

5.0 Compliance with Applicable Environmental Statutes and Regulations

This chapter identifies and briefly describes statutes, implementing regulations, and executive orders potentially applicable to suction dredging. The following sections provide a brief summary of the relevant aspects of the respective law, regulation, or executive order. Where there are conclusions on compliance, they are based on the impact analysis presented in Chapters 3 (Affected Environment) and 4 (Environmental Consequences). Section 5.1 describes the statutes under which the Forest Service manages National Forest System lands, including Clearwater National Forest. Section 5.2 describes how minerals are managed on National Forest System lands. Sections 5.3 through 5.12 describe Federal statutes, regulations, and executive orders that govern how environmental resources are managed, and section 5.13 describes Idaho regulations specific to small-scale suction dredges.

5.1 Forest Management

5.1.1 Forest Service Organic Administration Act of 1897

The *Organic Act* (16 U.S.C. 473-478, 479-482 and 551) is the original organic act governing the administration of National Forest System lands, and now is one of several laws under which the Forest Service manages National Forest System lands (see below for others). The Organic Act permits access to National Forests for all lawful purposes, including prospecting for, locating, and developing mineral resources.

5.1.2 Multiple-Use Sustained-Yield Act of 1960

This Act (MUSYA) (16 U.S.C. 528-531) establishes the policy that renewable surface resources in National Forests be managed for multiple use --- including recreation, range, timber, watershed, and fish and wildlife --- and sustained yield. MUSYA requires the Forest Service to consider the relative values of the resources in a particular area. MUSYA did not affect the use of or jurisdiction over the mineral resources of National Forest System lands.

5.1.3 Federal Land Policy and Management Act of 1976

FLPMA (43 U.S.C. 1701-1782) is the organic act for the Bureau of Land Management (BLM), which manages the mineral resources on all federal lands, including National Forest System lands, and administers mining claims under the Mining Law of 1872 (see section 5.2.1 below).

5.1.4 National Forest Management Act of 1976

The *National Forest Management Act* (NFMA) (16 U.S.C. 1600-1614) amended (and largely replaced) the Forest and Rangeland Renewable Resources Planning Act of 1974. NFMA required the Forest Service to assess National Forest System lands and develop a management program based on the principles of multiple use and sustained yield. The Forest Service also was required to develop and implement comprehensive Land Use and Resource Management Plans (which are known as LRMPs or “Forest Plans”) for each unit in the National Forest System.

These Forest Plans guide and coordinate multiple uses and the availability of lands for resource management. Plan development and implementation have to include:

- Interdisciplinary approach
- State and local coordination
- Public participation in planning process
- Multiple-use and sustained yield of products and services.

The *Forest Plan* for Clearwater National Forest (USFS 1987) was developed in compliance with NFMA. The Forest Plan establishes goals, objectives, and standards for the management of all resources of the Forest, including minerals (pages II-3, II-7, and II-30). Minerals goals, objectives, and standards discuss the need to facilitate the orderly development of mineral commodities and provide for timely, reasonable, effective and economically feasible environmental protections. The Forest Plan was amended in 1995 by the Decision Notice/Decision Record, Environmental Assessment, and Finding of No Significant Impact for management of anadromous fish-producing watersheds on Federal Lands in eastern Oregon and Washington, Idaho, and portions of California (PACFISH). The Forest Plan was also amended in 1995 by the Decision Notice and Finding of No Significant Impact for the Inland Native Fish Strategy for managing fish-producing watersheds in eastern Oregon and Washington, Idaho, Western Montana and portions of Nevada (INFISH). PACFISH AND INFISH provide guidance and monitoring requirements for minimizing impacts to surface resources, especially in relationship to Riparian Habitat Conservation Areas. This EIS is tiered to these plans and analysis documents.

5.1.5 Forest Service Surface Use Regulations and Guidelines

Forest Service regulations at 36 CFR Part 228 Subpart A (also known as the *228 Regulations*) set forth rules and procedures for use of the surface of National Forest System lands in connection with mineral operations. The regulations direct the Forest Service to prepare the appropriate level of NEPA analysis and documentation when proposed operations may affect surface resources. These regulations also do not allow the Forest Service to deny entry or preempt the miners' statutory right granted under the 1872 Mining Law. The regulations require the Forest Service to develop mitigation measures to minimize adverse impacts on National Forest resources. The 228 regulations include requirements for reclamation.

