

National Park Service
U.S. Department of the Interior

Denali National Park and Preserve
Alaska



FINDING OF NO SIGNIFICANT IMPACT (FONSI)

**FOR A PLAN TO REOPEN ADIT #3 ON THE
COMSTOCK #2 UNPATENTED MINING CLAIM
IN THE KANTISHNA HILLS AREA OF DENALI NATIONAL PARK**

July 2006

Recommended: _____

[Signature]
Superintendent
Denali National Park and Preserve

7/28/06
Date

Approved: _____

[Signature]
Acting
Regional Director, Alaska

7/28/06
Date

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Denali National Park and Preserve, Alaska
July 2006

The National Park Service (NPS) prepared an environmental assessment (EA) to evaluate a proposal to reopen adit #3 on the unpatented Comstock #2 lode mining claim in the Kantishna Hills part of Denali National Park (DENA). The request from Milan Martinek of Palmer, Alaska, resulted from the October 20, 2005 order from Office of Hearings and Appeals Administrative Law Judge Sweitzer entitled "Department Must Permit Martinek to Take the Opportunity to Attempt to Re-expose the Alleged Discovery Point." Judge Sweitzer's order was prompted by the Interior Board of Land Appeals (IBLA) decision entitled United States v. Milan Martinek, 166 IBLA 347 (2005). Judge Sweitzer's order directed the NPS to permit Mr. Martinek to attempt to re-expose the alleged discovery point in the uppermost adit #3 on the Comstock #2 mining claim. The face of adit #3 has sloughed in, and some of the interior walls of the adit may also have collapsed, so that taking samples from the adit would require some cleanout and an unknown amount of shoring-up the adit walls and ceiling. Mr. Martinek estimates that his plan to open up and sample the inside of adit #3 would take 3-10 people up to 40 days.

The NPS has selected Alternative 3 – Claimant's Sampling Plan Amended by NPS (Preferred Alternative) with the mitigation measures.

Attachment A provides details about changes to the EA and NPS responses to public comments. No additional information has been added to the EA. Three public comments were received during the 30-day open review period.

ALTERNATIVES

Three alternatives were evaluated in the EA.

Alternative 1, No Action (the Environmentally Preferred Alternative)

Under this alternative, the adit would not be reopened and no evidence would be assembled by the claimant or by the NPS on the Comstock #2 claim. This alternative would not be consistent with Administrative Law Judge Sweitzer's order.

Alternative 2, The Claimant's Sampling Plan

Alternative 2 would be similar to Alternative 3 in terms of the types of activities in the Eldorado Creek drainage as a whole, including the siting and logistics of the access and camp setup, as well as the reclamation requirements. However, (1) the use of explosives would be allowed to help loosen and remove the slough covering the adit portal, (2) the use of explosives and drilling would be allowed inside the adit to help expose and follow the mineral discovery, and (3) any useful trees on the Comstock #2 claim could be cut down to use as mine timbers to shore up the walls of the adit. This alternative would exceed Judge Sweitzer's order and is not otherwise authorized by law.

Alternative 3, Claimant's Sampling Plan Amended by NPS (the NPS Preferred Alternative) (the Selected Alternative)

The action to open and sample adit #3 on the Comstock #2 mining claim could take up to 40 days. The claimant and crew would access the claim from the park road in a 4x4 pickup truck and 4-wheelers by fording Moose Creek at Kantishna, and then equipment, personnel and supplies would go up the Eldorado Creek valley primitive mining route for about 3 miles. Obtaining access to the claim is the responsibility of the claimant. NPS has elected to remove enough of the rockfall on lower Eldorado Creek to allow passage of the claimant's 4x4 pickup truck and 4-wheelers. The rockfall would be replaced by the NPS after the project is completed.

Loose material that has sloughed down to cover the portal of the adit would be shoveled out of the portal by the claimant. The slope below the adit portal is steep but widely covered with previous mining waste rock, and it is expected that the collapsed material would end up on top of this waste rock. The claimant would install a silt fence above the cabin and around the bottom of the waste rock slope to keep rocks from rolling onto the floodplain and into the creek. Mining timbers would be brought in from outside the park by the claimant as necessary for adit stabilization.

When the claimant has stabilized the adit, the NPS Certified Mineral Examiner and the claimant would then have an opportunity to sample any re-exposed mineralization from adit #3 by taking samples of rock from the adit walls, roof, or floor using hand tools such as hammers and chisels. The samples would be marked and inventoried and would be sent to an assay office for evaluation.

The claimant's crew of 3-10 people could camp at a site in downtown Kantishna designated by NPS, or some or all of the crew would camp on the claim. A helicopter supplied by the claimant may be used to transport crew or materials such as mine timbers. A park helicopter may also be used for access by NPS employees involved with the sampling. A small cabin on the claim may be used for storage or for the crew's quarters.

