

Mainline II Thinning Project 2

Final Decision and Decision Rationale for Mainline II Thinning Project 2

Environmental Assessment Number OR080-05-11

October 2007

United States Department of the Interior
Bureau of Land Management
Oregon State Office
Salem District
Marys Peak Resource Area

Township 14 South, Range 6 West, Section 19, Willamette Meridian
Upper Alsea River 5th field Watershed.
Benton County, Oregon

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As the Nation's principal conservation agency, the Department of Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering economic use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interest of all people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.

BLM/OR/WA/PL-08/004+1792

I. Introduction

The Bureau of Land Management (BLM) has conducted an environmental analysis for the Mainline II Thinning Project 2, which is documented in the Mainline II Thinning environmental assessment (Mainline Thinning II, # OR080-05-11) and the associated project file. The Proposed Action of the Mainline II Thinning Project 2 is to promote complex and diverse habitat types for fish within Riparian Reserve Land Use Allocation (LUA). A Finding of No Significant Impact (FONSI) was signed on January 3, 2007 and the EA and FONSI were then made available for public review.

The decision documented in this Decision Rationale (DR) is based on the analysis documented in the EA. This decision authorizes the implementation of only those activities directly related to and included within Project 2.

II. Decision

I have decided to implement the Mainline II Thinning Project 2 as described in the proposed action (EA p. 39) hereafter referred to as the “selected action”. The selected action is shown on the map attached to this Decision Rationale. This decision is based on site-specific analysis in the Mainline II Thinning Environmental Assessment (EA # OR080-05-11), the supporting project record, management recommendations contained in the *South Fork Alsea River Watershed Analysis*; as well as the management direction contained in the Salem District Resource Management Plan (May 1995), which are incorporated by reference in the EA.

The following is a summary of this decision.

The proposed action includes the following: To enhance stream structure, seven trees within the SPZ adjacent to Unit 19A (see Map #2) would be felled and left on site.

The selected action described in the EA (p. 39) will be accomplished through a service contract or completed by BLM personnel.

III. Compliance with Direction:

The analysis documented in the Mainline Thinning II EA is site-specific and supplements analyses found in the *Salem District Proposed Resource Management Plan/Final Environmental Impact Statement*, September 1994 (RMP/FEIS). This project has been designed to conform to the *Salem District Record of Decision and Resource Management Plan*, May 1995 (RMP) and related documents which direct and provide the legal framework for management of BLM lands within the Salem District (EA pp. 1 &-2). All of these documents may be reviewed at the Marys Peak Resource Area office.

Survey and Manage Species Review

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.”

BLM has reexamined the objectives of Mainline II Thinning Project 2 as described in the Mainline Thinning II Thinning EA/FONSI (pg. 39). Project 2 consists of stream improvement work through the felling of large wood into a fish bearing stream.

“On July 25, 2007, the Under Secretary of the Department of Interior signed a new Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Forest Service Land and Resource Management Plans Within the Range of the Northern Spotted Owl that removed the survey and manage requirements from all of the BLM resource management plans (RMPs) within the range of the northern spotted owl. “In any case, this project falls within at least one of the exceptions (exception c) listed in the modified October 11, 2006 injunction.” Therefore, the decision to eliminate Survey and Manage is effective on this project.

Compliance with the Aquatic Conservation Strategy

On March 30, 2007, the District Court, Western District of Washington, ruled adverse to the US Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA-Fisheries) and USFS and BLM (Agencies) in *Pacific Coast Fed. of Fishermen’s Assn. et al v. Natl. Marine Fisheries Service, et al and American Forest Resource Council*, Civ. No. 04-1299RSM (W.D. Wash)(PCFFA IV). Based on violations of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the Court set aside:

- the USFWS Biological Opinion (March 18, 2004),
- the NOAA-Fisheries Biological Opinion for the ACS Amendment (March 19, 2004),
- the ACS Amendment Final Supplemental Environmental Impact Statement (FSEIS) (October 2003), and
- the ACS Amendment adopted by the Record of Decision dated March 22, 2004.

Previously, in *Pacific Coast Fed. Of Fishermen’s Assn. v. Natl. Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001)(*PCFFA II*), the United States Court of Appeals for the Ninth Circuit ruled that because the evaluation of a project’s consistency with the long-term, watershed level ACS objectives could overlook short-term, site-scale effects that could have serious consequences to a listed species, these short-term, site-scale effects must be considered. The following paragraphs show how the Middle Fork Fire Salvage project meets the Aquatic Conservation Strategy in the context of PCFFA IV and PCFFA II.

