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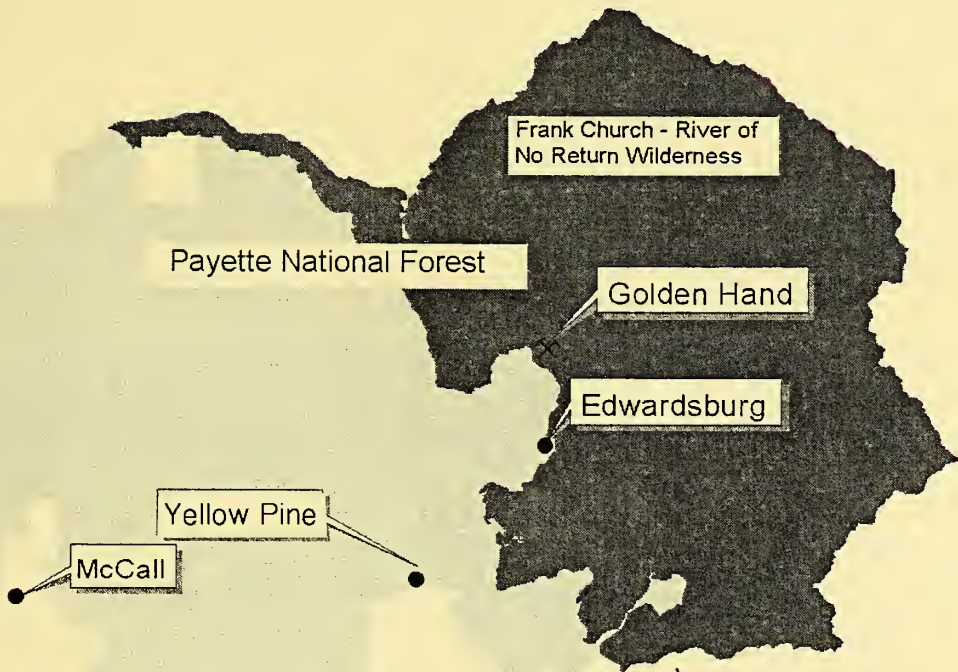
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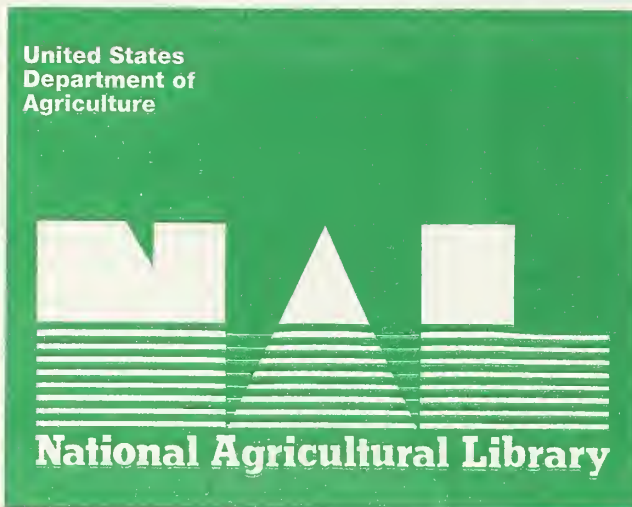
Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

May 2003

intermountain
Region
Payette National
Forest

Krassel Ranger
District, McCall, Idaho





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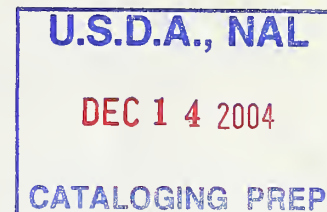
Record of Decision

The Golden Hand No. 3 and No. 4 Lode Mining Claims

Proposed Plan of Operations

Environmental Impact Statement

**USDA - Forest Service
Payette National Forest
Krassel Ranger District
Idaho and Valley Counties, Idaho**



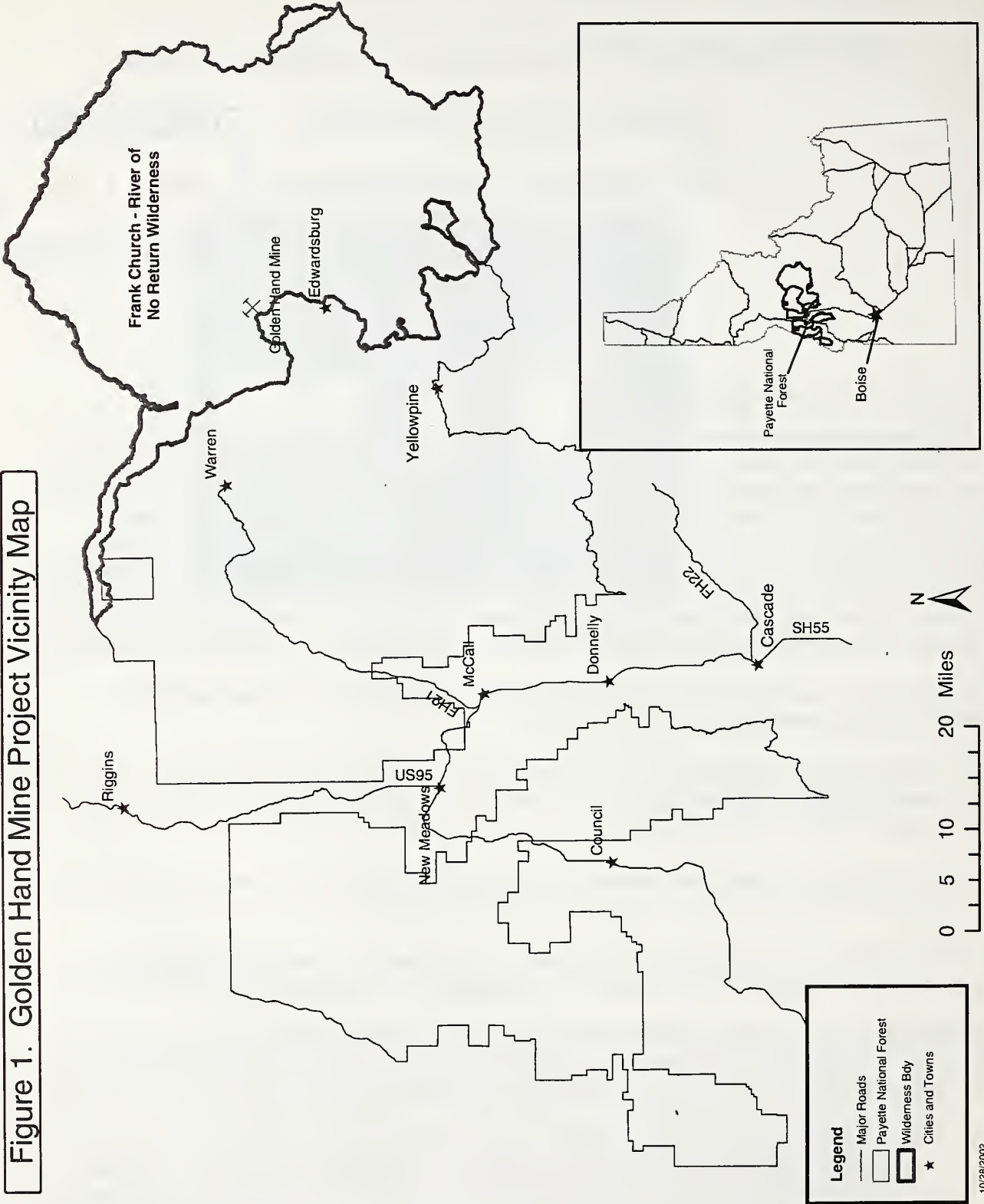
Project Location and Background

The Payette National Forest (PNF) completed an Environmental Impact Statement (EIS) to analyze the environmental consequences of approving a plan of operations (also referred to as the operating plan or plan) and alternatives to the plan for the Golden Hand No. 3 and No. 4 lode mining claims. The proposed plan submitted by American Independence Mines and Minerals, Inc. (AIMM) outlined a mineral development project located in the Frank Church-River of No Return (FC-RONR) Wilderness on the Krassel Ranger District, PNF in Section 26, T22N, R9E, Boise Meridian. (See **Figure 1**, Vicinity Map.) It would occur on a portion of the historic Golden Hand Mine site. The claims encompass approximately 20 acres each and are located near Coin Creek, a tributary of Beaver Creek, which flows into Big Creek, a tributary of the Middle Fork Salmon River. Most of the proposed operations would occur on the claims.

The recent events leading to the preparation of this Environmental Impact Statement on AIMM's proposed plan of operations are summarized here.

- In March 1985, AIMM submitted a plan of operations that the Forest Service determined would result in significant disturbance to surface resources on the Golden Hand No.'s. 1-8 lode mining claims in the FC-RONR Wilderness.
- The Forest Service conducted a mineral examination in July 1985 to determine if any of the Golden Hand claims were valid prior to processing the plan of operations.
- The mineral report was completed in November 1986. It concluded none of the eight claims were valid and recommended to the Interior Department that contest be initiated against all of the claims.
- AIMM timely appealed the Bureau of Land Management's (BLM) contest notice. A hearing was held before Administrative Law Judge Ramon M. Child, who ruled on January 19, 1989, that Golden Hand claim No.'s 1, 5, 6, and 7 were invalid and dismissed the contest on claim No.'s. 2, 3, 4, and 8.
- Both parties appealed to the Interior Board of Land Appeals (IBLA). On February 10, 1992, the Board affirmed Judge Child's decision that claim No.'s 1, 5, 6, and 7 were invalid and that claim No.'s 3 and 4 were valid. It reversed his decision that claim No. 2 was valid and remanded claim No. 8 back to the Hearings Division for review of the historic value of silver as it bore on the validity of claim No. 8. The Forest Service later dismissed its contest against claim No. 8.

