is available on the BLM website at: http://www.blm.gov/mt/st/en/fo/butte_field_office.html. The involved public lands are in Township 7 North, Range 3 West, Sections 19, 20, 29 and 30, southeast of Jefferson City in Jefferson County, Montana.

The EA analyzes the proposed ROW alternative and the no action alternative, and also considers other potential alternatives. In addition to the EA, a Finding of No Significant Impact (FONSI) and Decision Record (DR) are available on the website. The decision was to issue the ROW Grant for three years, subject to standard and special stipulations.

Smith Contracting, Inc., the applicant, applied for a road right-of-way to utilize an existing road across lands administered by the BLM. The applicant wants to haul ore from the Golden Asset Mine, located on private lands, under a State of Montana Small Miner Exclusion Statement. The applicant can use the BLM road within the bounds of the casual use definition under the existing travel plan, but the right-of-way authorization allows them to repair, use, and maintain the existing road for hauling up to 25 loads of ore per week.

Public comment received both prior to and subsequent the release of the EA helped BLM define issues for analysis, refine the proposed action, and explore alternatives. An initial EA and unsigned FONSI were released for public comment on September 27, 2013. The EA and unsigned FONSI were available for public review at the BLM office and website. Hard copies were placed in the Boulder Community Library and Jefferson County Courthouse. The public comment period was extended due to the government shutdown until November 1, 2013.

The BLM received 27 written comment letters from 24 commenters. Appendix 1 of the completed EA contains the substantive public comments received and the BLM responses to those comments. The BLM would like to thank everyone who took the time to participate in the review process. If you have any questions, please contact Mike Wyatt at 406/533-7619.

Sincerely,
//SIGNED//
Scott Haight
Field Manager

FINDING OF NO SIGNIFICANT IMPACT

Golden Asset Mine Road Right-Of-Way DOI-MT-B070-2013-0023-EA MTM-106022

Based upon a review of the Golden Asset Mine Road Right-Of-Way Environmental Assessment (EA) and the supporting documents, I have determined that the project is not a major federal action and will not have a significant effect on the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity, as defined at 40 CFR 1508.27 and do not exceed those effects as described in the Butte Resource Management Plan Record of Decision (April 2009). Therefore, an environmental impact statement is not required. This finding is based on the context and intensity of the project as described below.

Context:

This project is localized with implications only for the immediate area. The impacts associated with this project are short-term and local, and are not likely in and of its self to have international, national, regional, or state-wide importance. Smith Contracting, Inc. has applied for a right-of-way grant under the Federal Land Policy and Management Act (FLPMA) across public lands administered by the Bureau of Land Management's (BLM), Butte Field Office in the Elkhorn Mountains. The right-of-way will authorize the applicant to improve, use and maintain an existing BLM road to haul gold/silver ore from the Golden Asset Mine located on private inholdings enclosed by public lands. Smith Contracting can do small-scale, open pit mining, per se, under their Small Miner Exclusion Statement (SMES) operation at the Golden Asset Mine.

Intensity:

The following discussion is organized around the 10 Significance Criteria described at 40 CFR 1508.27. The following have been considered in evaluating intensity for this proposal:

1. Impacts may be both beneficial and adverse.

The proposed action will affect resources as described in the EA. Adverse effects include minor impacts to wildlife and visual resources that will occur temporarily during road work and the season of use. Long term effects will be limited in scope. Mitigating measures to reduce potential impacts to Air Quality and reduce impacts from Non-native

Invasive Species were incorporated in the design of the proposed action alternative. Beneficial impacts include the water drainage improvements on the existing road and potential economic benefits in the local communities. None of the environmental effects discussed in detail in the EA are considered significant, nor do the effects exceed those described in the Butte Resource Management Plan, April 2009 (RMP).

2. **The degree to which the selected alternative will affect public health or safety.**

The proposed action is designed to have no significant or unacceptable effect on public health or safety. The EA discloses that Air Quality could be affected by the proposed action from fugitive dust being raised during reconstruction and hauling activities; however the effects will be minimal, highly localized, and short-term. Use of water trucks, to wet the road when needed during these operations will greatly reduce fugitive dust. Although the Troy Creek route on BLM is a seasonally open road, there are existing locked gates preventing access by the general public and thus interactions. The adjacent landowners still require enforcement of their gate closures during the proposed hauling periods. Public safety on the road will be addressed through use of signs at the gates.