The *Forest Service Manual* (FSM) codifies the Forest Service's policies, practices, and procedures and serves as the primary basis for internal management and control of all Forest Service programs. FSM §2800 reiterates that the authority to manage the exploration and development of mineral resources within the National Forest System is jointly shared by the Secretaries of Interior (BLM) and Agriculture (Forest Service). The Department of the Interior administers the mining laws, and the Forest Service manages occupancy and use of the land's surface by persons who hold valid mining claims. Section 2800 also discusses specific responsibilities and considerations for dealing with proposed Plans of Operation. It states that the Forest Service should minimize or prevent adverse impacts related or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

5.2 Minerals Management

5.2.1 Mining Law of 1872

The major Federal law governing the disposition of so-called locatable minerals¹⁹ on Federal lands is the *Mining Law of 1872*, as amended (30 U.S.C. 22-54). This law provides citizens of the United States the opportunity to explore for, discover, and purchase certain valuable mineral deposits on Federal lands that remain open for that purpose (as do most lands in the Lolo Creek and Moose Creek study areas). The law also sets general standards and guidelines for claiming the possessory rights to valuable minerals discovered during exploration.

Under this law, a mine locator (the claimant) “...shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations and of all veins, lodes, and ledges throughout the entire depth.” While miners have rights under the 1872 Mining Law, they are legally required to comply with the rules and regulations covering National Forests (16 U.S.C. 479). They are also required to comply with applicable laws passed since 1872 that have placed additional requirements upon miners. Many of these laws are described in this chapter. (Also see the sidebar on page 1-8 for an overview of mining claims)

5.2.2 Multiple Use Mining Act of 1955

This law (16 U.S.C. 612) is known variously as the *Multiple Use Mining Act*, the *Surface Resources and Multiple Use Act*, the *Multiple Use Surface Act*, and the *Multiple Surface Use Mining Act*. The law specifies that unpatented mining claims located after July 23, 1955, may not be used for any purposes other than prospecting, mining or processing operations and uses reasonable incident thereto.

5.2.3 Mining and Mineral Policy Act of 1970

The *Mining and Mineral Policy Act* (30 U.S.C. 21a) states that it is the continuing policy of the Federal government to foster and encourage private enterprise in the development of economically sound mining and minerals industries and the orderly and economic development of domestic mineral resources to help satisfy industrial, security, and environmental needs.

5.3 National Environmental Policy Act

NEPA (42 U.S.C 4321 *et seq.*) was the first of what has come to be an array of statutes whose individual and collective goals are the protection of the human and natural environment from a variety of impacts that human activity can have. *NEPA* is the nation’s basic environmental charter, and requires that Federal agencies consider the environmental consequences of their

¹⁹ “Locatable” minerals are one of three categories into which minerals on federal lands are classified: locatable, leasable, salable. In general, locatable minerals include both metallic minerals (gold, silver, lead, etc.) and nonmetallic minerals (fluorspar, asbestos, mica, etc.), although several factors influence the category into which a mineral falls under various circumstances. In the Lolo Creek and Moose Creek study areas, gold is considered a locatable mineral.

actions. NEPA requires that a “detailed environmental statement” (that is, an Environmental Impact Statement, or EIS) be prepared for “...major federal actions significantly affecting the quality of the human environment.” The EIS must provide detailed information regarding all alternatives being evaluated, the environmental impacts of the alternatives, potential mitigation measures, and any adverse environmental impacts that cannot be avoided if the proposal is implemented. Agencies are required to demonstrate that these factors have been considered by decisionmakers prior to undertaking actions. Clearwater National Forest determined that the potential impacts to threatened and endangered species, as described in the Biological Assessments (USFS 2002a and 2002b) and resulting Biological Opinions (USFWS 2002 and 2003, NOAA Fisheries 2003), required that the approval of small-scale suction dredge operations be evaluated in an EIS.

