



United States  
Department of  
Agriculture

Forest  
Service

Lincoln National Forest

3463 Las Palomas Rd.  
Alamogordo, NM 88310  
(575) 434-7200

RECEIVED

JUL 03 2014

MINING & MINERALS DIVISION

File Code: 2800

Date: June 30, 2014

Chris Eustice  
Permit Lead, Sr. Environmental Engineer  
Mining Act Reclamation Program  
1220 South St. Francis Drive  
Santa Fe, NM 87505

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7011 2970 0001 7960 7702**

Dear Mr. Eustice:

We received your request for review and comment on the permit modification for the Capitan Iron Mine from El Capitan Precious Metals Inc. (El Capitan) in Lincoln County. My staff has read through the proposal and identified a few issues relevant to the approval of this application and moving forward with this operation. For your information and use, I have enclosed our most recent correspondence with Charles Mottley of El Capitan. In this letter we explained our understanding of their most recent plans, as of April 9th, 2014. We determined that the activities they were proposing at that time fit within the scope of their current Road Use Permit for Forest Road 489A. To date, we have not received a reply to this letter.

The proposal you provided appears to be a larger operation than what was discussed on April 9th. I have enclosed a copy of the map from their application with our comments inserted. Currently, El Capitan is only authorized to use Forest Road 489A for hauling heavy equipment in, such as a backhoe; and hauling out small amounts of mineral material, the amount that could be loaded in a pickup truck and hauled across the National Forest without any modifications made to the road. Our concerns are: It is unclear from this application as to the type and size of the processing and drilling equipment they plan to utilize is; there is no reference to the anticipated volume of material to be extracted and hauled across the National Forest; it is not clear as to what type of equipment will be used to haul the material off site across the National Forest; there is no reference to frequency of use of the road or anticipated duration of the project, nor if any modifications will be needed to Forest Road 489A, or other identified roads, to make them suitable for their intended use.

The proposal also shows several other unauthorized routes south and west of the patented land that cross the National Forest. These routes are not part of our Travel Management System and are unauthorized user created roads. They are not covered under El Capitan's Road Use Permit. Approval and use of these routes may be accomplished through an environmental analysis. To date, we have not received a proposal to use these routes.


I have also enclosed a letter from our Office of General Counsel to El Capitan's Attorney, Blair Dunn, regarding access and assertion of an RS 2477 Claim. Reference is made to a meeting held with El Capitan's former legal counsel in March. It states that the breadth of their proposal seemed to exceed the limited use authorized by their Road Use Permit. We discussed with them the need for a detailed proposal for the Forest to review. To date, no such proposal has been submitted for us to review. This proposal is needed for us to determine the type of authorization necessary for use and occupancy of National Forest System lands, and to determine the



appropriate level of environmental analysis required. In this letter they are also cautioned against the use of Forest Service Lands without proper authorization, the penalties associated with doing such and the history associated with unauthorized use by El Capitan at the site.

Thank you for the opportunity to review this proposal and work with your agency to properly authorize mining activity on National Forest System Lands. Please continue to keep us apprised of the administrative process as you move forward with this application. If you have any questions or concerns on the content of this letter or need any additional information please contact Eric Turbeville of the Smokey Bear Ranger District at (575) 630-3051 or [eturbeville@fs.fed.us](mailto:eturbeville@fs.fed.us).

Sincerely,



(Acting for) Travis Moseley

/s/ Loretta Benavidez (for)

