Categorical Exclusion Determination and Decision Record for O&C Logging Road Right-of-Way Permit No. M-2325 (OR 64612). CE-OR-115- 08-04

Description of Proposed Action

The proposed action is the issuance of an O&C Logging Road Right-of-Way Permit to Kent Gambee, under the provisions of 43 CFR Subpart 2812, and Title V, P.L. 94-579; 90 Stat 2743. This has been assigned as Permit No. M-2325, and serialized as case No. OR 064612. The term of the permit is proposed for 3 years.

The area to be harvested and the BLM roads to be used are identified below:

Area to Be Harvested			
T.	**R.**	**Sec.**	**Subdivision**
33S	1W	4	W1/2SE, N1/2SESE,
33S	1W	4	NE, SESW

The following table identifies the U.S. roads to be used, estimated volume to be hauled over each road and the anticipated haul periods:

BLM Roads to be Used					
BLM Road/Segment No.	Seg. Length	Length to be Used	Present Surface Type	Haul Period	Estimated Volume to be Hauled (MBF)
33-1-8.02	B	0.23	ABC	2007-2009	250

The affected roads are located in Jackson County on BLM lands administered by the Butte Falls Resource area. The roads to be used and area to be harvested are located on the attached map labeled as Exhibit A.

Reciprocal Rights

The regulations at 43 CFR 2812 allow for the U.S. to require the applicant to grant rights to the U.S. as a condition of authorizing the permit. A review of the applicants land ownership has been done and it has been determined that:

1) No rights are needed by the U.S.

Plan Conformance Review

This proposal is consistent with policy directed by the following:

- the *Final Supplemental Environmental Impact Statement and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan FSEIS, 1994 and ROD, 1994);
- the *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement* and *Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- the *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon* (FSEIS, 2004 and ROD, 2004);
- *Record of Decision Amending Resource Management Plans for Seven Bureau of Land Management Districts and Land and Resource Management Plans for Nineteen National Forests Within the Range of the Northern Spotted Owl*, approved March 2004;
- the *Final Supplemental Environmental Impact Statement and Record of Decision and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and* Guidelines (FSEIS, 2000 and ROD, 2001,

- *Medford District Integrated Weed Management Plan Environmental Assessment (1998)* and tiered to the *Northwest Area Noxious Weed Control Program* (EIS, 1985)

The proposed action is in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the Medford District Resource Management Plan that directs the BLM to continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon state-wide planning goals and rules, and the exclusion and avoidance areas identified in the Resource Management Plan (USDI 1995, p. 82).

Project Design Features

See attached Exhibit B, Special Provisions.

Categorical Exclusion Determination

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11, Appendix 11.5. This section allows for issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes at E.(16)

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances," included in 516 DM 2, Appendix 2, must be reviewed for applicability (See attached review). After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

Contact Person

For additional information concerning this project, contact Jean Williams, Project Leader, at (541) 618-2385

Jean A. Williams — Nov. 19, 2007

Prepared by — Date

Decision

It is my decision to authorize O&C Logging Road Right-of-Way Permit No. M-2325 (serial No. OR 64612) as described in the Proposed Action. The project is planned for implementation in 2008.

Decision Rationale

The proposed action has been reviewed by the Butte Falls Resource Area staff and appropriate Project Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the environment and no further environmental analysis is required.

11/20/07

Christopher J McAlear — Date
Field Manager
Butte Falls Resource Area

NEPA Categorical Exclusion Review

Proposed Action:

The proposed action is the issuance of an O&C Logging Road Right-of-Way Permit to Kent Gambee, under the provisions of 43 CFR Subpart 2812, and Title V, P.L. 94-579; 90 Stat 2743. This has been assigned as Permit No. M-2325, and serialized as case No. OR 064612. The term of the permit is proposed for 3 years.

Department of the Interior Manual 516 DM 2, Appendix 2 provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the proposed action based on actions which may:

1. *Have significant impacts on public health or safety.*

   Yes___ No X JW

   Remarks:

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resource;, park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

   Yes___ No X Jcm

   Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

   Yes___ No X JW

   Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

   Yes___ No X JW

   Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

   Yes___ No X JW

   Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

   Yes___ No X SS

   Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.*

   Yes___ No X Jcm

   Remarks:

8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.*

   Plants Yes___ No MW Remarks:

   Animals Yes___ No JH Remarks:

   Fish Yes___ No LZ Remarks: seasonal restriction on haul.