Figure 1. Golden Hand Mine Project Vicinity Map



10/28/2002
rev. 02/09/2003

- AIMM submitted a proposed plan of operations for work on claims No. 3 and No. 4 on April 16, 1996.
- The Payette National Forest initiated an environmental analysis of the proposed plan in November 1996. Due to a variety of factors, this analysis was never completed.
- AIMM filed suit in 1999 in Federal District Court for Idaho seeking an order requiring the Forest Service to allow access to the claim group for work under the 1996 plan and for other purposes.
- The Payette National Forest received a letter of clarification on Proposed Plan of Operations from David Lombardi representing AIMM on August 30, 2000.
- On April 19, 2002, the Payette National Forest published a Notice of Intent to prepare an Environmental Impact Statement in the Federal Register.
- On August 9, 2002, Judge B. Lynn Winmill issued an order on three points raised by AIMM. On one of those points, he ordered the Forest Service to complete the EIS and its review of the 1996 plan by May 1, 2003 as stated: "IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the Forest Service shall complete the EIS on the proposed Operating Plan for claims 3 and 4 on or before May 1, 2003."
- The Payette National Forest received a letter of clarification on the Proposed Plan of Operations from Conway Ivy on September 14, 2002.
- The Payette National Forest received a letter of clarification on the Proposed Plan of Operations from Conway Ivy on December 7, 2002.
- The Payette National Forest received a letter of clarification on the Proposed Plan of Operations from Conway Ivy on December 13, 2002.

The EIS was prepared in compliance with the National Environmental Policy Act (NEPA) and other relevant federal and state laws and regulations. The EIS analyzed and disclosed the direct, indirect, and cumulative environmental impacts on resources in and adjacent to the Golden Hand project area that would result from approving the proposed plan or alternatives to it.

Purpose and Need

Law, regulation, agency policy, and court rulings define the purpose and need for the Forest Service response to AIMM's proposed plan of operations.

- The 1872 Mining Law as amended (also referred to as the U.S. Mining Law[s]), provides in part that, "...all mineral deposits in land belonging to the United States are free and open to exploration and the lands in which they are found are open to occupation and purchase." This granting of statutory rights to explore, develop, and gain title to the minerals estate of federal lands open to mineral entry, remain in effect today.
- The 1897 Organic Administration Act (16 USC 478, 551) created the National Forest System, and at the same time opened these lands to entry under the 1872 Mining Law. This law also gives the Secretary of Agriculture authority to regulate activities conducted under the Mining Law.

- The Multiple Use Mining Act of 1955 (30 USC 612) reserved to the United States the right to use the surface of unpatented mining claims providing such use did not endanger or materially interfere with prospecting, mining or processing operations or reasonably incident uses.
- Regulations defining Forest Service authority to manage locatable mineral activities were adopted in 1974, and are codified in 36 CFR 228A. In accordance with these regulations, an approved plan of operation is required for any locatable mineral activity on National Forest System land that would cause a significant disturbance of surface resources. These regulations also require the Forest Service to conduct an analysis that meets the requirements of the National Environmental Policy Act (NEPA) for each plan of operation received. Forest Service responses to a proposed plan of operation are defined by regulation at 36 CFR 228.5. The overall purpose of these regulations as stated in 36 CFR 228.1, is to manage operations so as to minimize adverse environmental impacts on National Forest System surface resources.
- The Wilderness Act of 1964 requires the Forest Service to ensure that valid rights exist prior to approving locatable mineral activities inside a congressionally designated Wilderness area. To establish valid existing rights, mining claimants must show they have made a discovery of a valuable mineral deposit on the claim(s) prior to the withdrawal date, and have maintained that discovery. The Wilderness Act allows for surface disturbing activities that are reasonably incident to mining or processing operations when valid rights have been found to exist (U.S. Congress 1964, Section 4[d-3]). The Wilderness Act also states that mineral leases, permits, and licenses covering lands within National Forest Wilderness, shall contain reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character and consistent with the use of the land for the purposes for which they are leased, permitted, or licensed.

In summary, AIMM has the legal right to develop the mineral resources on their Wilderness claims where valid existing rights have been established, and the Forest Service has the legal authority to manage those activities to minimize, where feasible, environmental impacts on surface resources, including Wilderness. AIMM's right to develop is limited to activities that are reasonably incident to mining and not needlessly destructive, and by their obligation to comply with applicable state and federal laws. The Forest Service's right to manage AIMM's activity is limited in that it may not deny a plan of operation for development of such resources provided that it is reasonably incident and not needlessly destructive, and complies with applicable federal mining laws and regulations, and applicable state and federal laws and regulations related to air, water, and solid waste.

Decisions to Be Made

As the Payette National Forest Supervisor and the deciding official for this project. I determined that preparation of an EIS is required for a decision on the proposed plan under Forest Service regulations governing locatable mineral activities on National Forest System (NFS) lands (36 CFR 228A) and Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500-1508).

Given the purpose and need of the proposal, I reviewed the proposed plan, the other alternatives, and the environmental consequences in order to make the following decisions:

- Approve the plan of operations as proposed, or
- Notify the proponent of changes or additions to the plan necessary to minimize, where feasible, adverse environmental impacts from mineral development activities on NFS lands, as required by Forest Service regulations (36 CFR 228A), and
- Determine whether to approve amendments to the Forest Plan.

Authority for the Decision

The United States Constitution provides the fundamental basis for the control, acquisition, disposition, use and management of all federally owned lands. Article IV, Section 3, and paragraph 2 of the Constitution states:

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.”

The Supreme Court has repeatedly said the Congress has full power to sell, give away, or retain the Public Domain and other property for such purposes as it sees fit.

Through a series of delegations, beginning with the Secretary of Agriculture, the Intermountain Regional Forester has delegated the authority for this minerals development decision to me.

I retain the authority for the management of the Payette National Forest, including this proposal and associated projects, under the direction of this Record of Decision (ROD).

The Decision

Based upon my review of all alternatives, I have decided to notify the proponent of changes or additions to the plan necessary to minimize, where feasible, adverse environmental impacts from mineral development activities on NFS lands, as required by Forest Service regulations (36 CFR 228A). These changes are described in Alternative C as summarized below and fully described in the EIS. Alternative C includes two non-significant amendments to the Forest Plan.

Prior to approval of the Plan of Operations, AIMM must change the plan as described in the ROD and resubmit it to the Forest Service along with the reclamation plan. I will require a reclamation bond to ensure that the lands involved with the mining operation are reclaimed in accordance with an approved reclamation plan (36 CFR 228.8 and 228.13).

I will also require that AIMM show they have obtained the necessary federal and state permits to undertake operations identified in the plan. In each yearly operating plan, AIMM must show these permits before undertaking the actions. When the plan has been changed as required, the necessary permits are in place, and the bond instrument is determined to be acceptable, I will notify AIMM that the plan is approved.

Alternative C modifies the proposed plan of operations for the Golden Hand No. 3 and No. 4 lode mining claims to ensure that National Forest System lands, including those under mining claim locations, are used only for purposes required for and reasonably incident to mining and in a manner that minimizes adverse environmental impacts. This alternative would allow most of AIMM's proposed development activities using a sequenced implementation schedule starting in the area of the inferred ore deposit. (See Figure 2 for Project Area Map. See Figure 3 for Alternative C Map.)

Based on the information provided in the Surface Use Analysis (Abbey 2003, EIS Appendix B), the modified alternative is considered viable because it provides the opportunity for AIMM to achieve its stated goals while minimizing impacts to the environment.

This alternative allows vehicle access to the claims on Forest roads outside the Wilderness and on abandoned roadbeds in the Wilderness. Total road construction in the Wilderness is reduced from 4 miles, as originally proposed in Alternative B, to 3.4 miles. AIMM's proposed development scenario

including road construction and drilling at up to 31 drill locations could occur on the claims with the following primary modifications:

- Vehicles would be restricted to a tire tread width less than seven feet and equipment would be restricted to a track width less than eight feet.
- Roadbeds would not be widened; slough and vegetation on roadbeds would be removed.
- Additional road maintenance would include installation of culverts, dips, gravel, and a bridge at stream channel crossings and where needed for road drainage.
- All activities would include the use of Best Management Practices (BMPs) as described in the DEIS.
- Most roads would be constructed on old roadbeds.
- Road construction off roadbeds must occur outside of RHCAs.
- Drill locations off roadbeds would be outside specified stream buffers and would include mitigation measures.
- Drilling would be sequenced beginning in the area of the inferred ore deposit.
- Drilling data from each season would be shared with the PNF prior to approval of the next season's work.
- Trenching would not be authorized.
- Underground work (clearing out, drilling, and possibly ore extraction) would be conducted at two existing mine openings (adits).
- Vehicle access to the mining claims would eliminate the need for residential occupancy onsite.

I have determined a reasonable operating period based on AIMM's proposed work will be three years. I have included a contingency to allow for extension of the operating plan for up to two additional seasons to allow for unforeseen circumstances such as weather, emergency, or fire.

A detailed description of Alternative C is provided in the DEIS (pp. 2-9 to 2-17, and Errata).

This Selected Alternative also incorporates by reference terms and conditions in the Biological Opinion issued by the U.S. Fish and Wildlife Service on April 28, 2003 (Appendix A to this Record of Decision).

Rationale for the Decision

I am basing my decision to implement the Selected Alternative on the following primary factors:

- Fisheries and Water Quality
- Wilderness
- Activities Reasonably Incident to Mining

The selected alternative responds to **fisheries and water quality issues** with modifications that remove trenching, limit vehicle and equipment size, restrict road construction and drilling in RHCAs, and add road maintenance such as installation of culverts, dips, gravel, and a log stringer bridge. Alternative C

