



# Finding of No Significant Impact

for the Issuance of an Eagle Take Permit for  
Silicon Exploration Project

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**Nevada**

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## Introduction

The U.S. Fish and Wildlife Service (Service) received an application from AngloGold Ashanti North America (Applicant) requesting eagle take coverage under the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. §§ 668–668d and 50 Code of Federal Regulations [CFR] § 22.80) for incidental take of eagles at the Silicon Exploration Project (Project). The Project is an exploratory drilling operation with the goal to determine the extent and quality of mineral resources (such as gold) in the area. Disturbance to eagles could occur from the noise associated with the drilling, as well as from the presence of people, the drill rigs, and other activities associated with exploration. The Project is located approximately seven miles northeast of Beatty, Nevada in Nye County. The Applicant requested an incidental eagle take permit (permit) for the reoccurring loss of productivity from breeding golden eagles (*Aquila chrysaetos*) in the vicinity of the Project (one mile from surface disturbing activities) for up to 10 times over no more than 10 years. Issuance of a permit by the Service for take that is incidental to otherwise lawful activities under the Eagle Act constitutes a discretionary Federal action that is subject to the National Environmental Policy Act (NEPA; 42 United States Code [U.S.C.] §§ 4321–4347). In accordance with NEPA, the Service prepared an Environmental Assessment (EA) analyzing the environmental consequences of issuing a permit for the take of golden eagles associated with the Project. This EA assists the Service in ensuring compliance with NEPA and in making a determination as to whether any “significant” impacts to the environment not previously analyzed under the Service’s Programmatic Environmental Impact Statement for the Eagle Rule Revision, December 2016 (PEIS; USFWS 2016) could result from the analyzed actions, which would require preparation of an Environmental Impact Statement (EIS). “Significance” under NEPA is addressed by regulation 40 CFR § 1508.27, and requires short- and long-term consideration of both the context of a proposal and its intensity.

## Purpose and Need

The Service’s purpose in considering the proposed action of issuing an eagle incidental take permit is to fulfill our authority under the Eagle Act (16 U.S.C. §§ 668–668e) and its regulations (50 CFR § 22). Applicants, whose otherwise lawful activities may result in take of eagles, can apply for eagle incidental take permits so that their projects may proceed without potential violations of the Eagle Act. The Service may issue eagle take permits for eagle take that is associated with, but not the purpose of, an activity. Such permits can be issued by the Service when the take that is authorized is compatible with the Eagle Act preservation standard; it is necessary to protect an interest in a particular locality; and it is associated with, but not the purpose of, the activity; and it cannot be practicably avoided (50 CFR § 22 and 81 Federal Register [FR] 91494).

The need for this federal action is a decision on an eagle incidental take permit application from AngloGold Ashanti North America that is in compliance with all applicable regulatory requirements set forth under the Eagle Act in 50 CFR § 22.

## **Proposed Action and Alternative Considered**

In the EA, the Service fully analyzed two potential courses of action, summarized below, to respond to the Applicant's request for an incidental eagle take permit.

### **Proposed Action**

The Service proposed to issue an incidental eagle take permit, with associated conditions, to AngloGold Ashanti North America for reoccurring loss of productivity from breeding golden eagles for up to 10 times over no more than 10 years. The permit would require implementation of all conservation measures and commitments described in the Applicant's submitted permit application.

### **Alternative 1: No Action**

Under the No-Action Alternative, the Service would take no further action on AngloGold Ashanti North America's eagle take permit application.

## **Public Comment and Tribal Coordination**

A draft of the EA, the Applicant's ECP, and a draft Finding of No Significant Impact (FONSI) was made public on the Service's Pacific Southwest Region webpage<sup>1</sup> for 30 days to solicit public comments beginning December 20, 2022. The Service received one public comment letter on the draft EA and revisions were incorporated into the EA as a result of substantive comments, as appropriate.

The Service sent letters to eight federally-recognized tribal governments located within the vicinity of the Project, informing them of the application and inviting them to contact us if they wish to consult on this permit request. The letters also inform Tribes that the EA and draft FONSI are available, and Tribes are encouraged and welcomed to comment during the 30-day public review and comment period on the EA.

## **Selected Alternative**

Based on review of the analyses detailed in the EA, the Service selected the Proposed Action of issuing an incidental eagle take permit to AngloGold Ashanti North America for reoccurring loss of productivity from breeding golden eagles for up to 10 times over no more than 10 years.