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

   Yes___ No X JW

   Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

    Yes___ No X JW

    Remarks:

11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

    Yes___ No X Jcm

    Remarks:

12. *Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

    Yes___ No X MW

    Remarks:

ADMINISTRATIVE REMEDIES

In accordance with BLM's Rights of Way regulations (See 43 CFR § 2801.10), administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). Other than the applicant for the right-of-way, in order to be considered a "party to the case" the person claiming to be adversely affected by the decision must show that they have notified the BLM of their alleged injury through their participation in the decisionmaking process. (See 43 CFR § 4.410(b) and (c)). The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30 day appeal period.

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. **All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal** (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as "in full force and effective immediately" upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after this decision is approved (or the date the affected parties received notice of the decision). Only signed hard copies of a notice of appeal that are delivered to the Medford District Office will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and Kent Gambee at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem

the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

CONTACT INFORMATION

For additional information contact Christopher McAlear, Butte Falls Resource Area, 3040 Biddle Road, Medford Oregon, 97501, 541-618-2200.

Additional contact addresses include:

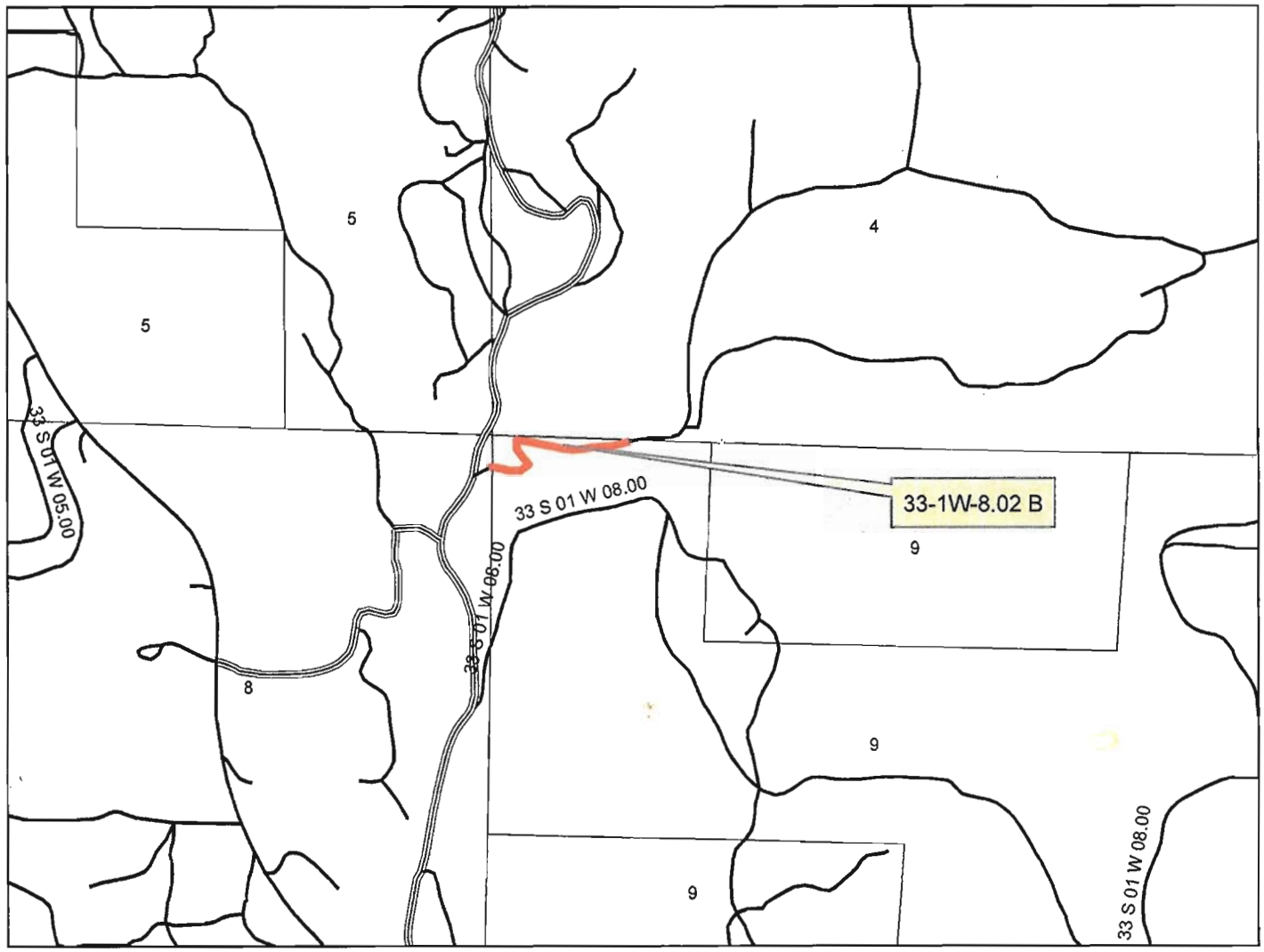
- U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals
  801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203