Existing Watershed Condition

The Mainline II Thinning Project 2 area is in the 82,101-acre Upper Alsea River 5th field watershed which drains into the Alsea River. Fifty-two percent of the watershed is managed by BLM, 47% is private, and 1% is U. S. Forest Service. The South Fork Alsea River Watershed Analysis (1996) describes the events that contributed to the current condition such as early hunting/gathering by aboriginal inhabitants, road building, agriculture, wildfire, and timber harvest.

Late seral (greater than 80 years old) forests comprise 20 percent of the ownership in the South Fork Alsea River Watershed Analysis area. We can infer then, that commercial harvest or stand

replacement fire has occurred on 80% of the lands in the analysis area. The earliest harvests have been regenerated and are progressing towards providing mature forest structure. Most of the private industrial lands have been and will continue to be moved from mid condition class to the early condition class.

Review of Aquatic Conservation Strategy Compliance:

I have reviewed this analysis and have determined that the project complies with the ACS on the project (site) scale. The following is an update of how this project complies with the four components of the Aquatic Conservation Strategy, originally documented in the EA, Section 4.0 Table 6, p. 37. The project will comply with the following:

Component 1 – Riparian Reserves: by maintaining canopy cover along all streams and the wetlands will protect stream bank stability and water temperature. Riparian Reserve boundaries will be established consistent with direction from the *Salem District Resource Management Plan*. No new road construction or timber harvest will occur within RMP Riparian Reserves;

Component 2 – Key Watershed: by establishing that the Mainline II Thinning Project 2 is not within a key watershed,

Component 3 – Watershed Analysis: The *South Fork Alsea River Watershed Analysis* (SFAWA) was completed in 1995. The following are watershed analysis findings that apply to or are components of this project:

- Stream portions with low potential have the greatest need for riparian and stream restoration. Peak Creek appeared to be the most heavily impacted subwatershed.. (SFAWA pp. 60, 61)
- Enhance entire fifth order channel of Peak Creek. (SFAWWA p. 7)

Component 4 – Watershed Restoration: by felling trees in streams will trap sediment, reduce stream gradients and improve fish habitat.

In addition I have reviewed this project against the ACS objectives at the project or site scale with the following results. The no action alternative does not retard or prevent the attainment of any of the nine ACS objectives because this alternative will maintain current conditions. The Selected Action does not retard or prevent the attainment of any of the nine ACS objectives for the following reasons.

Table 1: Project' Consistency with the Nine Aquatic Conservation Strategy Objectives

ACS Objective	How Project Meets the ACS Objective
1. Maintain and restore distribution, diversity, and complexity of watershed and landscape features to ensure protection of aquatic systems.	Dropping trees into the channel will allow habitat conditions to increase in complexity and diversity for resident fish (EA p. 53), thereby restoring distribution, diversity and complexity of watershed and landscape features.
2. Maintain and restore spatial connectivity within and between watersheds.	Fish habitat and fish passage will be enhanced in the project area, increasing movement up and downstream for fish, and therefore increasing connectivity within and between watersheds.
3. Maintain and restore physical integrity of the aquatic system, including shorelines, banks, and bottom configurations.	It is likely that trees felled that fall into a tributary of Peak Creek, may cause a small, short term increase in turbidity due to bank scouring. However, increases in turbidity will be very short term and a very small amount due to vegetation on stable banks. This increase in turbidity will likely settle out just down stream due to the low depositional nature of this stream (EA p. 52).
4. Maintain and restore water quality necessary to support healthy riparian, aquatic, and wetland ecosystems.	Stream temperature: an insignificant number of trees will be cut for Project 2, therefore there will be no effect on stream shading in adjacent streams. Sedimentation and stream turbidity: Small, short term increases in turbidity are likely due to bank scouring. However, increases in turbidity will be very short term and a very small amount due to vegetation on stable banks. This increase in turbidity will likely settle out just down stream due to the low depositional nature of this stream (EA p. 52-53).
5. Maintain and restore the sediment regime under which system evolved.	The direct and indirect effects to water quality, hydrological function and stream channel conditions will be near identical to those for Project 1 with the exception of short-term channel condition in the affected stream. In the short term, the addition of large wood may produce some increased turbidity and sedimentation. Over the long term, increased wood can improve channel function and aquatic habitat (EA p. 40-41).
6. Maintain and restore instream flows.	The cumulative effects analysis for risk of increases to peak flows will not be significantly different from Project 1 (EA p. 40-41).
7. Maintain and restore the timing, variability and duration of floodplain	It is possible that addition of wood to the channel could cause sediment build-up and stream aggradations which could eventually increase stream access its floodplain. This will be a restoration of floodplain inundation. There are no meadows or wetlands in Project 2.