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<sup>1</sup> <https://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html>

Take of golden eagles would occur under both alternatives; however, the Proposed Action fully offsets the take with required compensatory mitigation, which would not occur under the No-Action Alternative.

The Proposed Action is consistent with the purpose and need for this Federal action and is in compliance with all statutory (16 U.S.C. §§ 668) and regulatory requirements (50 CFR § 22.80 and 50 CFR § 13.21), including the criteria codified for permit issuance (50 CFR § 22.80(f)).

### Effects of Implementation

As described in the EA, the implementation of the Selected Alternatives would result in no significant impacts to any of the environmental resources identified in the EA. Our Selected Alternative is consistent with the purpose and need stated in the EA. A summary of the impact analysis, mitigation measures, EA conclusions, and effects on visual resources, migratory birds, and species listed under the ESA follows.

### Golden Eagles

In determining the significance of effects of each alternative on eagles, we screened each alternative against the Eagle Act's permit issuance criteria (50 CFR 22.80) using the quantitative tools available in our ECP Guidance (Service 2013) and as required by our eagle permit regulations (50 CFR 22.80). The Service independently evaluated the potential impacts from Project operations along with the implications for direct, indirect, and cumulative effects. We developed conservative risk estimates for the Project and our cumulative effects analysis to be protective of the species.

### Golden Eagle Cumulative Effects

To evaluate cumulative impacts for the local-area population, we followed the guidance provided in Appendix F of the ECP Guidance (Service 2013) and as described in the 2016 PEIS (Service 2016b). Using this process, we estimated annual golden eagle fatality rates within a 109-mile radius around the Project area. We evaluated all available data on permitted take and other documented eagle mortalities in determining cumulative impacts to the Location Area Population (LAP).

The take that would be authorized by this permit would be offset by the compensatory mitigation that would be provided by the Applicant, so it would not significantly impact the EMU eagle population. The minimization measures that would be required under the permit, along with the additional adaptive management measures, are designed to further ensure that the permit is compatible with the preservation of golden eagles at the Eagle Management Unit (i.e., Pacific Flyway) population scale.

## Bald Eagle

Because the Project has not changed in scope, timing, or duration, no significant adverse effects are foreseen to bald eagles because of the Project (BLM 2020). As a precautionary adaptive management measure, should annual nest monitoring surveys detect a bald eagle nest in the project area; our permit will require the Applicant coordinate with us and implement nest buffers to avoid disturbance impacts. Although take of bald eagles is not expected to occur at this Project and take of bald eagles would not be permitted, bald eagles in the region may benefit from avoidance and minimization measures established to reduce the risk to golden eagles. Bald eagles may benefit from compensatory mitigation actions provided to offset the take of golden eagles under the Proposed Action.

## Migratory Birds

Because the Project has not changed in scope, timing, or duration, no significant adverse effects to migratory bird populations are expected as a result of the Project (BLM 2020). Issuance of an eagle take permit to the Project may also provide benefits to migratory birds. Power pole retrofits completed as compensatory mitigation for the eagle take permit may minimize electrocution risk for raptors and other migratory birds, just as with eagles.

## Species Listed under the Endangered Species Act

The Mojave desert tortoise (*Gopherus agassizii*), a federally threatened species listed under the Endangered Species Act of 1973 (ESA), as amended (ESA) (16 U.S.C. §§ 1531-1544), has the potential to occur within the Plan boundary (BLM 2020). The Service consultation in compliance with Section 7 of the ESA was completed on November 25, 2019 (08ENVS00-2020-F-0017). The Service concluded that the Project is not likely to jeopardize the continued existence of the threatened Mojave desert tortoise, and the Applicant would implement desert tortoise minimization measures outlined during the consultation (BLM 2020). The effects of authorizing incidental eagle take is not expected to have effects to species protected by the ESA, including the Mojave desert tortoise.

# **Significance Criteria**

NEPA regulations define significance criteria for consideration by federal agencies (40 CFR § 1508.27). Below we examine these criteria for the selected Proposed Action.

## Context

NEPA requires consideration of the significance of an action in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant in accordance with 40 CFR 1508.27(a). For purposes of analyzing the Proposed Action, the appropriate context for potential

impacts associated with the Proposed Action is local and regional because the Proposed Action does not affect statewide or national resource values. The context of the Selected Alternative points to no significant environmental impact considering the following (as discussed in the EA):

- The Applicant will offset golden eagle take through compensatory mitigation. This will ensure that the impacts of issuing an eagle take permit on the local and regional golden eagle populations will be less than significant.
- Bald eagles and migratory birds may also benefit from reduced electrocution risk due to the power pole retrofitting provided as compensatory mitigation requirement for the eagle take permit.
- Authorizing incidental eagle take is not expected to have effects to species protected by the Endangered Species Act (ESA) at the Project facility.