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

The project area is located within an Area of Critical Environmental Concern (ACEC). The Elkhorn Tack On wilderness study area (WSA) is in proximity to the subject road, designated as seasonally open to motorized travel in the RMP and the 1995 Elkhorns Travel Plan. Hauling up to 25 loads of ore per week will be “limited” to this open route within the ACEC and abide by the RMP’s terms and conditions for this ACEC, which were developed in recognition of the neighboring WSA. There will be no new roads and the existing road closures will be maintained and enforced.

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

Based on public comment, internal discussion and the analysis of the actions, the effects on the human environment are not likely to be highly controversial among professionals, specialists, and scientists. While some of the public comments received indicate the selected alternative may be unpopular with some members of the public, I did not identify significant controversy amongst experts over the effects of this action.

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

The BLM has experience implementing similar actions in similar areas. No highly uncertain or unknown risks to the human environment were identified during analysis of the preferred alternative.

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 preferred alternative neither establishes a precedent for future BLM actions with significant effects nor represents a decision in principle about a future consideration. Any other proposals for this area will be subject to full NEPA analysis.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.

A cumulative effects analysis was conducted. No individually or cumulatively significant impacts were identified for the preferred alternative (proposed action). Any adverse impacts identified for the preferred alternative, in conjunction with any adverse impacts of other past, present, or reasonably foreseeable future actions will result in negligible impacts to natural and cultural resources.

Although the analysis area has seen a variety of activities over the past century, only mining and ranching interests have either secured access across adjacent private lands or have a potential to do so under the mining laws. This area of the Elkhorn Mountains has a strong mining history and high mineral potential. Minerals exploration and development are allowed, and there are a number of existing unpatented mining claims in the area. The subject road was improved in the 1980's as an alternate haul road for the mining operation at the Golden Asset claims. The proposed action is derived from the desire to renew mining on the patented private claims as a result of increased value of precious metals. Therefore, it is reasonable to expect more activity on the unpatented mine claims, which will require the use of the subject Troy Creek road. There aren't any major mining actions proposed or anticipated during the 3 years of the road right-of-way authorization. The proposed action's installation of water drainage features and the needed road maintenance on the existing route will outweigh the incremental increased use from up to 25 haul trucks per week.

The Golden Asset Mine mining operation could be a connected non-Federal action. The actual mining of up to 5 acres under a Montana SMES on the adjacent private lands would not, in combination with the right-of-way action, result in cumulative impacts that are significant. The short duration and small scale of operations from these actions would not generate significant impacts. The proponents do not need a right-of-way grant to use the public section of the Troy Creek road, when it's open for "casual use", as defined in 43 CFR 2801.5. Vehicle travel is allowed as long as there is no appreciable disturbance or damage to the road. Therefore, if the ore is hauled infrequently under good road conditions without any necessary road improvements, then a specific right-of-way authorization will not be required.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of

Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

A class III cultural resource inventory was completed for this preferred alternative (proposed action). No districts, sites, or other properties eligible for listing to, or included on, the National Register of Historic Places were identified within the area of potential direct effects. The investigations satisfied the Secretary of the Interior's Standards and Guidelines for the identification of historic properties and with the regulations for implementing Section 106 of the National Historic Preservation Act; there are no cultural resource concerns.

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 Endangered Species Act of 1973, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on BLM's sensitive species list.**

No significant effects are anticipated to species listed as Threatened or Endangered under the Endangered Species Act. Grizzly bears (Threatened), lynx (Threatened), or wolverine (Proposed) may occasionally migrate or disperse through the area, but no individuals of these species are known to permanently reside in the action area. No threatened, endangered, or Candidate Plant species are known to inhabit the project area or the existing road prism to be repaired, used, and maintained. In January 2014, BLM prepared a biological assessment for possible effects of the proposed action on lynx and wolverine for the purpose of informal consultation with the USFWS under Section 7 of the ESA. On February 4, 2014, BLM received a letter of concurrence from USFWS that the proposed action will not likely adversely affect lynx, and not likely jeopardize the continued existence of wolverine. See EA Appendix 2.

10. **Whether the action threatens a violation of a federal, state, local, or tribal law, regulation or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.**

The preferred alternative violates no federal, state, or local environmental protection laws. The operator is required to comply with all local, county, Montana, and Montana Department of Transportation requirements for the mining and hauling of ore on public roads.