This EIS has been prepared in compliance with NEPA regulations promulgated by the Council on Environmental Quality (40 CFR 1500-1508) and with the Forest Service Manual.

5.4 Clean Water Act

The *Clean Water Act* (33 U.S.C. 1251 *et seq.*) was established to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters” (§101(a)). The Clean Water Act sets goals to eliminate discharges of pollutants into navigable water, protect fish and wildlife, and prohibit the discharge of toxic pollutants in quantities that could adversely affect the environment. A number of interrelated provisions of the Act establish the structure by which these goals are to be achieved, through a variety of Federal and State programs. Two sections of the Clean Water Act, §§402 and 404, are potentially applicable to the suction dredging operations that might be approved under Alternative 2 (Suction Dredging) or Alternative 3 (Suction Dredging and Stream Improvement Projects).

5.4.1 Clean Water Act §402

Section 402 requires that discharges of pollutants from “point sources” be permitted under the National Pollutant Discharge Elimination System (NPDES). Authority to implement the NPDES program may be delegated by EPA to authorized states; in Idaho, however, EPA administers the program and issues all permits. EPA has determined that discharges from suction dredge operations, even small-scale operations, qualify as point sources and require NPDES permit authorization. In some states, EPA or authorized states have issued a “general” permit to cover multiple small-scale suction dredge operations; no such permit has been issued to date in Idaho, so each suction dredge operation requires an individual NPDES permit. The Forest Service cannot approve proposed plans for operations unless the operator has sought coverage for its discharges under the NPDES program.

5.4.2 Clean Water Act §404

Section 404 establishes a program to regulate the discharge of dredged and fill material into the waters of the U.S. This act requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the discharge of dredged or fill material into all waters of the U.S., including wetlands. The §404 program is administered by both the Corps of Engineers and

EPA. Corps of Engineers regulations are promulgated as 33 CFR Parts 321-330. In the case of suction dredge operations, tailings (that is, gravel and other overburden from which gold has been recovered) are discharged back into the creeks. The Corps of Engineers has determined that small-scale suction dredging operations authorized by the Idaho Department of Water Resources under a recreational dredge permit will not require a §404 permit (Idaho DWR 2003). See section 5.13 below for a description of this permit.

Wetlands are considered “waters of the United States,” and the §404 program is the principal means by which wetlands are protected. There will be no effects on wetlands from suction dredge operations approved by the Forest Service under Alternative 2 (Suction Dredging) other than minor effects on riparian vegetation, as described in section 4.9 in Chapter 4. Under Alternative 3 (Suction Dredging and Stream Improvement Projects), the restoration of Lolo Creek in the Lolo #5 area would have a short-term adverse effect on the existing vegetation and wetlands, but would ultimately increase channel stability and increase the stability and quality of riparian habitat by reducing future damage from high stream flows. Prior to implementation of the restoration project, the Forest Service would identify and delineate any jurisdictional wetlands in the Lolo #5 project area and comply with any applicable §404 requirements.

5.5 Executive Order 11990

Executive Order (EO) 11990, *Protection of Wetlands*, encourages federal agencies to take actions to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands when undertaking Federal activities and programs. As noted, there could be a short-term adverse effect on wetlands under Alternative 3, but the long-term effect would be positive.

5.6 Endangered and Threatened Species and Critical Habitat

5.6.1 Endangered Species Act

The purpose of the *Endangered Species Act* (ESA) (16 U.S.C. 1531-1544) is to conserve “the ecosystems upon which endangered and threatened species depend” and to conserve and recover listed species. Species may be listed as “endangered” if it is in danger of extinction throughout all or a significant portion of its range, or as “threatened if it is likely to become endangered within the foreseeable future. Two agencies have principal responsibilities for administering the law: the Department of the Interior’s Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries). The USFWS has primary responsibility for freshwater and terrestrial organisms, while NOAA Fisheries is responsible for marine (and anadromous) species. Section 7(a) of the Endangered Species Act requires Federal agencies to consult with USFWS and/or NOAA Fisheries, as appropriate, to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats.

