

# CATEGORICAL EXCLUSION REVIEW & DECISION RECORD

(DOI-BLM-OR-M060-2014-001-CX)

**Project Name:** Commercial Tree cutting and removal

**BLM Office:** Ashland Resource Area, Medford District Office

**Contact:** Brett Holcomb , Project Leader @ 541- 618-2314

**Location:** The affected environment is located on BLM administered lands in T. 38 S., R. 3 E., in Section 21. W.M., Jackson County, Oregon (see map).

## DESCRIPTION OF THE PROPOSED ACTION:

The Ashland Resource Area of the Medford District BLM proposes to issue a Cutting Permit for one commercial size tree to a private individual. The tree will be felled with a chainsaw, removed from the forest using a helicopter and flown approximately one-half mile to a landing area on BLM land where it will be loaded on a truck. The removal will occur in mid-November of 2013. The tree is a white fir species approximately 60 feet in height and approximately 17" in diameter (at breast height). The topography is gentle (3-8 percent) along a broad ridge-line. This area is located in the Dead Indian Creek drainage although there are no defined streams or riparian areas near the tree removal area. There is not road access to the tree removal site so the falling and yarding crew will walk in from BLM road 38S-03E-17.00. The tree will be hauled on BLM road 38S-03E-17.00 for approximately 2,000 feet to Dead Indian Memorial Highway.

**The Permittee agrees to comply with the following environmental and safety stipulations as required project design features:**

- The Permittee shall discontinue hauling under this permit upon written notice of the Authorized Officer that such operations are causing damage to the existing facilities.
- Permittee shall leave the road in as good of condition than what existed prior to use. When maintaining inboard ditches, avoid blading and vegetation removal unless absolutely necessary. All soil disturbance associated with road drainage improvement shall be within the existing road Rights-of-Way. Avoid blading and vegetation removal unless necessary to remove drainage impediments when maintaining inboard ditches. Control sediment by spreading weed-free straw in ditchlines where ditchline blading is required within 100 feet of streams. Avoid undercutting the toe of cutslopes and sidecasting. Sidecasting of material shall not occur within 200 feet of streams.
- The Permittee agrees to comply with the following environmental and safety stipulations as required project design features: The Permittee shall discontinue hauling under this permit upon written notice of the Authorized Officer that such operations are causing damage to the existing facilities. This restriction could be waived by the authorized officer, in consultation with a watershed specialist, under dry conditions. All equipment will be washed prior to entering BLM lands to avoid the introduction of noxious weeds.

**Wildlife:**

- Since there is no ground disturbance proposed, and, the existing road prism is not suitable habitat for any special status wildlife, there will be no effect to federally-listed, survey and manage or bureau special status wildlife.
- The northern spotted owl, a threatened species, is the only federally listed or proposed threatened/endangered wildlife species with suitable habitat in the vicinity of the proposed operations. None of the operations proposed on Federal land would modify northern spotted owl suitable habitat. There are no known northern spotted owl nests within 0.25 miles of the proposed haul route. No disturbance from noise is expected at the nearest known northern spotted owl nest site.
- Issuing the Permit would not adversely affect wildlife species that are listed or proposed for listing under the auspices of the Endangered Species Act of 1973, as amended.

**Hydrology/Fish:**

- Ground disturbing activities are not proposed. As the existing route is paved, haul would not increase road erosion, lead to road damage, or have any causal mechanism to impart negative effects to water quality. Authorizing this CE would therefore have no effect to fish, fish habitat, or any aquatic habitat in the vicinity. Aquatic Conservation Strategy objectives would not be compromised at any spatial scale of analysis.

**Botany:**

- 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.

**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.*

This proposed action is also consistent with 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 (2001 ROD). 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 (Standards and Guidelines, p. 7, 21-22).

This project is consistent with 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, as incorporated into the Medford District Resource Management Plan.

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. Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement, adopted by the district court on July 6, 2011.

The Ninth Circuit Court of Appeals issued an opinion on April 25, 2013, that reversed the District Court for the Western District of Washington's approval of the 2011 Survey and Manage Settlement Agreement. The case is now remanded back to the District Court for further proceedings. This means that the December 17, 2009, District Court order which found National Environmental Policy (NEPA) inadequacies in the 2007 analysis and records of decision removing Survey and Manage is still valid.

The 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 the Project 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).

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

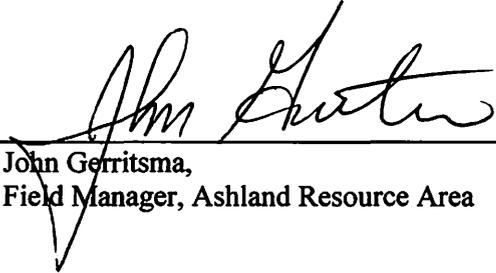
In accordance with 43 CFR §§ 46.205(c) and 46.215, the proposed action has been reviewed against the twelve criteria above and I have determined that none of the extraordinary circumstances described in 43 CFR § 46.205(c) apply to this project. The project qualifies as a categorical exclusion under 516 DM 11.9 C (7) which allows for the "harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction."