Figure 2. Project Area Map

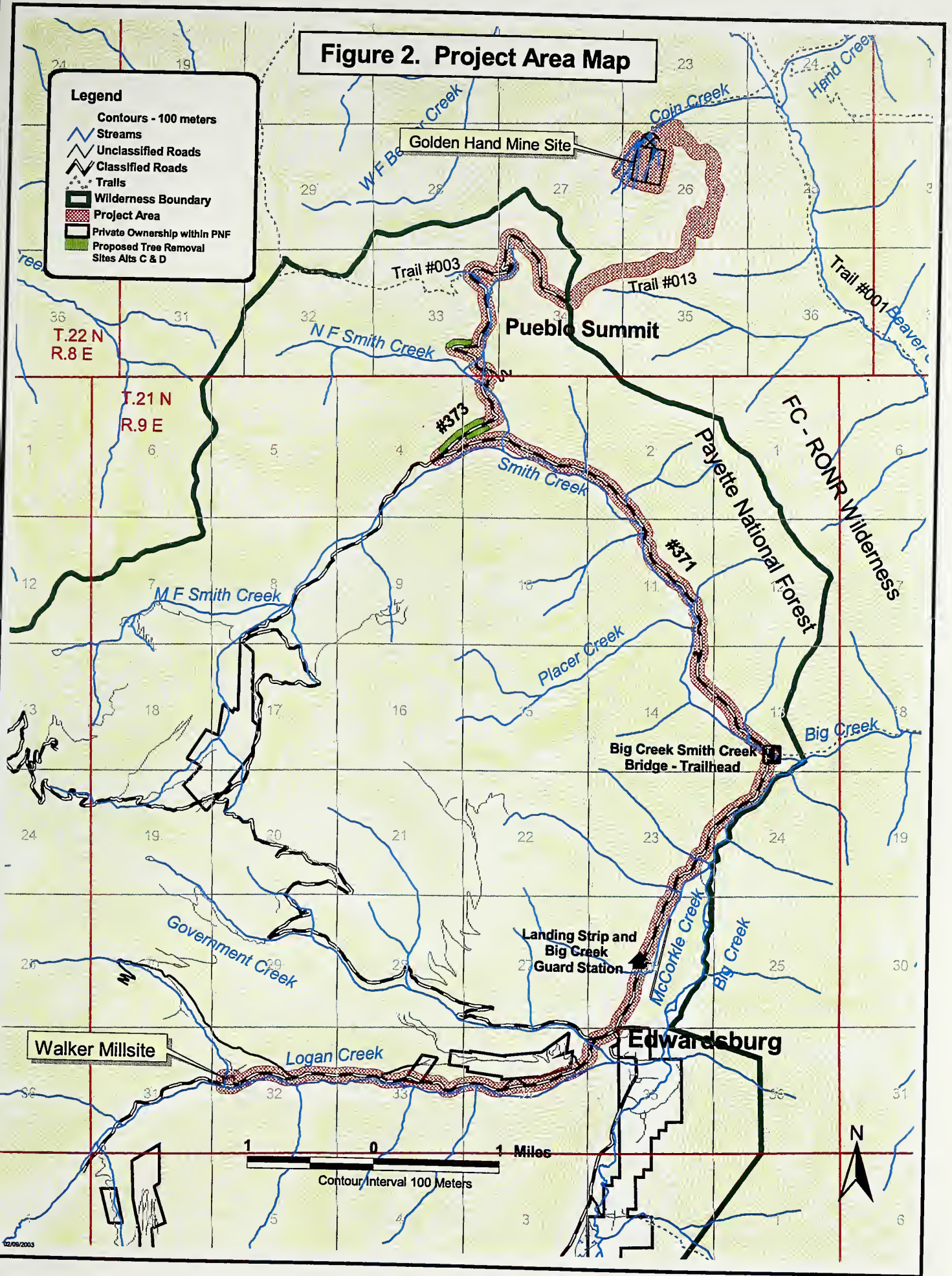
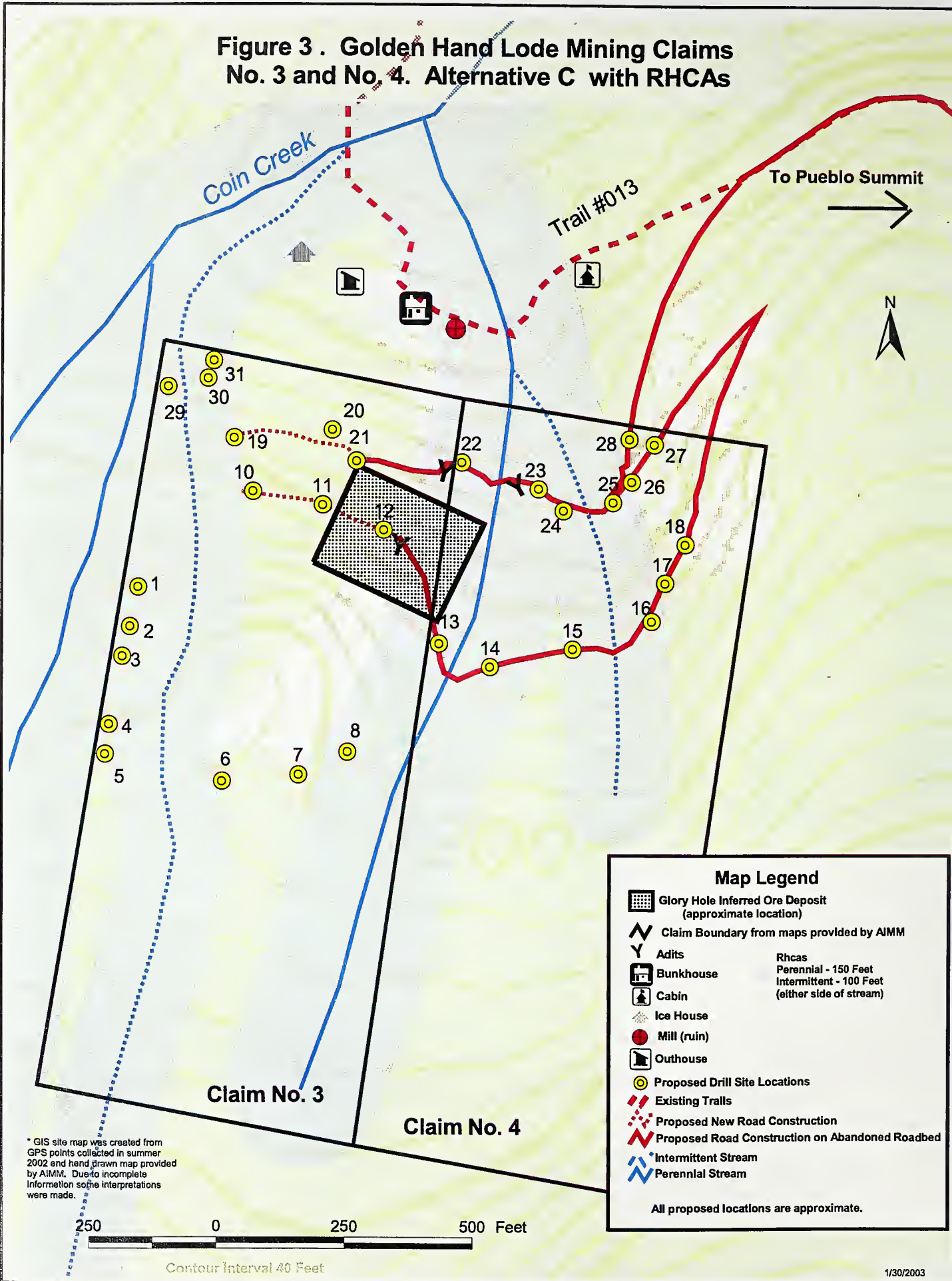


Figure 3. Golden Hand Lode Mining Claims No. 3 and No. 4. Alternative C with RHCAs



* GIS site map was created from GPS points collected in summer 2002 and hand drawn map provided by AIMM. Due to incomplete information some interpretations were made.

includes a number of road maintenance measures on FR 371 and 373 that would improve fish habitat conditions in the North Fork of Smith Creek, and Smith Creek. These include installation of a bridge, culverts, and armored stream crossings. Roads would not be widened under this alternative. Installing drivable dips and gravelling stream approaches would improve the travel route and minimize sediment production. Short-term increases in sediment could occur during installation of culverts, dips, bridge, and geogrid (an expandable plastic grid material used for soil and substrate stabilization), but BMPs would minimize these effects, and long-term benefits would be expected to greatly outweigh short-term effects.

While this alternative does not fully protect **Wilderness**, it does provide for reasonable protection of surface resources in accordance with the purposes of maintaining wilderness, in a manner consistent with the use of the land for mining purposes (36 CFR 228.15(b)).

The Wilderness Act allows mining development in designated Wilderness subject to “valid existing rights”. Direction for managing mining activities in wilderness under Forest Service mining regulations is found at 36 CFR Section 228.15, which states, in part, at section 228.15 (c):

- Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness.

Where access or development may cause significant impacts to surface resources, 36 CFR 228A requires that a plan of operations be submitted and evaluated and that the Forest Service minimize, where feasible, adverse impacts. In wilderness, the operations must protect surface resources in accordance with purposes of maintaining the Wilderness, but consistent with use of the land for mining purposes (36 CFR 228.15(b)).

The selected alternative responds to **Wilderness issues** by requiring the operators to live off-site, limiting the timing and duration of the operations, and prohibiting cutting of trees except to clear roadbeds in the Wilderness. The decreased amount of new road construction under this alternative would slightly lessen the adverse impacts by decreasing the amount of disturbed area. Compared to the proposed action, there would be less distance of abandoned roadbed along Trail #013 that would not be constructed, and no trenches would be excavated. Although the impacts remain high, this would reduce the adverse impacts to solitude and sense of remoteness because there would be no trenching and less road construction visible from Trail #013. The removal of trees from outside the Wilderness would also reduce the impacts to solitude, sense of remoteness, and primitive recreation under this alternative. Impacts from a long-term camp in the Wilderness such as tent sites, sounds, and ground disturbing activities would also be avoided because residential occupancy is not allowed. The lack of evidence of human habitation in the Wilderness will benefit the visitor’s solitude and sense of remoteness.

The selected alternative responds to **activities reasonably incident to mining** by establishing reasonable mitigations to protect surface resources, allowing proponents to meet their objectives, and not precluding future opportunities to further develop the claims. Implementation of this alternative will allow the proponents to complete work they have stated is necessary to “fully delineate the mineral deposits”:

1. Prepare more detailed geologic mapping
2. Conduct additional, non-surface disturbing soil and litho geochemistry sampling
3. Conduct non-surface disturbing geophysical traverses
4. Drill boreholes to determine the spatial position of the deposit in three dimensions.

However, the selected alternative does not allow trenching as proposed by AIMM. Trenching is a common practice when sited at points where data can be meaningful. To date that does not appear to be

the situation, as described above and analyzed in the Surface Use Analysis (SUA). Trenching is also considered to have the greatest potential to affect surface resources. Consequently, in the selected alternative, no trenching will occur. It is important to note that while trenching would not be approved under this alternative, it is not precluded after subsequent environmental analysis and decision if drilling delineates sufficient ore.

In the Selected Alternative, drilling would be sequenced beginning with sites 11, 12, 13, 21, 22, and 23. If the results of the first stage drilling were found favorable, a second phase of drilling activity incorporating additional sites would occur on as many as the 31 locations AIMM has requested.

