

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS RESOURCE AREA

**Categorical Exclusion Determination and Decision Record for
the issuance of an
O&C Logging Road Right-of-Way Permit No. M-2203 (OR 063941)
To the Purchaser of a Josephine County Timber Sale
CE-OR-117-08-45**

Location and Name of Applicant:

T. 34 S., R. 5 W., Section: 28,
Medford District, Grants Pass Resource Area, Josephine County
HUC-6: Upper Jumpoff Joe Creek, #171003100201 (see Exhibit A Map attached).
Applicant: Josephine County Department of Forestry

Background

Under the terms of the Memorandum of Understanding between the United States, Bureau of Land Management, Medford District and Josephine County, dated May 3, 1990, when Josephine County wishes to use BLM roads, the County shall submit their timber sale plan to the BLM and the BLM will determine if it has objections to the County's planned action. When there are no objections, the BLM shall furnish to the County a partially completed O&C Logging Road Right-of-Way permit which will be issued to the successful timber sale purchaser. This partially completed permit contains the terms and conditions for which the purchaser must comply. Upon award of the timber sale, the BLM will issue the permit to the successful purchaser. This document analyzes the impacts of the permit to be issued to the successful purchaser.

Description of Proposed Action:

Josephine County Dept. of Forestry sold their Jack timber sale in July of 2008. The proposed action is the issuance of an O&C Logging Road Right-of-Way Permit to the purchaser of Josephine County's timber sale, under the provisions of 43 CFR Subpart 2812, and P.L. 94-579; 90 Stat 2743.

This permit has been designated as Permit No. M-2203 (OR 063941). The requested period of use is for 2 years, with the possibility of one-year extensions at the discretion of the Authorized Officer. The permit will allow commercial hauling of approximately 170 MBF of private timber over existing U.S. roads. Utilization of these roads would, by itself, not facilitate any ground-disturbing actions on federal lands. The permit would not be a determining factor as to whether ground-disturbing actions would occur on private lands.

The areas to be harvested are identified as:

Area to Be Harvested			
T.	R.	Sec.	Subdivision
34 S	5 W	28	W½NW¼; E½

The following table identifies the U.S. roads to be used, estimated timber and/or mineral volumes to be hauled over each road and the anticipated haul periods:

BLM Roads to be Used						
BLM Road and Segment No.	Segment Length	Length to be Used	Present Surface Type	Haul Period	Estimated Timber Volume to be Hauled (MBF)	Estimated Mineral Volume to be Hauled (CY)
34-5-28.00	2.32	1.62	ABC	4 th Quarter	35	0
34-5-28.05	0.22	0.22	NAT	4 th Quarter	135	0
34-5-32.00A	0.64	0.64	BST	4 th Quarter	170	0
34-5-32.00B	0.48	0.48	ASC	4 th Quarter	35	0
34-5-32.00C	1.79	0.77	ASC	4 th Quarter	35	0
34-5-33.02	0.10	0.10	NAT	4 th Quarter	35	0

The haul route and affect roads are located in Josephine County on BLM lands administered by the Grants Pass Resource Area and crosses federal General Forest Management Area. The specific roads to be used and area to be harvested are located on the attached map labeled as Exhibit A.

Project Design Features

Permittee agrees to comply with the following environmental stipulations:

- A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake, or reservoir on or near the permit area together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes, or reservoirs on or near the permit area in connection with any operation under this permit.
- B. All applicable State and Federal laws and regulations concerning the use of poisonous substances, including insecticides, herbicides, fungicides, rodenticides, and other similar substances.
- C. All other applicable State and Federal environmental laws, regulations, and standards.
- D. If, in connection with his operations under this permit across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value such as historical or prehistorical ruins, graves, grave markers, fossils, or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.
- E. The Permittee shall discontinue hauling and other operations under this permit upon written notice of the Authorized Officer that such operations are in violation of this provision.
- F. All ground disturbing equipment shall be washed prior to use on BLM lands to control the spread of noxious weeds.

