

**United States  
Department of  
Agriculture**

**Forest  
Service**

**R-6**

**United States  
Department of  
the Interior**

**Bureau of Land  
Management**

**OR/WA**

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**Reply Refer To:** 1900/2600 (FS)/1736 (BLM) (OR931) P

**Date:** July 21, 2011

**FS-Memorandum**

**EMS TRANSMISSION 07/26/2011  
BLM-Instruction Memorandum No. OR-2011-063**

**To:** Bureau of Land Management District Managers (Coos Bay, Eugene, Lakeview, Medford, Roseburg, and Salem), Field Managers (Klamath Falls), and Forest Service National Forest Supervisors and Columbia River Gorge National Scenic Area Manager within the Northwest Forest Plan Area

**Subject:** 2011 Settlement Agreement in Litigation over the Survey and Manage Mitigation Measure in *Conservation Northwest et al. v. Sherman et al.*, Case No. 08-1067-JCC (W.D. Wash.)

**Program Area:** Northwest Forest Plan Implementation – Survey and Manage Mitigation Measure

**Purpose:** This memorandum provides direction regarding Survey and Manage species and the 2007 Records of Decision (ROD) removing the Survey and Manage Mitigation Measure. The District Court for the Western District of Washington issued an order in the above named case on December 17, 2009. In response, parties entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011 (see Attachment 1).

**Policy/Action:** The Court set aside the 2007 RODs, putting into effect the *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (USFS et al. 2001) (2001 ROD). Projects within the range of the northern spotted owl are subject to the Survey and Manage Standards and Guidelines in the 2001 ROD as modified by the 2011 Settlement Agreement.

The 2011 Settlement Agreement makes four modifications to the 2001 ROD: (A) acknowledges existing exemption categories (2006 Pechman Exemptions); (B) updates the 2001 Survey and Manage species list; (C) establishes a transition period for application of the species list; and (D) establishes new exemption categories (2011 Exemptions).

A. Acknowledges Existing Exemption Categories (2006 Pechman Exemptions)

The Settlement Agreement acknowledges and maintains in force the stipulation in previous litigation regarding Survey and Manage species and the 2004 Record of Decision related to Survey and Manage Mitigation Measure in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006). Also known as the “Pechman Exemptions,” the Stipulation identified the following four general categories of exemptions from the 2001 Survey and Manage Standards and Guidelines, including pre-disturbance surveys and known site management (see Attachment 2 for a full description of the Pechman Exemptions):

1. Thinnings in forest stands younger than 80 years of age;
2. culvert replacement/removal;
3. riparian and stream improvement projects; and

4. hazardous fuel treatments applying prescribed fire for noncommercial projects.

Include language in your National Environmental Policy Act (NEPA) documents describing which exemption you apply and how your project meets the specified exemption (see Attachment 3). Include relevant supporting information in your project record.

B. Updates the 2001 Survey and Manage Species List

The Settlement Agreement contains a list of Survey and Manage species modifying the 2001 Survey and Manage species list. The updated 2011 species list incorporates all but 13 of the category changes and species removals made through the 2001, 2002, and 2003 Annual Species Reviews (ASR). In addition, three species not previously removed from Survey and Manage by the ASRs are removed from the new list, while one new species is added to the list. In addition, the Settlement Agreement validated the range changes (contractions and expansions) made through the 2001-2003 ASRs. A spreadsheet titled *Survey and Manage Species List: Categories from 2001 ROD, 2001-2003 ASR, and 2011 Settlement Agreement* is available at: <http://www.blm.gov/or/plans/surveyandmanage/gg.htm>.

The 2011 species list also includes species-specific mitigation for the Siskiyou Mountains salamander in the north range and the Great Gray Owl. For the Siskiyou Mountains salamander, the mitigation requires the agencies to follow the Conservation Strategy developed for that species in Oregon. For the Great Gray Owl, the mitigation reduces the area in the Northwest Forest Plan where Survey and Manage applies, reduces the survey intensity (requiring only one year of surveys), narrows the types of habitat-disturbing activities requiring surveys, and defines how to manage nest sites. For a list of the species and species-specific mitigation, see Attachment 1.

C. Establishes a Transition Period for Application of Species List

The Settlement Agreement provides for a transition period in applying the new Survey and Manage species list. Pechman exempt projects do not need to apply any Survey and Manage list, since these types of projects are exempt from Survey and Manage Standards and Guidelines. All other “habitat-disturbing” projects within the Northwest Forest Plan area (2001 ROD, p. 76) must use one of the two species lists as discussed below. Include language in your NEPA documents describing which species list you apply to individual projects (see Attachment 3 for sample NEPA language and Attachment 4 for species checklist and tracking forms). Include relevant supporting information in your project record.

1. For projects with signed RODs, Decision Notices, or Decision Memoranda from December 17, 2009, through September 30, 2012, the agencies can use either:

- the list of Survey and Manage species in the 2001 ROD (Table 1-1, Standards and Guidelines, pages 41-51) or
- the list of Survey and Manage species and associated species mitigation from the 2011 Settlement Agreement (Attachment 1, Settlement Agreement).

2. For projects with signed RODs, Decision Notices, or Decision Memoranda after September 30, 2012, the agencies will use the 2011 Settlement Agreement list of Survey and Manage species and associated species mitigation.

Where an existing programmatic NEPA document analyzes species effects based on the 2001 ROD species list and you now seek to apply the new 2011 Settlement Agreement list to a subsequent individual project decision, you should assess whether use of the new species list would result in the need for supplemental or new NEPA analysis. If you determine that use of the new species list results in

substantial changes in the proposed action, or if you find that use of the new species list results in significant new circumstances or information that bear on the proposed action or its impacts, then you should prepare supplemental or new NEPA analysis (see CFR 1502.9). For Bureau of Land Management (BLM) decision makers, if you identify no need to change the proposed action or your analysis of its effects, you should document the assessment in a determination of NEPA adequacy (DNA); for Forest Service decision makers, you should follow the procedures described in Forest Service Handbook 1909.15, Chapter 10, Section 18.

The Settlement Agreement does allow for the Agencies to modify the Survey and Manage species list through future ASRs.

#### D. Establishes New Exemption Categories (2011 Exemptions)

This Settlement Agreement establishes seven categories of new exemptions, hereafter referred to as “2011 Exemptions.” Projects that meet the criteria articulated in the Settlement Agreement for these new exemptions are exempt from pre-disturbance surveys, but known site management may apply. For specific known site management direction for projects applying the 2011 Exemptions, refer to Settlement Agreement Table 1. The new 2011 Exemption categories are:

1. Recreation Projects
2. Fish and Wildlife Habitat Restoration Projects
3. Weeds and Sudden Oak Death
4. Wildland Urban Interface (WUI)
5. Bridges
6. Non-Commercial Fuel Treatments
7. Restoration Projects that May Involve Commercial Logging

In order to qualify for a 2011 Exemption, a project must satisfy all criteria outlined for the category in the Settlement Agreement. Specific to restoration projects that may involve commercial logging, a project must first satisfy the overarching principles stated in 7.a. (i)-(vi) as well as additional criteria in 7.b. for legacy tree culturing and 7.c. (i)-(vi) for dry forest before you may apply the exemption (exemption category 7, Settlement Agreement pp. 5-10).

You may apply multiple exemptions to a single project. For example, you may apply the WUI exemption (exemption category 4, Settlement Agreement pp. 4-5) for a project in the first quarter mile in designated WUI then apply the exemption for restoration projects that may involve commercial logging exemptions beyond that (exemption category 7, Settlement Agreement pp. 5-10).

For additional clarification regarding the WUI exemption, see examples provided in Attachment 5.

In your NEPA documents, describe any exemption you applied and how your project meets the related criteria (see Attachment 3). Identify known site management direction applicable for the new 2011 Exemptions (see Attachment 4 for species checklist and tracking forms). Include relevant supporting information in your project record.

For projects that do not fall within the Pechman Exemptions or the 2011 Exemptions, you must comply with the 2001 ROD, as modified by the 2011 Settlement Agreement, consistent with the species list direction above.

**Timeframe:** The guidance in this memorandum is effective as of July 6, 2011. The direction in this memorandum replaces the interim NEPA direction for Survey and Manage Species issued by the Forest Service Region 6 in January 2010 and Oregon/Washington BLM in February 2010.

**Background:** The District Court for the Western District of Washington issued an order on December 17, 2009, in the lawsuit *Conservation Northwest et al. v. Rey et al.*, Case No. 08-1067-JCC (W.D. Wash.) regarding the 2007 decisions to remove the 2001 Survey and Manage standards and guidelines. The Court found inadequacies in the National Environmental Policy Act analysis supporting the 2007 *Records of Decision to Remove the Survey and Manage Mitigation Measures Standards and Guidelines*.

**Coordination:** The guidance in this memorandum was developed collectively by the agencies across multiple program areas with targeted review from the field. Case attorneys assigned from the Office of General Counsel, Pacific Region, and Office of the Regional Solicitor, Pacific Northwest Region, reviewed this memorandum for legal sufficiency.

**Contact:** For questions, contact the following agency leads:

	<u><b>OR/WA BLM</b></u>	<u><b>FS Region 6</b></u>
<i><b>Policy</b></i>	Lee Folliard 503 808-6077	Debbie Hollen 503 808-2922
<i><b>Survey &amp; Manage 2001 ROD Implementation</b></i>	Rob Huff 503 808-6479	Carol Hughes 503 808-2661
<i><b>National Environmental Policy Act</b></i>	Anne Boeder 503 808-6628	Jill Dufour 503 808-2276
<i><b>Forestry</b></i>	Jeannette Griese 503 808-6182	Eric Watrud 503 808-2668
<i><b>Fire</b></i>	Louisa Evers 503 808-6377	Louisa Evers 503 808-6377

/s/ Calvin M Joyner for

KENT CONNAUGHTON  
Regional Forester, Region 6  
USDA Forest Service

/s/ Michael S Mottice for

EDWARD W. SHEPARD  
State Director, OR/WA  
USDI Bureau of Land Management

#### Attachments

1. 2011 Order, Settlement Agreement, and Species List (25 pp.)
2. 2006 Stipulation with Pechman Exemptions (3 pp.)
3. Survey and Manage Language for Inclusion in National Environmental Policy Act (NEPA) and Decision Documents (5 pp.)
4. Survey and Manage Species Checklist and Tracking Forms (9 pp.)
5. Applying the 2011 Wild Urban Interface Exemption Category (7 pp.)

FS Distribution

WO – Chris Iverson, Joseph Burns,  
David Pivorunas

Region 6 – Debbie Hollen, Sarah Madsen,  
Carol Hughes, Mark Skinner, Phil Mattson,  
Suzanne Taylor, Jill Dufour, Michael  
Hampton, Tracy Beck, Sarah Crim, Eric  
Watrud, Lorette Ray, Jackie Andrew, Lynn  
Burditt

pdl r6 nr survey and manage contacts

pdl r6 nr forest wild bios

pdl r6 nr forest botanists leads

pdl r6 forest fish bios

pdl r6 fam FMOs

pdl r6 fam fuels

pdl r6 nr forest staff

Region 5 – Barnie Gyant, Mary Beth  
Hennessy, Diane Macfarlane, Patricia  
Krueger, Diane Ikeda

BLM Distribution

WO – Ed Roberson, Marci Todd, Dave Goodman,  
Kathy Radigan, Jon Menten, Dwight Fielder, Peggy  
Olwell

CA – Jim Abbott, Tom Pogacnik, Amy Fesnok,  
Nancy Haug, Lynda Roush, Richard Burns

OR912 – Michael Campbell

OR930 – Mike Haske, Debbie Pietrzak

OR931 – Lee Folliard, Steve Calish, Rob Huff,  
Dave Roche, Anita Bilbao, Bruce Hollen, Kelli Van  
Norman, Mark Mousseaux, Al Doelker

OR933 – Kim Titus, Anne Boeder

OR934 – Carl Gossard, Leanne Mruzik, Louisa  
Evers

ORS000 – Rich Hatfield, Randy Herrin, Roy Price,  
Claire Hibler

ORE000 – Richard Hardt, Alan Corbin, Eric  
Greenquist, Nancy Sawtelle

ORR000 – Rex McGraw/Paul Ausbeck, Craig  
Kintop, Christopher Foster, Susan Carter

ORM000 – Tony Kerwin, John Bergin, Acting  
District Wildlife Biologist and Botanist.

ORC000 – Steve Fowler, Jeff Davis, Carolyn  
Palermo, Tim Rodenkirk, Jennie Sperling

ORL040 – Don Hoffheins, Shane Durant, Steve  
Hayner

Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CONSERVATION NORTHWEST et al.,

Plaintiffs,

v.

HARRIS SHERMAN et al.,

Defendants,

and

D.R. JOHNSON LUMBER COMPANY,

Defendant-Intervenor.

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CASE NO. C08-1067-JCC

**PARTIES' STIPULATION AND  
~~PROPOSED~~ ORDER**



**08-CV-01067-RPT**

Parties' Stipulation and [Proposed] Order  
Case No. C08-1067-JCC

Western Environmental Law Center, 541-485-2471  
1216 Lincoln Street, Eugene, Oregon, 97401

1 Plaintiffs Conservation Northwest et al., and Defendants Harris Sherman et al., hereby  
2 stipulate to and respectfully request that the Court order equitable relief as set forth in the Settlement  
3 Agreement attached as Exhibit 1 hereto, and enter a judgment of dismissal with prejudice under  
4 Federal Rule of Civil Procedure 41(a)(2) pursuant to the following provisions:

5 1. On July 11, 2008, Plaintiffs filed a complaint challenging the U.S. Forest Service and  
6 Bureau of Land Management's (collectively, "the Agencies") 2007 Supplement to the 2004  
7 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage  
8 Mitigation Measure Standards and Guidelines (the "2007 Supplement"), as well as the Records of  
9 Decision to Remove or Modify the Survey and Manage Mitigation Measure Standards and  
10 Guidelines from Forest Service Land and Resource Management Plans, and Bureau of Land  
11 Management Resource Management Plans, within the Range of the Northern Spotted Owl (the  
12 "2007 RODs"), issued by the U.S. Department of Agriculture and the U.S. Department of Interior.

13 2. On December 17, 2009, this Court issued an opinion and order (Dkt. No. 65) that  
14 granted in part and denied in part Plaintiffs' motion for partial summary judgment on certain claims  
15 under the National Environmental Policy Act ("NEPA"), and granted in part and denied in part  
16 Federal Defendants' cross-motion for summary judgment regarding the 2007 Supplement and the  
17 2007 RODs. This Court declined to issue a remedy at that time and directed the parties to confer as  
18 to case management for remaining issues in this case.

19 3. Plaintiffs and Defendants have engaged in negotiations and agree upon provisions to  
20 settle the remainder of this case. The Parties' agreement is set forth in the Settlement Agreement  
21 that is attached as Exhibit 1 to this stipulation and order.