A bond would be required of the claimant to cover re-closing the adit, for removing any supplies or equipment brought in for this sampling, and for restoring any flattened out land surfaces to their present irregular contours.

PUBLIC INVOLVEMENT

The EA was issued for public review and comment from June 27, 2006 to July 26, 2006. The EA or a notice of the EA was sent by mail or email to government agencies, interest groups and individuals. The EA was posted on the NPS planning website and the park's webpage. The park issued a press release on June 27, 2006 about the availability of the EA and the open comment period.

Three written comments were received. The individual commenter supported the NPS preferred alternative. The State of Alaska ANILCA Implementation Program supported Alternative 2. The Alaska Department of Environmental Conservation requested more information about the water bodies involved. The public comments received did not change the conclusions in the EA about the environmental effects of the action. The NPS responses to substantive public comments are found in the attached errata sheet, Attachment A.

DECISION

The NPS decision is to select Alternative 3, Claimant's Sampling Plan Amended by NPS (Preferred Alternative), along with the mitigating measures. This would allow the claimant the opportunity to reopen adit #3 on the Comstock #2 lode mining claim in the Kantishna Hills part of Denali National Park, with prohibition on the use of explosives, drilling, or the cutting of tress. The opportunity to reopen the adit will be permitted with the mitigating measures specified herein.

The NPS will issue a Special Use Permit to Mr. Martinek for this activity, to address camping, road use, vehicular travel up the Eldorado Creek valley, fuel management, silt fence installation, and mitigating measures.

Mitigating Measures

The following mitigation measures apply to the selected Alternative 3, Claimant's Sampling Plan Amended by NPS (Preferred Alternative). Mitigation measures are specific actions that when implemented reduce impacts, protect park resources, and protect visitors.

- **Vegetation and Soils.** All material excavated from the adit will be spread on top of the existing slope of waste rock below the adit. A silt fence will be installed at the bottom of the slope to keep rocks and slough from rolling down onto the floodplain.
- **Wildlife and Habitat.** The claimant and crew will follow established guidelines in the park's bear-human conflict management plan. The plan requires operators to use bear-proof containers for food and refuse.

- **Aquatic Resources.** The rockfall on lower Eldorado Creek that is removed to allow vehicular access up the former mining route will be replaced by the NPS to insure that subsequent vehicular traffic is blocked from impeding natural recovery of the floodplain.
- **Natural Soundscape.** Helicopters in use to support this sampling work will not fly over the lodges in Kantishna and generally will be limited to traveling north out of the Kantishna airstrip and around Alpha Ridge or Brooker Mountain to get to the claim area.
- **Cultural Resources.** If previously unknown cultural resources are located during the program, the work will be halted in the area until cultural resource staff can determine the significance of the finding.
- **Visitor Use and Recreation.** Inholders, lodge guests in Kantishna, and holders of backcountry permits for the area will be notified that equipment could be operating in the Eldorado Creek drainage that could be seen and heard by anyone walking near the Comstock #2 claim. They will also be notified that a camp could be set up in downtown Kantishna and that there will be vehicle traffic up the Eldorado Creek valley.
- **Safety.** All NPS staff going inside the mine adit will wear hard hats and be under the supervision of the project mineral examiner.

Rationale for the Decision

The selected action, Alternative 3 with mitigating measures, will satisfy the purpose and need of the project better than other alternatives. An order by Administrative Law Judge Sweitzer of the Office of Hearings and Appeals permits Mr. Martinek to take the opportunity to attempt to re-expose the alleged discovery point in the uppermost adit #3 on the Comstock #2 mining claim, using methods permitted by NPS consistent with its regulations. The major differences between the claimant's proposal for this activity and the alternative selected here is that the NPS believes that sampling beyond the original discovery exceeds the limited activity authorized by Judge Sweitzer's order and is not otherwise authorized by law, and that hand tools are sufficient to sample the exposures inside the adit. Additionally, the use of explosives to open an adit portal would be very dangerous to the security of the adit and would be unnecessary to remove the unconsolidated slough covering the adit portal. Use of trees from the property to hew into mine timbers will not be approved because of the limited number of trees suitable for use versus the loss of vegetation community structure.

Adverse impacts, such as the trimming of ½ mile of roadside overhanging vegetation, the noise from daily vehicular use in the Eldorado Creek valley and from up to 10 helicopter trips to provide access to the site, depositing slough material on top of the slope presently covered with mining waste rock, the temporary dispersal of nearby wildlife, the turbidity release into Eldorado Creek from vehicle use, the disturbance to the experience of hikers using the Eldorado Creek valley, will result in the following impacts: a minor adverse impact on vegetation; a negligible impact to wildlife and habitat; a moderate impact to aquatic resources; a minor impact on the natural soundscape; and a minor impact to visitors hiking in the area. These impacts will not result in an impairment of park resources fulfilling specific purposes identified in legislation

establishing the park or key to the natural or cultural integrity of the park and will not violate the NPS Organic Act.

