

Deschutes & Ochoco National Forests Crooked River National Grassland

- ▶ Deschutes & Ochoco National Forests Home
- ▶ About Us
- ▶ Contact Us
- ▶ Current Conditions
- ▶ Employment
- ▶ FAQ'S
- ▶ Fire & Aviation
- ▶ Maps & Brochures
- ▶ Newsroom
- ▶ Passes & Permits
- ▼ **Projects & Plans**

Schedule of Proposed Actions

Project Information

Plans, Analyses, Assessments

- ▶ Publications
- ▶ Recreational Activities
- ▶ Volunteering

▶ Newberry National Volcanic Monument

- ▶ Conservation Ed.
- ▶ Contracting
- ▶ Health
- ▶ Forest Products
- ▶ Geology
- ▶ Heritage
- ▶ Partnerships
- ▶ Plantlife
- ▶ Water/Fisheries
- ▶ Wildlife

▶ Links

▶ Evaluate Our Service

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Forest

Projects & Plans

Project Documents

Decision Notice & Finding of No Significant Impact

Bend Pine Nursery Land Conveyance Project

USDA Forest Service
Deschutes National Forest
Deschutes County, Oregon

Decision and Reasons for the Decision

Background

The Environmental Assessment (EA) for the Bend Pine Nursery Land Conveyance Project is available at the Deschutes National Forest, in Bend, Oregon. The EA documents the analysis of the proposed action, which is to convey through cash "sale" at market value approximately 185 acres (exact acreage is 184.62 acres) of the Bend Pine Nursery property out of federal ownership. The property being considered for conveyance is no longer essential for Nursery or other National Forest purposes, including for future administrative offices for the Deschutes or Ochoco National Forests. The property is available for conveyance under the authority of the Bend Pine Nursery Land Conveyance Act of November 22, 2000 (P.L. 106-526), hereafter referred to as the Bend Pine Nursery Act, or the Act.

The Act authorizes the Forest Service to sell or exchange any or all of its interests in the Bend Pine Nursery site (identified as Tract "A" in the Act), in addition to other identified properties, under such terms and conditions as the Forest Service may prescribe. The Act does not require that any of the property be sold or exchanged, but if the property is conveyed, the Act provides that the consideration or proceeds from the sale will be used for acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest or for a bunkhouse on the Umatilla National Forest. The Act provides that any sale or exchange shall be subject to the laws and regulations applicable to the conveyance and acquisition of land for the National Forest System, including the requirement of receiving market value for the property. The Act further provides that the Forest Service may solicit competitive offers for sale or exchange of the property under such terms and conditions as it may prescribe, with the Bend Metro Park and Recreation District being given the right of first refusal to purchase the Bend Pine Nursery property.

The Bend Pine Nursery Transition Team Report, approved by the Forest Supervisor on June 16, 2002, finds that by retaining at least 20 acres of the Bend Pine Nursery property, the Forest Service would retain flexibility in accommodating future administrative needs. At this time, the Bend Pine Nursery location is not being considered for new administrative offices; however, since the Forest Service will retain 25 acres for the existing seed extractory facility, future siting options and flexibility would be maintained. The 185-acre portion available for conveyance would not be needed by the Forest Service for any facilities.

The 185 acres of National Forest System land is part of a 210-acre parcel purchased in 1943. The property has been used by the Forest Service as a nursery and seed extractory for tree seedling operations, but the need for tree



Home

SCHEDULE OF
PROJECTS
PROJECT
INFORMATION

♦ By Administrative Unit

- Deschutes SO
- Bend/Fort Rock
- Crescent
- Sisters
- Ochoco SO
- Lookout Mtn.
- Paulina
- Crooked River NG

♦ Forest Health, Fire, Fuels, Vegetation Management

♦ Wildlife

♦ Recreation

♦ Land Acquisition

♦ Miscellaneous

PLANS, ANALYSES,
ASSESSMENTS

Deschutes National Forest1001 SW Emkay Drive
Bend, OR 97702

(541) 383-5300

Ochoco National Forest3160 N.E. 3rd Street
Prineville, OR 97754

(541) 416-6500

**Crooked River National
Grassland**813 S.W. Hwy. 97
Madras, OR 97741

(541) 475-9272



seedlings for reforestation has been greatly reduced in the last decade. Consequently, in 1995, the Chief of the Forest Service made the decision to terminate most operations, including seedling production, at the Bend Pine Nursery. A 25-acre portion in the southeast corner of the 210-acre parcel continues to be used as a regional seed extractory and will continue to operate at this site. The extractory facilities and approximately 25 acres will be retained by the Forest Service in federal ownership and will continue to serve future needs of the agency. The remaining estate (approximately 185 acres) is available for conveyance as further discussed in this decision. (Refer to attached site map).