Other Alternatives Considered

In addition to the Selected Alternative, I considered five other alternatives in the DEIS. Three of these alternatives (Alternatives A, B, and D) were analyzed in depth in the EIS. Comments on the DEIS requested analysis of four additional alternatives and one existing alternative (Alternatives B1, E, H, I, and J). After consideration, I have determined these additional alternatives do not add to the range of alternatives considered in the DEIS, address any different issues than already addressed, or substantively add to the disclosure of effects displayed in the DEIS. A summary of all alternatives considered in detail and those considered but dropped from further analysis along with rationale is provided below.

Environmentally Preferred Alternative

Regulations implementing the National Environmental Policy (NEPA) require agencies to specify “the alternative or alternatives that were considered environmentally preferable” [40 CFR 1505.2 (b)]. Forest Service policy further defines the “environmentally preferable alternative” as “an alternative that best meets the goals of Section 101 of NEPA...” (FSH 1909.15). Section 101 declares it policy of the Federal government to, in part, “preserve important historic, cultural, and natural aspects of our national heritage.” I have determined Alternative A to be the environmentally preferred alternative. The No Action Alternative is best suited to protect the wilderness nature of the landscape, protect surface resources, and honor cultural and historical preservation obligations.

Alternative A

No Action (Environmentally Preferred Alternative)

Under the No Action alternative, current management plans would continue to guide management of the project area. The National Environmental Policy Act (NEPA) requires consideration of a “No Action” alternative. However, under Forest Service mining regulations at Title 36 Code of Federal Regulations (CFR) 228 Subpart A, this option can only be considered as an intermediate step in processing a plan of operation, provided that it has been properly submitted under the authority of the U.S. Mining Laws. For example, some proposed plans or parts of proposed plans of operation may not represent logical and sequential development of mineral property, may not be feasible, may not comply with applicable state or federal laws, or may not be reasonably incident to mining. In such cases, the Forest Service may not simply deny approval of the plan, but has the obligation to notify the operator as required under 36 CFR 228.5, of changes to be made that are necessary for its approval. Ultimately, in accordance with law and regulation, holders of valid mining claims have a legal right to develop their claims, and a reasonable plan of operations must be identified and approved.

Alternative B

The Proposed Plan

Alternative B is AIMM’s proposed plan as described in five letters (see DEIS pp. 2-1 to 2-8, and Response to Comments). AIMM proposes to develop the Golden Hand No. 3 and No. 4 lode mining

claims (also referred to as “the claims”). The minerals to be developed on the claims would be silver and gold. The claims encompass approximately 20 acres each and are located near Coin Creek, a tributary of Beaver Creek, which flows into Big Creek, a tributary of the Middle Fork Salmon River. Under their proposed operating plan AIMM would:

- Maintain and widen portions of Forest Roads (FR) 371 and 373 to Pueblo Summit.
- Construct approximately 4 miles of road in the FC-RONR Wilderness, with 0.8 miles constructed on claims. Most roads (3.5 miles) would occur on abandoned roadbeds.
- Develop 31 drill site locations (with a total of 48 drill holes up to 500 feet deep each).
- Excavate 5 trenches (totaling approximately 750 feet [5 feet wide by 5 feet deep per trench]).
- Conduct underground work (clearing out, drilling, and possibly ore extraction) at two existing mine openings (adits).
- Place waste rock a minimum of 150 feet from drainages on existing waste dumps.
- Use a variety of vehicles and equipment including pickup trucks, a tandem drive flatbed truck, drill rig, dump truck, backhoe/loader, bulldozer, road grader, compressor, saws, underground mining machinery, and generator.
- Use a 14-yard tandem axle dump truck to haul a maximum of 10 dump truck loads of the extracted ore 20 miles to the Walker Millsite for bulk metallurgical testing over a ten-year period..
- Store fuel and explosives on or near the claims.
- Cut some trees on site to remove hazard trees and clear roads, and use the trees for mine timbers and firewood.
- Use a structure near the claims to house a six-person crew.
- Obtain water from a creek for mining operations (limited to 2500 gallons per day [GPD]), and domestic purposes (limited to 13,000 GPD).
- Conduct development activities from early summer through fall over a 10-year period.
- Conduct reclamation activities at the end of each season and at the end of the proposed operations.

For a complete description of the proposed plan see Alternative B in Chapter 2.

Alternative D

The Proposed Plan Modified for Increased Resource Protection with Non-Motorized Access

This alternative modifies the proposed plan of operations for the Golden Hand No. 3 and No. 4 lode mining claims to ensure that National Forest System lands, including those under mining claim locations, are used only for purposes required for and reasonably incident to mining and in a manner that minimizes adverse environmental impacts (see DEIS Figure 2-3). This alternative was considered viable based on the information provided in the Surface Use Analysis (Abbey 2003, Appendix B).

This alternative would approve activities found reasonably incident to mining, at this time. It does not preclude approval in the future of additional activities (such as trenching) that are found reasonably incident following appropriate environmental review, analysis, decision, and documentation.

As with Alternative C, this alternative would require AIMM to start the development work in the area of the inferred ore deposit, but the scope of activities considered under Alternative D would remain focused on drilling in the area of the deposit. This allows Alternative D to better respond to all resource protection issues, particularly the issue of Wilderness protection, because drilling activities would be accomplished without heavy equipment, road construction, and motorized access. This alternative specifically responds to **Wilderness** issues by restricting access to the claims to primitive means. No roads would be constructed, and all access in Wilderness would be by foot or pack stock. Alternative D also provides greater protection to **fisheries** and **water quality**.

Alternative D includes the same road maintenance and equipment restrictions on FR 371 and 373 as described in Alternative C. Key components of Alternative D include:

- No new road construction, construction on abandoned roadbeds, or trenching.
- All access in Wilderness by primitive means (on foot or with pack stock).
- Use of pack stock or manually portable drills.
- Drill sites would be located on abandoned roadbeds or on platforms more than 50 feet from waterways.
- Drilling activity would be focused around the area of the inferred ore deposit.
- Drilling data from each season would be shared with the PNF prior to approval of next season's work.
- Underground work (clearing out, drilling, and possibly ore extraction) would be conducted at two existing mine openings (adits).
- The operating period would be for three years with extensions up to two years based on unforeseen circumstances.
- Residential occupancy would be allowed on the claims to offset the greater travel times associated with foot travel and pack stock use.

Alternative E

Access by Helicopter (Requested by Nez Perce Tribe As Detailed in Comment on DEIS)

To avoid road construction in the Wilderness, reduce effects to soil and water and fisheries, and maintain wilderness character and experience, the ID Team considered an alternative that accessed the claims via helicopter. Although AIMM's proposed equipment could be brought in and moved around the claims by helicopter, it was determined that method would be disruptive to Wilderness users, and possibly to wildlife, create undue noise and safety issues, and be inordinately costly. Based on the results of the Surface Use Analysis (SUA), the ID Team decided a non-motorized access scenario (by foot and packstock) coupled with the reasonable development scenario outlined in the SUA (Alternative D) provided a better alternative to the issues listed than did helicopter access. The non-motorized access and reasonable development scenarios from Alternative D was analyzed in detail in the DEIS. I have reviewed available information and determined that further detailed study of this alternative would not result in a different conclusion, respond to the range of issues, or substantially add to the range of effects already considered in the DEIS.

Alternative F

Widening of FR 371 and 373 and FS Trail #013 to Accommodate AIMM's Vehicles and Equipment

An engineering review and survey were conducted to determine the amount of roadwork needed to accommodate AIMM's larger sized vehicles. For safety and resource protection, the ID Team determined that FR 371 and 373 and Forest Service Trail #013 would need to be widened two feet or more (from 8 to 10 foot widths to a 12 foot width) to accommodate AIMM's proposed vehicles and equipment (see discussion in the Roads and Access Management section). The ID Team considered two options: 1) widening of the road to accommodate the large vehicles, or 2) use of smaller equipment.

A review determined the potential road widening to Forest Service standards would be very costly. These costs included equipment, blasting, and hauling of material (because side casting is generally not allowed), and seeding and mulching of cut and fill slopes. Widening the road could also lead to additional resource concerns such as increased traffic on the road and increased sedimentation from exposed cut and fill slopes.

Conversely, use of vehicles with smaller tread widths and equipment with narrower tracks would have costs similar to the use of larger vehicles and equipment. AIMM has not disclosed what equipment the company has available and what needs to be rented, but rental costs for a smaller articulated dump truck (with a tire tread width of less than seven feet) are approximately \$9,000 per month. Compared to the cost of widening the road to Forest Service standards, the use of smaller equipment appeared to be more cost effective with fewer resource impacts. This alternative was analyzed in detail as Alternative C.

Based on a review of AIMM's proposed plan of operations, I directed the ID Team to assume that roads would be widened under AIMM's proposal, but without Forest Service management requirements and mitigation measures.

Alternative G

Minimum Tools with Access by Foot and Pack Animal and Mining with Non-Mechanized Tools

Based on the reasonable development scenario outlined in the SUA (Alternative D), the ID Team was able to analyze a non-motorized access alternative. A reasonable development scenario still included the use of drilling equipment. Non-mechanized tools would not allow any of the proposed pre-development activities and was not considered reasonable by the Forest Service.

Alternative B1

"1996 Plan with Reasonable Mitigation Imposed" (Submitted as Comment on DEIS by AIMM)

This alternative would modify Alternative B to include some modifications from Alternative C. The Forest Service reviewed in good faith Alternative B1 and the accompanying analysis provided by AIMM. (See Response to Comments Appendix, Section 2, which answers in detail each element of the alternative.) However, I have determined that Alternative B1 and the accompanying analysis did not disclose a range of actions or range of effects not already covered in those alternatives previously analyzed in the DEIS. In addition, the analysis provided by AIMM to support Alternative B1 was generally inadequate and unsupported by factual information (see 40 CFR 1502.24)..

Alternative H

Inferred Ore Deposit Drilling Only (Submitted as Comment on DEIS by ICL)

Alternative H would limit all drilling to the area within the boundaries of the 105'x 210' inferred ore deposit as shown within the DEIS. The Forest Service received and considered Idaho Conservation League's proposal in good faith. However, I have determined that the difference of effect between

Alternative H and Alternative D would be too negligible to warrant further study in the FEIS. I am comfortable that the full range of effect has been displayed in order to make an informed decision.