## DOCUMENT PREPARATION AND REVIEW

<u>Allison Hass</u>	<u>NEPA Clerk</u>	<u>10/18/2013</u>
Prepared by	Title	Date
<u>Ted Hass</u>	<u>Environmental Coordinator</u>	<u>10/23/2013</u>
Reviewed & Edited by	Title	Date

## DECISION

I have determined that the proposed action, which qualifies as a categorical exclusion under 516 DM 11.9 C (7), 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 Cutting Permit. Notice of this decision will be posted on the District internet website.

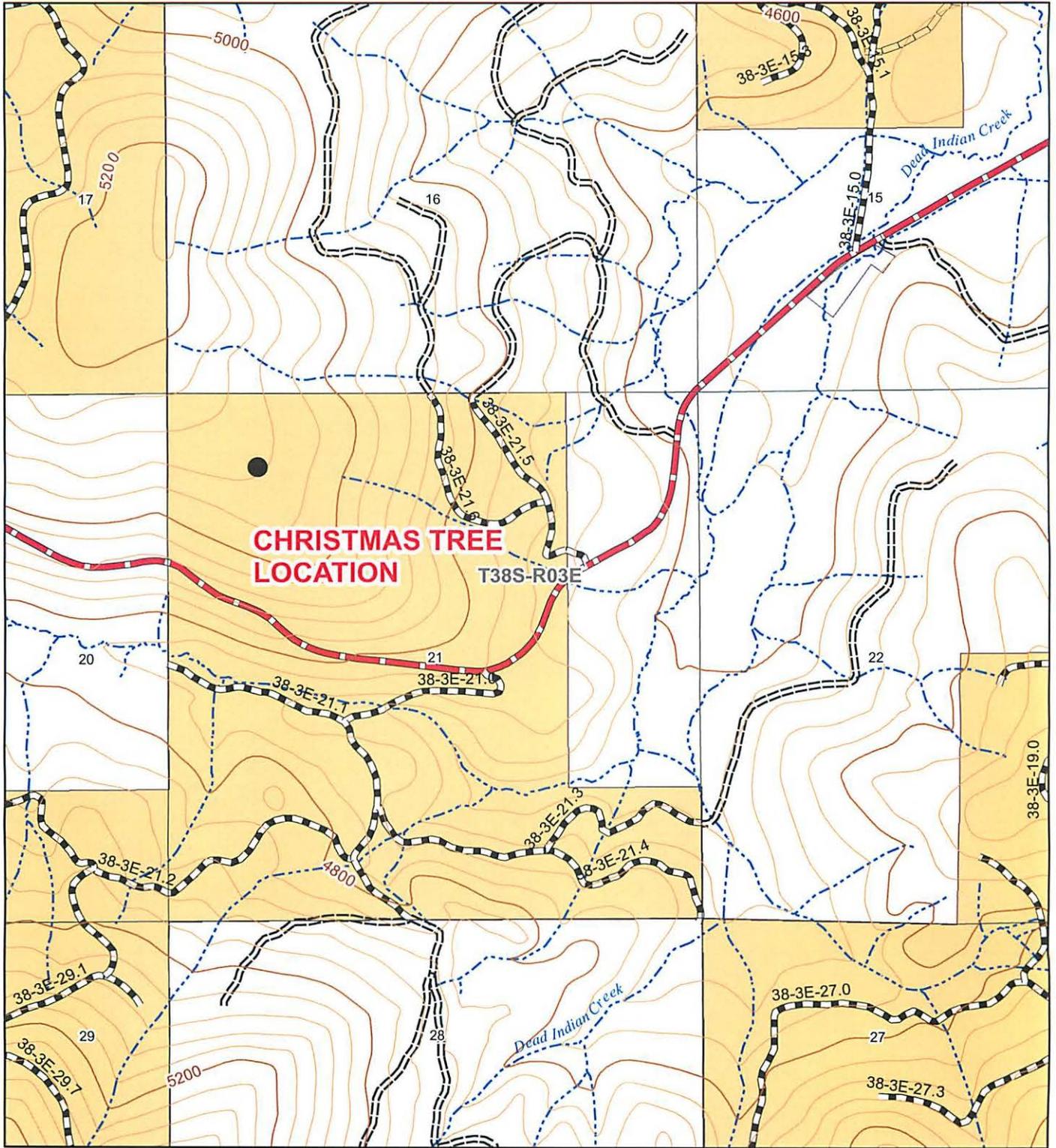
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John Gerritsma, \_\_\_\_\_ Date 10/24/13  
Field Manager, Ashland Resource Area

## ADMINISTRATIVE REMEDIES

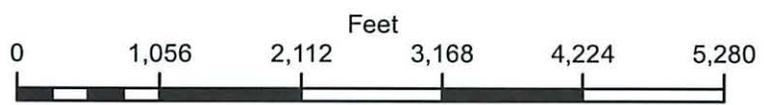
Based on the attached Categorical Exclusion, it is my decision issue a cutting permit as described in the Proposed Action. In making my decision, I considered the Project Design Features that will be incorporated into the project design.