Clearwater National Forest has consulted with both USFWS and NOAA Fisheries. ESA §7(c) and federal regulations on endangered species coordination (50 CFR 402.12) require that federal

agencies prepare biological assessments (BAs) of the potential effects of major actions on listed species and critical habitat. USFWS and NOAA Fisheries then issue their Biological Opinion as to the degree to which an agency's action will jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats.

Clearwater National Forest prepared and submitted two BAs for suction dredging, one for species and critical habitat in Lolo Creek (USFS 2002a) and one for Moose Creek (2002b). For Lolo Creek, the Biological Assessments determined that suction dredging was "likely to adversely affect" steelhead trout, but was "not likely to adversely affect" Lolo Creek bull trout. For Moose Creek, the Forest Service determined that suction dredging was "likely to adversely affect bull trout"²⁰. In their respective Biological Opinions, NOAA Fisheries (2002) and USFWS (2002) agreed with the Forest's determinations. Both agencies further concluded that suction dredging would not jeopardize either species if specific conservation measures minimizing impacts to streams and minimizing take were adopted. These conservation measures, and other measures deemed appropriate by Clearwater National Forest, are included as conditions of approval under Alternative 2 (Suction Dredging) and Alternative 3 (Suction Dredging and Stream Improvement Projects). For all other species of concern, the BAs determined that there would be no adverse effect as a result of suction dredging.

Potential effects of the proposed alternatives on fisheries, wildlife, and special status species are described in sections 4.7 and 4.8. Consultation and coordination letters are included as Appendix C.

5.6.2 Fish and Wildlife Coordination Act

The *Fish and Wildlife Coordination Act* (FWCA) of 1980 (16 U.S.C. 661 *et seq.*) provides for the conservation and management of fish and wildlife by encouraging cooperation between the USFWS and other federal, state, and local public agencies, as well as private agencies. It also calls for consultation with USFWS when any water body is impounded, diverted, controlled, or modified for any purpose. USFWS and state agencies charged with administering wildlife resources are to conduct surveys and investigations to determine the potential damage to wildlife and the mitigation measures that should be taken. USFWS incorporates the concerns and findings of the state agencies and other Federal agencies, including NMFS, into a report that addresses fish and wildlife factors and provides recommendations for mitigating or enhancing impacts to fish and wildlife affected by a Federal project. The Federal project must include justifiable measures that address USFWS recommendations and concerns.

None of the alternatives evaluated in this EIS involved impoundment, diversion, control, or modification of water bodies, so no consultations with USFWS were required. As noted in section 4.3 and 4.7 of Chapter 4, the Forest consulted with USFWS (and NOAA Fisheries) concerning threatened and endangered species.

²⁰ Steelhead are not listed in Moose Creek because their upstream migration is blocked by the Dworshak Dam and so are not present in the watershed.

5.7 Heritage Conservation

5.7.1 National Historic Preservation Act

Section 106 of the *National Historic Preservation Act* (NHPA) (16 U.S.C. 470) requires that federal agencies evaluate the effects of their actions on historical, archaeological, and cultural resources and afford the Advisory Council on Historic Preservation opportunities to comment on the proposed undertaking. The first step in the process is to identify cultural resources included in (or eligible for inclusion in) the National Register of Historic Places (NRHP) that are located in or near the project area. The second step is to identify the possible effects of proposed actions. The lead agency must examine whether feasible alternatives exist that would avoid such effects. If an effect cannot reasonably be avoided, measures must be taken to minimize or mitigate potential adverse effects. Potential impacts to heritage resources and proposed mitigation are described in section 4.13.

The Clearwater National Forest is required to comply with Section 106 of the NHPA prior to approving proposed plans of operations or implementing under Alternatives 2 and 3 or the Lolo #5 restoration project under Alternative 3. The Forest has initiated contact with the Nez Perce Tribe to identify potential traditional cultural resource concerns in the study area. Government-to-government consultation with the Nez Perce Tribe was held on February 13, 2004 at the Bureau of Indian Affairs office in Lapwai, Idaho.