Alternative I

Underground Activity Only (Submitted as Comment on DEIS by ICL)

Alternative I would limit all mineral development to underground activity through the existing adits to allow continued delineation of the ore body through the east and west drifts without severe surface effects of road building and drilling within RHCAs. Based on the reasonable development scenario outlined in the SUA (Alternative D), a reasonable development scenario still included the use of drilling equipment. I have determined that limiting development activities solely to underground work would not reasonably achieve the pre-development objectives and is not considered reasonable by the Forest Service.

Alternative J

Smaller-Scale Motorized Equipment (Submitted as Comment on DEIS by ID Dept. of Parks and Rec.)

Alternative J would consider allowance of motorized access on existing roadbed within The Frank Church River of No Return Wilderness portion of the project area utilizing smaller-scale motorized equipment, which would not require road widening. I am comfortable that the full range of access options has been studied within the DEIS. Motorized access still would create adverse impacts on Wilderness qualities. The effects of non-motorized use as displayed in Alternative D show the effects of not widening the road. Therefore, the addition of Alternative J would not display a substantive change in the display of effects and did not warrant further study in the FEIS.

Public Involvement

Public involvement has been instrumental in the identification and clarification of the issues associated with this proposal. This has been helpful in the formulation of alternatives and has assisted me in making a more informed decision for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations. Public open house meetings, *Federal Register* notices, newspaper releases, and group and individual meetings were some of the tools used to solicit input for this analysis.

Preliminary Scoping Letter: The first opportunity for public involvement occurred when the PNF first received the proposed plan of operations in 1996 and public "scoping" was conducted. No decision was made at that time.

Notice of Intent: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) in the *Federal Register* on April 19, 2002, soon after the agency decided that an EIS was to be completed.

Second Scoping Letter: On April 26, 2002, the Payette National Forest solicited comments from more than 476 interested parties on a Forest-wide mailing list to identify possible issues surrounding the proposed Plan of Operations at the Golden Hand Mine site within the Frank Church-River of No Return Wilderness.

Scoping Open House: One open house meeting was held on May 21, 2002 in McCall during the scoping period to provide additional information on the proposal and solicit comments.

Freedom of Information Act (FOIA): The Payette National Forest has received and answered a total of 11 FOIA requests, providing additional information to individuals or groups since 2001. Six of those have been processed since the initiation of scoping - April 26, 2002.

Public Comment Received on the Draft EIS: The Notice of Availability of the Draft EIS (DEIS) was published in the Federal Register on March 7, 2003 with a deadline for public comments of April 21, 2003. A total of 1,219 communications were received during the 45-day comment period. Communications were in the form of individual letters, response forms, e-mails, e-mail form letters, faxes, petitions, and other formats. Letters were from Tribes, local, State, and federal agencies, citizen organizations, individuals, and the proponent.

Individual Meetings: Payette National Forest personnel held a total of three individual meetings to share information and solicit comment, with Valley County Commissioners on March 24, 2003, Idaho County Commissioners on April 7, 2003, and Nez Perce Tribal Representatives on April 16, 2003.

DEIS Open Houses: The Forest sponsored two additional open house public meetings during the comment period. The first was held in McCall on April 7, 2003 and the second in Boise, Idaho on April 8, 2003. The date, time, and location were publicized in an April 1, 2003 news release to area media. These meetings were held to inform anyone willing to attend about the preferred alternative and to answer questions about the project. Approximately 17 people attended the meetings.

Analysis and Incorporation of Public Comments: The DEIS generated numerous public comments. The substantive comments have been analyzed by the Forest Service. Substantive comments were addressed in detail, individually and collectively, in the Errata and Response to Comments sections of the FEIS. I have weighed the substantive comments and applied them in developing the rationale for this decision as described above.

Findings Required by Other Laws and Regulations

Payette National Forest Land and Resource Management Plan

This analysis has been tiered to the EIS for the 1988 Payette National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan was approved in May 1988 by the Regional Forester and has been amended (see below). The Forest Plan establishes long-term management direction for the entire Forest (pp. IV-1 to 132) and provides more site-specific direction for PNF management areas. The proposed project is in Wilderness Management Area 26. Direction for the management area is provided in the FC-RONR Wilderness Management Plan. The PNF Forest Plan incorporates FC-RONR Wilderness Management Plan direction by reference (USDA 1988, p. I-2).

The Forest Plan has been amended to include goals, objectives, standards, and guidelines for protection of anadromous and inland fisheries as defined in the *Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California* (known as "PACFISH") (USDA and USDI 1995); and the *Inland Native Fish Strategy* (known as "INFISH") (USDA 1995). Both are interim habitat protection and restoration strategies designed to protect and improve aquatic health using Riparian Habitat Conservation Areas (RHCA) and Riparian Management Objectives (RMO).

Forest Plan Amendments

The Selected Alternative would require two amendments to the Forest Plan. Each of these is a one-time, site-specific, non-significant amendment that would not change the overall Forest Plan goals, objectives, Desired Future Conditions, or associated outputs. Alternative C would:

- Amend Management Area 26 (FC-RONR Wilderness) standards and guidelines (p. IV-351), Visual Resource Inventory and Planning, as follows: “For the Golden Hand Plan of Operations Project, allow activities within the project area of approximately 55 acres that would not meet the Visual Quality Objective of Preservation.”
- Amend Forest Plan standards and guidelines, as amended by PACFISH, to allow activities within the project area that do not meet PACFISH direction for Riparian Management Objectives, Riparian Habitat Conservation Areas, and minerals and road management.

Each of the amendments, when evaluated in light of 36 CFR 219.10 (f) and the four factors in Forest Service Handbook (FSH) 1909.12, section 5.32 (Process to Amend the Forest Plan), is not a significant change. Therefore, individually and collectively, they constitute non-significant amendments to the Forest Plan. For specific analysis, see Response to Comments, public comment Section 3.

Frank Church-River of No Return Wilderness Management Plan

The FC-RONR Wilderness Management Plan (also referred to as the Wilderness Plan) provides management direction for each of the four National Forests (Bitterroot, Salmon-Challis, Nez Perce, and Payette) administering portions of the FC-RONR Wilderness. The Wilderness Plan direction for minerals states, “Ensure that all operations are conducted so as to minimize adverse environmental impacts on surface resources” (USDA 1985, p. 44). For minerals access, the Wilderness Plan includes, “Reasonable access cannot be denied, but should be located to have the least long lasting impact on wilderness values,” and, “The use of motorized access by ground or air to claims shall be authorized only when proven essential” (USDA 1985, p. 44). Additionally, the Wilderness Plan directs, “Limit road, trail... construction to those clearly identified as essential to the operation.” Direction pertaining to use of a Forest Service minerals examiner states, “Utilize Forest Service Mineral Examiners to assess the proposed mineral development in determining that proposed methods of development are necessary and reasonable and if the proposed operation is the next logical step in the orderly development of the mineral resource” (USDA 1985, p.43). In compliance with this direction, to support the environmental analysis of this proposal, the Payette National Forest requested preparation of a Surface Use Analysis for this proposal by a certified Mineral Examiner. That analysis is provided as Appendix B in the DEIS.

Roads Analysis

Roads analysis is basically the process of assessing the past, present, and future conditions of roads on the landscape in order to inform decision-making. The Forest Service Manual (FSM 7700) requires a roads analysis under certain conditions. It also states that roads analysis below the forest-scale is not automatically required, but may be undertaken at the discretion of the Responsible Official. But when the Responsible Official determines that additional analysis is not needed for a project, the Responsible Official must document the basis for that conclusion (FSM 7712.13c, 12/14/01).

The EIS provides good information on the present and intended future condition of roads on the landscape in the Golden Hand Mine area and access corridor to it (see Figure 3). The DEIS on pp. 3-31 to 47 describes in detail the existing situation. The Response to Comments provides additional information.

The location and context of this project is unusual in that the abandoned roadbed that is now Trail #013 and the old exploration roads on the Golden Hand mine claims are essentially the only roads in this south-central portion of the Frank Church-River of No Return Wilderness. Therefore, to study these roads is to study all the pertinent roads in the landscape. South of the Wilderness boundary, in the Smith Creek and Logan Creek drainages, the Smith Creek Road (FR 371) and Pueblo Summit Road (FR 373) are two of the few main access routes in the area between Edwardsburg and Pueblo Summit Trailhead accessing the Trail to the mine site. Pages 3-33 through 3-35 describe and illustrate these roads in detail.

I find that the analysis of roads inside and outside the wilderness at the project scale provides the functional equivalent of a separate roads analysis process. The unusual nature of this proposed action is a second factor making the need for a separate roads analysis not applicable in this case. A mining project under the 1872 Mining Laws and the 36 CFR 228 Regulations provides a narrow decision space and few options for road reconstruction, closures, obliteration, and mitigation. This specific situation of a mining project in a Wilderness where the EIS contains a full analysis of roads in the area is an example of the situation where a separate roads analysis would be repetitive and unnecessary.

However, given concerns expressed by public comment and in the Endangered Species Act consultation process with the U.S. Fish and Wildlife Service and NOAA –Fisheries for this proposal, I have decided that the Forest Service will prepare a roads analysis for this area by no later than December 31, 2005.

Legal Requirements

This Record of Decision adheres to requirements of federal law.

Central Idaho Wilderness Act (CIWA) and the Wilderness Act: The US Congress designated the FC-RONR Wilderness in 1980 with the passage of the CIWA. The CIWA mandated the development of a comprehensive wilderness management plan. The CIWA includes some mining direction prohibitions for areas of the FC-RONR Wilderness but specific direction is provided in the Wilderness Act (U.S. Congress 1980, 16 USC 1274).

The Wilderness Act of 1964 (amended in 1978) was enacted by Congress to “secure for the American people, an enduring resource of wilderness for the enjoyment of present and future generations.” This act was passed “in order to ensure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition...”(Section 2 [a]). The Wilderness Act contains provisions for mining that include: “Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident hereto...subject to valid existing rights” (Section 4 [d-3]). The Selected Alternative complies with the Central Idaho Wilderness Act (CIWA) and the Wilderness Act in that it allows only activities reasonably incident to mining and in a staged approach. This Alternative would meet the objectives of the proponent, but through a cautious step-by-step approach.