22 4. The provisions of the Settlement Agreement and its attachment are incorporated  
23 herein by reference in this stipulation and order. The provisions of the Settlement Agreement shall  
24 be effective upon entry of an Order of this Court granting equitable relief and dismissing the claims  
25 pleaded in Plaintiffs' Complaint, or that could have been pleaded in Plaintiffs' Complaint, insofar as  
26 they concerned the legality of the 2007 RODs and 2007 Supplement, with prejudice pursuant to  
27 Federal Rule of Civil Procedure 41(a)(2).

28 5. Consistent with Sections VI.G through VI.J of the attached Settlement Agreement

1 and the processes set forth therein, this Court shall retain jurisdiction of this action to resolve  
2 disputes between the Parties that may arise in the future regarding the provisions of the Settlement  
3 Agreement, and to consider and rule on any motions to modify or vacate such provisions. See  
4 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

5  
6 6. The provisions stipulated to by the parties and ordered by the court in *Northwest*  
7 *Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 11, 2006), shall remain in force.  
8 Other than the provisions in Sections I.C and III of the Settlement Agreement that reference the  
9 exemptions stipulated to by the parties and ordered by the court in *Northwest Ecosystem Alliance v.*  
10 *Rey*, No. 04-844-MJP (W.D. Wash. Oct. 11, 2006), no other terms or conditions in the attached  
11 Settlement Agreement apply to, or modify in any way, those exemptions.  
12

13 7. The Court's Order granting equitable relief shall remain in effect unless and until the  
14 Agencies conduct further analysis and decision making pursuant to NEPA and issue a Record of  
15 Decision to supersede the Survey and Manage Mitigation Measure Standards and Guidelines.  
16

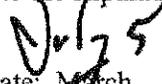
17 Dated: March 4, 2011.

Respectfully submitted,

18 /s/ Peter M.K. Frost  
19 Peter M.K. Frost, *pro hac vice*  
20 Attorney for Plaintiffs

21 /s/ Beverly Li  
22 Beverly Li  
23 Attorney for Defendants

24  
25 Pursuant to the stipulation of the parties, IT IS SO ORDERED.

26   
27 Date: March 4, 2011.

28   
John C. Coughenour  
UNITED STATES DISTRICT JUDGE



**SETTLEMENT AGREEMENT**  
**Conservation Northwest v. Sherman**  
**Case No. 08-CV-1067-JCC (W.D. Wash.)**

The Parties to this action, by and through their undersigned counsel of record, hereby agree to the following Settlement Agreement in order to resolve this action and avoid the need for further litigation before the Court. This Settlement Agreement constitutes a full, complete, and final settlement of all issues in *Conservation Northwest v. Sherman*, Case No. 08-CV-1067-JCC, filed in the U.S. District Court for the Western District of Washington, except for prospective court action to enforce the terms of this Agreement or to modify it, as set forth in Section VI below.

In the interests of the public, the Parties, and judicial economy, the Parties hereby agree to the following:

- I. Status of 2007 Records of Decision ("2007 RODs"), 2001 Record of Decision, and previous stipulated and court-ordered exemptions:
  - A. The Parties agree that the 2007 RODs are set aside and of no effect.
  - B. The Parties further agree that, unless and until the Agencies conduct further analysis and decision making pursuant to the National Environmental Policy Act ("NEPA") and issue a Record of Decision to supersede the Survey and Manage Mitigation Measure Standards and Guidelines, 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"), issued by the U.S. Department of Agriculture and the U.S. Department of Interior, as modified by this Settlement Agreement, is in effect. This Settlement Agreement applies in the area covered by the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, which is commonly referred to as the Northwest Forest Plan, where the Bureau of Land Management and U.S. Forest Service apply the Survey and Manage Standards and Guidelines.
  - C. The 2001 ROD shall be construed in a manner consistent with the portion of the stipulation and order providing exemptions in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006), which shall also remain in force.
- II. Updates to the 2001 Survey and Manage Species List.
  - A. Species List and Species Specific Mitigation

See Attachment 1 to this Settlement Agreement for the list of Survey and Manage species, including species specific mitigation for Siskiyou Mountains salamander, the Scott Bar salamander, and the Great Gray owl. See Section II.B. of this Settlement Agreement (Transition Period for

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Application of Species Lists) for additional detail regarding application of species lists.

**B. Transition Period for Application of Species Lists.**

1. For projects with signed Records of Decision, Decision Notices, or Decision Memos from December 17, 2009, through September 30, 2012, the Agencies will use either of the following Survey and Manage species lists:
  - a. The list of Survey and Manage species in the 2001 ROD (Table 1-1, Standards and Guidelines, page 41-51), or
  - b. The list of Survey and Manage species and associated species mitigation attached as Attachment 1 to this Settlement Agreement.
2. For projects with signed Records of Decision, Decision Notices, or Decision Memos after September 30, 2012, the Agencies will use the list of Survey and Manage species and associated species mitigation attached as Attachment 1 to this Settlement Agreement.
3. The Agencies may modify the list of Survey and Manage species and associated species mitigation attached as Attachment 1 to this Settlement Agreement through future Annual Species Reviews.

**III. Existing Exemptions from the Survey and Manage Standards and Guidelines.**

The provisions stipulated to by the parties and ordered by the court in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006), shall remain in force. None of the following terms or conditions in this Settlement Agreement modifies in any way the October 2006 provisions stipulated to by the parties and ordered by the court in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006).

**IV. New Exemptions from Pre-disturbance Surveys**

- A. This Settlement Agreement establishes certain categories of exemptions. Projects that qualify under the terms below are exempt from pre-disturbance surveys. A project may apply more than one of the exemptions set forth in this Settlement Agreement. In addition, Section IV.B. of this Settlement Agreement sets forth known site management direction for projects applying these exemptions.

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1. Exemptions for Recreation Projects:
  - a. New recreational foot, mountain bike, or horse riding trail construction or relocation, or trail bridge construction, maintenance or replacement, where limited to trail work of less than five acres of clearing per trail project, and not including trails for motorized off-highway vehicles.
  - b. Projects covering less than five acres that improve an existing recreation site. Some examples of recreation site improvement include adding campsites to existing campgrounds, adding recreational structures or facilities in existing recreation sites, and expanding recreation sites. Projects related to recreation sites for motorized off-highway vehicles are not exempt.
2. Exemptions for Fish and Wildlife Habitat Restoration Projects:
  - a. Meadow restoration and maintenance treatments. Meadows are defined as areas that have at least 25% cover of grasses, forbs, and early seral shrubs on each acre to be treated. Treatments are limited to prescribed fire, mechanical and/or hand treatments that remove trees younger than 80 years old, shrubs, and other vegetation within the meadow and up to 50 feet beyond the meadow's edge.
  - b. White oak, black oak, or aspen restoration projects. This exemption applies to activities in stands containing an average of five or more white oak, black oak, or aspen trees per acre over five inches diameter at breast height ("dbh") and is limited to prescribed fire, mechanical and/or hand treatments that remove trees younger than 80 years old, shrubs, and other vegetation.
  - c. Snag and down log creation when treatments retain 60% canopy cover. On any given acre, not more than 20% of any stand dominant or co-dominant cohort may be used to create snags and down wood.
3. Exemptions for Weeds and Sudden Oak Death:
  - a. Noxious and invasive weeds treatment projects including mechanical, chemical or biological methods. Under this exemption, chemical treatments are limited to hand application and must be at least 50 feet from surface water in riparian reserves and must meet label guidelines in all areas.

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- b. Treatments conducted to limit the spread of Sudden Oak Death when conducted in conformance with approved state and federal plans to control the disease.
4. Exemption for Certain Areas in Wildland Urban Interface ("WUI"):
- a. Hazardous fuel treatments, and compatible ecological restoration efforts, are exempt on federal lands within one-quarter mile of the boundary of federal and private lands, where the following criteria are met:
    - (i) A building is located on private land within one-quarter mile of the federal/private land boundary, and
    - (ii) The building is located within an "at risk" community as defined in the Healthy Forests Restoration Act.
  - b. To determine the exempt treatment area, measure from closest point of the building to federal/private boundary and use that as a starting point. Draw a ¼ mile radius centered on that point. To achieve logical boundaries, exempted treatment areas may be expanded up to 25% of the qualifying WUI acreage per section (640 acres).
  - c. All live fire-tolerant tree species greater or equal to 20 inches dbh will be retained, and resource protection measures to protect water and soil, and avoid weeds, will be applied. Fire-tolerant trees species include ponderosa pine, western larch, Douglas-fir, sugar pine, incense-cedar, Jeffrey pine, and oak species. In inventoried roadless areas, this exemption does not apply to portions of projects involving use of heavy equipment more than 150 feet from roads or commercial logging. Inventoried roadless areas are those areas identified in the set of inventoried roadless area maps contained in the Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, and following approval of a revised plan, any additional undeveloped lands identified and mapped during land management plan revision that meet the inventory criteria for potential wilderness found in Forest Service Handbook 1909.12, Chapter 70.
  - d. In addition to the first one-quarter mile, within dry forest plant association groups ("PAGs") (Oregon white oak, ponderosa pine, dry Douglas-fir, dry grand fir, and dry white fir) in Western Oregon Cascades Province, treatments within a second one-quarter mile of federal/private land boundary described above are exempt

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if the purpose of the treatments is to restore forest structure, function, and process by thinning from below to accelerate the development of large trees, increase species diversity, recruit snags and promote the development of within-stand vertical and horizontal heterogeneity. All live fire-tolerant tree species, including ponderosa pine, Douglas-fir, sugar pine, incense-cedar, Jeffrey pine, and oak species greater than or equal to 20 inches dbh will be retained.

5. Exemption for Bridges:

Replacing, maintaining, and removing bridges on roads and trails, and installing bridges in place of existing culverts, are exempt.

6. Exemption for Non-Commercial Fuel Treatments:

Portions of restoration or hazardous fuels projects where fuel is modified via noncommercial hand treatments, non-commercial mechanical treatments, and/or prescribed fire, are exempt. Any portion of a fuel treatment project involving commercial logging (except biomass and chipping) or the use of heavy equipment more than 150 feet from existing roads is not covered by this exemption.

7. Exemptions for Restoration Projects that May Involve Commercial Logging.

a. Projects exempted under Section IV.A.7 of this Settlement Agreement must comply with the following requirements:

- (i) Commercial timber harvesting within inventoried roadless areas, as identified in the set of inventoried roadless area maps contained in the Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, and following approval of a revised plan, any additional undeveloped lands identified and mapped during land management plan revision that meet the inventory criteria for potential wilderness found in Forest Service Handbook 1909.12, Chapter 70, is not exempt.
- (ii) Construction of permanent roads is not exempt. When a project otherwise qualifies for an exemption and requires construction of a new permanent road for project execution, the right-of-way for the new permanent road is not exempt.

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- (iii) When the cleared area of temporary roads, landings, and staging areas exceeds 1 percent of the treatment acres associated with vegetation removal (e.g., excluding acres of handpile and burn or prescribed fire), the project is not exempt.

Temporary roads shall be decommissioned within one year after completion of project activities requiring the temporary road. Decommissioning means those measures necessary to restore pre-road hydrologic functions and to minimize the risk of road-related sediment delivery to streams.

- (iv) Within Riparian Reserves, commercial logging within 150 feet of streams and waterbodies is not exempt, and use of heavy equipment (outside of the road prism) within 50 feet of streams and waterbodies is not exempt.
- (v) Projects that have been authorized using a Categorical Exclusion are not exempt.
- (vi) Projects that invoke one or more of the exemptions in this exemption category must be analyzed in an Environmental Assessment or an Environmental Impact Statement under NEPA.

b. Exemption for Legacy Tree Culturing:

In dry forest Plant Association Groups, thinning from below around legacy trees greater than 30 inches dbh and greater than 150 years old. The exempt treatment area will encompass an area with a radius no more than two times the widest part of the drip line measured from the tree bole. When the project reduces tree density around legacy trees less than 42 inches dbh, retain all fire tolerant trees (ponderosa pine, western larch, Douglas-fir, sugar pine, incense-cedar, and Jeffrey pine) and broadleaf species over 25 inches dbh. In all cases, retain all live trees over 30 inches dbh (except grand fir/white fir which may be killed and retained as snags or dead wood), and snags over 25 inches dbh. When culturing more than 10 legacy trees per acre, retain a stand average canopy cover of at least 60%.

c. Dry Forest Exemption:

- (i) The objective of this exemption is to restore and maintain late-

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successional structure, function, and processes appropriate to the Plant Association Group ("PAG"). It applies to projects whose purpose is to restore and maintain medium and large diameter shade-intolerant and fire resistant species, including Douglas-fir, ponderosa pine, western larch, sugar pine, Jeffrey pine, and incense-cedar.

- (ii) The description of the Dry Forest exemption employs the following terms, which are defined for purposes of this exemption, as follows:
- (a) "Stand Density Index" or "SDI": Stand exams are used to determine SDI and will achieve approximately a 66% confidence interval ("CI") with sample error ("SE") of +/- 20%. Maximum SDI is calculated based on the SDI curve for the dominant post-treatment (residual) species in the stand. For mixed species stands where no species occupies more than 70% of the stand basal area post-treatment, maximum SDI is calculated based upon an average of the maximum SDIs of the two dominant species.
  - (b) "Characteristic structural complexity" means: the species composition, spatial pattern, and size class distribution, including small and mid-sized classes, that were found in pre-settlement forests in that PAG and local area.
  - (c) "The dry forest PAGs in the East Cascades Provinces of Oregon and Washington" includes ponderosa pine, dry Douglas-fir, dry grand fir, and dry white fir plant association groups.
  - (d) "The Oregon Klamath PAGs" include Oak woodlands (*Quercus* spp.), Ponderosa pine and ponderosa pine/oak (*Quercus* spp.), Dry Douglas-fir, Douglas-fir/shrub-form tanoak (Rogue River basin only), Dry grand fir, and Dry white fir.
  - (e) "The California Cascades and California Klamath PAGs" include Oak woodlands (*Quercus* spp.), Pine-oak, Pine-juniper, Ponderosa pine, Jeffrey pine, Dry Douglas-fir (Douglas-fir mixed with ponderosa or Jeffrey pine), and Dry white and dry grand fir (includes ponderosa or Jeffrey pine as a stand component).

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- (iii) This exemption applies only to restoration projects in dry forest PAGs in the East Cascades Provinces of Oregon and Washington and in the California Cascades Province and Klamath Provinces of Oregon and California.
- (iv) In the Washington East Cascades Province, this exemption applies only to stands that do not contain nesting, roosting, foraging habitat for the spotted owl (as defined by U.S. Fish and Wildlife Service).
- (v) In the Oregon East Cascades Province, the California Cascades Province, and the Oregon and California Klamath Provinces, the exemption applies only to stands that:
  - (a) Do not contain high quality nesting, roosting, foraging habitat for the spotted owl (as defined by U.S. Fish and Wildlife Service as "older and more structurally complex multilayered conifer forests ... characterized as having large diameter trees, high amounts of canopy cover, and decadence components"); and
  - (b) Have a pre-treatment SDI greater than 45% of maximum SDI; and
  - (c) Show evidence of: past high-grade logging that removed large trees, and/or evidence of fire exclusion, such as tree encroachment.
- (vi) Within qualifying stands, projects are exempt under this category if they comply with all of the following standards:
  - (a) The project uses thinning from below that retains and promotes the development of characteristic within-stand structural complexity and interaction with natural disturbance processes appropriate to the PAG. Examples include characteristic levels of: clumps of large trees, old trees regardless of size, gaps, understory and broadleaf vegetation, and dense patches of small or mid-sized trees.
  - (b) The project retains all live fire tolerant species such as Douglas-fir, ponderosa pine, western larch, sugar pine, Jeffrey pine, and incense-cedar greater than 20 inches dbh, and all other species greater than 25 inches dbh and greater than 120 years old when measured at breast height

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(exceptions may be made for logging systems, safety, and other operational feasibility issues).

