

Categorical Exclusion Determination and Decision Record for Special Recreation Permits at Woodrat Mountain Recreation Site for Commercial Use

DOI-BLM-OR-M060-2015-0018-CX

Description of Proposed Action

The Proposed Action would issue Special Recreation Permits (SRPs) or Letters of Agreement to allow commercial companies or individuals to instruct students for tandem hang-gliding or paragliding flights at Woodrat Mountain recreation site. This categorical exclusion would authorize SRPs for commercial flights for a period of five years, with the annual season occurring February through October. Annual permit validation would be required.

Access would be by vehicle on existing roads to the developed upper or mid-launch areas of Woodrat Mountain. Federal Aviation Regulation 103 Exemption 4721 states that all tandem flights with unrated pilots are for the purpose of instruction. Therefore, all commercial flights with unrated pilots will be restricted to instruction only. Anticipated group sizes and associated impacts would be small and similar to those of casual use by the general public. Individual permit applications will be submitted to the Ashland Resource Area Outdoor Recreation Planner, and project descriptions will be reviewed on a case-by-case basis to determine if additional project design features or analyses are required. Large events or activities beyond the scale of casual use would require additional NEPA analysis beyond this categorical exclusion.

Woodrat Mountain is recognized as an existing recreation site in the 1995 Medford District RMP (p. 64). The upper launch site has a permanent toilet, trash facilities, and concrete barriers on the edge of the parking area to keep vehicles and pilots separated. This site has served as the primary takeoff site for hang gliders and paragliders in the Applegate Valley for more than 30 years. Long-term permission has been established by the Rogue Valley Hang Gliding & Paragliding Association (RVHPA) to use an offsite landing zone. In the RVHPA event brochure, two landing zones have been identified on a map, as well as hazards and areas where gliders should not land.

This permit requires use of the Bishop Creek Road 38-3-23 and Woodrat Mountain Road 38-2-29, and the established parking areas at the two launch sites. All material and refuse would be removed from the site at the conclusion of each launch.

If the BLM Outdoor Recreation Planner determines an activity or event does not require a SRP, a Letter of Agreement may be issued instead. A SRP is required if: there is a fee charged to participate; there is concern for health and safety; there is a management concern for cultural or natural resource, or facilities; or the activity requires services such as law enforcement, fire protection, on-site monitoring, exclusive use, or other specialized management.

A Letter of Agreement may be used if the activity is taking place in an appropriate area and there are no major concerns regarding the activity. A Letter of Agreement is documentation of the BLM's determination that a permit is not required, and that the group contacted and worked with the BLM in planning their activity. It is not an authorization to use public land. If an authorization is required, a SRP would be issued.

The launch area is located on public lands in the Ashland Resource Area, Jackson County, Oregon, in Township 38 South, Range 03 West, Section 25. A landing zone is located in Section 23 on private lands through an easement with the private landowners (Map 1). Only members of the Rogue Valley Hang Gliding & Paragliding Association are authorized to utilize the landing zone on private property, per the agreement with the landowner.

All tandem instructors and students would have to meet the Federal Aviation Administration regulations as contained in *FAA Exemption #4721N* (see Appendix A) in order to be permitted through this action. As part of the BLM's Special Recreation Permit process, each individual applicant would be required to furnish the BLM with insurance for their flights, which lists the BLM as additionally insured.

Plan Conformance Review

This Proposal is designed to be in conformance with the *1995 Medford District Record of Decision and Resource Management Plan (ROD/RMP)*. The 1995 Medford District RMP 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* (USDA and USDI 1994).

Additionally, the Proposed Action is consistent with the Medford District Resource Management Plan as 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* (2001 ROD); the *BLM Vegetation Treatments Using Herbicides Final Programmatic EIS Record of Decision* (USDI 2007); Record of Decision (BLM): *Vegetation Treatments Using Herbicides on BLM Lands in Oregon* (USDI 2010); *Medford District Integrated Weed Management Plan Environmental Assessment* (USDI 1998) and tiered to the *Northwest Area Noxious Weed Control Program* (EIS, USDI 1985). This project utilizes the December 2003 Survey and Manage species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews (ASRs) with the exception of the red tree vole.

This proposal is consistent with management direction in the Medford District 1995 ROD/RMP that directs the BLM to:

- *Pursue recreation opportunities that will benefit local community economic strategies consistent with BLM land use objectives* (USDI 1995, p. 63); and
- *Enhance recreation opportunities provided by existing and proposed watchable wildlife and wildflower areas and national backcountry byways* (USDI 1995, p. 64).

The proposed action was designed to be in conformance with the direction given for the management of public lands in the Medford District the following: the Oregon and California Lands Act of 1937 (O&C Act); Federal Land Policy and Management Act of 1976 (FLPMA); Endangered Species Act of 1973; Clean Water Act of 1987; Safe Drinking Water Act of 1974 (as amended 1986 and 1996); Clean Air Act of 1990 (as amended); National Historic Preservation Act of 1966 (as amended); and Archaeological Resources Protection Act of 1979.