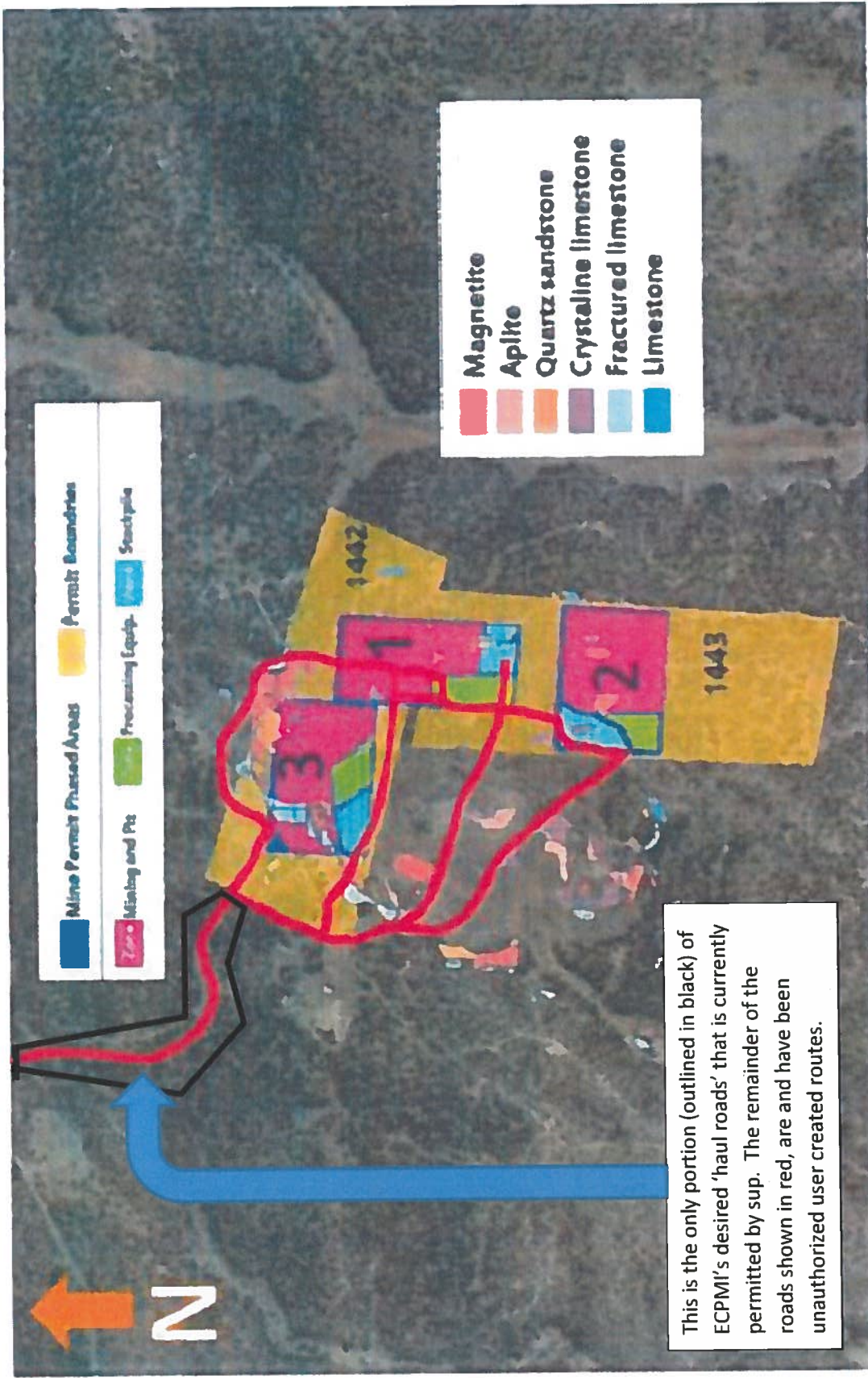
Travis G. Moseley

TRAVIS G. MOSELEY

Forest Supervisor

Enclosure (3)

cc: David Warnack  
Steve Hattenbach



**Figure 1 : Work Areas are subdivided into operationally segregated zones , with a haul roads in red (see attached Permit Area Boundary) A full sized version is attached .**



United States  
Department of  
Agriculture

Forest  
Service

Smokey Bear Ranger District

901 Mechem Drive  
Ruidoso, NM 88345  
(575) 257-4095

File Code: 2800

Date: April 11, 2014

Charles C. Mottley  
President  
El Capitan Precious Metals Inc.  
7811 E. Vaquero Dr.  
Scottsdale, AZ 85258