- (c) Snag and coarse woody debris objectives are to be identified and should consider all sizes of snags as part of the project proposal. Prescriptions must be designed to make substantial progress toward the project snag and coarse woody debris objective, including developing large trees for future snag recruitment and retaining agents of mortality or damage. To the extent practicable for the diameter and age of the stand being treated, each treatment includes retention and creation of snags to meet the snag and coarse woody debris objectives. Existing snags should typically be retained, especially large snags (exceptions may be made for logging systems, safety, other operational feasibility issues or fuel objectives). Felled snags will be left on site for woody debris consistent with project objectives.
- (d) The project reduces overall stand densities to an average of more than 30% of maximum SDI measured across treatment units.
- (e) If one of the purposes of treating stands containing nesting, roosting, foraging habitat for the northern spotted owl is to reduce risk of disturbance, then the agency will document:
  - (1) that this strategy to reduce the risk of disturbance best meets the full suite of project objectives, and
  - (2) that the exempt activities will result in greater assurance of long-term maintenance of late-successional habitat.
- (f) The project uses the U.S. Fish and Wildlife Service northern spotted owl "treat and maintain" criteria (e.g., no change in habitat function and no loss of habitat quantity compared to pre-treatment).
  - (1) In nesting, roosting, and foraging habitat for the northern spotted owl, retain structural conditions and at least 60% canopy cover; and

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- (2) In dispersal-only habitat for the northern spotted owl, and non-owl habitat, retain structural conditions and at least 40% canopy cover; and
- (3) In foraging-only habitat for the northern spotted owl, only in the California Klamath and California Cascades Provinces, retain structural conditions and at least 40% canopy cover.

**B. Known Site Management Associated with Project Exemptions.**

1. This known site management provision applies only to projects covered by exemptions provided in Section IV.A. of this Settlement Agreement. Although projects are exempted from pre-disturbance surveys, known sites of Survey and Manage species may exist within the project area. The 2001 ROD defines "known sites" at page 76. The Agencies will apply this known sites management provision to sites known prior to the NEPA decision or decision document. The Agencies shall disclose known site direction applied to the project.
2. This Settlement Agreement does not preclude the Agencies from employing the non-high priority site determination process for uncommon species described in the 2001 ROD Standard and Guidelines, at page 10, or the process for rare species identifying occasional sites not needed for persistence in the 2001 ROD Standard and Guidelines, at page 8.
3. The Agencies shall manage known sites in any area within a project covered by Section IV.A. exemptions under the following direction:

Table 1. Known site management direction for IV.A. exemptions.

<b>Exemption Category</b>	<b>Rare Species (Categories A, B, E)</b>	<b>Uncommon Species Categories (C, D, F)</b>
Recreation Project Exemptions	Follow species' management recommendations except where following them precludes agency from meeting project objectives	Follow species' management recommendations except where following them substantially impedes agency's ability to meet project objectives

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<b>Exemption Category</b>	<b>Rare Species (Categories A, B, E)</b>	<b>Uncommon Species Categories (C, D, F)</b>
Fish and Wildlife Habitat Project Exemptions	Follow species' management recommendations except where following them precludes agency from meeting project objectives	Follow species' management recommendations except where following them substantially impedes agency's ability to meet project objectives
Weeds Project Exemption	Follow species' management recommendations except where following them precludes agency from meeting project objectives	Follow species' management recommendations except where following them substantially impedes agency's ability to meet project objectives
Sudden Oak Death Project Exemption	No management recommendation requirements	No management recommendation requirements
Wildland Urban Interface Project Exemption	Follow species' management recommendations except where following them precludes agency from meeting project objectives	No management recommendation requirements, except for the red tree vole: protect nest trees plus touching crowns
Legacy Tree and Dry Forests Project Exemptions	Follow species' management recommendations	Follow species' management recommendations, except for the red tree vole in the mesic and xeric zones: apply one-half of the buffer known red tree vole sites would receive under the species' management recommendations (5 acres for one nest)
Bridges Exemption	No management recommendation requirements	No management recommendation requirements

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<b>Exemption Category</b>	<b>Rare Species (Categories A, B, E)</b>	<b>Uncommon Species Categories (C, D, F)</b>
Non-Commercial Fuel Treatments Exemption	Follow species' management recommendations except where following them precludes agency from meeting project objectives	Follow species' management recommendations except where following them substantially impedes agency's ability to meet project objectives

V. Fees:

- A. Federal Defendants will pay Plaintiffs, except for American Lands Alliance which is no longer in existence, \$207,406.25 in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and/or any other statute and/or common law theory, for all attorneys' fees and costs incurred by Plaintiffs, individually and/or severally, in this litigation.
- B. Federal Defendants' payment, as identified in Paragraph V.A. above, shall be accomplished by electronic fund transfer to the Western Environmental Law Center by the Agencies. The Western Environmental Law Center is receiving funds in trust for Plaintiffs and Plaintiffs agree to that procedure. Plaintiffs' attorneys shall provide the appropriate account number and other information needed to facilitate payment to the undersigned counsel. The account number and other information Plaintiffs' attorneys will provide to Defendants is for an IOLTA trust account into which funds will be deposited in trust for Plaintiffs. Defendants shall submit the paperwork for the payment within thirty (30) days after the order resolving all remaining issues in this case is entered by the Court or Plaintiffs provide the necessary information as required to facilitate the payment, whichever is later. Plaintiffs' attorneys shall notify the Defendants' attorneys when payment is received.
- C. Plaintiffs and their attorneys agree to hold harmless Federal Defendants in any litigation, further suit, or claim arising from the payment of the agreed upon \$207,406.25 in settlement amount pursuant to Paragraph V.A.

VI. Additional Terms:

- A. This Settlement Agreement is the result of compromise and settlement and does not represent an admission by any Party to any fact, claim, or defense in any issue in this lawsuit. This Settlement Agreement has no precedential value.

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- B. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.
- C. Nothing in the terms of this Settlement Agreement shall be construed to limit or deny the power of a federal official to promulgate or amend regulations.
- D. The undersigned representatives of the Parties certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Settlement Agreement and to legally bind such Parties to it.
- E. This Settlement Agreement represents the entirety of the Parties' commitments with regard to settlement.
- F. Nothing in this Settlement Agreement shall be construed to obligate the Government to make disclosures of information that would be otherwise prohibited or protected by law.
- G. No provision of this Settlement Agreement can be modified without the written agreement of the Parties and approval of the Court.
- H. An action exclusively to enforce a provision of this Settlement Agreement may be brought in this Court. All claims that do not exclusively involve interpretation of a specific provision in this Agreement shall be brought subject to applicable law regarding appropriate jurisdiction and venue. Federal Defendants reserve all defenses as to any challenges that Plaintiffs may bring. An action exclusively to enforce a provision of this Settlement Agreement may be brought only upon completion of the entire NEPA process following the agency's issuance of a Decision Notice and Finding of No Significant Impact in the event an EA is prepared, the agency's Record of Decision in the event an EIS is prepared, or the agency's decision memo if a categorical exclusion is used. The Court's review of any action exclusively to enforce a provision of this Settlement Agreement will be conducted only to the extent allowed by, and pursuant to and consistent with all applicable law.
- I. In the event that Plaintiffs or Federal Defendants seek to modify the terms of this Settlement Agreement, or in the event of a dispute arising out of or relating to this Settlement Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Settlement Agreement, the disputing party will notify the other party in writing of the nature of the dispute, and, within 14 days after such notification (or additional time if the parties agree), the parties will discuss and attempt to resolve the dispute. If the parties do not resolve the dispute thereafter, either party may file a motion to

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enforce the provisions of the Settlement Agreement and Order granting equitable relief and dismissing Plaintiffs' claims.

- J. The Parties will not seek the remedy of contempt for any alleged violation of the Settlement Agreement or the Order granting equitable relief and dismissing Plaintiffs' claims.
- K. Sections VI.G and VI.J of this Settlement Agreement do not apply to any modification by the Agencies through future Annual Species Reviews of the list of Survey and Manage species and associated species mitigation attached as Attachment 1 to this Settlement Agreement.

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP Species</b>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
<b>FUNGI</b>		
<i>Acanthophysium farlowii (Aleurodiscus farlowii)</i>		B
<i>Albatrellus avellaneus</i>		B
<i>Albatrellus caeruleoporus</i>		B
<i>Albatrellus ellisii</i>		B
<i>Albatrellus flettii</i> , In Washington and California		B
<i>Alpova alexsmithii</i>		B
<i>Alpova olivaceotinctus</i>		B
<i>Arcangeliella camphorata (Arcangeliella sp. nov. #Trappe 12382; Arcangeliella sp. nov. #Trappe 12359)</i>		B
<i>Arcangeliella crassa</i>		B
<i>Arcangeliella lactarioides</i>		B
<i>Asterophora lycoperdoides</i>		B
<i>Asterophora parastitica</i>		B
<i>Baeospora myriadophylla</i>		B
<i>Balsamia nigrens (Balsamia nigra)</i>		B
<i>Boletus haematinus</i>		B
<i>Boletus pulcherrimus</i>		B
<i>Bondarzewia mesenterica (Bondarzewia montana)</i> , In Washington and California		B
<i>Bridgeoporus nobilissimus (Oxyporus nobilissimus)</i>		A
<i>Cantharellus subalbicus</i> , In Washington and California		D
<i>Catathelasma ventricosa</i>		B
<i>Chalciporus piperatus (Boletus piperatus)</i>		D
<i>Chamonixia caespitosa (Chamonixia pacifica sp. nov. #Trappe #12768)</i>		B
<i>Choitomyces alveolatus</i>		B
<i>Choitomyces venosus</i>		B
<i>Chroogomphus loculatus</i>		B
<i>Chrysomphalina grossula</i>		B
<i>Clavariadelphus ligula</i>		B
<i>Clavariadelphus occidentalis (Clavariadelphus pistillaris)</i>		B
<i>Clavariadelphus sachalinensis</i>		B
<i>Clavariadelphus subfastigiatus</i>		B
<i>Clavariadelphus truncatus (syn. Clavariadelphus borealis)</i> In Jackson County, Oregon		D
<i>Clavariadelphus truncatus (syn. Clavariadelphus borealis)</i> Outside Jackson County, Oregon		B
<i>Clavulina castanopes var. lignicola (Clavulina ornatipes)</i>		B
<i>Clitocybe senilis</i>		B
<i>Clitocybe subditopoda</i>		B
<i>Collybia bakerensis</i>		F
<i>Collybia racemosa</i>		B
<i>Cordyceps ophioglossoides</i>		B
<i>Cortinarius barlowensis (syn. Cortinarius azureus)</i>		B
<i>Cortinarius boulderensis</i>		B
<i>Cortinarius cyanites</i>		B
<i>Cortinarius depauperatus (Cortinarius spilomeus)</i>		B
<i>Cortinarius magnivelatus</i>		B
<i>Cortinarius olympianus</i>		B

List of Survey and Manage Species and Category Assignment		
TAXA GROUP Species	Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).	Category
<i>Cortinarius speciosissimus</i> ( <i>Cortinarius rainierensis</i> )		B
<i>Cortinarius tabularis</i>		B
<i>Cortinarius umidicola</i> ( <i>Cortinarius canabarba</i> )		B
<i>Cortinarius valgus</i>		B
<i>Cortinarius variipes</i>		B
<i>Cortinarius verrucisporus</i>		B
<i>Cortinarius wiebeae</i>		B
<i>Craterellus tubaeformis</i> , In Washington and California		D
<i>Cudonia monticola</i>		B
<i>Cyphellostereum laeve</i>		B
<i>Dermocybe humboldtensis</i>		B
<i>Destuntzia fusca</i>		B
<i>Destuntzia rubra</i>		B
<i>Dichostereum boreale</i> ( <i>Dichostereum granulatum</i> )		B
<i>Elaphomyces anthracinus</i>		B
<i>Elaphomyces subviscidus</i>		B
<i>Endogone acrogena</i>		B
<i>Endogone oregonensis</i>		B
<i>Entoloma nitidum</i> ( <i>Rhodocybe nitida</i> )		B
<i>Fayodia bisphaerigera</i> ( <i>Fayodia gracilipes</i> )		B
<i>Fevansia aurantiaca</i> ( <i>Alpova</i> sp. nov. # Trappe 1966) ( <i>Alpova aurantiaca</i> )		B
<i>Galerina aikinsonia</i>		D
<i>Galerina cerina</i>		B
<i>Galerina heterocystis</i>		E
<i>Galerina sphagnicola</i>		E
<i>Gastroboletus imbellus</i>		B
<i>Gastroboletus ruber</i>		B
<i>Gastroboletus subalpinus</i>		B
<i>Gastroboletus turbinatus</i>		B
<i>Gastroboletus vividus</i> ( <i>Gastroboletus</i> sp. nov. #Trappe 2897; <i>Gastroboletus</i> sp. nov. #Trappe 7515)		B
<i>Gastrosuillus amarantii</i> ( <i>Gastrosuillus</i> sp. nov. #Trappe 9608)		E
<i>Gastrosuillus umbrinus</i> ( <i>Gastroboletus</i> sp. nov. #Trappe 7516)		B
<i>Gautieria magnicellaris</i>		B
<i>Gautieria othii</i>		B
<i>Gelatinodiscus flavidus</i>		B
<i>Glomus radiatum</i>		B
<i>Gomphus bonarii</i>		B
<i>Gomphus clavatus</i>		F
<i>Gomphus kauffmanii</i>		E
<i>Gymnomyces abietis</i> ( <i>Gymnomyces</i> sp. nov. #Trappe 1690, 1706, 1710; <i>Gymnomyces</i> sp. nov. #Trappe 4703, 5576; <i>Gymnomyces</i> sp. nov. #Trappe 5052; <i>Gymnomyces</i> sp. nov. #Trappe 7545; <i>Martellia</i> sp. nov. #Trappe 1700; <i>Martellia</i> sp. nov. #Trappe 311; <i>Martellia</i> sp. nov. #Trappe 5903)		B
<i>Gymnomyces nondistincta</i> ( <i>Martellia</i> sp. nov. #Trappe 649)		B
<i>Gymnopilus punctifolius</i> , In California		B
<i>Gyromitra californica</i>		B
<i>Hebeloma olympianum</i> ( <i>Hebeloma olympiana</i> )		B
<i>Helvella crassitunicata</i>		B
<i>Helvella elastica</i>		B
<i>Hydnotrya inordinata</i> ( <i>Hydnotrya</i> sp. nov. #Trappe 787, 792)		B
<i>Hydnotrya subnix</i> ( <i>Hydnotrya subnix</i> sp. nov. #Trappe 1861)		B