The No-Action alternative would not comply with Judge Sweitzer's order. Although it is the environmentally preferred alternative, the No-Action alternative was not selected for implementation because it would not satisfy the purpose and need for the action.

Significance Criteria

The selected alternative, Alternative 3 with mitigating measures, will not have a significant effect on the human environment. This conclusion is based on the following examination of the significance criteria defined in 40 CFR Section 1508.27.

1. *Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.* Alternative 3 will have no impacts on floodplains; air resources; threatened, endangered or other special status species; cultural resources; subsistence; park management; local communities and socioeconomic resources; and minority and low income populations. Impacts to vegetation and soils, wildlife, natural soundscapes, and visitor use will range from negligible to minor effects. Impacts to aquatic resources will be moderate.
2. *The degree to which the proposed action affects public health or safety.* No impact on public health and safety.
3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetland, wild and scenic rivers, or ecologically critical areas.* No known, unique characteristics are located within or near the area, except for national park lands.
4. *The degree to which effects on the quality of the human environment are likely to be highly controversial.* The EA analysis and public comments do not indicate that any effects presented in the EA are controversial.
5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The EA analysis and public comments do not indicate that any effects are highly uncertain or involve unique or unknown risks.
6. *The degree to which the action may establish a precedent of future actions with significant effects or represents a decision in principle about a future consideration.* Alternative 3 does not establish a precedent for future actions with significant effects or represent a decision about a future consideration.
7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.* No other activities of this type have been

proposed or approved. Future related actions could be proposed and would be evaluated at that time as to whether there would be a cumulatively significant impact.

8. *Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.* Alternative 3 will not adversely affect any eligible sites or cultural resources.

9. *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.* According to the U.S. Fish and Wildlife Service, no known endangered, threatened, special concern or candidate species occur in the area.

10. *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.* Alternative 3 does not violate any Federal, State or local environmental protection law.

FINDINGS

The levels of adverse impacts to park resources anticipated from the selected alternative will not result in an impairment of park resources that fulfill specific purposes identified in the establishing legislation or that are key to the natural or cultural integrity of the park.

The selected alternative complies with the Endangered Species Act, the National Historic Preservation Act and Executive Orders 11988 and 11990. There will be no significant restriction of subsistence activities as documented by the Alaska National Interest Lands Conservation Act, Title VIII, Section 810(a) Summary Evaluation and Findings.

The NPS has determined that the selected alternative does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR 1508.9), an environmental impact statement is not needed and will not be prepared for this activity.

ATTACHMENT A

NPS RESPONSES TO PUBLIC COMMENTS AND ERRATA
for the
Denali National Park EA
For a Plan to Reopen Adit #3 on the
Comstock #2 Unpatented Mining Claim
In the Kantishna Hills Area of Denali National Park

This attachment amends the subject environmental assessment (EA) and provides NPS responses to public comments.

PUBLIC COMMENTS

The NPS received three public comments: one from private individuals, one from the State of Alaska ANILCA Implementation Program, and one information request from the Alaska Department of Environmental Conservation for more information about the water bodies involved.

The NPS has read and considered all comments received. Responses to substantive comments are provided below. A substantive comment is defined as one which leads the NPS to: (1) modify an alternative, including the proposed action; (2) develop and evaluate an alternative not previously given serious consideration; (3) supplement, improve, or modify the environmental analysis; or (4) make factual corrections (CEQ NEPA Regulations 1503.4).

Comment 1, State of Alaska: The State questions the prohibition of explosives and drilling in Alternative 3. The State is concerned that without explosives and drilling the claimant may not be able to gather the information necessary to establish validity of the claim or respond to the decision of the Interior Board of Land Appeals.

Response 1, NPS: Following release of the EA for public review, the claimant filed a motion with Judge Sweitzer seeking authorization to drill and use explosives on the claim. NPS filed a response to the motion noting that the use of explosives and drilling exceeded Judge Sweitzer's October 20, 2005 order and that the use of explosives or drilling is not authorized by law. By order dated July 21, 2006 Judge Sweitzer determined that the motion was premature and would not be addressed until after the adit was reopened without drilling or explosives.

Comment 2, State of Alaska: The State questions the prohibition of explosives in Alternative 3 expressing concern that the manual efforts to reopen the adit may be unsuccessful. The State suggests that explosives may be needed to remove the surface material covering the adit.

Response 2, NPS: The NPS believes that the loose material covering the adit can adequately be removed using hand tools, and that the use of explosives could damage the portal structure.

ERRATA

This errata section provides clarifications, modifications, or additional information for the EA and for the selected alternative, Alternative 3. These amendments do not significantly change the analysis of the EA and, therefore a new or revised EA is not needed and will not be produced.

- **Correction:** The following sentence fragment that appeared on page 14 of the EA, in the description of the preferred alternative, should be removed: *No excavation of bedrock in or around Comstock #2*