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7012 2210 0000 3429 0630**

Dear Mr. Mottley,

On Wednesday the 9<sup>th</sup> of April a member of my staff, Eric Turbeville, spoke with your local representative Randy Bouldin. They discussed the proposed work El Capitan Precious Metals Inc. (ECPMI) would like to do on the patented land in the immediate future. My understanding is that ECPMI's plan is to continue to collect samples from the site using two six-wheeled heavy trucks, and will be using a pick-up truck to haul the samples contained in a 55 gallon drum off site for further analysis. My understanding is that ECPMI proposes to make no modifications to Forest Road 489A for this operation.

Based on this representation from ECPMI and my understanding expressed above, I feel this fits into the previously authorized use of Forest Road 489A under the existing Road Use Permit. No further authorization is needed from the Lincoln National Forest at this time for this level of activity. The current authorization will expire on the 30<sup>th</sup> of September 2014. If more sampling activity will occur after that date, ECPMI may request another road use permit.

If ECPMI has plans to conduct any activity above and beyond what Randy and Eric discussed, particularly if it would require any maintenance or improvement of the existing road, you will need to notify us in writing with a detailed description of your plans as discussed in my letter sent to you on March 24<sup>th</sup>, 2014.

Sincerely,

/s/Larry Cordova (for):  
DAVID M. WARNACK  
District Ranger

cc: A. Blair Dunn





United States Department of Agriculture  
*Office of the General Counsel*

Albuquerque Field Office  
P.O. Box 586  
Albuquerque, NM 87103-0586

Telephone: 505-248-6010  
Facsimile: 505-248-6013

March 12, 2014

A. Blair Dunn, Esq.  
6605 Uptown Blvd. NE, Ste. 280  
Albuquerque, NM 87110-4212

By e-mail to [abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

RE: ECPMI Assertion of RS 2477 Claim

Dear Mr. Dunn,

This letter responds to your March 7, 2014 letter which states that El Capitan Precious Metals, Inc. (ECPMI) intends to make immediate use of what you allege is an R.S. 2477 right of way across lands managed by the United States Forest Service (USFS), Lincoln National Forest. I write to advise you that the actions you state your client intends to take may violate civil and criminal law for which ECPMI and/or its agents may be liable, if those actions require prior authorization by the Lincoln National Forest.

As an initial matter, you have not specified what road you are referring to nor have you described the intended use of that road, however I assume you are referencing Forest Road 489A (FR 489A) which is part of pending ECPMI proposals and which we discussed with former ECPMI counsel Stuart Butzier on Wednesday March 5<sup>th</sup>. As I discussed with Mr. Butzier, the Road Use Permit issued to El Capitan LTD on September 13, 2013 allows limited use of FR 489A. Uses authorized under the Road Use Permit may continue as authorized by the Road Use Permit. However, the proposed uses in current proposals submitted by ECPMI and the proposed uses discussed with Mr. Butzier last week go well beyond the limited use currently authorized and will require prior approval by the Lincoln National Forest.

As we discussed with Mr. Butzier, we proposed that an actual detailed draft proposal be submitted to the Forest Service to allow us to review and discuss the necessary authorization and required level of NEPA. We had hoped to facilitate a productive dialogue and hoped we could craft a reasonable solution that met the needs of ECPMI. Instead, your letter suggests unilateral action will be taken by ECPMI in a manner which may violate applicable law.

ECPMI cannot hold an R.S. 2477 right of way and cannot state a claim to an R.S. 2477 right of way. Such a claim may only be made by a government entity. This has been addressed by numerous courts. For some comparable assertions in this Circuit see Kinsherff v U.S. 586 F. 2d 159 (10<sup>th</sup> Cir. 1978); Fairhurst Family Assoc. v USFS, 172 F. Supp. 2d 1328 (D. Co. 2001).