## Intensity

The term "intensity" refers to the severity of a proposed action's impact on the environment. In determining the intensity of an impact, NEPA regulations direct federal agencies to consider ten specific factors, each of which is discussed below in relation to the Selected Alternative for the Project.

*1) Impacts can be both beneficial and adverse and a significant effect may exist regardless of the perceived balance of effects.*

While consideration of the intensity of Project impacts must include analysis of both beneficial and adverse effects, only a significant adverse effect triggers the need to prepare an EIS (40 CFR 1508.27). The potential beneficial effects and adverse impacts of the Proposed Action are discussed briefly below.

**Beneficial Effects.** As described in the EA, the Proposed Action includes power pole retrofitting as mitigation for take of eagles. Such retrofits are anticipated to protect eagles from electrocution. As the number of retrofits to be completed for compensatory mitigation is calculated at a 1.2 to 1 ratio as required by our permitting process (Service 2016 PEIS), these avoided eagle electrocutions will more than offset Project-related take of eagles, thereby benefiting the eagle population as a whole. Pole retrofits are also expected to benefit other raptors that may be susceptible to electrocution.

**Adverse Effects.** Under our Selected Alternative, issuance of an eagle take permit would not affect eagles at the population scale, although individual eagles would be impacted.

*2) The degree to which the selected alternative will affect public health or safety.*

The Proposed Action would include mitigating eagle take by retrofitting power poles to prevent eagle electrocutions. As eagle and other raptor electrocutions on power poles can start fires, decreasing eagle and other raptor electrocutions could benefit human safety by reducing fire risk.

*3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.*

The Service only evaluated whether or not to issue an eagle take permit to the Applicant for a project approved by the Bureau of Land Management. Therefore only potential impacts to eagles and effects of eagle take on cultural practices were considered in the EA analyses. Thus, the Service concluded the Proposed Action of issuing an eagle take permit would not impact unique characteristics of the geographic area.

*4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.*

No effects of the Proposed Action were identified as highly controversial. As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) whether to prepare a detailed EIS, controversy is not equated with the existence of opposition to a use. NEPA implementation regulations (43 CFR 46.30) define controversial as “circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.”

*5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

The Applicant provided information on the eagles in the Project vicinity, reducing uncertainty in understanding Project impacts to eagles. This surveying and monitoring provides certainty in our assessment of the risk to eagles from the Project. As a result, there are no predicted effects of the Selected Alternative on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

*6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.*

Issuance of an eagle take permit for the Project does not set precedent for, or automatically apply, to other eagle take permit applications the Service is reviewing or could review in the future. Each permit request will be evaluated on a case-by-case basis. Therefore, the Proposed Action does not establish precedents for future actions or represent a decision in principle about a future action. Moreover, this Project will not limit the Service’s discretion when processing future eagle take permit applications under the Eagle Act’s permitting regulations.

*7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts--which include connected actions regardless of land ownership.*

The EA analyzes cumulative effects on golden eagles as required by NEPA (40 CFR 1508.8) and the Eagle Act’s permitting regulations (50 CFR 22). Under 50 CFR 22.80,

when reviewing a permit application, the Service is required to evaluate and consider effects of take permits on eagle populations at three scales: (1) the eagle management unit/bird conservation region, (2) local area, and (3) Project area. Our evaluation also considers cumulative effects. We incorporated data provided by the Applicant, our own data on permitted take and other documented eagle mortalities, and additional available information on population-limiting effects, in determining cumulative impacts to golden eagles. There are no significant adverse cumulative effects contributed under the Proposed Action.

*8) The degree to which the action may adversely affect districts, sites, highways, structures, or other 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.*

The action issuing an eagle incidental take permit to the Project approved by the BLM will have no adverse effect on significant scientific, cultural, or historical resources.

Eagles and their feathers are revered and considered sacred in many Native American traditions. The Project, including the take of eagles, is not expected to interfere with cultural practices and ceremonies related to eagles or to affect Native Americans' ability to obtain or use eagle feathers. Moreover, eagle feathers that are found will be sent to our repository and, if in good condition, will be made available for these practices. Therefore, we do not anticipate any adverse effect on cultural practices.