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP Species</b>	<i>Note:</i> Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).	<b>Category</b>
<i>Hydropus marginellus (Mycena marginella)</i>		B
<i>Hygrophorus caeruleus</i>		B
<i>Hygrophorus karstenii</i>		B
<i>Hygrophorus vernalis</i>		B
<i>Hypomyces luteovirens</i>		B
<i>Leucogaster citrinus</i>		B
<i>Leucogaster microsporus</i>		B
<i>Macowanites chlorinosmus</i>		B
<i>Macowanites lymanensis</i>		B
<i>Macowanites mollis</i>		B
<i>Marasmius applanatipes</i>		B
<i>Martellia fragrans</i>		B
<i>Martellia idahoensis</i>		B
<i>Mycena hudsoniana</i>		B
<i>Mycena overholtsii</i>		D
<i>Mycena quinaultensis</i>		B
<i>Mycena tenax</i>		B
<i>Mythicomycetes corneipes</i>		B
<i>Neolentinus adhaerens</i>		B
<i>Neolentinus kauffmanii</i>		B
<i>Nivatogastrium nubigenum</i> , In entire range except Oregon Eastern Cascades and California Cascades Physiographic Provinces		B
<i>Octavianina cyanescens (Octavianina sp. nov. #Trappe 7502)</i>		B
<i>Octavianina macrospora</i>		B
<i>Octavianina papyracea</i>		B
<i>Otidea leporina</i>		D
<i>Otidea smithii</i>		B
<i>Phaeocollybia attenuata</i>		D
<i>Phaeocollybia californica</i>		B
<i>Phaeocollybia dissiliens</i>		B
<i>Phaeocollybia fallax</i>		D
<i>Phaeocollybia gregaria</i>		B
<i>Phaeocollybia kauffmanii</i>		D
<i>Phaeocollybia olivacea</i> , In Oregon		D
<i>Phaeocollybia olivacea</i> In Washington and California		B
<i>Phaeocollybia oregonensis (syn. Phaeocollybia carmanahensis)</i>		B
<i>Phaeocollybia piceae</i>		B
<i>Phaeocollybia pseudofestiva</i>		B
<i>Phaeocollybia scatesiae</i>		B
<i>Phaeocollybia sipei</i>		B
<i>Phaeocollybia spadicea</i>		B
<i>Phellodon atratus (Phellodon atratum)</i>		B
<i>Pholiota albivelata</i>		B
<i>Podostroma alutaceum</i>		B
<i>Polyzellus multiplex</i>		B
<i>Pseudaleuria quinaultiana</i>		B
<i>Ramaria abietina</i>		B

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP Species</b>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
<i>Ramaria amyloidea</i>		B
<i>Ramaria araiospora</i>		B
<i>Ramaria aurantiisiccescens</i>		B
<i>Ramaria botryis</i> var. <i>aurantiramosa</i>		B
<i>Ramaria celerivirescens</i>		B
<i>Ramaria claviramulata</i>		B
<i>Ramaria concolor</i> f. <i>marrii</i>		B
<i>Ramaria concolor</i> f. <i>tsugina</i>		B
<i>Ramaria conjunctipes</i> var. <i>sparsiramosa</i> ( <i>Ramaria fasciculata</i> var. <i>sparsiramosa</i> )		B
<i>Ramaria coulterae</i>		B
<i>Ramaria cyaneigranosa</i>		B
<i>Ramaria gelatiniaurantia</i>		B
<i>Ramaria gracilis</i>		B
<i>Ramaria hilaris</i> var. <i>olympiana</i>		B
<i>Ramaria largentii</i>		B
<i>Ramaria lorithammus</i>		B
<i>Ramaria maculatipes</i>		B
<i>Ramaria rainierensis</i>		B
<i>Ramaria rubella</i> var. <i>blanda</i>		B
<i>Ramaria rubribrunnescens</i>		B
<i>Ramaria rubrievanescens</i>		B
<i>Ramaria rubripermanens</i> In Oregon		D
<i>Ramaria rubripermanens</i> In Washington and California		B
<i>Ramaria spinulosa</i> var. <i>diminutiva</i> ( <i>Ramaria spinulosa</i> )		B
<i>Ramaria stuntzii</i>		B
<i>Ramaria suecica</i>		B
<i>Ramaria thiersii</i>		B
<i>Ramaria verlotensis</i>		B
<i>Rhizopogon abietis</i>		B
<i>Rhizopogon atroviolaceus</i>		B
<i>Rhizopogon brunneiniger</i>		B
<i>Rhizopogon chamaleontinus</i> ( <i>Rhizopogon</i> sp. nov. #Trappe 9432)		B
<i>Rhizopogon ellipsosporus</i> ( <i>Alpova</i> sp. nov. # Trappe 9730)		B
<i>Rhizopogon evadens</i> var. <i>subalpinus</i>		B
<i>Rhizopogon exiguus</i>		B
<i>Rhizopogon flavofibrillosus</i>		B
<i>Rhizopogon inquinatus</i>		B
<i>Rhizopogon truncatus</i>		D
<i>Rhodocybe speciosa</i>		B
<i>Rickenella swartzii</i> ( <i>Rickenella setipes</i> )		B
<i>Russula mustelina</i>		B
<i>Sarcodon fuscoindicus</i>		B
<i>Sedecula pulvinata</i>		B
<i>Sowerbyella rhenana</i> ( <i>Aleuria rhenana</i> )		B
<i>Sparassis crispa</i>		D
<i>Spathularia flavida</i>		B
<i>Stagnicola perplexa</i>		B

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP</b> <b>Species</b>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
<i>Thaxterogaster pavelekii</i>	( <i>Thaxterogaster</i> sp. nov. #Trappe 4867, 6242, 7427, 7962, 8520)	B
<i>Tremiscus helvelloides</i>		D
<i>Tricholoma venenatum</i>		B
<i>Tricholomopsis fulvescens</i>		B
<i>Tuber asa</i>	( <i>Tuber</i> sp. nov. #Trappe 2302)	B
<i>Tuber pacificum</i>	( <i>Tuber</i> sp. nov. #Trappe 12493)	B
<i>Turbinellis floccosus</i>	In California	F
<i>Tylophilus porphyrosporus</i>	( <i>Tylophilus pseudoscaber</i> )	D
<b>LICHENS</b>		
<i>Bryoria pseudocapillaris</i>		A
<i>Bryoria spiralifera</i>		A
<i>Bryoria subcana</i>		B
<i>Buellia oidalea</i>		E
<i>Calicium abietinum</i>		B
<i>Calicium adpersum</i>		E
<i>Cetrelia cetrarioides</i>		E
<i>Chaenotheca chrysocephala</i>		B
<i>Chaenotheca ferruginea</i>		B
<i>Chaenotheca furfuracea</i>		F
<i>Chaenotheca subroscida</i>		E
<i>Chaenothecopsis pusilla</i>		E
<i>Cladonia norvegica</i>		C
<i>Collema nigrescens</i>	In Washington and Oregon, except in Oregon Klamath Physiographic Province	F
<i>Dendrisocaulon intricatum</i>	In California	E
<i>Dendrisocaulon intricatum</i>	In Oregon outside of Coos, Curry, Douglas, Josephine, & Jackson Counties; Washington	A
<i>Dermatocarpon luridum</i>		E
<i>Fuscopannaria saubinetii</i>	( <i>Pannaria saubinetii</i> )	E
<i>Heterodermia sitchensis</i>		E
<i>Hypogymnia duplicata</i>		C
<i>Hypogymnia vittata</i>		E
<i>Hypotrachyna revoluta</i>		E
<i>Leptogium burnetiae</i> var. <i>hirsutum</i>		E
<i>Leptogium cyanescens</i>		A
<i>Leptogium teretiusculum</i>		E
<i>Lobaria linita</i> , var. <i>temuoir</i>	In Washington Western Cascades (south of Snoqualmie Pass), Western Lowlands, and Eastern Cascades Physiographic Provinces; Oregon	A
<i>Lobaria oregana</i>	In California	A
<i>Microcalicium arenarium</i>		B
<i>Nephroma bellum</i>	In Oregon Western Cascades and Coast Range Physiographic Provinces; Washington Western Cascades Physiographic Province, Gifford Pinchot NF only	F
<i>Nephroma bellum</i>	In Oregon Klamath, Willamette Valley, and Eastern Cascades Physiographic Provinces; Washington Western Cascades (outside GPNF), Eastern Cascades, Olympic Peninsula Physiographic Provinces	E
<i>Nephroma isidiosum</i>		E
<i>Nephroma occultum</i>		A
<i>Niebla cephalota</i>		A
<i>Pannaria rubiginosa</i>		E

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP Species</b>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
<i>Peltigera pacifica</i>		E
<i>Platismatia lacunosa</i> , all except Oregon Coast Range Physiographic Provinces		E
<i>Pseudocyphellaria perpetua</i> ( <i>Pseudocyphellaria</i> sp. 1)		A
<i>Pseudocyphellaria rainierensis</i>		A
<i>Stenocybe clavata</i>		E
<i>Teloschistes flavicans</i>		A
<i>Tholurna dissimilis</i> , south of the Columbia River		B
<i>Usnea hesperina</i>		E
<i>Usnea longissima</i> , In Curry, Josephine, and Jackson Counties, Oregon; California		A
<i>Usnea longissima</i> , In Oregon, except in Curry, Josephine, and Jackson Counties; Washington		F
<b>BRYOPHYTES</b>		
<i>Brotherella roellii</i>		E
<i>Buxbaumia viridis</i> , In California		E
<i>Diplophyllum plicatum</i>		B
<i>Herbertus aduncus</i>		E
<i>Iwatsukiella leucotricha</i>		B
<i>Kurzia makinoana</i>		B
<i>Marsupella emarginata</i> v. <i>aquatice</i>		B
<i>Orthodontium gracile</i>		B
<i>Ptilidium californicum</i> , In California		A
<i>Racomitrium aquaticum</i>		E
<i>Rhizomnium nudum</i> , In Oregon		B
<i>Schistostega pennata</i>		A
<i>Tetraphis gemiculata</i>		A
<i>Tritomaria exsectiformis</i>		B
<i>Tritomaria quinquedentata</i>		B
<b>VERTEBRATES</b>		
Larch Mountain salamander <i>Plethodon larselli</i>		A
Shasta salamander <i>Hydromantes shastae</i>		A
Siskiyou Mountains salamander <i>Plethodon stormi</i> , In North Range		OFF <sub>1</sub>
Siskiyou Mountains salamander <i>Plethodon stormi</i> , In South Range		A
Scott Bar salamander <i>Plethodon asupak</i>		A <sub>2</sub>
Van Dyke's salamander <i>Plethodon vandykei</i> , Cascade population only		A
Great Gray Owl <i>Strix nebulosa</i> In Oregon Western Cascades, Eastern Cascades, and Klamath Physiographic Provinces		C <sub>3</sub>
Oregon Red Tree Vole <i>Arborimus longicaudus</i> , Mesic Zone		C
Oregon Red Tree Vole <i>Arborimus longicaudus</i> , North Mesic and Xeric Zones		C
<b>MOLLUSKS</b>		
<i>Ancotrema voyanum</i>		D
<i>Cryptomastix devia</i>		A
<i>Cryptomastix hendersoni</i>		A
<i>Deroceras hesperium</i>		B <sub>4</sub>
<i>Fluminicola</i> n. sp. 3		A
<i>Fluminicola</i> n. sp. 11		A
<i>Fluminicola</i> n. sp. 14		A
<i>Fluminicola</i> n. sp. 15		A
<i>Fluminicola</i> n. sp. 16		A

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP</b> <i>Species</i>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
<i>Fluminicola</i> n. sp. 17		A
<i>Fluminicola</i> n. sp. 18		A
<i>Fluminicola</i> n. sp. 19		A
<i>Fluminicola</i> n. sp. 20		A
<i>Fluminicola seminalis</i>		A
<i>Hemphillia burringtoni</i>		E
<i>Hemphillia glandulosa</i> , In Washington Western Cascades Physiographic Province		E
<i>Hemphillia malonei</i> , In Washington		C
<i>Hemphillia pantherina</i>		B <sub>4</sub>
<i>Juga</i> (o.) n. sp. 2		A
<i>Juga</i> (o.) n. sp. 3		A
<i>Lyogyrus</i> n. sp. 1		A
<i>Lyogyrus</i> n. sp. 2		A
<i>Lyogyrus</i> n. sp. 3		A
<i>Megomphix hemphilli</i> , all except Oregon Coast Physiographic Province		F
<i>Monadenia chaceana</i>		B <sub>4</sub>
<i>Monadenia fidelis minor</i>		A
<i>Monadenia infumata ochromphallus</i>		D <sub>5</sub>
<i>Monadenia troglodytes troglodytes</i>		A
<i>Monadenia troglodytes wintu</i>		A
<i>Oreohelix</i> n. sp.		A
<i>Pristiloma arcticum crateris</i>		A
<i>Prophysaon coeruleum</i> , In California and Washington		A
<i>Trilobopsis roperi</i>		A
<i>Trilobopsis tehamana</i>		A
<i>Vertigo</i> n. sp.		A
<i>Vespericola pressleyi</i>		A
<i>Vespericola shasta</i>		A
<i>Vorticifex</i> n. sp. 1		E
<b>VASCULAR PLANTS</b>		
<i>Arceuthobium tsugense mertensiana</i> , In Washington		F
<i>Bensoniella oregana</i> , In California		A
<i>Botrychium minganense</i> , In Oregon and California		A
<i>Botrychium montanum</i>		A
<i>Coptis asplenifolia</i>		A
<i>Coptis trifolia</i>		A
<i>Corydalis aquae-gelidae</i>		A
<i>Cyripedium fasciculatum</i> , In Washington outside Eastern Cascades Physiographic Provinces; Oregon; California		C
<i>Cyripedium montanum</i> , Entire range except Washington Eastern Cascades Physiographic Province		C
<i>Eucephalus vialis</i> (syn. <i>Aster vialis</i> )		A
<i>Galium kamtschaticum</i> , In Washington Western Cascades (south of Snoqualmie Pass), Olympic Peninsula, and Eastern Cascades Physiographic Provinces; Oregon Western Cascades Physiographic Province		A
<i>Platanthera orbiculata</i> var. <i>orbiculata</i> (syn. <i>Habenaria orbiculata</i> )		C
<b>ARTHROPODS</b>		
Canopy herbivores (south range)		F
Coarse wood chewers (south range)		F