Project Design Features

- Motorized vehicles must stay on existing roads; no cross-country use, or use behind gates or areas closed to such use is allowed.
- Road maintenance performed as a result of issuance of this Special Recreation Permit would be conducted during the dry season to prevent associated delivery of sediment to waterways. No snow plowing of associated roads will be authorized with permit issuance.
- Parking of vehicles and activity staging is restricted to areas previously disturbed and compacted.

- No signs, billboards, outdoor advertising, structures, or advertising of any kind or nature shall be located on BLM-administered lands.
- If special status species are located in the area, harassing, disturbing, or collecting those animal and plant species is prohibited.
- Damaging, disturbing, removing, or collecting any live vegetation, including wildflowers, is prohibited.
- If future surveys for northern spotted owl detect a nest within ½ mile of the launch site, a seasonal restriction may be imposed to reduce impacts to nesting individuals.
- If found, damaging, disturbing, or removing any artifacts or cultural features is prohibited.
- No digging or other ground-disturbing activities are allowed.
- Any items brought for use by the permit holder must be removed at the end of the activity or event.
- If BLM resource specialists determine additional site-specific stipulations may be necessary to protect resources, stipulations will be incorporated into the SRP or Letter of Agreement.
- The permit holder shall comply with all Federal, State, and local laws, ordinances, regulations, or written requirements applicable to the area covered by the SRP.
- Issuance of an SRP or Letter of Agreement does not imply exclusive use of a site or area by the permit holder.
- Permit holder shall submit final event or quarterly post-use reports.

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 H(1). This section allows for *Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; and /or for recreational travel along roads, trails, or in areas authorized in a land use plan. This categorical exclusion cannot be used for the establishment or issuance of Special Recreation Permits for "Special Area" management (43 CFR 2932.5).*

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances" included in the Code of Federal Regulations (CFR) at 43 CFR 46.205(c) must be reviewed for applicability.

Upon review, the BLM has 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 Zach Million, Ashland Resource Area Outdoor Recreation Planner (541-618-2318) .

NEPA Categorical Exclusion Review

Proposed Action:

Issue Special Recreation Permits (SRPs) or Letters of Agreement to allow commercial companies or individuals to instruct students for tandem hang gliding or paragliding flights at Woodrat Mountain recreation site, located on the Medford District BLM, in the Ashland Resource Area.

43 CFR 46.205(c) requires that “any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215” (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may:

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

Yes No

Rationale: Special Recreation Permits issued under the authority of this Categorical Exclusion would require tandem instructors and students to comply with the Federal Aviation Administration regulations as contained in *FAA Exemption #4721N* in order to be permitted through this action. As part of the BLM’s Special Recreation Permit process, each individual applicant would be required to furnish the BLM with insurance for their flights, which lists the BLM as additionally insured.

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; 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

Rationale: The action contained in the proposed Special Recreation Permit is exempt from surveys for cultural resources under the Oregon State Protocol (Appendix E, Recreation Management, #2). The project will have no effect on cultural resources. There are no park, recreation, or refuge lands, wilderness areas, wild or scenic rivers, national natural landmarks, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, national monuments, or any other ecologically significant or critical areas within the area proposed for use.

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

Yes No

Rationale: The project’s interdisciplinary team of resource specialists reviewed the project and did not identify any highly controversial effects or unresolved conflicts concerning this project.

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

Yes No

Rationale: The project's interdisciplinary team of resource specialists reviewed the project and determined there is not threat of significant environmental effects or unique or environmental risks.

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

Yes No

Rationale: Special Recreation Permits have been issued on the Medford District BLM in the past, and will likely occur in the future. Each approved permit contains its own set of conditions and project design features that must be evaluated on its own merit, as the BLM has done with the project. Environmental conditions, such as vegetation, slopes, soils, and streams are unique to each project, and must be considered anew for each Special Recreation Permit proposal. This action does not represent a decision in principle about the future actions with potentially significant effects.

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

Yes No

Rationale: Resource specialists have not identified any effect to resources that would result from this Special Recreation Permit; therefore, no cumulative effect would occur as a result of proposal implementation.

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

Yes No

Rationale: There will be no effect for cultural resources. The action is one that is exempt from surveys for cultural resources under the State Protocol (Appendix E, Recreation Management, #2).

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

Rationale: The paved road and road shoulder do not provide suitable habitat for Federally-listed, State-listed or Bureau special status plant species. There are no known populations of Threatened or Endangered species, State-listed, Bureau special status or Survey and Manage plant species in the areas included for use in this Proposed Action.

Animals Yes No

Rationale: The area included in this proposal (launch site) is outside of northern spotted owl Critical Habitat, and is within the nest core of one historic nest site. The nearest known historic nest site is more than ½ mile from this location. The area proposed for launching is an existing opening/clearing and no additional habitat modification would be necessary. No heavy equipment or loud motorized equipment would be used for this activity. Surveys in

this area are ongoing, and if surveys locate a nest within a ½ mile of this site, a seasonal restriction may be imposed to reduce impacts to nesting northern spotted owls.