//SIGNED//

Scott Haight
Field Manager

July 1, 2014

Date

DECISION RECORD

Golden Asset Mine Road Right-Of-Way

DOI-MT-B070-2013-0023-EA

MTM-106022

Decision:

It is my decision to offer, and if accepted, grant a 3 year road right-of-way over Bureau of Land Management (BLM) administrated lands to Smith Contracting Inc. to re-construct, use, and maintain an access road for hauling ore as described in the Proposed Action of the Environmental Assessment (EA), DOI-BLM-MT-B070-2013-0023-EA. The right-of-way will be approximately 14,900 feet long and 24 feet wide.

Authorities:

The grant is made under the authority of Title V of the Federal Land Policy and Management Act (FLPMA) of 1976 {43 U.S.C 1761} and will be subject to the terms and conditions set forth in 43 CFR 2800.

In addition, I have made the determination as required under Executive Order 13212 that the projects as proposed will have no impact on the President's Energy Policy.

Selected Alternative:

- The BLM will issue a 24 foot wide road right-of-way grant (ROW) to Smith Contracting, the applicant/holder, authorizing them to repair, use, and maintain approximately 14,900 feet of existing BLM road.
- The authorization will restrict the holder to 25 loads per week of unprocessed hardrock ore, using 28 ton or less capacity dump trucks. The dump trucks will be typical highway legal rear-dump and/or side-dump trucks.
- The ROW authorization will authorize use of the BLM road from May 16th through December 1st of each year, when road conditions permit.

- A BLM right-of-way authorization issued to the applicant would only pertain to BLM lands and would not imply any legal justification to use the private road segments or obligate the landowners to authorize use. The applicant would be responsible for securing access across all private road segments involved.
- The applicant/holder is authorized to grade, add gravel and install water bars/swales, where needed at the discretion of the BLM Authorized Officer.
- Before the project is completed, the applicant/holder will be responsible for repairing any damage to the road improvements and the road from their use.
- The ROW authorizes a 12 foot driving surface within the 24 foot wide right-of-way. No new ditches will be constructed in areas where they do not already exist, unless onsite monitoring by the BLM determines it's needed to improve water drainage. The applicant/holder will clean out only existing side ditches that are needed to improve the drivability of the road. When ditches are cleaned, the material will be placed on the road and graded out smooth. Any organic material, not appropriate for the road bed, will be hauled up to the Golden Asset Mine.
- If the applicant/holder adds gravel, it will be to minimal thickness necessary to improve the drivability of the road for the intended use. The gravel will be spread to the width of the driving surface and the thickness will be variable depending on need. The applicant/holder will notify the BLM office at least two days in advance of when any grading or improvements begin, so BLM can monitor the activity.
- The current layout of the road will not change and no turnouts will be added. Existing wide spots in the road can be graded and graveled to function as turnouts.
- A French drain and/or culvert may be installed at the discretion of the Authorized Officer, where more than a water bar/swale is needed. Design shall be approved by the Authorized Officer in advance of installation.
- The applicant/holder will be responsible for weed control on the disturbed areas within the limits of the right-of-way for the term of the grant. All heavy equipment and off-road vehicles will be pre-washed to remove weeds and weed seeds prior to starting any road work. The right-of-way will be treated with BLM approved herbicides and follow Jefferson County Weed Board acceptable weed control methods. If grass seed is required, the seed mix will be certified weed-free and approved by the Authorized Officer.
- The applicant/holder will be responsible for dust abatement. Water trucks will spray water to minimize fugitive dust during dry high use periods of hauling or construction. Water application and frequency thereof, dependent on conditions at the discretion of the Authorized Officer.

The road right-of-way will encumber approximately 8.21 acres of federal land described as:

Principal Meridian Montana

T. 7 N., R. 3 W.,

Section 19: Lots 14, 15, 20, 21, and 22;

Section 20: N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 29: NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Section 30: Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Other Terms / Conditions / Stipulations for Right-of-Way grant MTM-106022:

The grant shall be subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

The Holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated regarding toxic substances or hazardous materials. In any event, the Holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, *et seq.*) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, section 102b. A copy of any report required or requested by any federal agency of state government as a result of a reportable release or spill of any toxic substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved Federal agency of State government.

Alternatives Considered:

The EA considered a No Action and Proposed Action alternatives. The No Action alternative was considered to provide a baseline comparison of effects with the Proposed Action. The Proposed Action Alternative meets the purpose and need derived from the application and application amendments. Any potential resources issues were addressed by including mitigation measures with the proposed action.