ACS Objective	How Project Meets the ACS Objective
inundation and water table elevation in meadows and wetlands.	
8. Maintain and restore the species composition and structural diversity of plant communities in riparian zones and wetlands to provide thermal regulation, nutrient filtering, and appropriate rates of bank erosion, channel migration and CWD accumulations.	There will be little or no change in riparian vegetation on banks or within the riparian zone along the tributary of Peak Creek.
9. Maintain and restore habitat to support well distributed populations of native plant, invertebrate, and vertebrate riparian-dependent species	This project will promote complex and diverse habitat types for fish in the project stream. Dropping trees into the channel will increase complexity and diversity of habitat for resident fish (EA p.53), aquatic invertebrates and riparian-dependent species such as amphibians.

IV. Alternatives Considered

The EA analyzed the effects of Alternative 1, the Proposed Action, Alternative 2, the “No Action” alternative. Complete descriptions of the "action" and "no action" alternatives are contained in the EA, pages 40-43.

V. Decision Rationale

Considering public comment, the content of the EA and supporting project record, the management recommendations contained in the *South Fork Alsea River Watershed Analysis*, and the management direction contained in the RMP, I have decided to implement the selected action as described above. The following is my rationale for this decision.

1. The selected action:
 - Meets the purpose and need of the project as shown in *Table 2*.

- Complies with the *Salem District Record of Decision and Resource Management Plan*, May 1995 (RMP) and related documents which direct and provide the legal framework for management of BLM lands within the Salem District (EA pp. 1 & 2).
- The Mainline II Thinning Project 2 is in full and complete compliance with the *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. No additional surveys are planned for the area as currently designed.
- Will not have significant impact on the affected elements of the environment (EA FONSI pp. i-iii) beyond those already anticipated and addressed in the RMP EIS.
- Has been adequately analyzed.

Table 2: Comparison of the Alternatives with Regard to the Purpose of and Need for Action

<i>Purpose and Need (EA section 2.1)</i>	<i>No Action</i>	<i>Selected Action</i>
The purpose of this project is to promote complex and diverse habitat types for fish in the tributary stream of Peak Creek. Felling and leaving trees in this stream will add a supply of new wood that will allow habitat types to increase in complexity and diversity for resident fish.	Does not meet. LWD in the stream system will continue to be a limiting factor for quality fish habitat, as there is little potential for the natural recruitment of large wood from adjacent stands. The amount of pool area in this tributary of Peak Creek is so low, species that depend on pool habitat (including cutthroat trout) will not likely increase their use of this stream segment.	Meets. Felling and leaving trees in the channel will increase complexity and diversity of habitat conditions for resident fish. Immediate benefits to fish habitat will occur in this reach. Logs will provide structure for in-stream diversity, slow water velocity, create pools, increase pool depth and trap gravels for spawning habitat.

2. The No Action alternative was not selected because it does not meet the Purpose and Need directly, or delays the achievement of the Purpose and Need, as shown in *Table 2*.

VI. Public Involvement/ Consultation/Coordination

Scoping: A scoping letter, dated November 23, 2005, was sent to 26 potentially affected and/or interested individuals, groups, and agencies. One response was received during the scoping period.

A description of the project was included in the December 2005, and March, June and September 2006 project updates which was mailed to more than 1070 individuals and organizations to solicit comments on the proposed project.

Comment Period and Comments:

The EA and FONSI were made available for public review from January 8, 2007 to February 6, 2007. The notice for public comment was published in a legal notice by the *Gazette Times* newspaper.

Two comment letters were received. The first letter was from the Confederated Tribes of Grande Ronde Community of Oregon. The second letter was received from the Oregon Wild. Neither letters contained comments concerning Project 2.

