

CATEGORICAL EXCLUSION REVIEW & DECISION RECORD

(DOI-BLM-OR-M060-2010-0026-CX)

Project Name: O&C Logging Road Right-of-Way Permit No. M-5063 (OR 66313)

BLM Office: Ashland Resource Area, Medford District Office

Contact: Floyd Peterson, Project Leader @ (541) 618-2329

Location: The haul route and affected roads are located on BLM administered lands in T. 37 S., R. 4 W., in Sections 4, 9 & 10, W.M., Jackson County, Oregon (Exhibit A).

DESCRIPTION OF THE PROPOSED ACTION:

The Ashland Resource Area of the Medford District BLM proposes to issue an O&C Logging Road Right-of-Way Permit to a private land owner, under the provisions of 43 CFR Subpart 2812, and P.L. 94-579; 90 Stat 2743. This has been designated as Permit No.M-5036 (OR 066313). The requested period of use is for 3 years, with the possibility of one-year extensions at the discretion of the Authorized Officer. The permit will allow commercial hauling of approximately 130 MBF of private timber over existing BLM road(s). 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 following table identifies the BLM 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.	Seg. Length	Length to be Used	Present Surface Type	Haul Period	Estimated Timber Volume to be Hauled (MBF)	Estimated Mineral Volume to be Hauled (CY)
37-4-4.1A	1.18	1.18	ASC	SUMMER	130	0
37-4-4.2A	1.05	1.05	NAT	SUMMER	130	0
37-4-4.2B	0.51	0.51	NAT	SUMMER	130	0

The 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.

The following project design features (PDFs) are required conditions for this project:

Road Maintenance:

- Slide material shall be moved to approved waste areas staked on the ground by BLM staff.
- Spot rocking shall be required in wet areas as directed by the BLM (Ashland RA Engineering staff will be the point of contact).
- Each season following road use, road maintenance and waterbar installation should occur as necessary to maintain effective drainage. This would include adequately blocking the entrance to preclude use along the entire road length.
- All areas of ground disturbance and loose fill within riparian reserves shall be seeded with an approved seed mix and mulched with weed free material prior to fall rains.
- Within 30 days following final use, the road should be left so that vehicle reestablishment would not readily occur and maintenance and stormproofing is adequate to maintain effective drainage until the next entry. An important aspect of this is to prevent motorized use over time.
 - Block entrance with a combination of boulders, logs and other debris, and an earthen berm.
 - Construct a dip over the 24" cmp and slightly below the 36" cmp to prevent diversion. This is referred to as "stormproofing".
 - Construct or reconstruct "large" dips or waterbars. These features should be large enough to remain effective and discourage vehicle use if unauthorized use occurs.
 - Place boulders, slash, or cull logs at key points along the road length as equipment exits.
- **OM-1 - Operator Maintenance**

Permittee shall be responsible for maintenance of BLM Road No(s) as shown on the right-of-way permit (page 1) during haul operations. The following provisions shall apply in connection with this maintenance.

- **OM-2 – Waterbars**

After use of the road each season, water bars will be reconstructed to enable them to effectively route captured flow off the road prism. Permittee shall notify the Authorized Officer upon completion of maintenance for inspection and approval by the Authorized Officer.

- **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. When cleaning culverts, remove material to a stable location outside of the riparian reserve.

To storm proof the culvert crossings, rolling dips will be constructed over the crossings to ensure that when the pipes fail, water that overtops the road is diverted directly across the road prism and back into the stream channel below the crossings.

- **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. Avoid sidestepping of material. Remove material to a stable location outside of the riparian reserve.

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 as shown on the plans.

- **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 roads is prohibited from October 1st to June 15th, without the written permission of the Authorized Officer.

<u>Road No.</u>	<u>Segment</u>
37-4-4.1	A
37-4-4.2	A
37-4-4.2	B

▪ **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-4 – Assignability**

When the Permittee lands served by this permit are sold or transferred to another owner who needs the rights granted by this permit, assignment of the permit is required. Application for assignment shall be made in accordance with 43 CFR 2812.7.

▪ **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.

▪ **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 re-initiation 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.

PLAN CONFORMANCE

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan (RMP)* which states to “*continue to make BLM-administered lands available for needed rights-of-way.*” 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:

Yes	No	<u>Categorical Exclusion Exception</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Have significant adverse effects on public health or safety.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	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.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	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.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects. (40 CFR 1508.7 and 1508.25(a)).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	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

Floyd Peterson	Realty Specialist	04/22/2010
Prepared by	Title	Date
Stephanie Larson	Assistant Environmental Coordinator	06/24/2010
Reviewed & Edited by	Title	Date

DECISION

I have determined that the proposed action, which qualifies as a categorical exclusion under 516 DM 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 issuance of the O&C Logging Road Right-of-Way Permit No.M-5036 (OR 66313) to the private land owner. Notice of this decision will be posted on the District internet website.

For 
John Gerritsma,
Field Manager, Ashland Resource Area

6-24-10
Date

ADMINISTRATIVE REMEDIES

This is a lands decision on a right-of-way action in accordance with BLM regulations under 43 CFR Part 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after this decision is signed) 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).

Greg Liles Logging
 RIGHT OF WAY LOCATION MAP
 SEC.10 T.37S.,R.4W., WILL.MER.

SERIAL NO. OR 066313
 EXHIBIT A
 SHEET 1 OF 1
 DATE: 4-22-2010

LEGEND

- U.S. LANDS
- Gergory and Karen Liles Lands

ROADS	MILES
37-4-4.1	1.8
37-4-4.2 A	1.05
37-4-4.2 B	0.51

HAUL ROUTE