The Bend Pine Nursery parcel borders the city of Bend, is more than five miles from the nearest National Forest System land, and is more than a mile from the nearest public land managed by the Bureau of Land Management (BLM). This 185-acre portion of the parcel is no longer essential for current and projected future program needs of the Forest Service. The parcel, being a portion of "Tract A" in the Bend Pine Nursery Act, is appropriate for sale or exchange under the Act with the proceeds being available for other National Forest purposes as specified in the Act.

Purpose and Need for Action

The primary purpose and need for this land conveyance is to meet the intent of the Bend Pine Nursery Act. The first purpose of this action is to serve the public interest by conveying out of Federal ownership a parcel that is no longer needed for Forest Service nursery operations and is not suited for National Forest management, in part because of its proximity to the rapidly growing urban areas of Bend. The conveyance will eliminate the costs of administration and maintenance of this unneeded property.

The second purpose and need for selling this parcel under the authority of the Bend Pine Nursery Act is to allow for proceeds of the sale to be deposited into an account and used for the acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest and the Umatilla National Forest (Sections 4 and 5 of the Act). The Deschutes National Forest is currently in the strategic planning process to analyze and identify options for the selection of replacement administrative facilities to meet their Bend area needs. Proceeds from the sale will help fund these facilities and allow the Forest Service to improve efficiencies and customer service, plus recognize cost savings by reducing existing high cost leases. A portion of the proceeds may be used for a bunkhouse needed on the Umatilla National Forest and any excess proceeds could be used for Forest Service acquisition of other lands and interests in Oregon.

The third purpose and need for this project is to ensure that the value of the estate proposed for conveyance is not unduly devalued. In any land conveyance transaction, receiving market value for the land is required by law, regulation, and policy, unless legislation specifically calls for some other practice. The Bend Pine Nursery Act (Section 3(c)), states that conveyance is subject to applicable laws and regulations for conveyance of National Forest System land. The estate to be sold will not be split or modified, in such a way that would adversely affect its market value, and therefore the financial return to the Federal Government and the American people.

The EA documents the detailed analysis of two alternatives. The proposed action (conveying the 185-acre parcel out of federal ownership) meets the identified purpose and need statements. The no action alternative (retaining the property in federal ownership) would not meet the purpose and need statements.

Decision and Rationale

Based upon my review of all alternatives and the results of the analysis documented in the EA, I have decided to implement Alternative 2 as described in the EA. Selection of this alternative authorizes the sale of the federal assets of the Bend Pine Nursery property that are no longer essential for National Forest purposes. The estate that I have decided to convey out of Federal ownership includes approximately 185 acres of land, 5 buildings or structures (pump house, open storage, chemical building, outhouse, and outhouse building), 157 acres of surface irrigation water rights, a water well, groundwater rights for supplemental irrigation and frost protection, and several easements associated with the property (including an irrigation pipeline, existing road easements, and planned easements or conversions from special use permits), as described in the EA.

Surface irrigation water rights from the Swalley Irrigation District are appurtenant to the land and may be offered with the land in a sale transaction. The groundwater rights consist of two parts: supplemental irrigation and frost protection. The supplemental irrigation groundwater right is tied to the primary surface right and may be sold with the surface irrigation rights; however, the frost protection groundwater right for the existing well is transferable and may have extra value, separate from the land. I propose to sell all water rights, including the frost protection groundwater right. If it is determined through appraisal or other analysis that any or all of the water rights have a higher and measurable sale value separate from the land being sold, and if it will not devalue the land being sold, I reserve the right to value and sell any or all of the water rights separately and apart from the land. As required by the Bend Pine Nursery

Act, Bend Metro Parks and Recreation District would have a right of first refusal to purchase any water rights that are sold separately.

Deschutes County has a future need to obtain an 80-foot wide road easement for an extension to 27th Street, and the Forest Service previously approved granting an easement in a 1993 Forest Service Decision Memo. If the property is sold before an easement for construction is issued by the Forest Service, the County would secure the needed easement from the new property owner instead of from the Forest Service.

