

DECISION RECORD & CATEGORICAL EXCLUSION REVIEW

(DOI-BLM-OR-M060-2010-0016-CX)

Project Name: Oregon Army National Guard Permit Application (OR 63234)

BLM Office: Ashland R.A., Medford District.

Contact: Leslie Voelkel (541) 618-2217

DESCRIPTION & LOCATION OF THE PROPOSED ACTION:

The proposed action is to authorize a temporary land use permit to the Oregon Army National Guard for training exercises and maneuvers on public lands. This permit is for the use of BLM roads and lands in the Soda Creek and Deer Creek areas in the Ashland Resource Area (Exhibit A). This authorization is subject to specific terms and conditions included in the permit (Exhibit B) and the Project Design Features (PDFs) listed below. The permit would be valid for a three (3) year period.

Planned activities include vehicle use of BLM roads to transport personnel throughout the training area for land navigation, dismounted (walking) and mounted (in-vehicle) movement, crew served weapons positions, field mess operation, overnight bivouacs and exercises. Vehicles will be used on existing roads only. Refueling operations, if required would be conducted on a BLM approved site (preferably an existing gravel pit) and according to ORARNGR procedures. Portable restrooms will be provided. No live fire training will occur. This permit would authorize year round activities; however, some restrictions would take place during the wet season and when seasonal restrictions are required to protect wildlife. Activities will be located within the following locations:

Township 37 South, Range 2 East, Section 25
Township 37 South, Range 3 East, Sections 17-20 and 29-32
Township 38 South, Range 2 East, Section 1
Township 38 South, Range 3 East, Sections 4-6

All in Jackson County, W.M., Oregon

The following Project Design Features (PDFs) are required conditions of this permit:

- Restrict all mechanized operations to existing and open BLM roads. Mechanized use of unauthorized (user created) routes, off road travel, and roads closed to the public (gated) is prohibited.
- Minimize ground disturbance associated with **all** activities.
- Staging of equipment and supplies should occur on previously disturbed and compacted surfaces.

To protect big game species within the Big Game Winter Range:

- No activities shall take place from November 15th to April 1st within T. 37 S, R. 3 E., Sections 17, 18.

To avoid possible disturbance to northern spotted owls during their critical breeding season:

- Locations of known northern spotted owl (NSO) nests will be given to Oregon Army National Guard personnel to facilitate the minimization of disturbance within 195 feet of these sites and,
- A buffer will be flagged on the ground prior to Oregon National Guard activity.

To protect Special Status Plant Species, the following site will have flagged buffers:

Table 1. Special Status Plant Species by location and number of sites (x)

T37S. R2E. section 25	Buxbaumia viridis (7)
T37S. R3E. section 17	Buxbaumia viridis (1), Cypripedium fasciculatum (1)
T37S. R3E. section 18	Cheilanthes intertexta (3)

T37S. R3E. section 19	Buxbaumia viridis (3), Cypripedium montanum (1)
T37S. R3E. section 20	Chaenotheca ferruginea (1)
T37S. R3E. section 29	Cypripedium fasciculatum (3)
T37S. R3E. section 30	Buxbaumia viridis (2)
T37S. R3E. section 31	Buxbaumia viridis (2)
T38S. R2E. section 1	Buxbaumia viridis (2)
T38S. R3E. section 5	Cypripedium montanum (3)

PLAN CONFORMANCE

43 CFR 2920.1-1(b) allows the agency to issue permits for the temporary (not to exceed 3 years) use of public lands (p.307). Through the application of required project design features (listed above), this project complies with the objectives and management direction of the 1995 Medford District Resource Management Plan (RMP).

The proposed action is in compliance with the 1995 Medford District Record of Decision (ROD) and RMP. The 1995 Medford District Resource Management Plan incorporated the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan) (USDA and USDI 1994).

The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*. On July 25, 2007, the *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* amended the 1995 Medford District Resource Management Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects (including timber sales).

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because this meets the provisions of the last valid Record of Decision, specifically the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews). This project is not a habitat disturbing activity, as defined in page 22 of the Standards and Guidelines of the 2001 *Record of Decision and Standards and Guidelines*, for any Survey and Manage species. Because the project is not habitat disturbing, the Survey and Manage provisions, including pre-disturbance surveys, are not required under the 2001 *Record of Decision and Standards and Guidelines*, (Standards and Guidelines, p. 7, 21-22).

