U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SALEM DISTRICT OFFICE
Marys Peak Resource Area
Benton, Lane, Lincoln and Polk Counties, Oregon

CATEGORICAL EXCLUSION REVIEW - NEPA COMPLIANCE RECORD

Project: Marys Peak 2005-09 Young Stand Manual Maintenance, Density Management Precommercial Thinning, Variable Density Precommercial Thinning, and Pruning

Date: February 5, 2007

Categorical Exclusion Number: OR-080-05-02 (**2007 Add Acres)**

Location: Marys Peak Resource Area. Selected areas for 2007 include approximately 27 acres manual maintenance (release only), 442 acres manual maintenance (release with 14x14 spacing), 508 acres density management precommercial thinning (PCT), 219 acres variable density PCT, and 236 acres of pruning.

Land Use Allocation(s): Approximate add acreages for 2007 are General Forest Management (GFMA) [Matrix] – 362 acres; Late-Successional Reserve (LSR) – 970 acres; Adaptive Management Area (AMA) – 61 acres. Riparian Reserves are part of all units.

Description of Proposed Action including Purpose of and Need for Action:

This project consists of 2007 add acres of manual maintenance, density management precommercial thinning, variable density precommercial thinning, and pruning in the Marys Peak Resource Area over the period of 2005 thru 2009. The 2007 add units are similar to units described in the original Categorical Exclusion (CX OR-080-05-02), and all units comply with the project general description, effect summaries and design features.

All of the 2007 units that are to be added to the young stand management CX (OR-080-05-02) are covered by the Letter of Concurrence from the US Fish and Wildlife Service (reference number 1-7-2005-I-0665, dated 10-12-2005) that addressed potential disturbance effects to federally listed wildlife species. Project design standards set forth in this completed consultation include scheduling treatments to reduce potential disturbance as follows for the 2007 treatment

units: Three units are to be treated after July 7th. Approximately four units are to be treated after August 5th. Remaining units are not restricted.

Refer to the CX OR-080-05-02 and specialist reports for additional project details. Interdisciplinary team members have reviewed the 2007 add units and have completed the required consultation.

Land Use Plan Conformance: As stated in the Mar's Peak 2005-09 Young Stand Manual Maintenance, Density Management and Pruning CX #OR-080-05-02 , the proposed action is in conformance with the *Salem District Record of Decision and Resource & Management Plan* (RMP), dated May 1995 as amended (pp**.** 7**,** 11, 16, 17, 21, 32, 46, 47, 63, 71 & Appendix D) directs the following: Conduct silvicultural activity in suitable forest stand according to management actions/direction. Control stocking, reestablish and manage stands and acquire desired vegetation. Apply silvicultural treatment to restore large conifer in Riparian Reserve. Implement silvicultural practice in LSR that benefit the creation of LSR. Avoid disturbance to spotted owls and marbled murrelet. Watershed analyses in fourteen of sixteen watersheds have been completed from 1995 to 1999. The recommended actions within the watershed analyses support the proposed action. The proposed action is in conformance with the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* and *Standard and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl*, dated April 1994 (the Northwest Forest Plan, or NWFP); *Record of Decision Amending Resource Management Plans for Seven Bureau of Land Management Districts and Land and Resource Management Plans for Nineteen National Forests Within the Range of the Northern Spotted Owl - Decision to Clarify Provisions Relating to the Aquatic Conservation Strategy*, dated March 2004 (ACSROD); and *Record of Decision to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl*, dated March 2004. .

The Bureau of Land Management (BLM) is aware of the August 1, 2005, U.S. District Court order in Northwest Ecosystem Alliance et al. v. Rey et al. which found portions of the *Final Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (January, 2004) (EIS) inadequate. Subsequently in that case, on January 9, 2006, the Court ordered:

- set aside the 2004 Record of Decision *To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern spotted Owl* (March, 2004) (2004 ROD) and
- reinstate the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measure Standards and Guidelines* (January, 2001) (2001 ROD), including any amendments or modifications in effect as of March 21, 2004.

The BLM is also aware of the November 6, 2006, Ninth Circuit Court opinion in Klamath-Siskiyou Wildlands Center et al. v. Boody et al., No. 06-35214 (CV 03-3124, District of Oregon). The court held that the 2001 and 2003 Annual Species Reviews (ASRs) regarding the red tree vole are invalid under the Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act (NEPA) and concluded that the BLM's Cow Catcher and Cotton Snake timber sales violate federal law.

This court opinion is specifically directed toward the two sales challenged in this lawsuit. The BLM anticipates the case to be remanded to the District Court for an order granting relief in regard to those two sales. At this time, the ASR process itself has not been invalidated, nor have all the changes made by the 2001-2003 ASR processes been vacated or withdrawn, nor have species been reinstated to the Survey and Manage program, except for the red tree vole. The Court has not yet specified what relief, such as an injunction, will be ordered in regard to the Ninth Circuit Court opinion. Injunctions for NEPA violations are common but not automatic.

We do not expect that the litigation over the Annual Species Review process in Klamath-Siskiyou Wildlands Center et al. v. Boody et al will affect this project, because the development and design of this project exempt it from the Survey and Manage program. In Northwest Ecosystem Alliance et al. v. Rey et al the U.S. District Court modified its order on October 11, 2006, amending paragraph three of the January 9, 2006 injunction. This most recent order 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."