The Bend Pine Nursery property will be sold at not less than current market value (established by the Forest Service), under the terms and conditions of a Purchase and Sale agreement. As required in the Bend Pine Nursery Act (Sec. 3(c)), conveyance would be subject to applicable Forest Service laws and regulations, which would include those relating to valuation and administrative actions for processing a land sale.

Selection of Alternative 2 best meets the purpose and need, and serves the public interest by conveying out of public ownership a parcel of land that is no longer needed for Forest Service nursery operations, is not suited for National Forest management because of its proximity to the rapidly growing urban areas of Bend, and its lack of resource management characteristics. The parcel is surrounded by private land and is isolated from other federal lands. The sale of this parcel will provide for more efficient management of National Forest lands, eliminating the ongoing maintenance costs associated with land, structures, and improvements that are no longer needed.

My selection of Alternative 2 will meet the second purpose and need of this project, in that it will allow for the proceeds of the sale to be deposited into an account that can be used for the acquisition of local Forest Service administrative and visitor facilities in the Bend area.

Selection of Alternative 2 will meet the third identified purpose and need for the project, in that the parcel would be conveyed without adversely affecting the market value of the estate in the conveyance process. If it is determined that any of the water rights have a higher and measurable value as a separate estate without devaluing the land, it may be in the public interest to sell them separately. Therefore, I am reserving the right to sell the water rights separately, although still subject to the terms of the Bend Pine Nursery Act and the Park District's right of first refusal.

The administrative determination concerning the method and terms of sale is not a part of this Decision and will be made upon completion and approval of the appraisal for the property. If the administrative determination is made to offer the property for sale directly to the Bend Metro Parks and Recreation District or another buyer, that party will be required to accept the offer to purchase the property for cash at the current approved appraised value and under terms and conditions of a Purchase and Sale Agreement. If the offer to purchase is not accepted within the time allowed, the Forest Service will reevaluate sale of the property under the guidelines of the Act and under normal property sale procedures. The property may be exposed to the open market and competitive bids will be solicited under criteria developed for the sale.

Specific terms and conditions of a sale will be negotiated between the Forest Service and the buyer, and agreed to in a binding Purchase and Sale Agreement. The Forest Service will consider granting a short-term temporary special use permit to the buyer prior to completion of the sale, if needed to allow for maintenance of the property, studies and planning, or other purposes provided there is no site disturbance prior to conveyance. Details and terms of such a permit, including temporary access and any appropriate market rental fee, would be very specific and stipulated in a permit.

Other Alternatives Considered

In addition to the selected alternative, I reviewed the Alternatives Eliminated from Detailed Study and considered the No Action alternative, which was evaluated in detail. An evaluation and comparison of the selected alternative (Proposed Action) and the No Action alternative can be found in the EA on pages 8-26.

Alternative 1, No Action

Under the No Action alternative, the property would remain in federal ownership. In this alternative, the sale would not occur. The Forest Service would continue to expend funds for maintenance and associated costs for the land, structures, irrigation system, and well, while at the same time, having no use for the property. This alternative was not selected because it does not meet the purpose and need for the action as described in the EA and it would not benefit the Forest Service.

Why Selling Specifically to the Bend Metro Park and Recreation District was not Considered

As described in Section 1.4, Decision to be Made, in the Environmental

Assessment, my decision includes only a decision about the estate to be offered for conveyance. Selection of a buyer, methods of conveyance, and valuation of the estate are not a part of this decision. These are administrative determinations or actions that would occur as part of the conveyance process and are separate from the environmental analysis conducted under the NEPA.

The Forest Service acknowledges and understands that there is a great deal of interest expressed by the public regarding to whom the property would be sold. All but one of the 132 individuals and groups who commented on the EA urged the Forest Service to sell the Bend Pine Nursery to the Bend Metro Park and Recreation District. They felt that selling the property to the District best meets the intent of Congress and of the Act and is important to the Bend community. While I understand this is an important issue, it is not within the scope of the decision to be made, for my reasons stated above. However, this would be addressed as we proceed with implementing the Park District's right of first refusal to purchase the estate identified for conveyance, as provided for in the Bend Pine Nursery legislation.

Public Involvement

As previously described, the need for this action began in 1995 when it was determined that the Bend Pine Nursery was no longer needed for seedling production, and culminated in November, 2000 when the Bend Pine Nursery Act was signed into law. A proposal to convey the Bend Pine Nursery out of federal ownership was first listed in the Schedule of Projects (SOP) in the Winter, 2001 issue of the SOP, and in each subsequent issue. On June 4, 2001, a public notice describing the proposed sale of the Bend Pine Nursery property was sent to more than 500 individuals, groups, and agencies. Residents living within 1/4 mile of the Bend Pine Nursery were included in the mailing. In addition to the public notice, a number of articles appeared in *The Bulletin* (Bend, Oregon) in June and July, describing the project. Sixty-one letters or forms were received (see Administrative Record). On July 16, 2001, the Forest Service held a public forum to discuss the proposed conveyance.