JACK TIMBER SALE
HAUL ROUTE

EXHIBIT A
O&C PERMIT M-2203

T.34S.,R.5., WILL.MER.
SEC. 28

N



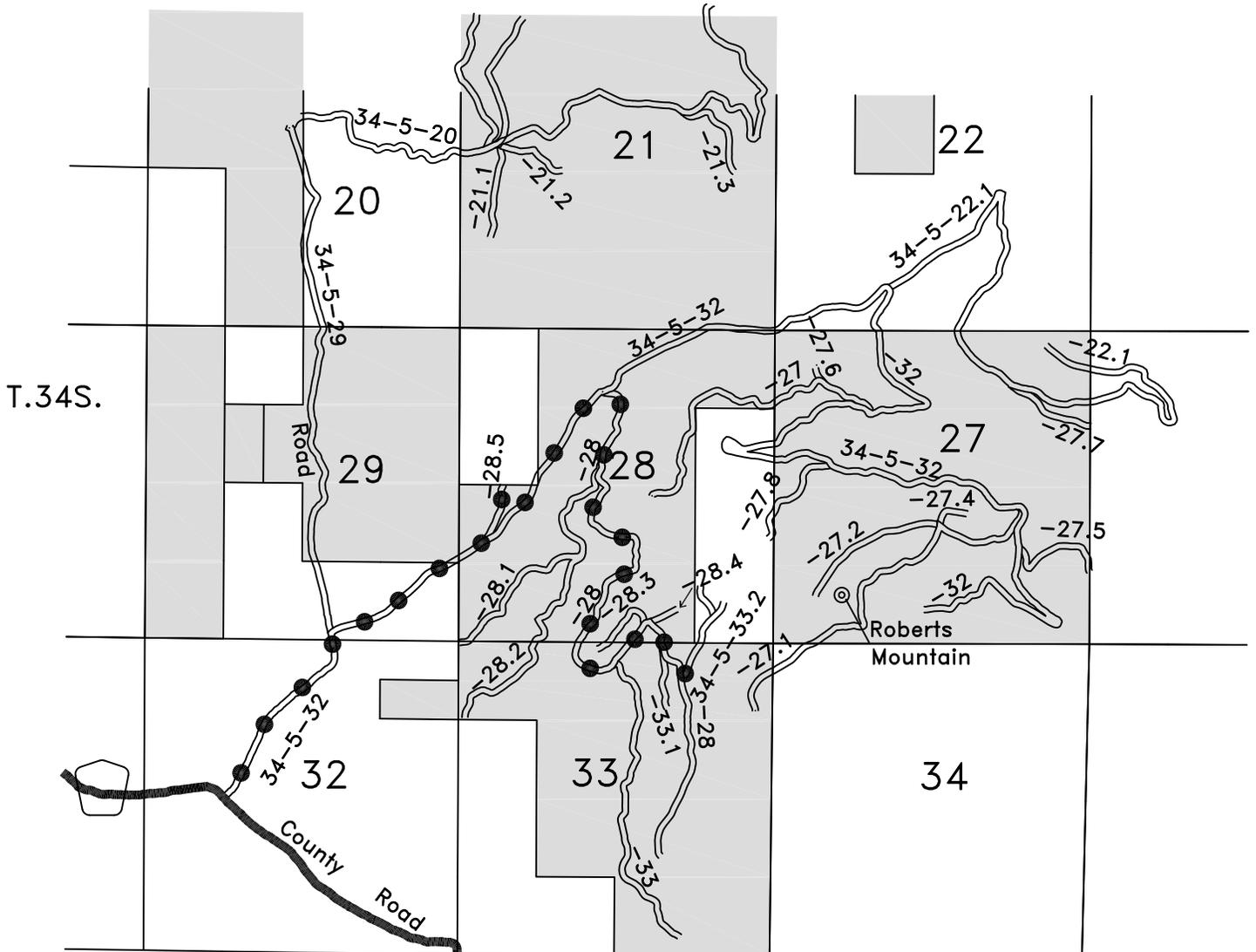
LEGEND

U.S. LAND

HAUL ROUTE



R.5W.



ADDITIONAL TERMS, CONDITIONS, AND STIPULATIONS

G-1 - Insurance Requirements:

The Permittee shall 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 (or commercial liability insurance), \$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 to general insurance practices of the timber industry in effect at the time of review.

G-2 - 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-5 – Use of Herbicides

The use of herbicides is prohibited along roads that cross U.S. lands administered by the Bureau of Land Management.

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 Verification of Final Volume

The Authorized Officer may conduct a final reported volume verification by comparing the total volume reported to the Bureau of Land Management with other state or federal agencies. The Permittee will be asked to account for any difference.

RU-3 - Stop Activities in Case of Damage

The Bureau of Land Management reserves the right to stop any or all activities authorized under this Permit when the Authorized Officer determines that damage to the road or environment may occur or is anticipated.

RU-4 - Roads Limited to Dry Weather Use

Use of the following road is prohibited between the periods from October 15th to May 15th, without the written permission of the Authorized Officer.

<u>Road No.</u>	<u>Segment</u>
34-5-28.05	All
34-5-33.02	All

RU-5 - 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.

RU-6 – Presumption of Abandonment use (if permit is longer than five years)

Failure of the Permittee to use any right-of-way for the purpose for which it was granted for any continuous five-year period shall constitute a rebuttable presumption of abandonment of that right-of-way.

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.

HM -1 –Hazmat

The Right-of-way Holder may not release any hazardous substances or hazardous wastes (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.) on the right-of-way area. The Right-of-way Holder agrees to indemnify the United States against any liability arising from the release of any hazardous substances or hazardous wastes.