Consultation/Coordination:

Wildlife:

The Mainline II Thinning Project 2 is considered to be a no effect to spotted owl and marbled murrelet because the project will have no negative impact on owl nesting/foraging/roosting habitat and no substantial impact on dispersal habitat. The project will have no impact on murrelet potential or suitable habitat since there is none present.

Fish:

Consultation with NOAA NMFS is required for all actions which 'may affect' ESA listed fish species and critical habitat. The area where the proposed action is located, one unnamed stream, is tributary to Peak Creek in the South Fork Alsea River. There are no fish species listed as threatened or endangered under the Endangered Species Act (ESA), as amended, in the project area or in the Upper Alsea Watershed. Project 2 will have no effect on designated Critical Habitat for the same reasons in that the project will have no effect on the ESA listed fish species.

Protection of Essential Fish Habitat (EFH) as described by the Magnuson/Stevens Fisheries Conservation and Management Act and consultation with NOAA NMFS is required for all projects which may adversely affect EFH of Chinook and Coho Salmon. The proposed Mainline II Thinning Project 2 is not expected to adversely affect EFH due to distance of proposed activities associated with the project from occupied habitat. Access to project area streams is blocked by a natural waterfall (Green Peak Falls) several miles downstream from the project area. Consultation with NOAA NMFS on EFH is not required for this project. The proposed actions addressed under this project will meet the Project Design Criteria established in the *Endangered Species Act Section 7 Formal Programmatic Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Fish Habitat Restoration Activities in Oregon and Washington, CY2007-CY2012*.

Conclusion

I have determined that change to the Finding of No Significant Impact (FONSI – January 2006) for the Mainline II Thinning Project 2 is not necessary because I've considered and concur with information in the EA and FONSI. The comments on the EA were reviewed and no information was provided in the comments that lead me to believe the analysis, data or conclusions are in error or that the proposed action needs to be altered. There are no significant new circumstances or facts relevant to the proposed action or associated environmental effects that were not addressed in the EA.

This decision may be appealed to the Interior Board of Land Appeals in accordance with the regulations contained in 43 Code of Federal Regulations (CFR), Part 4 and Form

1842-1. Form 1842-1 can be obtained from the Salem District website at <http://www.or.blm.gov/salem/html/planning/index.htm>.

If you appeal: A public notice for this decision is scheduled to appear in the *Corvallis Gazette Times* newspaper on Saturday, October 13, 2007. Within 15 days of this notification, a *Notice of Appeal* must be filed in writing to the office which issued this decision – Marys Peak Field Manager, Bureau of Land Management, 1717 Fabry Road SE, Salem, OR, 97306. A copy of the *Notice of Appeal* must also be sent to the BLM Regional Solicitor (see Form 1842-1). The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your *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 and to the Board 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 you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay: Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