The National Environmental Policy Act (NEPA) of 1969 (P.L . 91-190): The purposes of this Act are “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” (42 U.S.C. Sec. 4321). NEPA establishes the format and content requirements for environmental analyses and documentation. The entire process of preparing this DEIS was undertaken to comply with NEPA.

The National Forest Management Act (NFMA) of 1976 (P.L. 94-588): This Act guides development and revision of National Forest Land Management Plans and contains regulations that prescribe how land and resource management planning is to be conducted on NFS lands to protect National Forest resources. The different alternatives for this project were developed to comply with NFMA, and represent varying degrees of resource protection.

The Endangered Species Act (ESA) of 1973, as amended: The purposes of this Act are to provide for the conservation of threatened and endangered species and their habitats. The PNF is required by the ESA to ensure that any actions it approves will not jeopardize the continued existence of threatened and endangered species or result in the destruction or adverse modification of critical habitat. The PNF has prepared biological assessments that evaluate the potential effects of proposed activities on threatened and endangered species that may be present in the analysis areas. The assessments include any measures the PNF believes are needed to minimize or compensate for effects on the species.

Consultation with the US Fish and Wildlife (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries is required under the ESA and will be completed prior to any decisions made as a result of this analysis. Additional information about USFWS and NOAA Fisheries is provided below under “Other Agencies Having Permit or Review Authority.”

The Migratory Bird Treaty Act of 1918: The purpose of this Act is to establish an international framework for the protection and conservation of migratory birds. This project may result in an unintentional take of individuals; however, the project complies with the Fish and Wildlife Service Director Order # 131 and requirements for permit to “take”. In addition, this project complies with Executive Order 13186 since the analysis meets Forest Service requirements as defined under the January 16, 2001 Memorandum of Agreement (MOA) between the USDA-Forest Service and the USDI-Fish and Wildlife Service. The actions expected under this MOA will be a precursor to help form more specific protocol that will be developed in a subsequent interagency MOA(s), pursuant to the Executive Order. The purpose of this MOA is to strengthen migratory bird conservation through enhanced collaboration between the Forest Service and Fish and Wildlife Service in coordination with state, Tribal, and local governments (DEIS p. 3-148). Therefore, this decision is consistent with the Migratory Bird Treaty Act and its EO and MOU.

1872 General Mining Law as amended (30 USC 22, et seq.): This law allows U.S. citizens the right to locate, explore, and develop mining claims on federal lands, such as National Forests that are open to mineral entry or, if closed to mineral entry, subject to valid existing rights. Additional information is provided in the Minerals and Geology section, DEIS Chapter 3. This decision, as well as the Purpose and Need, Proposed Action, and each action alternative in the EIS, is consistent with the mining laws.

The Multiple Use Mining Act of July 23, 1955 (30 USC 611, et seq.): The Act requires, among other things, that any unpatented mining claim “... shall not be used, prior to issuance of patent therefore, for any purpose other than prospecting, mining, or processing operations and uses reasonably incident thereto.”

Alternative C is consistent with the Multiple Use Mining Act in that it responds to activities reasonably incident to mining by placing reasonable mitigations in order to protect surface resources, allowing the proponents to meet their objectives, and not preclude future opportunities to further develop the claims. Additional information is provided in the Minerals and Geology section, Chapter 3 of the DEIS.

The Federal Water Pollution Control Act of 1972 (P.L. 92-500) as amended in 1977 (P.L. 95-217) and 1987 (PL 100-4), also known as the federal Clean Water Act: The primary objective of this Act is to restore and maintain the integrity of the nation’s waters by: 1) Eliminating the discharge of pollutants into the nation’s waters; and 2) Achieving water quality levels that are fishable and swimmable. This Act establishes a non-degradation policy for all federally proposed projects to be accomplished through planning, application, and monitoring of Best Management Practices (BMPs) (see DEIS Appendix B).

Identification of BMPs is mandated by Section 319 of the Water Quality Act of 1987 (also referred to as the Clean Water Act), which states, "It is national policy that programs for the control of non-point sources of pollution be developed and implemented."

The Idaho Antidegradation Policy requires that "existing instream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected" (IDAPA, 16.01.02.051.01). I believe that the analysis supports the Antidegradation Policy, in that salmonid spawning and rearing and cold-water biota protection from accelerated sediment production, would not be precluded by Alternative C. While there may be a risk from several sources, including accelerated sediment, to ESA listed species (see Fisheries Resource section and Biological Assessment in Project Record); the goals of ESA and the Antidegradation Policy are not the same.

By selecting Alternatives C, models predict that project-related sediment delivery would decline in the Smith Creek subwatershed, resulting in potential benefits to fish and fish habitat. In the Beaver Creek subwatershed, a variety of activities, including sediment delivery, may cause impacts to listed fish species. I am confident that modifications included in Alternative C largely decrease risk and meet the intent of Idaho's Antidegradation Policy.

The Clean Air Act, as amended in 1990: The purposes of this Act are "...to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population; to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution; to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and to encourage and assist the development and operation of regional air pollution prevention and control programs." This decision is consistent with the Clean Air Act.

Federal Noxious Weed Act of 1974: This Act provides for the control and management of non-indigenous weeds that injure or have the potential to injure the interests of agriculture and commerce, wildlife resources, or the public health. The Act requires that each federal agency develop a management program to control undesirable plants on federal lands under the agency's jurisdiction; establish and adequately fund the program; implement cooperative agreements with state agencies to coordinate management of undesirable plants on federal lands; and establish integrated management systems to control undesirable plants targeted under cooperative agreements.

Implementation of Alternative C is fully compliant with the Federal Noxious Weed Act. There would be monitoring for noxious weeds, which is effective in preventing the establishment and spread of noxious weeds. Under this alternative there would be motorized access. To mitigate the effects of vehicles and heavy equipment traveling into the Golden Hand Mine site, the proponent would be required to hose down the tires and undercarriage with pressurized water to dislodge the seeds prior to entering the Payette National Forest. In addition, disturbed sites would be reseeded with native plants and monitored for any noxious weed infestations. Work crews trained in noxious weed recognition and removal would monitor the roadbeds and the area within 100' on either side of the road and mechanically remove any weeds or microtrash. These mitigations will reduce the potential for noxious weeds establishment and spread in and adjacent to the project area (DEIS p. 3-153).

The Preservation of American Antiquities Act of 1906: This Act makes it illegal to "...appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned by the Government of the United States..." Concurrence has been reached with the Idaho State Historic Preservation Office regarding impacts to cultural resources in the Golden Hand project area. Under this alternative there would be adverse effects to cultural resource properties as a result of mining-related activities, but the effects would be less than in the proposal due to the lack of occupancy on-site. The presence of work crews and the close proximity of the mining activity to the

historic properties may result in damage or removal of historic artifacts. The extensive site documentation required by the MOA will decrease the probability the adverse effects (DEIS p. 3-161).

Natural or Depletable Resource Requirements and Conservation Potential: The Golden Hand Mine project has been designed to conform to applicable laws and regulations pertaining to natural or depletable resources, including minerals and energy resources. Regulations of mineral and energy activities on the National Forest, under the 1872 General Mining Law and the Mineral Leasing Act of 1920, are shared with the Bureau of Land Management.

The National Historic Preservation Act: This Act requires federal agencies to consult with State and local groups before nonrenewable cultural resources, such as archaeological sites and historic structures are damaged or destroyed. Section 106 of this Act requires federal agencies to review the effects that project proposals may have on the cultural resources in the project area. It requires agencies to consider the effects of undertakings on properties eligible to or listed in the National Register of Historic Places by following the regulatory process specified in 36 CFR 800.

The Idaho State Historic Preservation Office (SHPO) must approve any changes to cultural resources that are determined eligible to the National Register of Historic Places and a Section 106 review must occur. The Forest Service, in accordance with Section 106, consulted with SHPO on the potential effects of the proposed plan (Alternative B) on the Golden Hand Mine site. The Forest Service determined that there would be potential adverse effects to cultural resources as a result of the proposed activities at the Golden Hand Lode Mining Claims No. 3 and No. 4 (DEIS p. 3-160).

The Forest Service and SHPO agreed that partial mitigation of adverse effects could occur from the establishment of a Memorandum of Agreement (MOA) between the PNF and SHPO. This mitigation does not offset all potential adverse effects, but would lessen the effects. The MOA requires extensive site documentation such as archival quality photographs of the mining and mining related facilities, and narrative descriptions of the mine area and its history.

All alternatives, including the Selected Alternative, would cause adverse effects to cultural resources by failing to restore the eligible properties (DEIS p. 3-160). However, given the Section 106 consultation process documented in the MOA, the Selected Alternative is consistent with the National Historic Preservation Act.

Environmental Justice

On February 11, 1994, President Clinton signed Executive Order 12898 on Environmental Justice. This order directs each federal agency to make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The same day, the President signed a memorandum, emphasizing the need to consider these types of effects during NEPA analysis. To meet this direction, the USDA requires that where proposals have the potential to disproportionately adversely affect minority or low-income populations, these effects must be considered and disclosed (and mitigated to the degree possible) through the NEPA analysis and documentation.

Several different situations characterize environmental justice.

1. **Facility siting and opposition.** The targeted siting of potentially polluting facilities in areas with racial minorities or impoverished populations.
2. **Regulatory agency discrimination.** Discrimination by regulatory agencies in enforcement of environmental standards where projects may be affecting low income or minority populations.

3. Equitable distribution of project benefits and risks. The inequitable distribution of project benefits, primarily economic, with project impacts such as increased pollution or perceived risk of pollution.

Payette National Forest has considered each of these factors in reaching the decision to approve Alternative C from the final EIS. The following is a discussion of each concern. Other than members of two Native American Tribes within the region, the agencies have not identified any racial minorities or impoverished populations within the project area that might be affected by implementation of this project.

1. Facility Siting and Opposition. The proposed mine is not located within or adjacent to any tribal reservations. It is, however, located within the region of territory ceded to the Nez Perce by the Nez Perce Treaty of 1855. The Selected Alternative will improve access via Forest roads 371 and 373. This decision approving the mine operations includes numerous required mitigations to minimize, eliminate, or avoid impacts to resources. Tribal government representatives and members of two area tribes have been invited to participate in the development and review of the EIS. Comments from the Nez Perce Tribe have been received on the draft EIS and in the development of the final EIS. The Shoshone Bannock Tribe has also contacted the Payette recently to share their concerns. It is likely that comments from individual tribal members were received as well, but the agencies cannot determine which commentors were or were not tribal members.