The proposed action is also 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.

CATEGORICAL EXCLUSION REVIEW

Department of the Interior Regulations (43 CFR § 46.205(c)) require that any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in 43 CFR § 46.215. An action would meet one of the extraordinary circumstances if the action may:

- | <u>Yes</u> | <u>No</u> | <u>Categorical Exclusion Exception</u> |
|-------------------|------------------|---|
| () | (X) | 1. Have significant adverse effects on public health or safety. |
| () | (X) | 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. |
| () | (X) | 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)] not already decided in an approved land use plan. |
| () | (X) | 4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. |
| () | (X) | 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. |
| () | (X) | 6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects. (40 CFR 1508.7 and 1508.25(a)). |
| () | (X) | 7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places. |
| () | (X) | 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. |
| () | (X) | 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment. |
| () | (X) | 10. Have disproportionate significant adverse impacts on low income or minority populations (Executive Order 12898). |
| () | (X) | 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). |
| () | (X) | 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). |

COMPLIANCE WITH NEPA

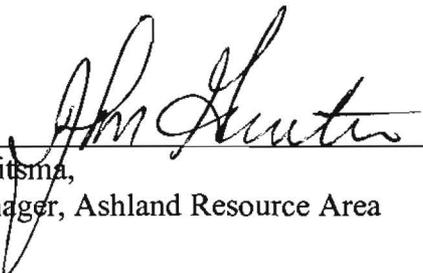
In accordance with 43 CFR §§ 46.205(c) and 46.215, the proposed action has been reviewed against the twelve criteria above and I have determined that none of the extraordinary circumstances described in 43 CFR § 46.205(c) apply to this project. The project qualifies as a categorical exclusion under 516 DM 11.9 E (16) which allows for the *“issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.”*

DOCUMENT PREPARATION AND REVIEW

<u>Leslie Voelkel</u>	<u>Realty Specialist</u>	<u>1-19-2010</u>
Prepared by	Title	Date
<u>Stephanie Larson</u>	<u>Assistant Environmental Coordinator</u>	<u>3-25-2010</u>
Reviewed & Edited by	Title	Date

DECISION

I have determined that the proposed action qualifies as a categorical exclusion under 516 DM 2 Appendix 2 and Section 11.9 E (16) involves no significant impact to the human environment and that no further environmental analysis is required. It is my decision to authorize the requested temporary permit OR 63234 as described above in the Proposed Action.

	<u>3/25/10</u>
John Gerritsma, Field Manager, Ashland Resource Area	Date

ADMINISTRATIVE REMEDIES

Notice of this decision will be posted on the Medford District internet website. The action is subject to protest under 43 CFR 4.450-2. A decision in response to a protest is subject to appeal to the Interior Board of Land Appeals under 43 CFR part 4.