<b>List of Survey and Manage Species and Category Assignment</b>		
<b>TAXA GROUP Species</b>	<i>Note: Where taxon has more than one name indicated, first name is current accepted name, second one (in parentheses) is name used in NFP (Table C-3).</i>	<b>Category</b>
Litter and soil dwelling species (south range)		F
Understory and forest gap herbivores (south range)		F
<b>SPECIES SPECIFIC NOTES</b>		
<p>Species range changes (expansions and contractions) that were approved through the 2001-2003 Annual Species Reviews are considered valid and are incorporated into the survey and management requirements for the species included in this list.</p> <p>1 The Siskiyou Mountains salamander, in the north range, is removed from Survey and Manage. Management for this species in the north range will follow the 2007 FS/BLM Conservation Strategy and 2007 FS/BLM/FWS Conservation Agreement (and subsequent updates) which established Agency management for the conservation of this species. The Conservation Strategy and Conservation Agreement provide for a similar level of conservation for the species, and a similar level of Agency commitment when compared with Survey and Manage obligations for this species.</p> <p>2 The Scott Bar salamander is added to the Survey and Manage list and will utilize the Siskiyou Mountains salamander south range management recommendations and survey protocols until further refinements on species survey and management are addressed under the Survey and Manage Standards and Guidelines.</p> <p>3 Although the great gray owl is within management Category C (which indicates that only high-priority sites require management) all known sites will require management and be considered high-priority. The Category C designation indicates however, that not all sites need to be discovered through surveys, and allows for a reduced survey effort as identified below.</p> <p><i>Pre-disturbance surveys</i> Pre-disturbance surveys will follow Version 3.0 of the Great Gray Owl Survey Protocol (or future revisions/amendments), except only 1 year of surveys are required. Pre-disturbance surveys of suitable nesting habitat are required only for proposed activities:</p> <ul style="list-style-type: none"> <li>• that fall potential nest trees within 600 feet of natural openings that are 10 acres or greater and provide suitable conditions for great grey owl nesting (good foraging base); Or</li> <li>• where disturbance above ambient levels (or other activities that may impact potential nesting owls) will occur within 300 feet (or up to 1-mile for blasting) of suitable nesting habitat associated with natural openings 10 acres or greater between March 1st and July 31st.</li> </ul> <p><i>Management Recommendations</i> Until new Management Recommendations are developed, the following serves as management requirements for this species. Around known (see Protocol definition) and future sites provide:</p> <ul style="list-style-type: none"> <li>• a 30 acre management area encompassing the best available nest trees. Within the 30 acre area, management treatments are limited to protection or improvement of nesting habitat.</li> <li>• a 0.25 mile radius protection zone. Within the protection zone,                         <ul style="list-style-type: none"> <li>○ Provide a 300 foot buffer around natural openings greater than 10 acres that have nesting habitat associated with them. Within this 300 foot buffer, treatments are limited to protection or improvement of nesting habitat.</li> <li>○ Prohibit disturbance from management activities within 300 feet of nesting habitat (1 mile radius for blasting) from March 1st-July 31st, or until fledging, whichever is later, unless surveys of the nesting habitat indicate no presence or no nesting.</li> </ul> </li> </ul> <p>4 Based upon direction contained in the ROD, equivalent-effort pre-disturbance surveys are required for these mollusk species.</p> <p>5 Although Pre-Disturbance Surveys are deemed practical for this species, continuing pre-disturbance surveys is not necessary in order to meet management objectives.</p>		

Hon. Marsha J. Pechman

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST ECOSYSTEM ALLIANCE, et al., )  
Plaintiffs, )  
v. )  
MARK E. REY, et al., )  
Defendants. )

CASE NO. C04-844-P

STIPULATION AND [PROPOSED]  
ORDER RE: INJUNCTION



04-CV-00844-ORD

Stipulation and [Proposed] Order re: Injunction  
C04-844-P

Western Environmental Law Center, 541-485-2471  
1216 Lincoln Street, Eugene, Oregon, 97401

1       *Whereas*, on August 1, the Court entered an Order on Summary Judgment in this case;

2       *Whereas*, on January 9, 2006, the Court entered an Order Issuing a Permanent Injunction;

3       *Whereas*, on January 24, 2006, Federal Defendants filed a Rule 59(e) Motion for

4 Reconsideration of Order and Judgment to narrow the scope of the injunction, and Defendants-

5 Intervenors filed a Rule 60 Motion to Alter or Amend the Judgment;

6       *Whereas*, on February 12, 2006, Plaintiffs opposed both motions, but stated a willingness to  
7 meet and confer to discuss certain modifications of the judgment;

8       *Whereas*, on April 20, 2006, the Court issued an Order denying the motions for  
9 reconsideration and to alter or amend the judgment, but stated that "the Court would be receptive to  
10 a Rule 60(b) motion to modify the judgment if the parties engage in mediation and are able to reach  
11 an agreement on exemptions to the judgment";

12       *Whereas*, the parties have since met and conferred regarding the scope of the injunction;

13       *Whereas*, Plaintiffs and Defendants-Intervenors agree that the injunction should be  
14 modified, and Federal-Defendants do not oppose such a request;

15       *Therefore*, Plaintiffs and Defendants-Intervenors hereby stipulate to and respectfully request  
16 that the Court enter an Order under Rule 60(b) amending paragraph 3 of the injunction, to state:

17  
18       3. Defendants shall not authorize, allow, or permit to continue any logging or other habitat  
19 disturbing activities on projects to which the 2004 ROD applied unless such activities are in  
20 compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March  
21 21, 2004), except that this order will not apply to:

21       a. Thinning projects in stands younger than 80 years old;

22       b. Replacing culverts on roads that are in use and part of the road system, and removing  
23 culverts if the road is temporary or to be decommissioned;

24       c. Riparian and stream improvement projects where the riparian work is riparian planting,  
25 obtaining material for placing in-stream, and road or trail decommissioning; and where the  
26 stream improvement work is the placement large wood, channel and floodplain  
27 reconstruction, or removal of channel diversions; and

28       d. The portions of projects involving hazardous fuel treatments where prescribed fire is  
applied. Any portion of a hazardous fuel treatment project involving commercial logging

1 will remain subject to the survey and manage requirements except for thinning of stands  
2 younger than 80 years old under subparagraph a. of this paragraph.

3 Dated: October 10, 2006.

Respectfully submitted,

4  
5 /s/ Peter M.K. Frost

6 Peter M.K. Frost  
7 Stephanie M. Parent  
8 Attorneys for Plaintiffs

9 /s/ Brian Kipnis

10 Brian Kipnis  
11 Wells D. Burgess  
12 Attorneys for Federal Defendants

13 /s/ Scott W. Horngren

14 Scott W. Horngren  
15 Shay S. Scott  
16 Attorneys for Defendants-Intervenors

17 Pursuant to the stipulation of parties, IT IS SO ORDERED.

18 Dated this 11 day of Oct., 2006.

19 

20 Marsha J. Pechman  
21 UNITED STATES DISTRICT JUDGE

22 Presented by: /s/ Peter M.K. Frost  
23 Peter M.K. Frost, *pro hac vice*  
24 Western Environmental Law Center  
25 1216 Lincoln Street  
26 Eugene, Oregon 97401  
27 Tel: 541-485-2471  
28 Fax: 541-485-2457  
29 frost@westernlaw.org

30 Stipulation and [Proposed] Order re: Injunction  
31 C04-844-P

32 Western Environmental Law Center, 541-485-2471  
33 1216 Lincoln Street, Eugene, Oregon, 97401

## **Attachment 3: Survey and Manage (S&M) Language for Inclusion in National Environmental Policy Act (NEPA) and Decision Documents**

### **1. Introductory Plan Conformance Language for NEPA Documents**

Instruction: Use the following introductory language in the plan conformance section of your NEPA document:

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Sherman, et al.*, No. 08-1067-JCC (W.D. Wash.), granting Plaintiffs' motion for partial summary judgment and finding NEPA violations in the *Final Supplemental to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (USDA and USDI, June 2007). In response, parties entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. Projects that are within the range of the northern spotted owl are subject to the survey and management standards and guidelines in the 2001 ROD, as modified by the 2011 Settlement Agreement.

The [NAME] Project is consistent with the [NAME] District Resource Management Plan/Forest Land and 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), as modified by the 2011 Settlement Agreement.

### **2. Species List Language and Summary of Conformance with 2001 Survey and Manage Standards and Guidelines for NEPA Documents (Include IM Attachment 4 for Survey and Manage Species Checklist and Tracking Forms in NEPA)**

Instruction: In your NEPA document, use the quote below from the 2011 Settlement Agreement regarding species list options:

The 2011 Settlement Agreement states:

*“For projects with signed Records of Decision, Decision Notices, or Decision Memoranda from December 17, 2009, through September 30, 2012, the Agencies will use either of the following Survey and Manage species lists:*

- a. The list of Survey and Manage species in the 2001 ROD (Table 1-1, Standards and Guidelines, pages 41-51).*
- b. The list of Survey and Manage species and associated species mitigation, Attachment 1 to the Settlement Agreement.”*

Instruction: If applying a. the list of S&M species in the 2001 ROD (Table 1-1, Standards and Guidelines, pages 41-51), include:

Project Consistency: The [NAME] Project applies the Survey and Manage species list in the 2001 ROD (Table 1-1, Standards and Guidelines, pages 41-51) and thus meets the provisions of 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 modified by the 2011 Settlement Agreement.

[SUMMARIZE S&M CONFORMANCE WITH STANDARDS & GUIDELINES]  
(Survey and Manage Species Tracking Forms, EA pp. X).

Instruction: If applying b. the list of S&M species and associated species mitigation in the Settlement Agreement Attachment 1, include:

Project Consistency: The [NAME] Project applies the Survey and Manage species list in the 2011 Settlement Agreement (Table, Settlement Agreement Attachment 1) and thus meets the provisions of 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 modified by the 2011 Settlement Agreement.

[SUMMARIZE S&M CONFORMANCE WITH STANDARDS & GUIDELINES]  
(Survey and Manage Species Tracking Forms, EA pp. X).

### **3. Exemption Language for NEPA Documents (if applicable)**

Instruction: Use the language below in i. if you apply a Pechman Exemption, ii. if you apply a 2011 Exemption, or i. and ii. if your project meets the specified criteria and you can meet both Pechman and 2011 Exemptions.

i. Exemption – Pechman Example

The [NAME] Project applies a 2006 Exemption from a stipulation entered by the court in litigation regarding Survey and Manage species and the 2004 Record of Decision related to Survey and Manage Mitigation Measure in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash., Oct. 10, 2006). Previously, in 2006, the District Court (Judge Pechman) invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation entered into a stipulation exempting certain categories of activities from the Survey and Manage standards and guidelines, including both pre-disturbance surveys and known site management. Also known as the Pechman Exemptions, the Court's Order from October 11, 2006 directs:

*“Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:*

- a. Thinning projects in stands younger than 80 years old;*
- b. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;*
- c. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and*

- d. *The portions of project involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph.”*

Per the 2011 Settlement Agreement, the 2006 Pechman Exemptions remain in force:

*“The provisions stipulated to by the parties and ordered by the court in Northwest Ecosystem Alliance v. Rey, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006), shall remain in force. None of the following terms or conditions in this Settlement Agreement modifies in any way the October 2006 provisions stipulated to by the parties and ordered by the court in Northwest Ecosystem Alliance v. Rey, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006).”*

The [NAME] Project meets Exemption A because it entails no regeneration harvest and entails thinning only in stands less than 80 years old [INSERT EA CITATION WHERE DETERMINATION OF STAND AGE IS DOCUMENTED].

(Note: This is an example for a timber sale that meets Pechman Exemption A. Modify to fit your project as necessary, identifying which of the four Pechman Exemptions you are applying with detail regarding how the project meets the criteria.)

ii. Exemption – 2011 Settlement Agreement Example

The [NAME] Project applies a 2011 Exemption from the stipulation entered by the court in litigation regarding Survey and Manage species and the 2007 Record of Decision related to Survey and Manage Mitigation Measure in *Conservation Northwest v. Sherman, Conservation Northwest, et al. v. Sherman, et al.*, No. 08-1067-JCC (W.D. Wash., July 6, 2011). The language below outlines the applicable Wildland Urban Interface exemption in the Settlement Agreement and this project’s consistency.

The 2011 Settlement Agreement States:

*“4. Exemption for Certain Areas in Wildland Urban Interface (“WUI”):*

*a. Hazardous fuel treatments, and compatible ecological restoration efforts, are exempt on federal lands within one-quarter mile of the boundary of federal and private lands, where the following criteria are met:*

*(i) A building is located on private land within one-quarter mile of the federal/private land boundary, and*

*(ii) The building is located within an “at risk” community as defined in the Healthy Forests Restoration Act.”*

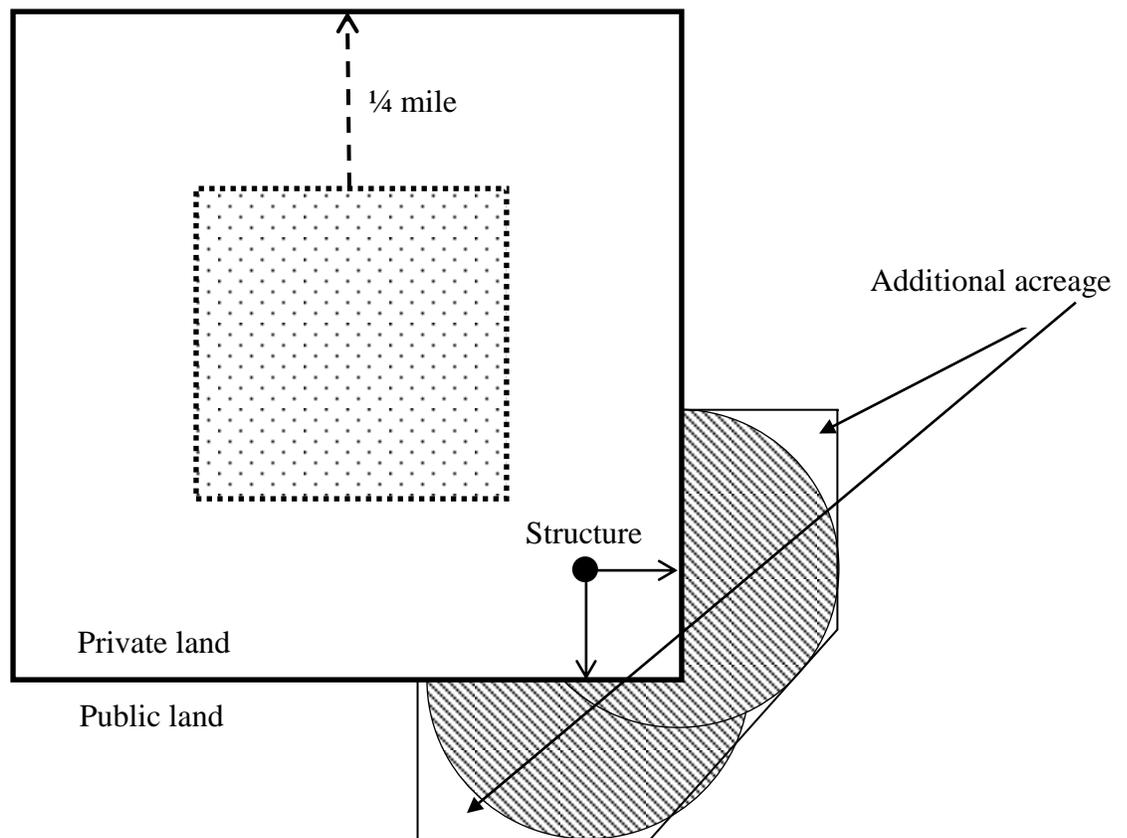
Project Consistency: The [NAME] Project is a hazardous fuel treatment with a building on private land within one quarter mile of the Federal/private land boundary [EA REFERENCE AND/OR MAP REFERENCE]. The referenced building is covered by the [NAME] Community Wildfire Protection Plan or is otherwise defined as an “at risk” community according to the Healthy Forests Restoration Act [REFERENCE].