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

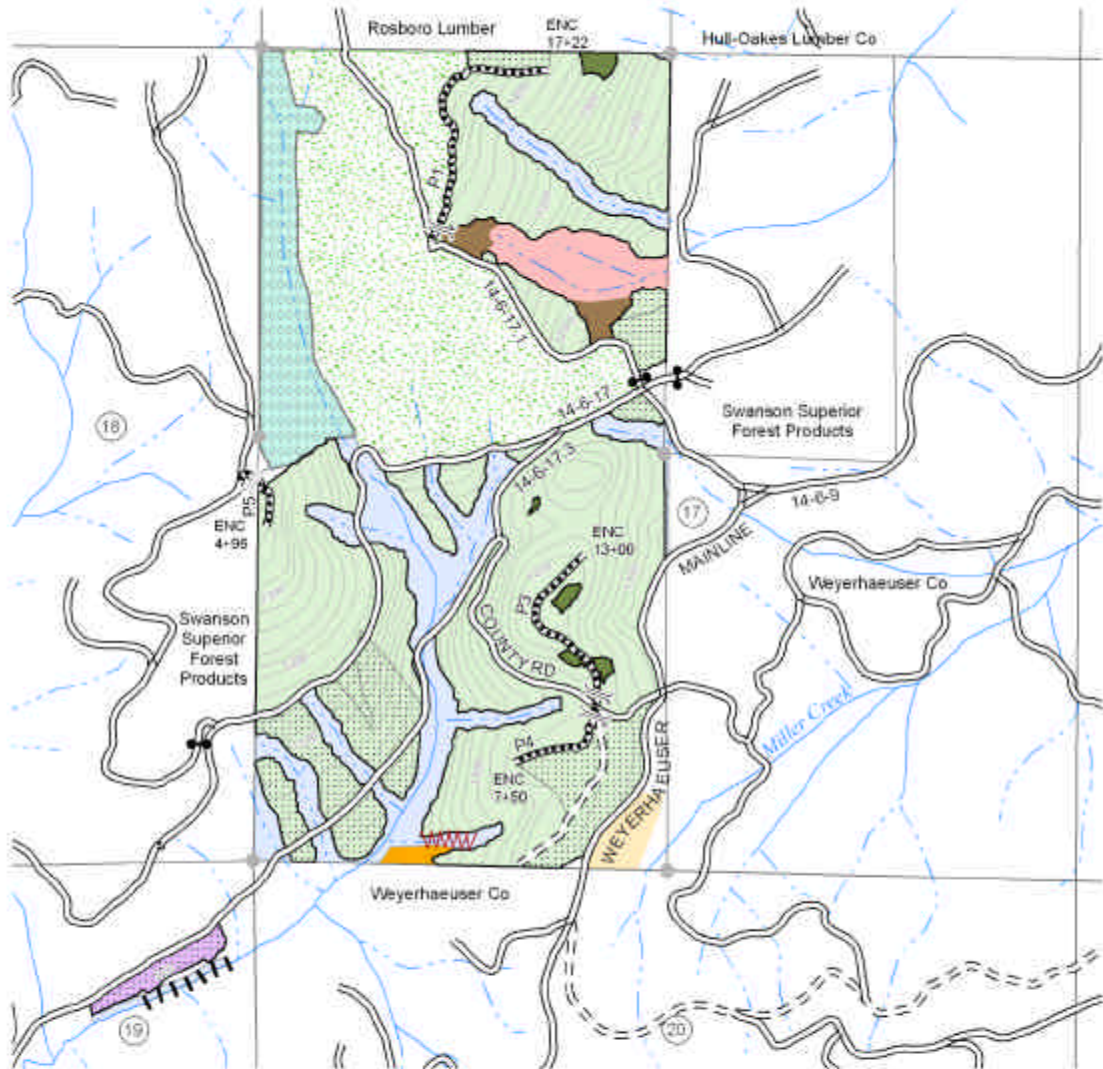
Statement of Reasons: Within 30 days of the filing of the *Notice of Appeal*, a complete statement of reasons why you are appealing must be filed with the Interior Board of Land Appeals (see Form 1842-1).

If no appeals are filed, this decision will become effective and be implemented 15 calendar days after the public notice of the Decision Record appears in the *Corvallis Gazette Times*. The public notice is scheduled to appear in the *Corvallis Gazette Times* on Saturday, October 13, 2007.

Contact Person: For additional information concerning this decision, contact Gary Humbard (503) 315-5981, Marys Peak Resource Area, Salem BLM, 1717 Fabry SE, Salem, Oregon 97306.

Approved by: Trish Wilson
Trish Wilson
Marys Peak Resource Area Field Manager

10/9/07
Date



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|--|------------------------------|-----------------------------|---------------------------------|-------------------------------|-------------------------|--------------------------------------|-----------------------------|
| ● Found Corner | ● Gate | — Fishbearing Stream | — Non-fishbearing Stream | — Existing Road | — Natural Surface Road | — Road to be constructed and blocked | — Barrier to be constructed |
| Reserve Areas | | | | | | | |
| — Stream Protection Zone | — Nonforest - Hardwood Stand | — Low Density Conifer Stand | — Red Tree Vole Protection Area | — Logging Feasibility Problem | — Fungi Protection Area | — Untreated Riparian Reserve | — 2003 Dawson Thinning Area |
| Project 1 | | | | | | | |
| Unit 17A - 149 acres (Project 1) | | | | | | | |
| Unit 19A - 3 acres (Project 1) | | | | | | | |
| Ground-Based Yarding | | | | | | | |
| Skyline Yarding | | | | | | | |
| Full suspension required over stream | | | | | | | |
| Project 2 | | | | | | | |
| Large woody debris placement (Project 2) | | | | | | | |

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October 3, 2007