5.7.2 Archaeological Resources Protection Act

The *Archaeological Resources Protection Act* (ARPA) (16 U.S.C. 470aa-470ll) provides for the protection of archaeological sites located on public and Indian lands, establishes permit requirements for the excavation or removal of cultural properties from public or Indian lands, and establishes civil and criminal penalties for the unauthorized appropriation, alteration, exchange, or other handling of cultural properties. There are heritage resources in the vicinity of the project areas, but not likely within the streams where suction dredging would take place under Alternatives 2 and 3. If significant cultural resources are encountered during suction dredging, operators are required to stop work until they have notified the Forest archaeologist. There could be cultural resources within or underneath the tailings that would be disturbed in the Lolo #5 restoration area under Alternative 3. The Forest Service will consult with the State Historic Preservation Office prior to implementing this project.

5.7.3 Native American Graves Protection and Repatriation Act

The *Native American Graves Protection and Repatriation Act* (NAGPRA) (25 U.S.C. 3001) addresses the discovery, identification, treatment, and repatriation of Native American and Native Hawaiian human remains and cultural items (associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony). This Act also establishes fines and penalties for the sale, use, and transport of Native American cultural items. Consistent with procedures set forth in applicable federal laws, regulations, and policies, the USACE will proactively work to preserve and protect natural and cultural resources, establish NAGPRA

protocols and procedures, and allow reasonable access to sacred sites. There are no known Native American graves in the vicinity of the study areas.

5.7.4 American Indian Religious Freedom Act

The *American Indian Religious Freedom Act* (AIRFA) of 198 (42 U.S.C. 1996) established protection and preservation of Native American's rights of freedom of belief, expression, and exercise of traditional religions. Courts have interpreted AIRFA to mean that public officials must consider Native American's interests before undertaking actions that might harm those interests. Clearwater National Forest conducted government-to-government consultation with the Nez Perce Tribe on February 13, 2004.

5.7.5 Executive Order 13175

EO 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) requires establishment of regular and meaningful consultation with tribal officials in the development of federal policies that have tribal implications, to strengthen the government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes. Clearwater National Forest has initiated contact with the Nez Perce regarding suction dredging so that potential traditional resource concerns can be identified.

5.7.6 National Trails System Act of 1968

The *National Trails System Act* (16 U.S.C. 1241-1249) and its amendments authorized a national system of trails and defined four categories of national trails. It listed the route of the Lewis and Clark expedition for study and possible designation as a National Scenic Trail.

5.7.7 The National Parks and Recreation Act

The *National Parks and Recreation Act of 1978* (16 U.S.C. 2501-2514) amended the National Trails Act and named the Lewis and Clark Trail as one of four National Historic Trails.

5.7.8 The Nez Perce National Historic Trail Act

The Nez Perce National Historic Trail Act of 1986 (16 U.S.C. 1244) amended the National Trails System Act to create the Nez Perce National Historic Trust.

5.8 Executive Order 11988, Floodplains

If a Federal agency program will affect a floodplain, the agency must consider alternatives to avoid adverse effects in the floodplain or to minimize potential harm. EO 11988 requires Federal agencies to evaluate the potential effects of any actions they might take in a floodplain and to ensure that planning, programs, and budget requests reflect consideration of flood hazards and floodplain management. Suction dredging will have no effect on the floodplains of Lolo Creek or Moose Creek.

5.9 Farmland Protection

5.9.1 Farmland Protection Policy Act

The Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*) requires federal agencies to identify and take into account the adverse effects of their programs on the preservation of farmlands. There are no farmlands in or near the project areas.

5.9.2 CEQ Memorandum on Analysis of Impacts on Prime or Unique Agricultural Lands

This Council on Environmental Memorandum (August 11, 1990) establishes criteria to identify and consider the adverse effects of Federal programs on the preservation of prime and unique farmland; to consider alternative actions, as appropriate, that could lessen adverse effects; and to ensure federal programs are consistent with all state and local programs for protection of farmland. There are no farmlands in or near the project areas.