The 2011 Settlement Agreement States:

*“b. To determine the exempt treatment area, measure from closest point of the building to federal/private boundary and use that as a starting point. Draw a ¼ mile radius centered on that point. To achieve logical boundaries, exempted treatment areas may be expanded up to 25% of the qualifying WUI acreage per section (640 acres).”*

Project Consistency: A single structure is located in the corner of a section, and the exempt treatment area applies the ¼ mile radius described on each of two sides of the private-public boundary. This treatment width is consistent with exemption allowances for the dry forest type. The treatment area was expanded by an additional [X] acres to create a logical operational boundary (see figure below). The additional area is less than 25 percent of the qualifying WUI acreage.

(Note: For WUI exemptions, include a figure representative of your specific project. See IM Attachment 5 – Applying the 2011 Wildland Urban Interface Exemption Category for additional examples.)



The Settlement Agreement states:

*“c. All live fire-tolerant tree species greater or equal to 20 inches dbh will be retained, and resource protection measures to protect water and soil, and avoid weeds, will be applied. Fire-tolerant trees species include ponderosa pine, western larch, Douglas-fir, sugar pine, incense-cedar, Jeffrey pine, and oak species. In*

*inventoried roadless areas, this exemption does not apply to portions of projects involving use of heavy equipment more than 150 feet from roads or commercial logging. Inventoried roadless areas are those areas identified in the set of inventoried roadless area maps contained in the Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, and following approval of a revised plan, any additional undeveloped lands identified and mapped during land management plan revision that meet the inventory criteria for potential wilderness found in Forest Service Handbook 1909.12, Chapter 70.”*

Project Consistency:

- The prescription retains all live fire-tolerant trees greater than or equal to 20” dbh (EA REFERENCES),
- The project incorporates project design features to protect water and soil and avoid weeds (EA REFERENCES), and
- There are no inventoried roadless areas within this project area (EA REFERENCES).

**4. General Language for Decision Documents (Repeats Introductory Language for NEPA Documents)**

Instruction: Use the following general language in the decision document for your project:

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Sherman, et al.*, No. 08-1067-JCC (W.D. Wash.), granting Plaintiffs’ motion for partial summary judgment and finding NEPA violations in the *Final Supplemental to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (USDA and USDI, June 2007). In response, parties entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. Projects that are within the range of the northern spotted owl are subject to the survey and management standards and guidelines in the 2001 ROD, as modified by the 2011 Settlement Agreement.

I have reviewed the NEPA document for the [NAME] Project and have determined it is consistent with the [NAME] District Resource Management Plan/Forest Land and 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), as modified by the 2011 Settlement Agreement.

## ATTACHMENT 4 - Survey and Manage Species Checklist and Tracking Forms

The Forest Service (FS) and Bureau of Land Management (BLM), referred to as the Agencies, are implementing the January 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 S&Gs) as modified by the 2011 Settlement Agreement in *Conservation Northwest v. Sherman et al.*, No-08-1067-JCC (W.D. Wash).

This is a Survey and Manage (S&M) species checklist and sample tracking format. The Agencies' Regional and State Offices intend for National Forest/BLM District units to use the checklist and format to account for Survey and Manage species in project planning. The examples in Table A do not list every S&M species that your specific National Forest/BLM District unit may need to consider or address, but instead displays a variety of different situations you may encounter on your unit.

Apply the following checklist and format. This checklist and format are tools; they are not intended to replace the effects analysis section of your National Environmental Policy Act (NEPA) document. Include the tracking forms in your project NEPA. If you include the tracking forms as an appendix to the NEPA document, summarize the project's S&M conformance with the 2001 ROD S&Gs in the NEPA document itself. If you have questions or believe your project has a high litigation risk, please work with the S&M Contact for your National Forest/BLM District and the appropriate program leads in your FS Regional or BLM State Office to finalize your tracking forms for greatest accuracy and defensibility.

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### CHECKLIST and DIRECTIONS

#### Species List:

- 1. For project decisions made between now and September 30, 2012, apply one of the following S&M species lists to your unit and project. For project decisions made after that date, please use b or c below. Identify which list applies to the project at the top of the tracking form.
  - a. 2001 S&M ROD Species List (Table 1-1, Standards and Guidelines, page 41-51);
  - b. 2011 Survey and Manage Settlement Agreement Species List, including species specific mitigation for Siskiyou Mountains salamander, the Scott Bar salamander, and the Great Grey Owl (Attachment 1, Settlement Agreement); or
  - c. No list (project complies with a Pechman Exemption and is therefore exempt from S&M pre-disturbance surveys and known site management).  
*Note:* Projects using a 2011 Exemption may require application of a species list for purposes of known site management (see "Known Site Management" section below).
- 2. Double check S&M categories and species names for correctness and accuracy.

#### Survey Protocols:

- 1. Use survey protocols and any Annual Species Review (ASR) range extensions/contractions to determine if the project is in the species range, has suitable habitat, is a "habitat-disturbing activity" and, hence, needs pre-disturbance surveys.
- 2. Identify and list the survey protocols used. Note the survey protocol name in the preceding bullets to Table A.
- 3. Confirm survey results are entered into the appropriate Agency database.
- 4. Confirm forms are in the project record. The survey forms are evidence that surveys were conducted within protocol parameters and demonstrate survey findings.

□ **Survey Requirements:**

- 1. Include the following species in Table A:
  - a. Category A and C flora and fauna species known or suspected to occur within the National Forest/BLM District (pre-disturbance surveys).
  - b. Category B mollusk species known or suspected to occur within the National Forest/BLM District (pre-disturbance surveys/equivalent effort surveys).
  - c. Category E mollusk species (California) known or suspected to occur within the National Forest/BLM District (pre-disturbance surveys/equivalent effort surveys). This applies only when using the 2001 ROD list, and only to *Ancotrema voyanum* in California. Other Category E mollusk species on the 2001 S&M ROD Species List and 2011 Settlement Agreement Species List do not require equivalent effort surveys.
- 2. For habitat-disturbing projects within old-growth forests (2001 ROD S&Gs, pp. 79-80), list the following species in Table A:
  - a. Include Category B bryophyte and lichen species known or suspected to occur within the National Forest/BLM District (if your project has a Decision in FY06 or later and strategic surveys are not completed for the province that encompasses the project area, then equivalent effort surveys are required in old-growth habitat to be disturbed; 2001 ROD S&G, p. 9). Do not list the 8 lichen and bryophyte species where strategic surveys are considered complete. See IM-2006-38 for further information about these species and about Equivalent Effort surveys.
  - b. Include Category B fungi species known or suspected to occur within the National Forest/BLM District if your project has a Decision in FY11 or later (if your project has a Decision in FY06 or later and strategic surveys are not completed for the province that encompasses the project area, then equivalent effort surveys are required in old-growth habitat to be disturbed; 2001 ROD S&G, p. 9).
- 3. Although you are listing all species with pre-disturbance and equivalent effort survey requirements that are **known or suspected** within your National Forest/BLM District, Table A should reflect how the species information is applied to the [PROJECT] specifically. For instance, some of the species may be known or suspected within your National forest/BLM District, but the project may not be within the range of the species, and therefore the species is not known or suspected within the specific project.
- 4. Review consistency of responses in consecutive columns of Table A for a given species. If a project is not within the range of the species, you can't have suitable habitat in the project (i.e. doesn't make sense to put "No" in the first column for "within range of the species" and then have "Yes" in second column for "project contains suitable habitat").

□ **Known Site Management:**

*(Note: Although applying a 2011 Exemption excuses pre-disturbance surveys, known site management may be required – see Settlement Agreement Table 1 for specific known site management direction.)*

- 1. Include in Table A, any species with **known sites that occur within the project area**.
  - Indicate what site management the unit implemented and what information the National Forest/BLM District utilized in determining appropriate site management (management recommendations, conservation assessments, species fact sheets, Appendix J-2, etc.). Be specific when describing exact management applied; for example, “placed a 100 ft. no-activity area around the site (source citation).”
- 2. For Category D and E species, only the “Sites Known or Found” and “Site Management” sections of Table A need to be filled out (all other fields should be N/A).
  - Indicate what site management the unit implemented and what information the National Forest/BLM District utilized in determining appropriate site management (management

recommendations, conservation assessments, species fact sheets, Appendix J-2, etc.). Be specific when describing exact management applied; for example, “placed a 100 ft. no-activity area around the site (source citation).”

- 3. For species not requiring site management (non-high priority sites, occasional site of a rare species not needed for persistence, Category F species), indicate that site management is not required and why.

*(Note: While a “yes/no/NA” answer is sufficient in the column titled “Site Management” for Table A, provide the more detailed information identified above in 1-3 in either a footnote to Table A or the Statement of Compliance-Summary of Survey Results section at the end of the form.)*

**Information Regarding Unique Circumstances:**

Use the footnotes section of Table A for information that describes unique circumstances in your National Forest/BLM District or for further clarification. Don't use them to restate something that is already clear from the table. For example, it may be helpful to more completely explain that the range of the species bi-sects the National Forest/BLM District and the specific project is outside the range.

**Final Statement of Compliance:**

Include a summary in the Statement of Compliance to include identification of:

- 1. Species list applied
- 2. Species surveyed
- 3. Species found or with known sites in the project area
- 4. Information demonstrating application of management recommendations
  - Identify the management recommendation or other information utilized.
  - Clearly describe on-the-ground application of known site management. What management/protective measures were specifically applied to provide for the persistence of the species at the known site.

**Survey & Manage Tracking Form:**

***Wildlife Species Survey and Site Management Summary***

*FS Forest Name – District Name or BLM District Name –Field Office Name*

**Project Name:** i.e. Timber Sale/Fuels Project/Other Project Name

**Prepared By:** Name

**Project Type:** i.e. Regeneration Harvest & Commercial Thinning

**Date:** Date

**Location:** i.e. Township and Range Coordinates

**S&M List Date:** 2011 Settlement Agreement

*(NOTE: Examples here apply the 2011 Settlement Agreement species list and reflect a variety of different projects/project types in order to display the variety of documentation the field unit will need to complete. Examples applying the 2001 ROD Species List maybe different.)*

**Table A: Survey & Manage Wildlife Species**

The [NATIONAL FOREST/BLM DISTRICT] compiled the species listed below from the 2011 Settlement Agreement Attachment 1. The list includes those vertebrate and invertebrate species with pre-disturbance survey requirements (Category A, B, or C species), whose known or suspected range includes the [NATIONAL FOREST/BLM DISTRICT] according to:

- [LIST REFERENCES FOR SURVEY PROTOCOLS USED FOR RANGE, HABITAT AND SURVEY METHODOLOGY.]

This list also includes any Category D, E, or F species with known sites located within the [PROJECT AREA.] Applicable management recommendations include:

- [LIST THE MANAGEMENT RECOMMENDATIONS OR OTHER INFORMATION THAT HAVE BEEN USED TO MANAGE ANY KNOWN SITES, AND THAT THE SITE MANAGEMENT IS IN ACCORDANCE WITH THOSE MRs/THAT INFORMATION.]

**EXAMPLE TABLE**

Species	S&M Category	Survey Triggers			Survey Results			Site Management
		Within Range of the Species ?	Contains Suitable habitat?	Habitat Disturbing*?	Surveys Required ?	Survey Date (month/year)	Sites Known or Found?	
<b>Vertebrates</b>								
List Category D, E, and F species if there are known sites within the Project Area <i>Example: Siskiyou Mountains salamander (Plethodon storm, north range)</i>	Off <sup>1</sup>	N/A	N/A	N/A	No	N/A	2 <sup>1</sup> Strategic Surveys 2002	Yes <sup>1</sup>
Great Gray Owl ( <i>Strix nebulosa</i> )	C	Yes	No <sup>2</sup>	No	No	N/A	0	N/A

Larch mountain salamander ( <i>Plethodon larselli</i> )	A	Yes	Yes	Yes	Yes	3/10 and 10/10	0	N/A
Red Tree Vole ( <i>Arborimus longicaudus</i> )	C	Yes	Yes	Yes	Yes	6/2010	1	Yes <sup>4</sup>
<b>Mollusks</b>								
List Category B mollusks <i>Example: Siskiyou Sideband (Monadenia chaceana)</i>	B <sup>5</sup>	Yes	Yes	Yes	Yes	March and Sept 2010	1	No <sup>6</sup>
Crater Lake Tightcoil ( <i>Pristiloma arcticum crateris</i> )	A	Yes	Yes	No	No	May 2005 <sup>7</sup>	0	N/A

\*"Habitat disturbing" and thereby a trigger for surveys as defined in the 2001 ROD S&Gs (p. 22).

N/A = Not Applicable

<sup>1</sup> This species is covered by a Conservation Strategy in the northern part of the species range. According to mitigation described in the 2011 Settlement Agreement Species List, Survey and Manage no longer applies to this species in the northern part of the range. There are two known sites identified through Strategic Surveys completed in 2002, and the [NATIONAL FOREST/BLM DISTRICT] applied the Conservation Strategy for management of these sites. In this particular case, the [NATIONAL FOREST/BLM DISTRICT] applied a 100 foot no-activity radius surrounding occupied habitat; consequently removing sale units 4a and 10b from the sale.

<sup>2</sup> Pre-disturbance surveys for Great Gray Owls are not required since there is no suitable nesting habitat within the project area or within proximity of the project area that would be impacted by disturbance. The required habitat characteristics of suitable habitat include: (1) large diameter nest trees, (2) forest for roosting cover, and (3) proximity [within 600 feet] to openings that could be used as foraging areas (*Survey Protocol for the Great Gray Owl within the range of the Northwest Forest Plan v3.0*, January 12, 2004; and mitigation language in the 2011 Settlement Agreement Species List). The stands in XX do not have proximity to natural-openings  $\geq$  10 acres (Name, staff review, 2011) and pre-disturbance surveys are not suggested in suitable nesting habitat adjacent to man-made openings at this time (pg. 14, *Survey Protocol for the Great Gray Owl within the range of the Northwest Forest Plan v3.0*, January 12, 2004).