The Bureau of Land Management has reexamined the objectives of Marys Peak 2005-09 Young Stand Manual Maintenance, Density Management Precommercial Thinning, Variable Density Precommercial Thinning, and Pruning. The Project consists of thinning trees in stands younger than 80 years old. For the foregoing reasons, the Marys Peak 2005-09 Young Stand Manual Maintenance, Density Management Precommercial Thinning, Variable

Therefore, the decision to eliminate Survey and Manage is effective on this project.

Interdisciplinary Team Review:

Affected Resource	Specialist	Initial	Date
Botany/Vegetation	Ron Exeter	[illegible]	Feb 7, 2007
Cultural Resources	Dave Calver	[illegible]	2/21/07
Fire Hazard/Risk	Tom Tomczyk	[illegible]	2/7/07
Fisheries	Scott Snedaker	SMS	2/6/07
Hydrology, Water Quality, Soils	Patrick Hawe	WPH	2/20/07
Natural Resources Supervisor	Diane Morris	DM	2/27/07
Other Resources/ NEPA	Gary Humbard	GLH	2/7/07
Silviculture, Visual and Rural Interface Resources	Clint Foster	CF	2/5/07
Wildlife	Scott Hopkins	SH	2/6/07

NEPA Review: The proposed action qualifies as a categorical exclusion under Department of Interior Manual 516 DM 11, 11.5, C(1) and (4). The action has been reviewed to determine if any of the exceptions described in 516 DM 2, Appendix 2, apply.

Reviewed by: Gary L. Humbard Date: 3/15/07
NEPA Coordinator

Decision:

I have reviewed this NEPA compliance record and have determined that the proposed project complies with criteria for the categorical exclusions as described under Department of Interior Manual 516 DM 2.3A. None of the exceptions to categorical exclusion apply, nor are any of the environmental impacts to the elements of the environment considered to be significant. Therefore, an environmental assessment or an environmental impact statement is not needed. It is my decision to implement the proposed action, as described, subject to the project design features identified below.

Project Design Features:

- To retain species diversity, the only tree species to be treated would be western hemlock, Douglas-fir, noble fir, Sitka spruce, cherry, red alder, and big-leaf maple that compete with the leave conifers. All other tree species would be reserved. Species priority for selected leave trees would be noble fir, western hemlock, Sitka Spruce, Douglas-fir, big-leaf maple, and red alder, in that order.

selected leave trees would be noble fir, western hemlock, Sitka Spruce, Douglas-fir, big-leaf maple, and red alder, in that order.

- Red alder and big-leaf maple would be left if not competing with selected leave trees for survival. Hardwoods over 8 inches diameter breast height would be girdled if competing with selected leave trees. Surplus hardwoods less than 8 inches diameter breast height would be cut in a manner to minimize damage to the selected leave trees. Only brush which competes with the selected leave trees would be cut.

- Pruning treatment would be done with hand tools only.

- The slash would be pulled back 10-20 feet from edges of all roads and trails in units and to the top of all cut banks, or a 10-20 foot uncut buffer will be left where specified to mitigate fire hazard and scenic value concerns. In some units, the slash would be pulled back 20 feet from the edge of the existing landings and to the top of the cut banks. Additionally, where cutting occurs in south or west facing units above roads and trails an uncut buffer or pullback of slash will be a minimum of 20 feet.

- During severe fire closure periods, roads and trails through recently cut areas may need to be closed to vehicle traffic, to reduce the risk of a fire start, especially on South and West aspects.

- Factors that help to reduce the increase in fire risk and hazard:

    - A tree canopy would be maintained resulting in less heat and drying of fuels and a cooler, more humid micro-site.

    - Hardwood slash will be a large component of the increase in fuel loading in many of the units causing the resulting fuel bed to be less volatile than if the increase came from pure conifer.

- For all units containing noble fir, supply to contractors a copy of a picture and description for the identification of *Bridgeoporus nobilissimus* (noble-fir polypore). If *Bridgeoporus nobilissimus* is located within a unit, all operations would be suspended in that area and contact made with the Marys Peak resource area botanist for further mitigation measures.

- Wildlife and fisheries or qualified personnel shall review proposed activity plans to define affected areas.

- A 10-foot, uncut stream buffer would be left on each side of ephemeral and non-fish bearing streams and wetland areas, and a 20 foot untreated buffer on perennial streams to prevent any potential adverse affects to stream channel or water quality conditions. Refuel power equipment, or use absorbent pads for immobile equipment, at least 150

- Wildlife corridors may be identified for additional cutting or clearing along heavily used big game trails.

- Three units would be scheduled for treatment after July 7th and four units after August 5th in 2005 to reduce the possible disturbance to listed wildlife species.

- The timing for any of the described treatments will be outside the nesting period for spotted owls and marbled murrelets. For projects operating between April 1 and September 15, work hours will be restricted to two (2) hours after sunrise to two (2) hours before sunset. This will minimize potential disruption interruption of the marbled murrelet's behavioral patterns during those critical times of activities. The work is generally of short duration lessening the potential for disturbance effects.

- The Resource Area Biologist would be notified if any federally listed wildlife species are found occupying stands within 0.25 miles of the proposed units.

Authorized Official: Gerry A. Day Date: 3/15/07

Gerry A. Day, Field Manager (acting)
Mary's Peak Resource Area