

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SALEM DISTRICT OFFICE
TILLAMOOK RESOURCE AREA**

FINDING OF NO SIGNIFICANT IMPACT

For the

**Von Road and Testament Creek Road Project
DOI-BLM-OR-S060-2010-009-EA**

I. Introduction

The Von Road and Testament Creek Road Project Environmental Assessment (EA# DOI-BLM-OR-S060-2010-009-EA) documents the environmental analysis of the proposed project. The EA is incorporated by reference in this Finding of No Significant Impact determination (FONSI). The EA analyzes the repair and decommissioning of two BLM-controlled roads that were damaged during storms in 2007 and 2008. Von Road, which is owned and controlled by BLM but is located on private land under a right-of-way agreement, was damaged by a landslide that destroyed a segment of the road and would be repaired by excavating into the hillside and widening what is left of the road for a distance of about 250 feet. Testament Creek Road was damaged by two or more landslides in an area with a lot of surface and subsurface water and landslide activity. This road would be decommissioned for a distance of about 0.8 miles by removing several culverts, including one on private land, and unstable sidecast material, waterbarring, and blocking the road to vehicles. The work on both roads is expected to be done in 2010 or 2011.

II. Background

The EA is in conformance with the *Salem District Proposed Resource Management Plan/Final Environmental Impact Statement*, dated 1994 (PRMP/FEIS) and the *Salem District Record of Decision and Resource Management Plan*, dated 1995 (ROD/RMP). The analysis supporting this EA is also tiered to the *Final Supplemental Environmental Impact Statement (EIS) on Management of Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan,)* dated 1994 and its *Record of Decision*, dated 1994.

III. Finding of No Significant Impact

I am adopting the EA, in which the effects analysis indicates that there would not be a significant impact on the quality of the human environment from the implementation of either alternative. This finding and conclusion is based on my consideration of the Council of Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and intensity of the impacts described in the EA.

Context

The proposed project is a site-specific action directly involving repairs and decommissioning of less than one mile of road. These actions by themselves do not have international, national, region-wide, or state-wide importance.

The discussion of the significance criteria that follows applies to the intended actions and is within the context of local importance. The EA details the effects of the action alternative; none of the effects identified, including direct, indirect and cumulative effects, are considered to be significant and do not exceed those effects described in the RMP/FEIS.

Intensity

Impacts that may be both beneficial and adverse (40 CFR 1508.27 (b)(1))

Due to the proposed projects' design features, the most noteworthy predicted effects include: (1) there is a small potential for disturbance to spotted owls in the Testament Creek Road project area. Consultation with US Fish and Wildlife will be done programmatically; (2) minor short-term increases in sediment in Testament Creek, and a long-term reduction in sediment from decommissioning this section of road; (3) consistency with the ACS (Aquatic Conservation Strategy) objectives; (4) no loss in population viability of special status or special attention species (also see significance criteria #9 below); (5) no impacts to fisheries or their habitats.

None of the environmental effects disclosed above and discussed in detail in the EA are considered significant, nor do the effects exceed those described in the RMP/FEIS.

Public Health and Safety (40 CFR 1508.27(b)(2))

Public health and safety was not identified as an issue. The proposed project is comparable to other road projects which have occurred within the Salem District with no unusual health or safety concerns.

Unique characteristics of the geographic area (40 CFR 1508.27(b)(3))

There are no park lands, prime farm lands, or wildernesses located within the project area. No cultural resource sites have been identified within the project area. There are no federally designated Wild and Scenic Rivers within the project area. There are no wetlands within the project area. There are no Areas of Critical Environmental Concern or other known ecologically critical areas within or adjacent to the project area.

Degree to which effects are likely to be highly controversial (40 CFR 1508.27(b)(4))

Scoping of the proposed project resulted in no project specific comments. The effects of the proposed projects on the quality of the human environment were adequately understood by the interdisciplinary team to provide an environmental analysis. A complete disclosure of the predicted effects of the proposed project is contained in the EA.

Degree to which effects are highly uncertain or involve unique or unknown risks (40 CFR 1508.27(b)(5))

The proposed project is not unique or unusual. The BLM has experience implementing similar projects in similar areas and have found effects to be reasonably predictable. The environmental effects to the human environment are fully analyzed in the EA. There are no predicted effects on the human environment which are considered to be highly uncertain or involve unique or unknown risks.

Consideration of whether the action may establish a precedent for future actions with significant impacts (40 CFR 1508.27(b)(6))

The proposed project does not set a precedent for future actions that may have significant effects, nor do it represent a decision in principle about a future consideration. Any future projects will be evaluated through the NEPA (National Environmental Policy Act) process and will stand on their own as to environmental effects.

Consideration of whether the action is related to other actions with cumulatively significant impacts (40 CFR 1508.27(b)(7))

The interdisciplinary team evaluated the proposed project in context of past, present and reasonably foreseeable actions. No cumulative effects have been identified. A complete disclosure of the effects of the action alternative is contained in the EA.

Scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8))

The proposed project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will the proposed project cause loss or destruction of significant scientific, cultural, or historical resources..

Threatened or endangered species and their critical habitat (40 CFR 1508.27(b)(9))

Because there is a small potential for disturbance to unknown owls, the Testament Creek portion of the proposed action *May Affect* but is *Not Likely to Adversely Affect* the spotted owl. Due to the potential for negative impact to the owl, Section 7 consultation with the US Fish and Wildlife Service is required and will be carried out programmatically through the streamlined consultation process.