- Regional Solicitor
  Pacific Northwest Region, U.S. Department of the Interior
  500 N.E. Multnomah Street, Suite 607, Portland, Oregon 97232

- Kent Gambee
  1658 Peachey Road
  Ashland, OR 97520

Exhibit A

GAMBEE, OR 064612



T. 33S. R.1W. Sec. 9

Legend

All other roads

County

Ownership

Other Agencys

BLM Managed Land

Private Land

N

Permit No.: M-2325
Serial Number: OR 64612

EXHIBIT B
SPECIAL PROVISIONS

GENERAL PARAGRAPHS

G-1 - Insurance Requirements:
At the discretion of the Authorized Officer, the Permittee may be required to maintain comprehensive liability insurance covering all operations, including vehicles, of the Permittee under this permit in amounts not to exceed the following whenever it exercises any of the rights granted by this permit: (a) Bodily injury, $1,000,000.00 - for injury to any on person; $1,000,000.00 - for any one occurrence; and (b) Loggers Property Damage Form B, $1,000,000.00 - for any one occurrence. When the authorized Officer notifies the Permittee of the requirement for insurance, the Permittee shall deliver within one week to the United States a certificate from the insurer stating that such insurance is in force and that the insurer will give the United States ten (10) days' notice prior to any cancellation or modification of such insurance. It is understood that the amounts of the bond and insurance required herein shall be reviewed periodically and that the parties may mutually agree upon such adjustment as is required to comply and conform with general insurance practices of the timber industry in effect at the time of review.

G-2 - Non-exclusive Use
There is hereby reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant.

G-3 - May be Amended
This permit may be amended to include additional rights for the Permittee over existing roads controlled by the United States or over roads controlled by third parties limited to land identified as “United States Lands” on the attached Exhibit A map. However, approval of such amendment shall be subject to all regulations and laws current at the time of application.

G-4 - Reciprocal Rights if Needed by U.S.
If, during the term of this permit, the United States determines it needs rights over existing roads on any lands currently owned by the Permittee which are identified on the attached Exhibit A map as “Permittee Lands”, or over existing roads on any lands which the Permittee acquires during the life of this Permit, the Permittee shall grant to the United States, a non-exclusive easement (in the form identified in the Exhibit C, attached hereto and made a part hereof) for the purposes of management and removal of timber and other forest products from the lands of the United States. Any rights granted to the United States over Permittee roads or lands shall be granted for the same duration as the rights granted to the Permittee hereunder.

G-5 - Assignability
When the Permittee lands or title to timber served by this permit are sold or transferred to a new party who needs the rights granted by this permit to remove timber, assignment of the permit is required. Application for assignment shall be made in accordance with regulations in effect at time of any such assignment. Use of U.S. roads with assignment is considered to be in trespass.

G-6 – No Herbicide Use
The use of herbicides is prohibited along roads that cross BLM managed land.

ROAD USE STIPS

RU-1 - Notification of Periods of Non Use
Before beginning hauling under the terms of this permit for the first time, or after a shutdown of thirty (30) or more days, the Permittee shall notify the Authorized Officer in writing of the date he/she plans to begin operations. The Permittee shall also notify the Authorized Officer in writing if he/she intends to cease operations for any period of thirty (30) or more days. Such written notification may be made by notation on Form OR 2812-6, Report of Road Use.