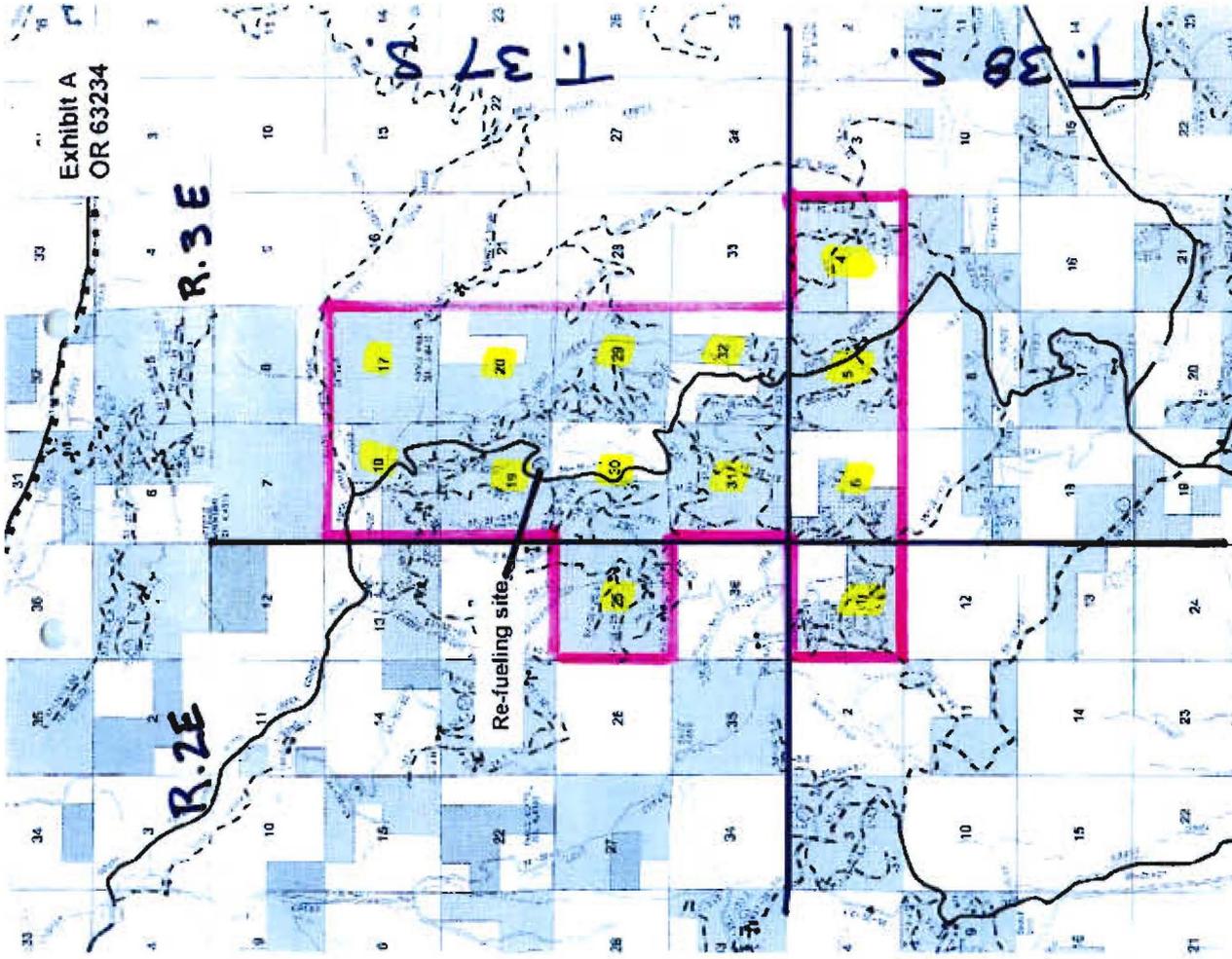


Exhibit A
OR 63234

OTHER TERMS AND CONDITIONS

The United States will not be held liable for any damage to the Permittee's equipment caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silvicultural practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management.

Cultural and Paleontological Resources. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the permittee, or any person working on their behalf, on public or Federal land shall be immediately reported to the Authorized Officer. Permittee shall suspend all operations in the immediate area of such discovery until a written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values.

The Permittee shall protect existing roads, fences, utility lines and like improvements during all training operations conducted under this permit. The Permittee shall not obstruct any roads without the prior approval of the Authorized Officer. Damage caused by the Permittee to any roads, public utilities or other improvements shall be promptly repaired by the Permittee to a condition which is satisfactory to the Authorized Officer.

The Permittee shall not place signs, gates, or barricades on public land, its resources, or improvements without prior written approval from the Authorized Officer.

All equipment shall be washed prior to entering the project area at a site where any mud or debris from the equipment will not contribute to the spread of noxious weeds.

Re-fueling of all equipment shall take place in T. 37 S., R.3 E., Section 19, W.M., Jackson County, Oregon at the location designated on Exhibit A, attached hereto.

The Permittee shall notify Leslie Voelkel, Realty Specialist, at 541-618-2217 or 541-618-2200, seven (7) days in advance regarding specific dates the Permittee will exercise activities authorized under this permit.

The Permittee shall contact and receive either a permit or notification from the Oregon State Forestry prior to use of mechanized equipment by the Permittee in the exercise of activities authorized under this permit.