*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, or the degree to which the action may adversely affect a species proposed to be listed as endangered or threatened or proposed critical habitat.*

The Mojave desert tortoise (*Gopherus agassizii*), a federally threatened species listed under the Endangered Species Act of 1973 (ESA), as amended (ESA) (16 U.S.C. §§ 1531-1544), has the potential to occur within the Plan boundary (BLM 2020). The Service consultation in compliance with Section 7 of the ESA was completed on November 25, 2019 (08ENVS00-2020-F-0017). The Service concluded that the Project is not likely to jeopardize the continued existence of the threatened Mojave desert tortoise, and the Applicant would implement desert tortoise minimization measures outlined during the consultation (BLM 2020). The effects of authorizing incidental eagle take is not expected to have effects to species protected by the ESA, including the Mojave desert tortoise.

*10) Whether the action threatens a violation of federal, state, or local law requirements imposed for the protection of the environment.*

The Proposed Action will not violate any federal, state, or local law.



## Finding of No Significant Impact

The Service's Migratory Bird Program concludes from the analysis conducted in the EA and the information provided above that the Proposed Action would not trigger significant impacts on the environment based on criteria established by regulations, policy, and analysis. Analyses of impacts were conducted at the Project, local, and regional scales, and direct, indirect, and cumulative effects were assessed. The selected Proposed Action, unlike the No Action Alternative, is unlikely to have significant impacts on eagles because there is mitigated take of eagles, cumulative effects are addressed, and the Proposed Action meets the Eagle Act's preservation standard (16 U.S.C. §§ 668a, 50 CFR § 22.6) and all regulatory requirements (50 CFR § 22.80).

Based on the findings discussed herein, we conclude that the Proposed Action is not a major Federal action and will result in no significant impacts to the environment, individually or cumulatively with other actions in the general area. This determination is based on the rationale that the significance criteria, as defined by the CEQ (40 CFR § 1508.27) have not been met. "Significantly" as used in NEPA requires considerations of both context and intensity. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR § 1508.27. Therefore, preparation of an EIS to further analyze possible effects is not required pursuant to Section 102(2)(c) of NEPA, and our environmental review under NEPA is concluded with this finding of no significant impact (FONSI).

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## References

- 16 United States Code (U.S.C.) § 668. Title 16 - Conservation; Chapter 5a - Protection and Conservation of Wildlife; Subchapter II - Protection of Bald and Golden Eagles; Section (§) 668 - Bald and Golden Eagles. Available online: <http://uscode.house.gov>
- 40 Code of Federal Regulations (CFR) § 1508.27. Title 40 - Protection of Environment; Chapter V - Council on Environmental Quality; Part 1508 - Terminology and Index; Section (§) 1508.27 - Significantly. Available online: <https://www.ecfr.gov>
- 42 United States Code (U.S.C.) §§ 4321-4347. Title 42 - the Public Health and Welfare; Chapter 55 - National Environmental Policy; Subchapters I (Policies and Goals) and II (Council on Environmental Quality); Sections (§§) 4321-4347. Available online: <http://uscode.house.gov>
- 43 Code of Federal Regulations (CFR) 46. 2008. Title 43 - Public Lands: Interior; Part 46 - Implementation of the National Environmental Policy Act of 1969. 43 CFR 46. [73 Federal Register (FR) 61314, October 15, 2008, unless otherwise noted.]. Available online: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title43-vol1/pdf/CFR-2011-title43-vol1-part46.pdf>
- 50 Code of Federal Regulations (CFR) § 13.21. Title 50 - Wildlife and Fisheries; Chapter I - United States Fish and Wildlife Service, Department of the Interior; Subchapter B - Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants; Part 13 - General Permit Procedures; Section (§) 13.21 – Issuance of permits. Available online: <https://www.ecfr.gov>
- 50 Code of Federal Regulations (CFR) § 22. Title 50 - Wildlife and Fisheries; Chapter I - United States Fish and Wildlife Service, Department of the Interior; Subchapter B - Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants; Part 22 - Eagle Permits. Available online: <https://www.ecfr.gov>
- 81 Federal Register (FR) 91494. 2016. Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests. Vol. 81, No. 242. December 16, 2016. pp 91494-91554. Available online: <https://www.federalregister.gov/>
- US Fish and Wildlife Service (USFWS). 2016. Programmatic Environmental Impact Statement for the Eagle Rule Revision. December 2016. Available online: <https://www.fws.gov/migratorybirds/pdf/management/FINAL-PEIS-Permits-to-Incidentally-Take-Eagles.pdf>