To my knowledge, Lincoln County (the relevant local government entity) has never claimed an R.S. 2477 right of way to FR 489A. However, even if Lincoln County made such a claim, this would not allow ECPMI to unilaterally use FR 489A as proposed.

The USFS has authority under the Property Clause of the U.S. Constitution and the agency's Organic Act (16 U.S.C. 551) to reasonably regulate uses of roads and trails on USFS managed lands, whether or not the roads and trails are located within an R.S. 2477 right-of-way, to reasonably regulate exercise of such pre-existing rights to protect Federal lands and resources. See SUWA v BLM, 425 F.3d 735, 748 (10<sup>th</sup> Cir. 2006), United States v. Jenks, 129 F. 3d 1348 (10<sup>th</sup> Cir. 1997); United States v. Garfield County, 122 F. Supp. 2d 1201 (D. Utah 2000). Prior authorization through a special use permit is required for proposed uses of system roads by 36 CFR 251 subpart B. It is through this mechanism that the current road use permit was issued. The scope and nature of the uses currently proposed by ECPMI and discussed with Mr. Butzier last week require prior authorization even if they were in a R.S. 2477 right of way.

I caution ECPMI that use of Forest Service lands without a required special use authorization is a punishable offense under 36 CFR 261.10 and 16 USC 551. Violation of these regulations is currently a Class B misdemeanor under 18 U.S.C. §3559(a)(1)(G), punishable by not more than six months imprisonment, fine of not more than \$5,000 under 18 U.S.C. 3571(b)(6), or both. You may not be aware that ECPMI previously conducted activities on the Lincoln National Forest without the required authorizations and the proposed unilateral action would constitute a repeat violation. Furthermore, such action may constitute trespass for which the ECPMI could be liable.

For approximately 6 years the Lincoln National Forest has worked with ECPMI on several proposals that ECPMI has failed to pursue. The USFS has spent a considerable amount of taxpayer funds and resources reviewing and responding to ECPMI's proposals. We met with ECPMI counsel last week on yet another proposal and developed a clear path forward for ECPMI. However your letter does not indicate we will see the necessary effort from ECPMI to obtain the required authorizations. Please inform me whether ECPMI will in fact invest the necessary effort to pursue any of their proposals in a timely manner at this time, or if I should simply instruct the Lincoln National Forest to close these files at the current time.

If you have any questions, please do not hesitate to give me a call at (505) 248-6020.



Steve Hattenbach,  
Acting Assistant Regional Attorney



United States Department of Agriculture  
*Office of the General Counsel*

Albuquerque Field Office  
P.O. Box 586  
Albuquerque, NM 87103-0586

Telephone: 505-248-6010  
Facsimile: 505-248-6013

March 12, 2014

A. Blair Dunn, Esq.  
6605 Uptown Blvd. NE, Ste. 280  
Albuquerque, NM 87110-4212

By e-mail to [abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

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If you have any questions, please do not hesitate to give me a call at (505) 248-6020.



Steve Hattenbach,  
Acting Assistant Regional Attorney

Auth ID: SBD025938  
Contact Name: EL CAPITAN PRECIOUS METALS INC  
Expiration Date: 12/31/2019  
Use Code: 753

FS-2700-4b (v.09/12)  
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
FOREST ROAD SPECIAL USE PERMIT  
AUTHORITY:  
FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

EL CAPITAN PRECIOUS METALS INC of CHUCK MOTTLEY, ECPMI, 7811 E. VAQUERO DRIVE, SCOTTSDALE, AZ 85258 (hereafter called the holder) is hereby authorized to use the following described National Forest Development Road within the Lincoln National Forest for the following purposes:

El Capitan Precious Metals Incorporated (ECPMI) will utilize National Forest System Road 489A, as shown on Appendix A, from NM Hwy 246 to the Pittsburg Iron Lode claims on private inholdings north of Capitan, NM.