RU-2 Notification of Additional Volume
The Permittee shall notify in writing to the BLM when the haul volume will exceed the original estimated volume in the permit by 20%. Certified haul volumes shall be submitted for the original estimated volume to bring the permit current. The new estimated volume shall be subject to additional haul fees at the rates shown in the permit and shall be paid prior to the signed agreement by the BLM of the additional haul volume.

RU-3 Verification of Final Volume
Either prior to or following termination of this permit, the Authorized Officer may conduct a final reported volume verification by comparing the total volume reported to the Bureau of Land Management with the Oregon Department of Revenue Severance and Harvest Tax Timber Volume Records. Whenever the volume reported to the Bureau of Land Management is less than that reported to the Oregon Department of Revenue, the Permittee will be asked to account for the difference. Termination of this permit shall not relieve the Permittee of responsibility for the payment of fees due for all volume hauled over roads authorized by this permit.

RU-4 - Stop Activities in Case of Damage
The Bureau of Land Management reserves the right to stop any or all activities of the Permittee that directly involve BLM-controlled roads or lands, when the Authorized Officer determines that damage to the road or environment may occur or is anticipated.

TE-1 - Threatened or Endangered Species
The Permittee shall immediately discontinue specified use upon receipt of written notice from the Authorized Officer that:

a) Threatened or endangered plants or animals protected under the Endangered Species Act of 1973, as amended, may be affected by the operation and a determination is made that consultation or reinitiation of consultation is required concerning the species prior to continuing operations; or

b) Federal proposed, federal candidate, Bureau sensitive or State listed species protected under BLM Manual 6840 - Special Status Species Management - have been discovered and a determination is made that continued operations would adversely affect the species or its habitat.

Discontinued operations may be resumed upon receipt of written instructions from the Authorized Officer.

RU-5 - Roads Limited to Dry Weather Use
Permitte shall discontinue hauling during periods of wet weather.

RU-6 - Landings, Yarding and Condition of Roads During Use
No landings shall be located within 25 feet of the road and no yarding shall be allowed in the road. Permittee shall keep the roadway and ditches clear of logging debris. The Permittee is responsible for all damages beyond normal maintenance as determined by the Authorized Officer of the Bureau of Land Management.

The Permittee agrees to repair damages to the satisfaction of the Authorized Officer or to reimburse the Bureau of Land Management for repair of such damages. The road(s) must be open for travel at all times.

The Permittee shall, to the satisfaction of the Authorized Officer, clean up landings and areas on BLM land where equipment has been operated or repaired and shall remove, or otherwise dispose of in a legal manner, all garbage, temporary buildings, trash, litter or other refuse resulting from the Permittee's operations including fuel containers, oil cans, and discarded equipment or parts thereof.

MAINTENANCE PROVISIONS

OM-1 - Operator Maintenance
Permittee shall be responsible for maintenance of BLM controlled Roads during haul operations. The following provisions shall apply in connection with this maintenance.

OM-3 – Culvert & Ditch Maintenance
Permittee shall clean all logging debris including dislodged rocks or soil from ditches, culverts, and catch basins which will inhibit free drainage of water from the roadway and adjacent shoulders.

Permittee shall be responsible for maintaining normal flow in drainage structures. This includes cleaning of ditches, catch basins, culverts, and drain dips.

OM-4 – Grading & Shaping
Permittee shall grade and shape all roads in a manner and frequency to promote drainage away from the roadway and minimize erosion and sedimentation.

Permittee shall remove or shape unplanned berms to promote drainage away from the roadway.

OM-5 – Brushing
Roadside brushing shall be performed to meet the requirements for safety and sight distance.

RC-5 – Grading and Surfacing

The subgrade must be graded, compacted, and shaped to the required dimensions and configuration prior to surfacing.

Rock used for surfacing must conform to the following specifications:

Gradation	3 inch minus Jaw Run or 4 inch minus grid rollrd rock

The finished surface must be graded, compacted, and shaped on the existing roadway. Do not widen roadway for placement of any maintenance rock.