There are no impacts to listed or proposed fish species within the project area; therefore consultation with the National Marine Fisheries Service is not required.

Any effects that threaten a violation of Federal, State, or local laws or requirements imposed for the protection of the environment (40 CFR 1508.27(b)(10))

The proposed project does not violate any known Federal, State, or local law or requirement imposed for the protection of the environment. The EA and supporting Project Record contain discussions pertaining to the Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, Coastal Zone Manage Act, Executive Order 12898 (Environmental Justice), Oregon Scenic Waterways Act, and Executive Order 13212 (Adverse Energy Impact). State, local, and tribal interests were given the opportunity to participate in the environmental analysis process. Furthermore, the proposed project is consistent with applicable land management plans, policies, and programs

Pursuant to Executive Order 13212, the BLM must consider the effects of this decision on the National Energy Policy. As there would be no impact to the exploration, development or transportation of undeveloped energy sources from the proposed action, a Statement of Adverse Energy Impacts is not required.

Conclusion

Based on the information contained in the EA (DOI-BLM-OR-S060-2010-009-EA), and all other information available to me I have determined that the proposed action would not have a significant impact on the human environment within the meaning of section 102(2) (c) of the National Environmental Policy Act of 1969, and that an Environmental Impact Statement is not required. I have determined that the effects of the proposed activities would be in conformance with the *Record of Decision and Resource Management Plan* for the Salem District.

/s/ Stephen M. Small
Stephen M. Small
Tillamook Field Manager

4/16/2010
Date

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SALEM DISTRICT OFFICE
TILLAMOOK RESOURCE AREA**

**DECISION RECORD
For the
Von Road and Testament Creek Road Project
DOI-BLM-OR-S060-2010-009-EA**

DECISION

It is my decision to implement the proposed action as described in the Von Road and Testament Creek Road Project Environmental Assessment (EA# DOI-BLM-OR-S060-2010-009-EA). The project will repair and decommission two BLM-controlled roads that were damaged during storms in 2007 and 2008. Von Road, which is owned and controlled by BLM but is located on private land under a right-of-way agreement, was damaged by a landslide that destroyed a segment of the road and would be repaired by excavating into the hillside and widening what is left of the road for a distance of about 250 feet. Testament Creek Road was damaged by two or more landslides in an area with a lot of surface and subsurface water and landslide activity. This road would be decommissioned for a distance of about 0.8 miles by removing several culverts, including one on private land, and unstable sidecast material, waterbarring, and blocking the road to vehicles. The work on both roads is expected to be done in 2010 or 2011.

Consultation with the U.S. Fish and Wildlife Service (USFWS) has been completed, and consultation with the National Marine Fisheries Service (NMFS) is not required. The Environmental Assessment (EA) analyzed the proposed action and the Finding of No Significant Impact (FONSI) documented that there would be no significant impacts.

This decision is in conformance with the Salem District Record of Decision and Resource Management Plan (ROD/RMP) and will not have significant environmental impacts beyond those already addressed in the environmental impact statement prepared for the ROD/RMP.

CONSULTATION AND COORDINATION

Public Scoping and Review

The Environmental Assessment (DOI-BLM-OR-S060-2010-009-EA) was released for a 15-day public comment period on March 30, 2010. The document was posted on the Salem District web page and mailed to eight organizations, individuals, government organizations and adjacent landowners. No comments were received.

Consultation

The EA determined that the project would be of *No Effect* on ESA-listed fish species or their critical habitats, or Essential Fish Habitat under the Magnuson-Stevens Fisheries Conservation and Management Act. Consultation with the National Marine Fisheries Service is not required.

Because there is a small potential for disturbance to unknown owls, the Testament Creek portion of the proposed action *May Affect* but is *Not Likely to Adversely Affect* the spotted owl. Due to the potential for negative impact to the owl, Section 7 consultation with the US Fish and Wildlife Service is required and has been carried out programmatically through the streamlined consultation process.

SURVEY AND MANAGE

The Von Road and Testament Creek Road Project is consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines, as incorporated into the Salem District Resource Management Plan.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure.

Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects.

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because the Von Road and Testament Creek Road Project meets the provisions of the last valid Record of Decision, specifically the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews). For the Von Road and Testament Creek Road Project, surveys are not required because Von Road is located on private land and is therefore not subject to the Survey and Manage mitigation measure, and the proposed work on Testament Creek Road would all occur with the road prism, which is not considered habitat for Survey and Manage species.

ADMINISTRATIVE REVIEW OPPORTUNITIES

The effective date of this decision shall be the date of posting of the Notice of Decision and FONSI on the Salem District web page (April 16, 2010). Any person adversely affected by this decision may appeal it to the Interior Board of Land Appeals, Office of the Secretary, in

accordance with the regulations contained in 43 CFR, Part 4. If an appeal is taken, a notice of appeal must be filed at the physical address of the Tillamook Resource Area, Salem District BLM office within 15 days from the date of this decision. In an appeal the appellant has the burden of showing that the decision is in error.

If, pursuant to 43 CFR 4.21, an appellant wishes to file a petition (request) to stay (suspension) this decision during the time that an appeal is being reviewed by the IBLA, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If a stay is requested, the applicant has the burden of proof to demonstrate that a stay should be granted. Except as otherwise provided by law or other pertinent regulations, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ Stephen M. Small
Stephen M. Small
Tillamook Field Manager

4/16/2010
Date