No new construction or reconstruction of the road is proposed. NFSR 489A serves as the only access to the Pittsburg Iron Mine, and ECPMI is working with the New Mexico Mining and Minerals Division on a permit modification proposal to their existing minimal impact mining permit (LI005ME) for the detection, extraction, and preliminary, on-site processing of iron ore on the Pittsburg Iron Mine.

The following access is needed:

- Year round access and use of the road
- 8-10 trucks per day, with all mining material in 20 ton containers
- No temporary work areas on National Forest Land
- No structures or facilities on National Forest Land
- Routine road maintenance to include blading within the original roadbed and some watering for dust abatement will be conducted by the Holder in accordance with the attached operations and maintenance plan, Appendix B.

The road covered by this permit is located in the County of Lincoln, State of New Mexico, and is shown on the attached map, and identified as follows: Sec. 10, T. 8 S., R. 14 E., NEW MEXICO PRINCIPAL MERIDIAN,

This permit authorizes use of approximately 1 mile of road.

**This permit is made subject to the following terms, provisions, and conditions:**

1. This permit is subject to all existing easements and valid rights existing on this date. This permit is issued without prejudice to any R.S. 2477 right-of-way over National Forest System Road 489A.
2. Holder shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting construction, operation, and maintenance if those standards are more stringent than applicable Federal standards.
3. The holder shall cut no timber except as authorized by construction stipulations or maintenance agreements.
4. Holder shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with Federal and State laws and regulations.
5. Holder shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy under this permit.
6. Holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this permit. The initial payment is set at \$74.62 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$74.62 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair market value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as

necessary to assure that it is commensurate with the value of the rights and privileges authorized. In addition to the annual payment, the holder shall pay its proportionate share of road costs prior to using the road for commercial use. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the permit to terminate.

7. Late Payment Interest, Administrative Costs and Penalties. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, et seq.)

8. Holder shall pay the Forest Service for its share of maintenance cost or perform maintenance, as determined by the Forest Service for all commercial use of the road. The maintenance obligation of the holder shall be proportionate to total use and commensurate with its use. Any maintenance to be performed by the holder shall be authorized by and shall be performed in accordance with an approved maintenance plan. In the event the road requires maintenance, restoration, or reconstruction work to accommodate the holder's needs, the Forest Service shall authorize the work required in the same manner as provided herein for maintenance or in clause 10 for reconstruction. The holder shall perform such work at its own expense.

9. The exercise of the use permitted shall be subordinate to any easement on said road subsequently granted by the United States to a public road agency for operation as a public highway.

10. Any construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Forest Service prior to beginning such construction or reconstruction.

11. The United States shall have unrestricted use of the road and right-of-way for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal lands or resources, and it shall have the right alone to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof and to other users including members of the public, except users of land or resources owned or controlled by the holder. The Forest Service shall control such use to avoid unreasonable interference with use of the road by the holder.

12. The Forest Service may relocate the road to the extent necessary to accommodate the management needs of the National Forests.

13. This permit may be terminated or suspended upon breach of any of the conditions herein, or revoked at the discretion of the Regional Forester.

14. Unless sooner terminated in accordance with the provisions of the permit, or revoked by the Regional Forester, this permit shall expire and terminate on 12/31/2019. Prior to expiration of this permit, the holder may apply for a new permit that would renew the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit.

15. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

16. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and condition of this permit.

17. Liability. For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

C. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States.

D. In the event of any breach of the conditions of this authorization by the holder, the authorized officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

E. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

F. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty or liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

18. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

19. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 214, or revisions thereto.

20. Assignability. This authorization is not assignable or transferable. If Holder, through death, voluntary transfer, enforcement of contract, foreclosure, or other valid legal proceeding shall cease to be owner of the above described real property accessed by the authorized road, this authorization shall terminate.

21. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

In Witness Whereof, the parties hereto have caused this permit to be duly executed on this \_\_\_\_\_ day  
of \_\_\_\_\_.