2. Regulatory Agency Discrimination. As a land management agency, the Forest Service exercises some regulatory functions over activities such as mining on National Forest System lands. At least three other federal agencies exercise regulatory responsibilities under law over such activities: U.S. Fish and Wildlife Service, National Oceanic and Oceanographic Administration – Fisheries, and the Environmental Protection Agency. At least two State regulatory agencies have responsibilities as well-- Idaho Department of Environmental Quality, and Idaho State Historic Preservation Office. The Payette National Forest has devoted considerable resources to studying the potential effects of the proposed action and its alternatives and consulting with the federal and State regulatory agencies. The Payette National Forest has afforded agencies and the public multiple means of obtaining information regarding the proposal. See the Public Participation Section above for more details.

3. Equitable Distribution of Project Benefits and Risks. Because the project is neither adjacent to or near Tribal reservations, there will be no risk of impacts to reservation lands. Members of any tribes living off the reservations and in the project vicinity will be affected to the same extent as other people in the area with respect to non-traditional use. Traditional use of the area may be affected in terms of traditional use with respect to hunting, fishing, and spiritual setting.

Consumers, Civil Rights, Minorities, and Women: Forest Service actions have potential to produce some form of impacts, positive or negative, on the civil rights of individuals or groups, including minorities and women. The need to conduct an analysis of this potential impact is required by Forest Service Manual and Forest Service Handbook direction. In conclusion, there are no environmental justice issues relative to the approval of Golden Hand Mine project that violate or are inconsistent with the intent of Executive Order 12898. Measures have been taken to minimize environmental impacts resulting from the mine regardless of the minority status or economic ability of the people in the area. The regulatory agencies have pursued enforcement of these mandates. Due to the small scale of the project and the extended 3-5 year time frame, no minority or economic group would experience discernible economic benefits or risks of the proposed project.

American Indian Religious Freedom Act. The American Indian Religious Freedom Act (AIFRA) was passed as a by Congress in 1978. It states that it shall be the policy of the United States to protect and preserve for the American Indian the inherent right of freedom to believe, express, and exercise

traditional religions, to use sacred objects, and to worship through ceremonies and ritual. The Forest Service complies with this act by consulting with and considering the views of Native Americans when a proposed land use might conflict with traditional Native American religious beliefs or practices. The act does not require that land uses, which conflict with Native American religious beliefs or practices, be denied.

Conflicts identified for Alternative C include visual and audible disruption from mining activities of some Native American traditionalists who may be worshipping within portions of the Frank Church-River of No Return Wilderness, and desecration of lands containing or supporting sacred plants and animals by intrusive activities. However, no Tribes with aboriginal affiliation to the area have identified specific sites of religious, medicinal, or cultural importance. This may be related to issues of confidentiality for the Tribes.

Although the Forest Service and regulatory agencies have made efforts to minimize impacts to Tribal concerns about water quality and fisheries, the land use of mining is simply not compatible with some traditional Native American values and how those values are placed on the traditional use. No degree of adverse impact even mitigated or reclaimed impact is viewed as acceptable to some people because they consider surface disturbance an act of desecration. While many portions of the Big Creek drainage will continue to be conducive for religious practices, residual impacts to the Golden Hand Mine area are unavoidable even with successful reclamation.

In selecting the preferred alternative, it is important to acknowledge these concerns, while recognizing that the Golden Hand Mine is presently a disturbed mining site, and complete mitigation is not possible because the impact is as much spiritual as it is physical. It is also important to note that this decision does not limit the Native Americans' freedom to believe, express, or exercise their traditional religious beliefs, their right to possession of sacred objects, or freedom to worship through ceremonies and traditional rites as required by AIRFA.

This decision is also consistent with President Clinton's executive order (E.O. 13007) requiring each agency, to the extent practicable, to accommodate access to and use of sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. No "sacred site(s)" as defined in the executive order have been identified that will be disturbed by implementation of Alternative C. Access to the Big Creek drainage and the Frank Church-River of No Return Wilderness will not be eliminated or noticeably reduced, although access to areas occupied by active mine operations may be limited during the life of the mine.

Payette National Forest Responsibilities to Federally Recognized Tribes: American Indian Tribes are afforded special rights under various federal statutes that include: the National Historic Preservation Act (NHPA) of 1966 (as amended); the National Forest Management Act of 1976 (P.L. 94-588); the Archaeological Resources Protection Act of 1979 and Regulations at 43 CFR Part 7; the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 and Regulations at 43 CFR Part 10; the Religious Freedom Restoration Act of 1993 (P.L. 103-141); and the American Indian Religious Freedom Act (AIRFA) of 1978. Federal guidelines direct federal agencies to consult with modern American Indian Tribal representatives who may have concerns about federal actions that may affect religious practices, other traditional cultural uses, as well as cultural resource sites and remains associated with American Indian ancestors. Any tribe whose aboriginal territory occurs within a project area is afforded the opportunity to voice concerns for issues governed by NHPA, NAGPRA, or AIRFA.

Federal responsibilities to consult with Indian Tribes are included in the National Forest Management Act of 1976 (P.L. 94-588), Interior Secretarial Order 3175 of 1993 and Executive Orders 12875, 13007, 12866, and 13084. Executive Order 12875 calls for regular consultation with tribal governments; and Executive Order 13007 requires consultation with Indian Tribes and religious representatives on the

access, use, and protection of Indian sacred sites. Executive Order 12866 requires that federal agencies seek views of Tribal officials before imposing regulatory requirements that might affect them; and Executive Order 13084 provides direction regarding consultation and coordination with Indian Tribes relative to fee waivers. Another Executive Order that pertains to American Indian Tribes includes Executive Order 12898, which directs federal agencies to focus on the human health and environmental conditions in minority and low-income communities, especially in instances where decisions may adversely impact these populations (see the “Environmental Justice” discussion above). The Regulations for implementing NEPA (40 CFR 1500-1508) provide for Indian tribes to participate in Forest management projects and activities that may affect them.

The Golden Hand Mine project area is located within ceded lands of the Nez Perce Tribe. Ceded lands are federal lands on which the federal government recognizes that a Tribe has certain inherent rights conferred by treaty. In the Nez Perce Treaty of 1855, Article 3, the United States of America and the Nez Perce Tribe mutually agreed that the Nez Perce retain the right of:

“... taking fish at all usual and accustomed places in common with citizens of the Territory [of Idaho]; and of creating temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing horses and cattle...”

The Golden Hand Mine also has the potential to affect lands covered under the Shoshone-Bannock Tribes Fort Bridger Treaty of 1868. Though the Fort Bridger Treaty did not specifically cede territory in the region to the Shoshone-Bannock, Article 4 of this Treaty states:

“...but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts.”

The government’s trust responsibility requires the Forest Service to assess proposed actions for their potential to affect treaty rights including culturally significant plant and animal species, habitats, traditional cultural properties, cultural resources, and sacred sites. Where potential impacts may exist, the federal agencies must seek consultation with the Tribe, and must address those impacts in planning documents and final decisions.

Public scoping notices and questionnaires as to the form of DEIS to send were mailed to the two Tribes with treaty rights – the Nez Perce Tribe and the Shoshone-Bannock Tribes. The Nez Perce Tribe responded and by phone officially requested informal consultation to occur during the 45-day comment period (March 27, 2003) and provided written comments to the Forest Service. The Shoshone Bannock did not initially respond to Payette inquiries, but did request formal consultation, via letter, on the proposal on April 21, 2003. Formal consultation has not yet been completed due to the lack of formal consultation procedures between the Forest Service and Shoshone-Bannock Tribe. However, talks have been initiated between the Payette and the Tribe toward that end.

Unavoidable Adverse Environmental Impacts

The Selected Alternative will produce adverse effects on some components of the environment that cannot be avoided or mitigated. Potential adverse effects are documented in DEIS Chapter 3 and the FEIS. A range of reasonable alternatives has been considered. The Selected Alternative includes management requirements and mitigation measures to avoid, where possible, or reduce adverse environmental effects.

Other Agencies Having Permit or Review Authority

U.S. Fish & Wildlife Service, National Oceanic & Atmospheric Administration

The U.S. Fish & Wildlife Service (USFWS) has responsibilities under the Fish and Wildlife Coordination Act (1934), Endangered Species Act (1973), and Bald Eagle Protection Act (1940). Responsibilities under the Fish and Wildlife Coordination Act require federal agencies issuing permits (i.e. Corps of Engineers § 404 Permit) to consult with the USFWS to prevent the loss of or damage to fish and wildlife resources where “waters of any stream or other body of water are proposed...to be impounded, diverted...or otherwise controlled or modified.”

The National Oceanic & Atmospheric Administration (NOAA-Fisheries) is the federal agency responsible for the stewardship of the nation's living marine resources and their habitat. The public's trust responsibility in this area is derived from a number of federal laws, primary of which are the Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, and Endangered Species Act (ESA).

The Forest Service has prepared two biological assessments (BAs) to comply with the ESA. One primarily addresses aquatic threatened and endangered species, and the other focuses on terrestrial species. A BA analyzes potential effects on threatened and endangered species that may be present in or near the project area. The Forest Service determines from the BA if implementation of the selected alternative would adversely affect any species listed or proposed as threatened or endangered under the ESA. The Forest Service initiates consultation by submitting the BA to the two agencies. The USFWS and NOAA-Fisheries review the BA and come to a determination on the effect. This determination is issued as a Biological Opinion (BO). The BO includes terms and conditions that must be complied with in order to be exempt from the prohibitions of Article 9 of that Act. The BO may include conservation recommendations, which are suggestions regarding discretionary activities to minimize or avoid adverse effects of the proposed action on listed species or critical habitat. If it is determined in the BO that the alternative would jeopardize the continued existence of a species, the agency must offer a reasonable and prudent alternative that would, if implemented, preclude jeopardy. The USFWS and NOAA Fisheries have 60 days from initiation of formal consultation to issue a BO. If the USFWS or NOAA Fisheries decide that implementation would not jeopardize the continued existence of any listed species, each would issue a letter of concurrence after a 30-day informal consultation period.