<sup>4</sup> One site of this species was located during surveys. [The NATIONAL FOREST/BLM DISTRICT] delineated a 10 acre habitat area of the best habitat surrounding the active nest (*Management Recommendations for the Oregon Red Tree Vole *Arborimus longicaudus*, Version 2.0*, September 27, 2000). The [NATIONAL FOREST/BLM DISTRICT] dropped Unit 12 due to the habitat area overlap with the unit.

<sup>5</sup> Equivalent-effort pre-disturbance surveys are required for this species.

<sup>6</sup> One site of this species was located during surveys. However, the location of the known site would preclude the [NATIONAL FOREST/BLM DISTRICT] from meeting the project objective of replacing a trail bridge. Management of the known site would require the [NATIONAL FOREST/BLM DISTRICT] to not cut down smaller diameter trees to allow placement of the new bridge structure to span the 100 year flood plain. The project cannot occur unless this access can be developed.

Therefore, the [NATIONAL FOREST/BLM DISTRICT] has utilized the flexibility in the 2011 Settlement Agreement from Table 1, to exempt management of this known site.

<sup>7</sup>Suitable habitat for the Crater Lake tightcoil is “perennially wet situations in mature conifer forests, among rushes, mosses and other surface vegetation or under rocks and woody debris within 10 meters of open water in wetlands, springs, seeps and riparian areas...” (pg. 43, *Survey Protocol for S&M Terrestrial Mollusk Species v3.0*, 2003). Within the project, suitable habitat is confined to the stream-side areas that are contained within Riparian Reserves in the regeneration harvest units. Significant negative affects to the micro-climate of this habitat within the Riparian Reserve will not occur so there is no trigger for surveys. Although pre-disturbance surveys for this species were not required (since the habitat for this species would not be impacted), protocol mollusk surveys were completed May 2005. No Crater Lake tightcoil sites were discovered.

**Statement of Compliance.** The [NATIONAL FOREST/BLM DISTRICT] applied the 2011 Settlement Agreement Species List to the XX project, completing pre-disturbance surveys and management of known sites (Table A) required by Survey Protocols and Management Recommendations to comply with the *2001 Record of Decision and Standard and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measure Standards and Guidelines (2001 ROD S&Gs)*.

[SUMMARY OF SURVEY RESULTS] Project surveys discovered sites for two Survey and Manage wildlife species:

- Red Tree Vole: 2010 Pre-disturbance surveys identified one site. In accordance with the Management Recommendations for the Oregon Red Tree Vole *Arborimus longicaudus*, Version 2.0 (September, 2000) a 10 acre habitat area of the best habitat surrounding the active nest was delineated and resulted in dropping Unit 12 due to the habitat area overlap with the unit.
- Siskiyou Sideband: 2010 Equivalent effort surveys identified one site. Location of the known site would preclude the [NATIONAL FOREST/BLM DISTRICT] from meeting the project objective as described in Table A Footnote 6; therefore I have utilized the flexibility in the 2011 Settlement Agreement (Table 1) to exempt management of this known site.

In addition, there are two known sites in the project area for the Siskiyou Mountains Salamander. Previously a Category D vertebrate species, this species now requires species specific mitigation as outlined in the Survey & Manage 2011 Settlement Agreement Species List. Two sites were identified in the project area from 2002 Strategic Surveys. Application of management in accordance with the Conservation Strategy for Siskiyou Mountains Salamander (2007) resulted in the removal of two units from the sale (Units 4a and 10b).

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NAME, Wildlife Biologist  
NAME District or Field Office

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Date

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**Survey & Manage Tracking Form:**

***Botany Species Survey and Site Management Summary***

*BLM District Name – Field Office Name or FS Forest Name – District Name*

**Project Name:** i.e. Timber Sale/Fuels Project/Other Project Name

**Prepared By:** Name

**Project Type:** i.e. Regeneration Harvest & Commercial Thinning

**Date:** Date

**Location:** i.e. Township and Range Coordinates

**S&M List Date:** 2011 Settlement Agreement

*(NOTE: Examples here apply the 2011 Settlement Agreement species list and reflect a variety of different projects/project types in order to display the variety of documentation the field unit will need to complete. Examples applying the 2001 ROD Species List maybe different.)*

**Table A. Survey & Manage Botany Species**

The [NATIONAL FOREST/BLM DISTRICT] compiled the species listed below from the 2011 Settlement Agreement Attachment 1. This includes those vascular and non-vascular plant species with pre-disturbance survey requirements (Category A or C species), whose known or suspected range includes the [NATIONAL FOREST/BLM DISTRICT] according to:

- [LIST REFERENCES FOR SURVEY PROTOCOLS USED FOR RANGE, HABITAT AND SURVEY METHODOLOGY.]

[IF THE PROJECT IS a HABITAT-DISTURBING ACTIVITY IN OLD-GROWTH] This list also includes species with Equivalent Effort pre-disturbance survey requirements, including Category B lichen and bryophytes (if project decision was signed after FY05) and Category B fungi species (if project decision was signed after FY10) whose known or suspected range includes the [NATIONAL FOREST/BLM DISTRICT] according to:

- [LIST REFERENCES FOR SURVEY PROTOCOLS USED FOR RANGE, HABITAT AND SURVEY METHODOLOGY.]

This list also includes any Category B, D, E, or F species with known sites located within the [PROJECT AREA.] Applicable management recommendations include:

- [LIST THE MANAGEMENT RECOMMENDATIONS OR OTHER INFORMATION THAT HAVE BEEN USED TO MANAGE ANY KNOWN SITES, AND THAT THE SITE MANAGEMENT IS IN ACCORDANCE WITH THOSE MRs/THAT INFORMATION.]

**EXAMPLE TABLE**

Species	S&M Category	Survey Triggers			Survey Results			Site Management
		Within Range of the Species ?	Contains Suitable habitat?	Habitat Disturbing*?	Surveys Required?	Survey Date (month/year)	Sites Known or Found?	
List any Category D, E or F species, if there are known sites within the project area.  Example: <i>Clavariadelphus truncatus</i>	D, E, F  Example: D <sup>1</sup>	N/A	N/A	N/A	No	N/A	1	Yes <sup>2</sup>
List Category B lichens and bryophytes with Strategic Surveys completed (and no Equivalent Effort Surveys required). Site management is still required for these species, in all habitat types.  Example: <i>Diplophyllum plicatum</i>	B <sup>3</sup>	N/A	N/A	N/A	No	N/A	1	Yes <sup>4</sup>
List Category B lichens and bryophytes with Strategic Surveys NOT completed (and Equivalent Effort Surveys required), as well as all Category B Fungi  Example: <i>Bryoria subcana</i>	B <sup>5</sup>	No	N/A	N/A	No	N/A	N/A	N/A
Another Example: <i>Thorluna dissimilis</i>	B <sup>6</sup>	Yes	Yes	Yes	Yes	April 2010	0	No
<b>Fungi</b>								
<i>Bridgeoporus nobillissimus</i>	A	Yes	No	N/A	No	N/A	0	No
<b>Lichens</b>								

<i>Bryoria pseudocapillaris</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Bryoria spiralifera</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Hypogymnia duplicata</i>	C	No	N/A	N/A	No	N/A	0	N/A
<i>Leptogium cyanescens</i>	A	Yes	Yes	Yes	Yes	Nov. 2010	0	N/A
<i>Lobaria linita</i>	A	Yes	No	N/A	No	N/A	0	No
<i>Nephroma occultum</i>	A	Yes	Yes	Yes	Yes	Nov. 2010	1	No <sup>7</sup>
<i>Niebla cephalota</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Pseudocyphellaria perpetua</i>	A	Yes	No	N/A	No	N/A	0	N/A
<i>Pseudocyphellaria rainierenensis</i>	A	Yes	Yes	Yes	Yes	Nov. 2010	0	N/A
<i>Teloschistes flavicans</i>	A	No	N/A	N/A	No	N/A	0	N/A
<b>Bryophytes</b>								
<i>Schistostega pennata</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Tetraphis geniculata</i>	A	Yes	No	N/A	No	N/A	0	N/A
<b>Vascular Plants</b>								
<i>Botrychium minganense</i>	A	Yes	No	N/A	No	N/A	0	N/A
<i>Botrychium montanum</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Coptis asplenifolia</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Coptis trifolia</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Corydalis aquae-gelidae</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Cyripedium fasciculatum</i>	C	Yes	Yes	Yes	Yes	June 2010	0	N/A
<i>Cyripedium montanum</i>	C	Yes	Yes	Yes	Yes	June 2010	0	N/A
<i>Eucephalis vialis</i>	A	Yes	Yes	Yes	Yes	Aug. 2010	0	N/A
<i>Galium kamtschaticum</i>	A	No	N/A	N/A	No	N/A	0	N/A
<i>Plantanthera orbiculata</i> var. <i>orbiculata</i>	C	Yes	Yes	Yes	Yes	Aug. 2010	1	Yes <sup>8</sup>

\*“Habitat disturbing” and thereby a trigger for surveys as defined in the 2001 ROD S&Gs (p. 22).

N/A = Not applicable

<sup>1</sup> Pre-project surveys are not required for Category D species.

<sup>2</sup> A 50 foot no activity area was delineated around this site in Unit 3c.

<sup>3</sup> Strategic surveys were completed for this species, and no Equivalent Effort surveys are required (IM-2006-038).

<sup>4</sup> A site discovered during strategic surveys in 2005 was located within the project area. A 50 foot no activity area was delineated around this site in Unit 3a.

<sup>5</sup> Strategic surveys have not been completed for this species; however, the project is not located within the range of the species, and hence Equivalent Effort surveys are not required.

<sup>6</sup> Strategic Surveys have not been completed for this species; the project is within old growth, and since the Decision for this project is after September 30, 2005, Equivalent Effort surveys for this species are required.

<sup>7</sup> One site of this species was located during surveys. However, the location of the known site would preclude the [NATIONAL FOREST/BLM DISTRICT] from meeting the project objective of replacing a trail bridge. Management of the known site would require the [NATIONAL FOREST/BLM DISTRICT] to not cut down smaller diameter trees to allow placement of the new bridge structure to span the 100 year flood plain. The project cannot occur unless this access can be developed. Therefore, the [NATIONAL FOREST/BLM DISTRICT] has utilized the flexibility in the 2011 Settlement Agreement from Table 1, to exempt management of this known site.

<sup>8</sup> A 150 foot no activity area was delineated around this site in Unit 12b.

**Statement of Compliance.** The [NATIONAL FOREST/BLM DISTRICT] applied the 2011 Settlement Agreement Species List to the XX project, completing pre-disturbance surveys, (equivalent effort surveys, [IF IN OLD GROWTH FOREST]) and management of known sites (Table A) required by Survey Protocols and Management Recommendations to comply with the *2001 Record of Decision and Standard and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measure Standards and Guidelines*.

[SUMMARY OF SURVEY RESULTS] Project surveys discovered sites for two Survey and Manage botany species:

- Category A Lichen (*Nephroma occultum*): 2010 Pre-disturbance survey identified one site on an older tree adjacent to a patch of small deciduous trees near an existing opening. Location of the site would preclude the [NATIONAL FOREST/BLM DISTRICT] from meeting the project objective as described in Table A Footnote 7, therefore I have utilized the flexibility in the 2011 Settlement Agreement (Table 1) to exempt management of this known site.
- Category C Vascular Plant (*Plantanthera orbiculata* var. *orbiculata*): 2010 Pre-disturbance surveys identified one site located within the northeast corner of unit 12b. Delineated a 50 foot no activity area around the site (*Management Recommendations for Vascular Plants* (January 20, 1999)).

Known sites are present within the project for two additional species:

- Category D Fungi (*Clavariadelphus truncates*): 2001 and 2002 Strategic Surveys located one site. *Delineated a 50 foot no activity area* site based on information utilized from the *Conservation Assessment for Fungi in Regions 5&6 and OR/WA/CA BLM* (July 2007).
- Category B Bryophyte (*Diplophyllum plicatum*): 2001 and 2002 Strategic Surveys located one site. Implemented the *Management Recommendations for Bryophytes* by utilizing the *Conservation Assessment for 11 species of Bryophytes (2005)* and the *Species Fact Sheet for Diplophyllum plicatum (May 2009)* to delineate a 50 foot no activity area.

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NAME, Botanist  
NAME District or Field Office

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Date

## ATTACHMENT 5 – Applying the 2011 Wildland Urban Interface Exemption Category

The 2011 Settlement Agreement exempts WUI projects that meet certain project design criteria from Survey and Manage pre-disturbance surveys. This exemption applies to all northern spotted owl provinces within the first quarter-mile ( $\frac{1}{4}$  mile) of the public-private land boundary where a structure is present on private land within  $\frac{1}{4}$  mile of that boundary. In addition, for dry forest plant associations in the Western Oregon Cascades province, treatments within a second  $\frac{1}{4}$  mile area of the federal/private land boundary may be exempt if certain criteria are met. See the settlement agreement, section IV, A, 4 d for specifics on project design criteria. See also section IV, B, 3, Table 1 for known site management requirements

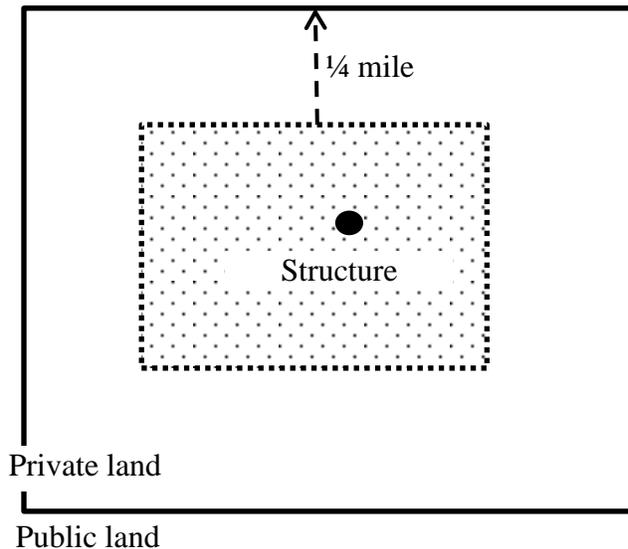
For areas other than the Western Oregon Cascades province, the 2011 Settlement Agreement provides no additional exemptions for treating WUI beyond the  $\frac{1}{4}$  mile limit. In areas outside the Western Oregon Cascades province, use other commercial logging exemptions that may apply (e.g., Pechman exemptions, dry forest exemptions) to accomplish WUI management goals.

### Five Examples in Determining How to Apply the Wildland Urban Interface (WUI) Exemption Category

In the examples below, each square represents a one square mile section of privately owned land within a public land matrix. Stippled area is farther than  $\frac{1}{4}$  mile from the public-private boundary. Structures (black dots) located within the stippled area bounded by the dotted line are farther than  $\frac{1}{4}$  mile from the public-private boundary, therefore, the WUI exemption cannot be used.