Holder: EL CAPITAN PRECIOUS METALS INC

USDA -Forest Service

By: Charles C. Mottley

Chuck Mottley

EL CAPITAN PRECIOUS METALS INC

By: \_\_\_\_\_

Travis Moseley

Forest Supervisor

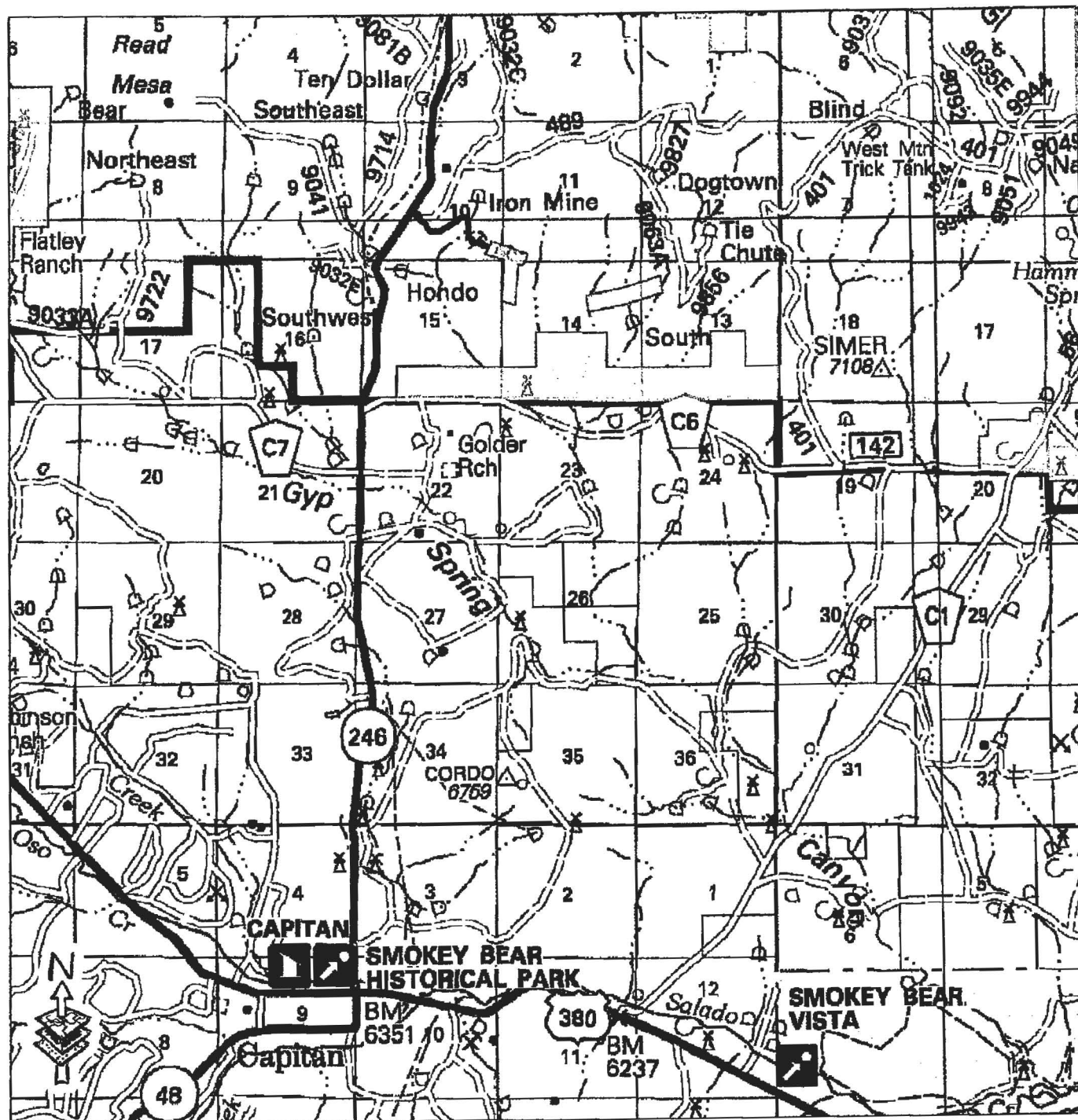
Lincoln National Forest

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.