The use of this area for recreational hang gliding and paragliding would, by itself, not facilitate any new ground-disturbing actions on Federally-administered lands. Therefore, there is no effect to Federally-listed or Candidate species, Survey and Manage, or Bureau Special Status wildlife species.

Fish Yes No

Rationale: As no additional ground disturbance would result from authorizing this action, there would be no potential to affect fish or aquatic habitat. Coho Critical and Essential Fish habitats would not be affected, and Aquatic Conservation Strategy objectives would not be compromised.

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

Yes No

Rationale: The BLM's interdisciplinary team reviewed this proposal to ensure compliance with applicable laws, including the Federal Land Policy and Management Act, Endangered Species Act, Clean Water Act, National Environmental Policy Act, Clean Air Act, National Historic Preservation Act, and Archaeological Resources Protection Act, among others. The resource specialists found the project conforms with the direction given for the management of public lands in the Medford District RMP, which complies with all applicable Federal and State laws.

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

Yes No

Rationale: The project would not have a disproportionately high or adverse effect to low-income or minority populations.

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

Rationale: No such sites have been identified in the area proposed for use in this Special Recreation Permit. Therefore, there would be no effect on such sites.

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

Rationale: Noxious weeds exist along the roads leading up to the launch site. Treatment of existing noxious weed populations have been ongoing for several years, and will continue.

Program design features prevent ground disturbance and require motorized vehicles to stay on existing roads; therefore, the Proposed Action will not contribute further to the spread of noxious weeds.

Decision

It is my decision to issue Special Recreational Permits or Letters of Authorization as described in the Proposed Action.

Decision Rationale

The proposed action has been reviewed by Ashland Resource Area resource specialists, 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 human environment, and no further environmental analysis is required.



Kristi Mastrofini
Field Manager
Ashland Resource Area

6/10/15

Date

Administrative Remedies

Administrative review of special recreation permit 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 for the Special Recreation Permit, 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 land decision on a Special Recreation Permit in accordance with BLM regulations at 43 CFR Subpart 2930. Under 43 CFR Subpart 2931.8(b), “All decisions BLM makes under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted under 4.21(b) of this title.”

Right of Appeal

The decision to be made on the action described in this categorical exclusion is subject to appeal under 43 CFR subpart 2931. Under 43 CFR 5003.2 (a), a notice of decision will be published in local newspaper(s). Under 43 CFR 2931.8 (a), appeals may be filed under 43 CFR parts 4 and 1840. Under 43 CFR 2931.8 (b), all decisions BLM makes under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted under 43 CFR 4.21(b) of this title.

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. Faxed or e-mailed appeals will not be considered. Only signed hard copies of a notice of appeal that are delivered to the Ashland Field Manager, 3040 Biddle Road, Medford, OR 97504, will be accepted.

In addition to the applicant, in order to qualify as an appellant, a “party to the case,” you 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)). 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 the applicant, Rogue Riders Endurance Club, 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.

Or for additional information concerning this project, contact Kathy Minor, Planning and Environmental Coordinator, at (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
1220 S.W. 3rd Avenue
Portland, OR 97204
- Rogue Valley Hang Gliding and Paragliding Association
P.O. Box 694
Jacksonville, OR 97530

Appendix A: FAA Exemption #4721N

[This] exemption to § 103.1(a) and (b) of Title 14, Code of Federal Regulations allows USHPA to operate unpowered ultralight vehicles (hang gliders) weighing less than 155 pounds, with another occupant, for the purpose of sport, training, or recreation.

Conditions and Limitations

1. Each operation must comply with the remaining sections of part 103, except § 103.1(a) and (b).
2. For training purposes, this exemption applies only to flights for the purpose of giving instruction in two-place unpowered ultralight vehicles from USHPA- approved launch sites.
3. Both occupants on all two-place training flights must possess a current pilot rating issued by the USHPA and at least one occupant must possess a current USHPA Tandem instructor rating.
4. Prior to all two-occupant training flights, the student must be informed that the flight is conducted under an exemption granted by the FAA and that the ultralight vehicle does not meet aircraft certification standards set forth by the FAA.
5. Both occupants on all two-place flights, other than for training purposes, must possess a current pilot rating issued by the USHPA and at least one occupant must possess a current Tandem Pilot rating issued by the USHPA.
6. For identification purposes, the USHPA shall issue an individual authorization to each person allowed to conduct operations under this exemption. Each authorization shall include an identification number and a copy of this exemption. The USHPA shall also have a procedure to rescind this authority when needed.
7. Each individual who operates an ultralight vehicle under the authority of this exemption must be familiar with the provisions contained herein and must have in his or her personal possession a copy of the authorization issued by the USHPA and a copy of this exemption. These documents shall be presented for inspection upon request by the FAA.
8. This exemption is not valid for operations outside of the United States.

Our decision extends the termination date of Exemption No. 4721, as amended, to October 31, 2016, unless sooner superseded or rescinded.

Sincerely,

//s//

John Barbagallo
Acting Deputy Director, Flight Standards Service
Issued in Washington, D.C. on September 19, 2014