CL -1 –Cultural

If in connection with any operations within the right-of-way area, the Right-of-way Holder, its agents or contractors, encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Right-of-way Holder, its agents or contractors, shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the Bureau of Land Management of the findings within 24 hours. Operations of the Right-of-way Holder, its agents or contractors, may resume at the discovery site upon receipt of written instructions and authorization from the Authorized Officer.

Plan Conformance Review

This proposed action 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);

- *Medford District Integrated Weed Management Plan Environmental Assessment (1998)* and tiered to the *Northwest Area Noxious Weed Control Program (EIS, 1985)*
- *Final Supplement to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines (FSEIS, 2007 and ROD, 2007).*¹

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 proposed action 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).

Categorical Exclusion Determination

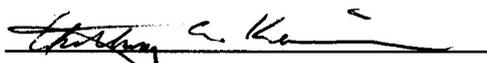
This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9.E.16. This section allows for "Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

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 Dave Allen, Project Leader, at (541) 618-2472 or Tony Kerwin, NEPA Coordinator, at (541) 471-6564.

Prepared by:


 Tony Kerwin, Environmental Planner 10/15/08
 Date:
 Grants Pass Resource Area

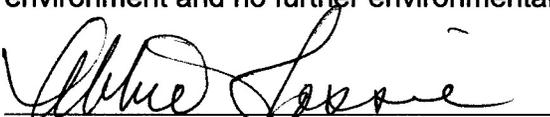
¹Complete title: *Record of Decision to Remove the Survey and Manage Mitigation measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl.*

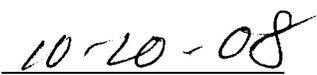
Decision

It is my decision to authorize O&C Logging Road Right-of-Way Permit No. M-M-2203 (serial No. OR 063941) as described in the Proposed Action. The project is planned for implementation summer 2008.

Decision Rationale

The proposed action has been reviewed by the Grants Pass 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.


Abbie Jossie, Field Manager
Grants Pass Resource Area


Date

ADMINISTRATIVE REMEDIES:

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 (a) – (c)). Other than the applicant/proponent for the right-of-way action, 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 that they have a "legally cognizable interest" and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d)).

EFFECTIVE DATE OF DECISION

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after the date of service) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

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 the date of service. Only signed hard copies of a notice of appeal that are delivered to the following address will be accepted. Faxed or e-mailed appeals will not be considered.

BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
2164 NE Spalding
Grants Pass, OR 97526

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 Josephine County Department of Forestry 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.

HOW TO FILE AN APPEAL

See the attached Form 1842-1 for complete instructions on Filing an Appeal

CONTACT INFORMATION

For additional information contact:

Abbie Jossie, Field Manager, Grants Pass Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541)471-6652

Or Mike Mathews (Grants Pass Resource Area Environmental Planner) at (541)471-6565

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
805 S.W. Broadway, Suite 600
Portland, Oregon 97205
- Josephine County Department of Forestry
County Courthouse, Room 68
Grants Pass, OR 97526

Enclosures:
Exhibit A Map
Form 1842-1

**O&C Logging Road Right-of-Way Permit No. M-2203 (OR 063941)
To the Purchaser of a Josephine County Timber Sale
CE-OR-117-08-45**

NEPA Categorical Exclusion Review

Proposed Action:

Josephine County Dept. of Forestry sold their Jack timber sale in July of 2008. The proposed action is the issuance of an O&C Logging Road Right-of-Way Permit to the purchaser of Josephine County's timber sale, under the provisions of 43 CFR Subpart 2812, and P.L. 94-579; 90 Stat 2743.

he requested period of use is for 2 years, with the possibility of one-year extensions at the discretion of the Authorized Officer. The permit will allow commercial hauling of approximately 170 MBF of private timber over existing U.S. roads. Utilization of these roads would, by itself, not facilitate any ground-disturbing actions on federal lands. The permit would not be a determining factor as to whether ground-disturbing actions would occur on private lands.

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**

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**

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

Yes **No**

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

Yes **No**

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

Yes **No**

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

Yes **No**

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

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

Animals Yes No

Fish Yes No

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

Yes No

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

Yes No

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

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

Reviewers:

Concepcion Francis 10/15/08
Date
Silviculture, Vegetation Dynamics
& Port-Orford Cedar

Robin M. Smith 9/29/2008
Date
Botany

Steve Brenner 10/15/08
Date
Cultural Resources

Mike J. 9/17/08
Date
Fisheries

Jason Reuz 9/18/08
Date
Wildlife

Michael DeBosi 9/18/08
Date
Soils/Hydrology

J. M. Hill 9/17/08
Date
Visual Resources / Recreation

Jim Propper 9/24/08
Date
Engineering