# APPENDIX A EL CAPITAN PMI SPECIAL USE PERMIT

1 in = 1 miles

0 0.5 1 2 Miles

## Legend

— NFSR 489A

## Land Ownership

PRIVATE

FOREST SERVICE

This product is reproduced from geospatial information prepared by the U.S. Department of Agriculture, Forest Service. GIS data and product accuracy may vary. The use of GIS products for purposes other than those for which they were intended may yield inaccurate or misleading results. The Forest Service reserves the right to correct, update, modify or replace GIS products without notification.

Data projection: UTM NAD83 Zone 13N

Lincoln National Forest  
Produced on 16 October 2014 by Eric Turbeville

**APPENDIX B  
OPERATION AND MAINTENANCE PLAN**

**NFSR 489A EL CAPITAN PMI ACCESS  
FOREST ROAD SPECIAL USE PERMIT  
SBD025938**

This plan is developed to establish the specifications and procedures to prevent and control natural resource damage resulting from the use and maintenance of the road to El Capitan Precious Metals Inc.'s private parcels located in Sec. 10, T. 8 S., R. 14 E. This is developed in compliance with the Special Use Permit FS 2700-4b.

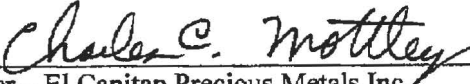
This Stipulation, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between El Capitan Precious Metals Inc., hereinafter referred to as the Holder, and USDA Forest Service—Lincoln National Forest acting by and through its authorized representative, hereinafter referred to as the Forest Service.

Whereas, the Holder has been issued a special-use authorization dated \_\_\_\_\_ for the use and occupancy of National Forest land for the use and maintenance of a road, and such authorization requires that all maintenance/repair conform with approved plans, specifications, and stipulations.

Now, therefore, the Holder agrees to the following terms and conditions, and the Forest Service hereby authorizes the use and maintenance to proceed in accordance with these terms and conditions:

1. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or any revision thereof for this area must have prior approval by the Forest Service.
2. The Holder shall comply with all Federal and State laws and the regulations of the Secretary of Agriculture, having due regard for the health and safety of employees; and safeguard with barriers and covers when the road would unduly imperil the life, safety or property of other persons.
3. The Holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the Forest Supervisor.
4. The Holder shall take reasonable precautions to protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. The holder shall notify the Forest Service concerning any monument/marker that cannot stay in place so it can be moved by Forest Service prior to work commencing.
5. The Holder shall maintain a muffler or spark arrester satisfactory to the Forest Service on the exhaust systems of all trucks and tractors or other internal combustion engines, including chainsaws, used in connection with the use and maintenance of this road.
6. The Holder shall cut only timber as necessary in clearing for previously approved road construction, reconstruction, and maintenance. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the Forest Service and decked along the road for disposal by the Forest Service.

7. All woody slash, debris, and excess soil and rock, resulting from construction and maintenance work under this permit shall be disposed of in a manner satisfactory to the Forest Supervisor or designated representative.
8. The Holder shall be responsible for the prevention and control of soil erosion and gullying in the permit area and shall take such preventative measures as are necessary to repair and revegetate damaged areas and to prevent future damage.
9. The Holder shall repair fully all damage to National Forest roads and trails caused by the Holder in exercise of the privileges granted.
10. Failure to comply may result in permit revocation and removal of improvements.
11. The Holder understands and agrees with this operation and maintenance plan.

  
Holder – El Capitan Precious Metals Inc  
Chuck Mottley

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Officer – District Ranger  
David M. Warnack

\_\_\_\_\_  
Date