

retain its integrity of location, overall setting, design, materials (in terms of bridges and culverts), feeling, and association. The rail line was removed in 2004 and part of NECC future plan is to reinstall the rail line.

The NRHP-eligible former C&W railroad grade (5LA.7112) was affected by the construction of a haul road between the mine and the intersection of the CP&W entrance road to the State Wildlife Area prior to DRMS approval. Neither the construction of the haul road nor the future reinstallation of the rail line within the former C&W railroad corridor alters or will alter the former C&W's alignment or height. The construction of the haul road and the future reinstallation of the rail line within the former C&W railroad corridor is intended to return the historic resource to its original use, and therefore is consistent with the first two of the Secretary of the Interior's Standards for Rehabilitation: 1) A property will be used as it was historically or be given a new use that requires minimal changes to its distinctive materials, features, spaces, and spatial relationships; and 2) The historic character of a property will be retained and preserved. Any new construction associated with the Project will likewise be consistent with the Secretary of the Interior's Standards for Rehabilitation.

As the construction of the haul road introduces an effect to the resource, the Criteria of Adverse Effects were applied. The construction of a haul road does not cause the physical destruction of or damage to all or part of the property, does not alter the property in a way that is not consistent with the Secretary's standards for the treatment of historic properties, and does not remove the property from its historic location. As the construction of a haul road is consistent with the original use and purpose of the former C&W railroad grade, it does not change the character of the property's use of physical features within the property's setting that contribute to its historic significance, and does not introduce visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features. The construction of a haul road will not lead to the neglect of the property which causes its deterioration but will instead ideally return a neglected and deteriorated historic property to its original use. The preceding application of the Criteria of Adverse Effects also applies to the future reinstallation of the rail line within the former C&W railroad grade (5LA.7112).

There are also no publicly owned parks in the area that will be affected by the New Elk Mine. The mining area underlies the Bosque del Oso State Wildlife area which was transferred to the state by previous mine owners. New Elk Coal Company has the right to mine in this area as governed by a lease agreement. Operation of the haul road on the railroad bed and installation and operation of the railroad will create noise from trucks and the trains from the mine to the Jensen Rail Yard, however, this will have limited impacts on wildlife and the public that enjoy the State Wildlife area. NECC and CPW have an MOU (Exhibit 46) that contains stipulation for operation of haul trucks that will limit the potential impacts to wildlife and the State Wildlife Area. Retention of the post-mining haul road will provide additional access to the wildlife area.

A Permit Revision (PR-6) was filed for continued mining the Blue Coal Seam. The mining method and extraction of coal will use room and pillar mining. No secondary or retreat mining is planned, and subsidence is not anticipated. Mining in the PR-6 area will occur in only the Blue Seam. This area was previously included in the Golden Eagle permit area where mining occurred only in the Maxwell Seam and mining in this seam did not occur in the PR-6 area. As a result, there are no seams above or below the Blue Seam that may contribute to potential subsidence. A cultural resource survey was conducted for the PR-6 area (Exhibit 7) and no resources recommended for further investigation or eligible for the NRHP were found. The impacts to cultural resources in the area of mining should not occur but monitoring of subsidence will identify any effects of mining.