For the Golden Hand Project, the Payette reinitiated consultation with the USFWS and NOAA-Fisheries by transmitting copies of the BAs for review. On April 28, 2003, the U.S. Fish and Wildlife Service provided a signed BO to the Forest Service concluding that the project “may adversely affect” listed bull trout in the area, but is not likely to cause a trend toward extinction.

The Payette has reinitiated consultation with NOAA Fisheries on the Payette Forest Plan as part of the request for formal consultation on the Golden Hand Mine. For this project, the Forest Service recognizes that the previous biological opinions (1995 and 1998 BOs) from NOAA-Fisheries contain provisions with which the Payette National Forest is unable to comply, due to the need for road access to mining sites in the watershed and due to time constraints for completing roads analysis. The Forest transmitted the Biological Assessment (BA) for Fisheries to NOAA-Fisheries on March 20, 2003 (letter from Forest Supervisor Mark Madrid to Ken Troyer, NOAA Fisheries). The 60 day period to issue the final Biological Opinion ends May 19, 2003.

Consultation is an ongoing process that, in effect, begins before formal submission of the BA. Through consultation with the two regulatory agencies, Payette personnel have kept informed of the agencies' preferences for mitigations and protective measures for fish habitat. The Payette personnel anticipate that the NOAA-Fisheries BO will be similar to the BO from the USFWS, and that this decision will be consistent with its terms and conditions.

When the Final Biological Opinion has been signed and received, the Payette will compare it against this Record of Decision. If material differences exist, then the responsible Payette line officer would review the magnitude of those changes and consider possible need for further analysis and/or adjustments in the decision under the provisions of the Forest Service NEPA Handbook (FSH 1909.15), section 18.1 (Review and Documentation of New Information Received After a Decision has Been Made).

U.S. Army Corps of Engineers (COE)

COE is the permitting authority for the discharge of dredged or fill materials into the wetlands and non-wetland waters of the United States. Any activities that would result in disposal of dredged or fill materials into wetlands and non-wetland waters of the U.S. would require a "404 permit" under Section 404 of the Clean Water Act. AIMM would be responsible for obtaining appropriate permits from COE.

U.S. Environmental Protection Agency (EPA)

The EPA has oversight responsibility for federal Clean Water Act programs delegated to and administered by the Idaho Department of Environmental Quality. EPA may also intervene to resolve interstate disputes where discharges of pollutants in an upstream state may affect water quality in a downstream state. EPA also reviews 404 dredge and fill permit applications and provides comments to the COE. The EPA has veto authority under the federal Clean Water Act for decisions made by the COE on 404 permit applications. EPA also has responsibilities under NEPA and the federal Clean Air Act to cooperate in the preparation of EISs and to review draft EISs and federal actions potentially affecting the quality of the environment. EPA advises the lead agencies on the preparation of an EIS and evaluates the adequacy of information in the EIS, the overall environmental impact of the proposed action, and various alternatives. EPA has been notified and submitted comments on the DEIS. Responses to those comments have been included in response to comments (FEIS Appendix H).

Idaho Department of Water Resources (IDWR)

Water rights and uses are administered by the IDWR under State law. The IDWR has no record of any permits associated with the Golden Hand Mine or anywhere near the mine site. Therefore any diversion of water for mining purposes would require a Permit to Appropriate from the IDWR prior to water use. AIMM would be responsible for obtaining the necessary permit from the state.

Idaho Department of Environmental Quality (IDEQ)

The IDEQ has review authority and is responsible for implementing environmental protection laws and programs for the State of Idaho. Compliance with state requirements for protection of waters within Idaho (Idaho Administrative Code IDAPA 58.01.02) means, "The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected"; and, "...wherever attainable, surface waters of the state shall be protected for beneficial uses, which for surface waters includes all recreational use in and on the water surface, and the preservation and propagation of desirable species of aquatic life." IDEQ administers water quality monitoring for compliance with Idaho water quality standards and is the issuing agency for waivers needed for short-term increases in surface water turbidity during construction. IDEQ has been notified and submitted comments on the DEIS. Responses to those comments have been included in response to comments (FEIS Appendix H).

Administrative Review or Appeal Opportunities

This decision is subject to appeal. AIMM may appeal the decision under either 36 CFR Part 215, or 36 CFR Part 251. Other parties may appeal the decision under 36 CFR Part 215. A written notice of appeal must state that it is being filed under either 36 CFR 215, or 36 CFR 251. Appeals under 36 CFR 251 must meet the content requirements of 36 CFR 251.90 and be filed by June 16, 2003. Appeals under 36 CFR 215 must meet the content requirements of 36 CFR 219.14 and be filed by June 23, 2003. All

appeals must be addressed to: Appeals Deciding Officer, USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, Utah, 84401, (801) 625-5265, Fax (801) 625-5277.

Implementation

The project may not be implemented until after appeal resolution, depending on the nature of that resolution.

Contact Person

Copies of the Final EIS were mailed to those who expressed interest in the document. The FEIS is available for review on the Internet at www.fs.fed.us/r4/payette/main.html, under the "Reading Room" icon. To request a hard copy of the FEIS or for additional information contact C. Quinn Carver at the Krassel Ranger District, P.O. Box 1026, McCall, Idaho, 83638 or by phone at (208) 634-0600.

Mark Madrid
MARK J. MADRID
Forest Supervisor
Payette National Forest

5/1/03
Date

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Appendix A

USFWS Biological Opinion Excerpt

*This is a direct excerpt from the U.S. Fish and Wildlife Service's **Biological Opinion and Conference Report, The Golden Hand No. 3 and No. 4 Proposed Plan of Operations, Idaho and Valley Counties** (4/28/03, pp. 50-53). It lists all the Reasonable and Prudent Measures and Terms and Conditions that are incorporated as integral parts of the Forest Service's decision on this project.*

“....

Reasonable and Prudent Measures

Bull Trout

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize incidental take.

1. Minimize effects from vehicles fording streams throughout the project area.
2. Assure that new and reconstructed roads, road use, and road maintenance will not result in a detrimental increase in sediment delivery to streams.
3. Minimize loss of habitat, disturbance of fish, and potential for disruption of migration from installation of the of the [sic] log stringer bridge and geo-grid ford across Smith Creek.
4. Reduce potential of adverse effects from water withdrawal for mine operations.
5. Monitor and report compliance and effectiveness of these Reasonable and Prudent Measures at reducing take of bull trout.

Canada Lynx

Since no incidental take is anticipated, no reasonable and prudent measures are necessary.

Terms and Conditions

Bull Trout

To be exempt from the prohibitions of Section 9 of the Act, the Payette National Forest must comply with the following terms and conditions which implement the reasonable and prudent measures described above. The terms and conditions are non-discretionary.

- 1a. A fishery biologist shall assess potential for spawning at and below all fords. Where suitable substrate exists, a fishery biologist shall survey for bull trout spawning redds prior to use of fords from August 15 to October 15. If redds are

located, monitor for effects from ford use and identify opportunities to avoid direct effects on them.

- 1b. Periodically inspect ford areas visually to determine whether juvenile fish or fry are present; if present identify and implement alternatives to avoid or reduce risk of crushing fish as vehicles cross fords.
- 1c. All fords in the project area shall be inspected prior to starting the project, then at least four times during the operating season to assure they are stable and hardened and that displacement of bed materials during use is avoided or minimized.
- 2a. During road reconstruction and maintenance activities, road surface blading shall be stopped the appropriate distance (to be determined by a Forest hydrologist) from wet areas.
- 2b. By September 15 of each operating season, assure that all erosion control and water management measures are in place. AIMM would be allowed to continue operations after this date only with Forest approval and with erosion control measures in place at all time after September 15.
- 3a. Install the geo-grid ford and the log stringer bridge outside of the bull trout spawning period (approximately August 15 - October 15). Alternatively, a Forest fish biologist shall survey the North Fork of Smith Creek 3-5 days prior to construction. If redds or spawning bull trout are observed, reschedule construction to the period outside August 15 through October 15.
- 3b. Install the geo-grid ford and the log stringer bridge after high flows have subsided to assure that sediment mobilization during construction is minimized.
- 3c. A Forest fish biologist shall approve the gravel used to fill in the geo-grid ford to assure that it is washed and of an appropriate size to deter bull trout spawning and to allow for bull trout movement above and below the ford. The gravel shall also be clean and free of fine material.
- 3d. The condition of the geo-grid ford shall be monitored four times per season of operation after installation to assure that it is not impeding movement of bull trout. If it appears to be interfering with movement of fish, necessary corrections shall be made and monitored to assure the problem is corrected.
- 3e. The condition of the geo-grid ford shall be monitored annually after installation to assure that it is effectively preventing and minimizing sediment releases during vehicle crossings. If it is not operating effectively, corrections shall be made and monitored to assure the problem is corrected.
- 4a. Evaluate the extent of effects of water withdrawal and identify opportunities to reduce incidental take bull trout and its habitat. Once a month throughout project operation, during and without withdrawal of water for mine operations, monitor flow on the unnamed perennial tributary to Coin Creek at a total of four locations:

- 1) directly above the water withdrawal; 2) directly below the water withdrawal; 3) directly below where the unnamed intermittent stream enters the unnamed perennial stream; and 4) directly above where the unnamed perennial tributary enters Coin Creek. Using comparisons of with and without withdrawal flow levels, evaluate the extent of effects and identify options to reduce the effects. Potential options include, but are not limited to, reducing amount of time water is withdrawn daily and relocating the withdrawal point.
- 5a. Water quality monitoring addressed in the Fisheries Monitoring Plan (USDA 2003b), shall be conducted by Forest personnel rather than AIMM to assure that water quality monitoring technical standards are met.
- 5b. During project implementation the Forest shall notify the Service within 24 hours of any emergency or unanticipated situations arising that have potential to result in unanticipated adverse effects on bull trout.
- 5c. Within 120 days of the end of each annual operating season, the Forest shall provide a written report or letter with photographs to the Service indicating the observed level of take of bull trout, if any.
- 5d. In that same correspondence, inform the Service of actions taken pursuant to the Terms and Conditions of this Incidental Take Statement, including a qualitative assessment of their effectiveness.

Canada Lynx

Since no incidental take is anticipated, no Terms and Conditions are necessary.

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