Other road access routes were considered as alternatives, but were eliminated from further analysis. In the Butte Resource Management Plan (RMP), the project area lies within the Elkhorn Mountains Area of Critical Environmental Concern (ACEC). The ACEC limits motorized travel to RMP designated routes adopted from the 1995 Elkhorns Travel Management Plan. The ACEC states existing road closures will be maintained and no new permanent roads or motorized trails will be authorized for public use in order to protect wildlife and non-motorized recreation values. Other routes considered are either closed or the open (restricted) segment does not extend all the way to the subject private parcels.

Public Involvement:

The proposed road right-of-way authorization to haul ore on an existing road was announced to the public by posting the project on the field office NEPA log accessible on the BLM Montana/Dakotas external website and Butte Field Office website. The website NEPA log invites the public to provide comments/concerns or ask for more information on any of the proposed actions listed on the log.

During a site visit at the request of adjacent landowners from the Aspen Valley Ranches subdivision, the landowners voiced their questions and concerns regarding the proposed action. Based on the amount of interest from the landowners, the BLM organized an on-site meeting, August 13, 2013, to address the outstanding questions and concerns. The meeting was attended by interested landowners with land adjacent the potentially impacted area, BLM representatives, the proponent (Smith Contracting), and the Montana Department of Environmental Quality's representative overseeing Small Miner's Exclusion Statement (SMES) mining on private claims.

BLM did not receive any written comments through the external scoping, but verbal concerns brought forward within the scope of this assessment were:

- Addressing the existing erosion issues and the water damaged road as well as the proposed action's further impacts to an already deteriorating road condition.
- Disrupting wildlife and leading to harassment.
- Displacing big game during hunting season.
- Roadkill mortality risk to big game.
- Increased use of the public road for a hauling operation detracts from enjoyment of the area.

Due to the public interest expressed, the BLM provided a comment period for the EA and unsigned FONSI. The BLM issued a press release on September 27, 2013 and initially accepted public comments until October 15, 2013. Hard copies were placed in the Boulder library and Jefferson County Courthouse.

A Federal Government shutdown and employee furlough occurred during the comment period. The BLM Butte Field Office website was unexpectedly brought down in association with the government shutdown. Therefore, the BLM extended the public comment period on the EA and draft FONSI until November 1, 2013. BLM received 27 written comment letters from 24 commenters.

Articles appeared in the local newspapers about the proposed action, including: "Jeff City mining project leads to questions," Boulder Monitor, August 28, 2013; and "Neighbor has concerns about proposed mining project in Elkhorn Mountains," Helena Independent Record, October 12, 2013.

Appendix 1 of the June 2014 EA contains the substantive public comments received on the Golden Asset Mine Access Road Right-Of-Way Environmental Assessment and the BLM responses to those comments. The BLM considered and responded to all substantive comments in preparing this June 2014 EA, the Finding of No Significant Impact, and Decision Record.

Rationale for Decision:

The proposed action was selected, because it best meets the Purpose and Need described in the Environmental Assessment. Incorporating the terms, conditions, and stipulations into the proposed action will eliminate or minimize identified resource concerns.

The action is in conformance with the Butte Field Office Resource Management Plan and Environmental Impact Statement, approved on April 2009, and is consistent with the plan's goal to "provide land-use opportunities contributing to a sustained flow of economic benefits and meet local infrastructure needs while protecting or minimizing adverse impacts to resources and resource uses." The decision will provide for the reasonable use and enjoyment of the non-Federal land, which is completely surrounded by lands managed by the BLM. A cumulative effects analysis was conducted. No individually or cumulatively significant impacts were identified for the proposed action. Any adverse impacts identified for the preferred alternative, in conjunction with any adverse impacts of other past, present, or reasonably foreseeable future actions will result in negligible impacts to natural and cultural resources. This action will not have any adverse impacts on the President's Energy Policy, Executive Order 13212.

Appeals Language:

The right-of-way decision shall take effect immediately upon the date the grant is signed by the authorized officer and shall remain in effect while any appeal is pending unless the Interior Board of Land Appeals issues a stay. Any appeal of this decision must follow the procedures set forth in 43 CFR Part 4. Within 30 days of the decision, a notice of appeal must be filed in the office of the authorized officer at 106 North Parkmont Butte, Montana 59701. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the authorized officer.

If you wish to file a petition for stay pursuant to 43 CFR Part 4.21(b), the petition for stay should accompany your notice of appeal and shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted,
and
- (4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the authorized officer.

A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, Montana 59107-1394, not later than 15 days after filing the document with the authorized officer and/or IBLA.

//SIGNED//

Scott Haight, Field Manager

July 1, 2014

Date