5.10 Wild and Scenic Rivers

The Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) designates qualifying free-flowing river segments as wild, scenic, or recreational. The Act establishes requirements applicable to water resource projects affecting wild, scenic, or recreational rivers within the National Wild and Scenic Rivers System, as well as rivers designated on the National Rivers Inventory. Under the Act, a Federal agency may not assist in the construction of a water resources project that would have a direct and adverse effect on the free-flowing, scenic, and natural values of a federally designated wild or scenic river. If the project would affect the free-flowing characteristics of a designated river or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the National Park Service.

Neither Lolo Creek nor Moose Creek are designated as wild, scenic, or recreational. The North Fork Clearwater River, of which Moose Creek is an upstream tributary (Moose Creek flows into Kelly Creek, which in turn flows into the North Fork), is eligible for listing, although Clearwater National Forest has no plans at present to list the North Fork. Regardless, the suction dredge operations that would be approved under Alternatives 2 (Suction Dredging) and 3 (Suction Dredging and Stream Improvement Projects) would have no effect on Kelly Creek or the North Fork Clearwater River.

5.11 Air Quality

The Clean Air Act (42 U.S.C. 7401 *et seq.*) was established “to protect and enhance the quality of the nation’s air resources so as to promote public health and welfare and the productive capacity of its population.” This law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. The Clean Air Act establishes emission standards for stationary sources, volatile organic compound (VOC) emissions, hazardous air pollutants, and vehicles and other mobile sources. The Act also

requires the states to develop implementation plans applicable to particular industrial sources. The Air Quality Division (AQD) of the Idaho Division of Environmental Quality (IDEQ) implements the Clean Air Act in Idaho to ensure that all sources comply with the NAAQS.

Suction dredging would cause only extremely minor emissions of pollutants from suction dredge pumps and compressors, and air emissions are so minor that they require no permits or approvals. Clearwater National Forest determined that air emissions from the small engines used by suction dredge operators were negligible and so did not need to be evaluated in the EIS.

5.12 Executive Order 12898

This Executive Order, *Federal Actions to Address Environmental Justice in Minority and Low Income Populations*, directs federal agencies to identify and address, as appropriate, disproportionately high and adverse health and environmental impacts on minority and low-income populations. There is no human population in the vicinity of the project sites. As described in Chapter 3, the Nez Perce Tribe holds treaty rights for fishing, hunting, and gathering in both Lolo Creek and Moose Creek. Clearwater National Forest has initiated consultations with the Nez Perce regarding suction dredging. Potential impacts on Tribal Treaty Rights are described in section 4.17.

5.13 Executive Order 13045

Executive Order 13045, *Protection of Children from Environmental Health and Safety Risks*, requires federal agencies to ensure that their policies, programs, activities, and standards address potential risks that may disproportionately affect children. It defines environmental health and safety risks as risks to health or to safety that are attributable to products or substances that a child is likely to come in contact with or ingest. The range of alternatives considered in this EIS will not produce risks to the health and safety of children.

5.14 Idaho Stream Channel Protection Act

Idaho regulates recreational dredge mining under this Act (Idaho Code §42-3803(a)). “Recreational” dredging is defined as those mining activities in which miners use power sluices, small recreational suction dredges with a nozzle 5 inches in diameter or less, and equipment rated at a maximum of 15 horsepower. This is also the size cutoff for this EIS, and suction dredges not qualifying as “recreational” under this statute would also not qualify for approval.

The statute requires dredge operators to obtain a permit from the Idaho Department of Water Resources before any suction dredge mining can be done. In each of the past several years, approximately 400 suction dredge operations have been authorized to operate in Idaho each year.

To be authorized to operate under the permit, operators must adhere to a number of conditions intended to protect water quality, habitat, and fish. The Forest Service has included most of these conditions as conditions of approval under Alternative 2 (Suction Dredging) and 3 (Suction Dredging and Stream Improvement Projects). One of the approval conditions under Alternatives 2 (Suction Dredging) and 3 (Suction Dredging and Stream Improvement Projects) is that

operators be authorized under a stream alteration permit from the State. In addition, many of the conditions of approval under these alternatives are the same as under the State permit.