In addition, I have reviewed the plan conformance statement and have determined that the Proposed Action is in accordance with the approved land use plan and that no further environmental analysis is required. Therefore, an environmental assessment or an environmental impact statement is not needed. It is my decision to implement the Proposed Action in accordance with 43 CFR §5003-Administrative Remedies. If no protest is received by the close of business (4:30 p.m.) within 15 days after publication of this Categorical Exclusion and Decision Record on the Medford BLM Website, this decision will become final and may be implemented immediately.

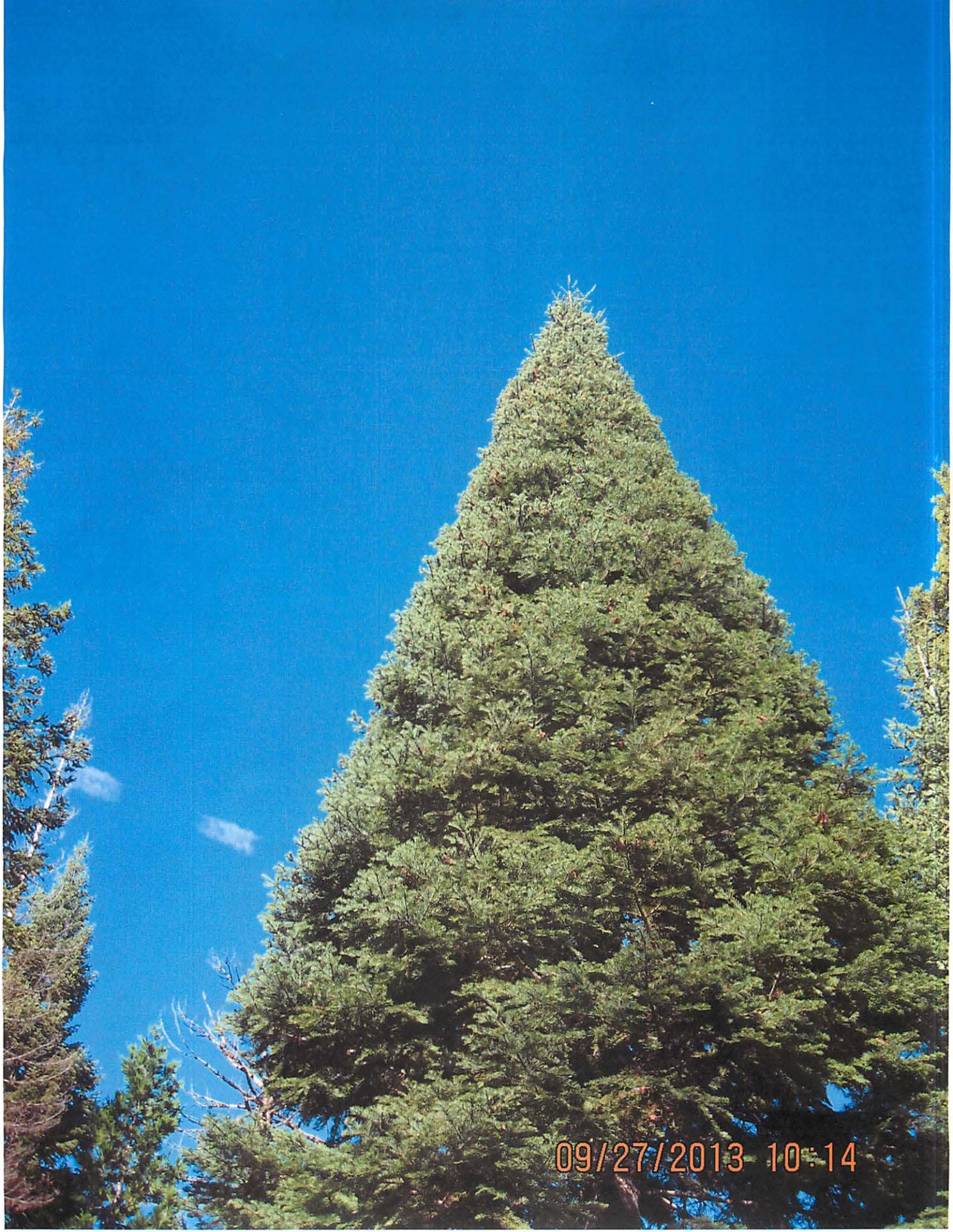


T38S-R03E

**CHRISTMAS TREE  
LOCATION**



**SCALE-1:12,000**



09/27/2013 10:14