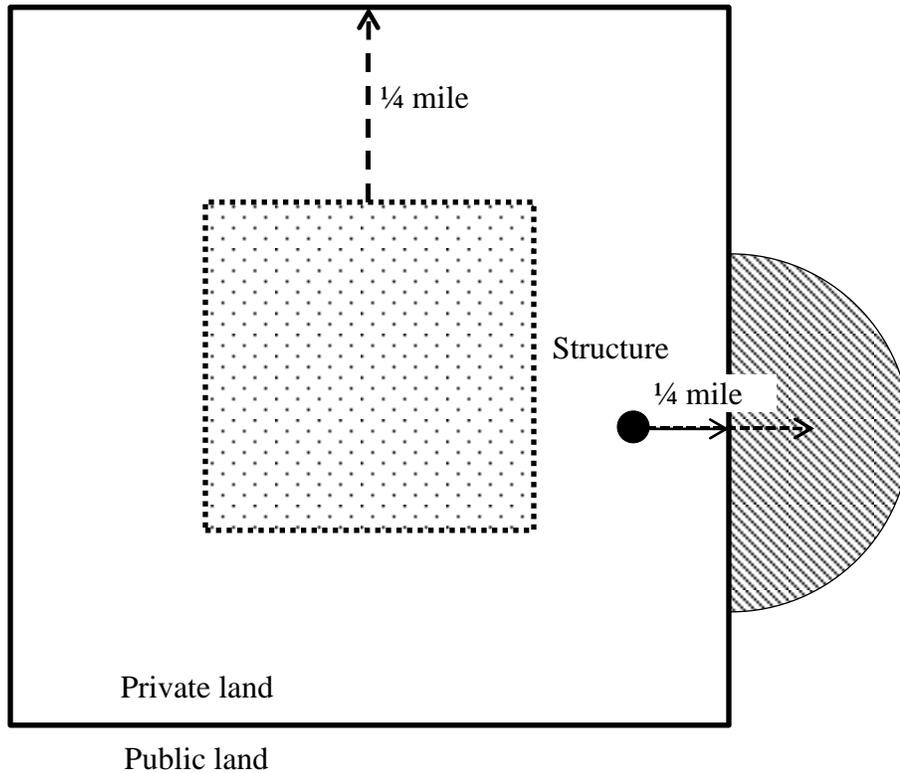
#### Example 1

The section of private land has no structure on it or the structure is located more than  $\frac{1}{4}$  mile from the public-private boundary. The WUI exemption does not apply.



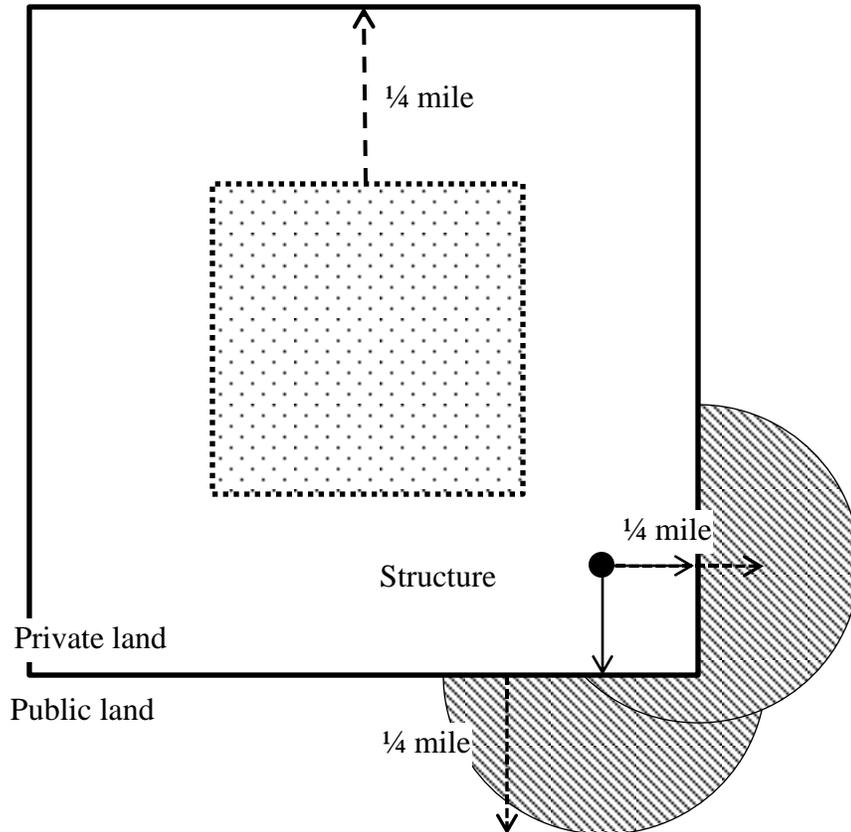
### Example 2

The structure is located within  $\frac{1}{4}$  mile of the public-private boundary along one edge of a section of private land. Measure from the closest point of the structure to the public-private boundary. The point where the line intersects the public-private boundary becomes the center of a circle with a  $\frac{1}{4}$  mile radius. The WUI exemption applies to the half circle on the public lands, or approximately 128 acres.



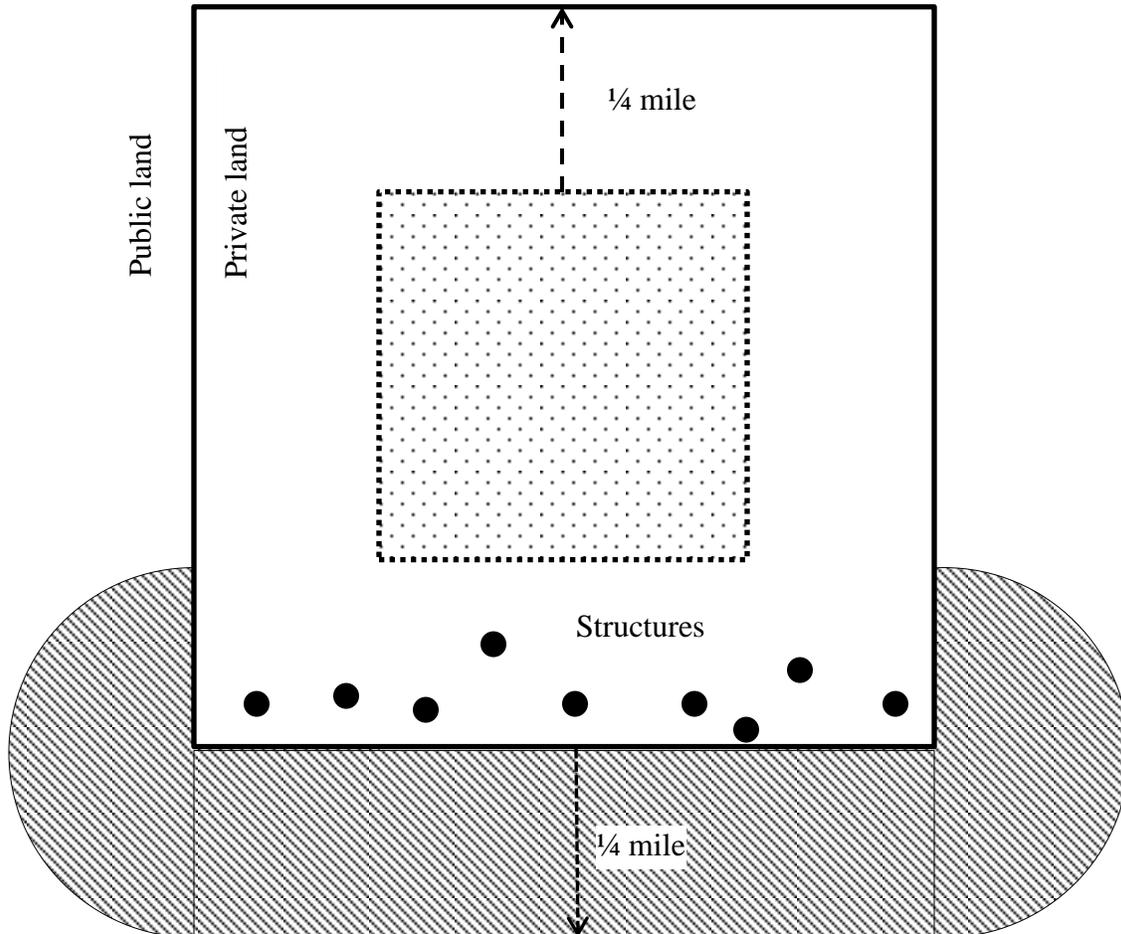
### Example 3

The section of private land has a structure located near a corner of the private land boundary with federal land. Measure from the closest point of the structure to the public-private boundary on each of the two sides within  $\frac{1}{4}$  mile of the boundary. The point where the line intersects the boundary becomes the center of a circle with a  $\frac{1}{4}$  mile radius. The exempted area is that portion of the circle on the public lands (up to  $\frac{3}{4}$  of a circle, depending on location with respect to the corner). Overlapping circles may be connected to create a logical treatment boundary provided the new boundary does not expand the exempted area by more than 25% of the qualifying WUI acreage in each section.



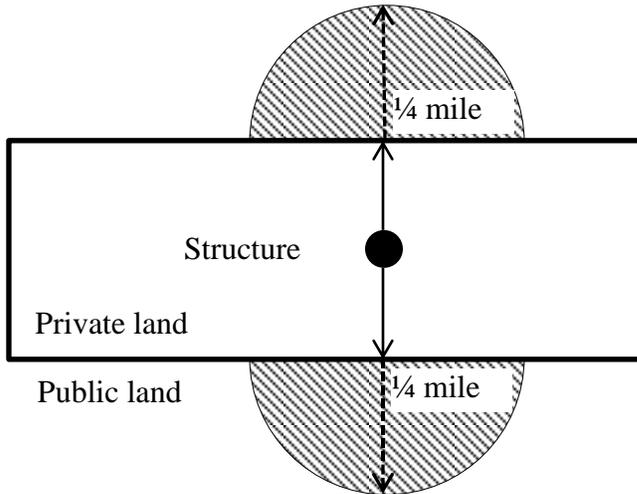
#### Example 4

There are several structures located within  $\frac{1}{4}$  mile of the private-public boundary with obviously overlapping circles. The WUI exemption applies. The exempted area extends  $\frac{1}{4}$  mile beyond the public-private boundary with partial circles at the corners. Overlapping circles may be connected to create a logical treatment boundary provided the new boundary does not expand the exempted area by more than 25% of the qualifying WUI acreage in each section.



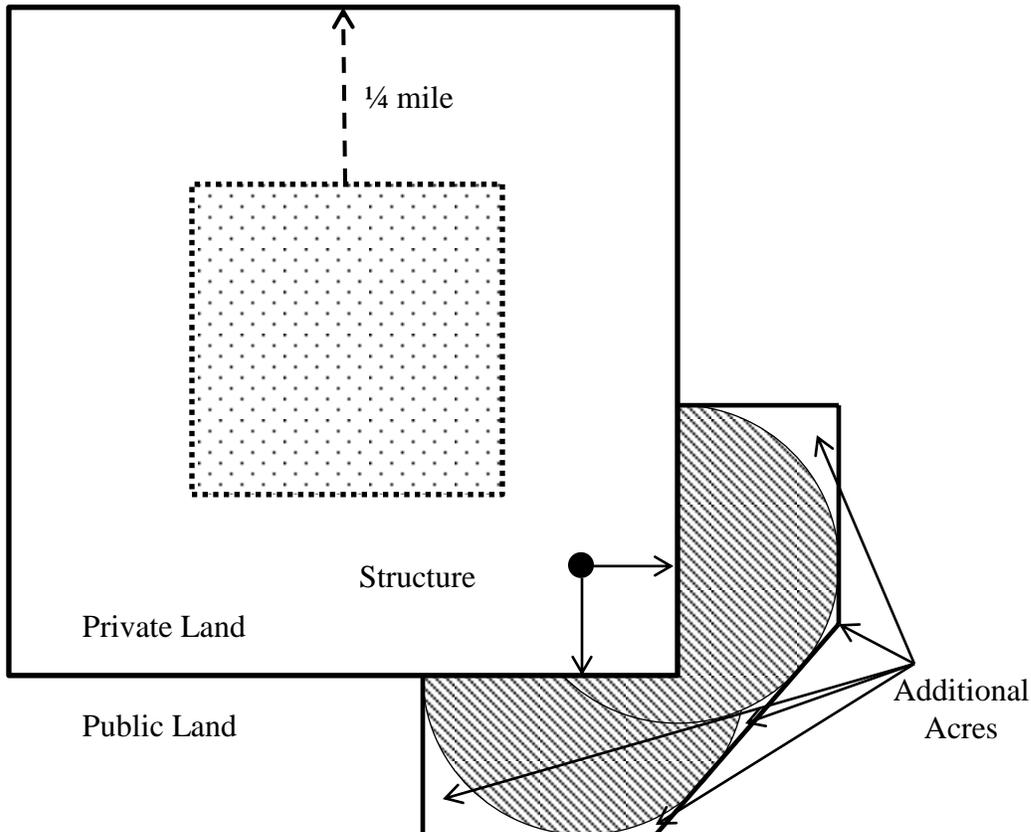
**Example 5**

The structure is located in the center of a private land partial section that is  $\frac{1}{2}$  mile wide or less. The WUI exemption applies. The exempted area includes both sides on the private-public boundary using a circle with a  $\frac{1}{4}$  mile radius. If the structure were located closer than  $\frac{1}{4}$  mile from the public-private boundary on one side and farther than  $\frac{1}{4}$  mile from the public-private boundary on the other side, the exemption would apply only to the side located within  $\frac{1}{4}$  mile of the public-private boundary.



## Applying the Additional Acres Provision

The settlement agreement allows us to increase the size of the exempted area by as much as 25% in order to create more workable treatment boundaries. This provision allows us to “square the circle”. A key feature of this provision is that the additional 25% is based on the number of acres within the exempted area as depicted in the previous examples. Below is an example of additional acres based on Example 3 above.



In this example, the exempted area is the equivalent of a half circle and about  $\frac{3}{4}$  of a half circle. The area of a half circle with a  $\frac{1}{4}$  mile radius is about 128 acres. The  $\frac{3}{4}$  circle encompasses about 96 acres for a total exempted area of approximately 224 acres. The allowable addition is 25% of that, or about 56 acres. In total, the exempted area would be approximately 280 acres. All calculations should be based on measured area.

## Applying the WUI Exemption in the Western Oregon Cascades Province

The 2011 Settlement Agreement has a special provision for use of the WUI exemption in the Western Oregon Cascades Province. Beyond the  $\frac{1}{4}$  mile limit, all other provinces can apply the Dry Forest provisions under the Restoration Projects that May Involve Commercial Logging exemption, which has no limits on the size of the area. This option is not available in the Western Oregon Cascades. Instead, a separate provision under the WUI exemption allows for dry forest-like treatments an additional  $\frac{1}{4}$  mile beyond the standard WUI exemption where the listed dry forest plant association groups are present. Based on Example 2 above, this provision would consist of an overlapping circle with a  $\frac{1}{2}$ -mile radius.