On May 24, 2002, copies of the EA were sent to all groups and individuals who commented on the proposal during scoping, or otherwise requested a copy. A Notice of Availability of the Bend Pine Nursery Land Conveyance Project EA for public comment was also mailed to more than 500 addresses at that time. A legal notice that notified the public of the 30-day comment period on the final EA was published in *The Bulletin* on June 12, 2002. One hundred thirty-two letters or comment forms were received. The Bend Metro Park and Recreation District held a public meeting on June 21, 2002, in order to seek input on the possible purchase of the property, citing authority under the Act (Section 3(e)(3)) that allows the Bend Metro Park and Recreation "right of first refusal" to purchase the Bend Pine Nursery. The Park District requested that the Forest Service attend to answer any questions pertinent to the NEPA document or decision to be made. At the public meeting, the Park District presented alternative park development proposals for the site and answered questions. Many of the comment letters received by the Forest Service during the EA comment period resulted from this meeting.

During scoping for this project, the Forest received comments from the public, other agencies, and groups. Most issues or concerns raised by the public related to potential future uses of the land, how those future uses might impact the parcel as open space, and how public access might be changed. The issue of open space and public access is indirectly addressed in the Bend Pine Nursery Act, in that it gives the Park District the right of first refusal to purchase the property.

Another issue brought up during scoping was how to sell the property. As stated earlier, this is a Forest Service administrative determination that will be made during the conveyance process and is not a part of issue development or consideration for this decision.

Given the comments and concerns raised by the public and the decision to be made, the interdisciplinary team identified no key issues, and determined that no other alternatives to the proposed action needed to be developed or analyzed in detail. (See EA pages 3-5). Other issues were identified that respond to concerns raised during scoping, and these were evaluated in the effects section of the EA. (See EA pages 8-26).

Public Benefit Determination/Bend Pine Nursery Act Compliance

I have determined that the public interest will be well served and the requirements of the Act will be met through sale of the Bend Pine Nursery property as described above. Sale will help achieve better management of Federal lands and help to meet the needs of the state and local community. Sale of the property will meet the intent of the Act and the public interest will be served by conveying out of Federal ownership property that is no longer needed for Forest Service nursery operations and is not well suited for continued management as

part of the National Forest System. The general public will benefit from eliminating the costs of administration and maintenance of this property and from the use of the sale proceeds to acquire other administrative property needed by the Forest Service.

Local public input received through the scoping and environmental analysis process indicates that the community is concerned that there is a continuing need for open space and developed recreational opportunities in the Bend area. The Park District believes that the Bend Pine Nursery property provides a unique recreation opportunity for the central Oregon area. With the rapid growth the area has experienced, the need for open space and park development has become more important and more urgent in light of increasing urban development. The Bend Pine Nursery Act recognized this community need when it granted the Park District the right of first refusal to purchase the property. The Park District's 2002 "Draft Pine Nursery Conceptual Master Plan" addresses the demonstrated need for a community based regional park facility. The Bend Nursery site would appear to be highly suitable for help meet this need.

Selling of the property, with the Park District having the right of first refusal, would serve the public interest and provide that the interests of the local public, as expressed in their formal comments, could be met. Sale at market value would meet the requirements of the Act, and provide that the greater public receives market value for the Federal parcel. Selling the property would also be in the best interest of the Forest Service and the broader national public, as it would eliminate the need to continue to spend public funds to support and maintain an underutilized facility. Proceeds of a sale will help fund the purchase, construction, or acquisition of needed administrative facilities to better serve the Forest Service's customers, which is also in both the local and national public interest.

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. My finding of no significant environmental effects is not biased by the beneficial effects of the action. The analysis considers both beneficial and adverse effects. (See EA pages 8-26).
2. There will be no significant effects on public health and safety, because the conveyance of these lands from Federal ownership does not in itself have any effect on public health and safety. A hazardous materials survey has been conducted for the property, and the findings are described in a report entitled the Engineering Evaluation/Cost Analysis for the Bend Pine Nursery. Remedial clean up of several small sites with residual materials from previous agricultural use of the property will be completed by the Forest Service and accepted by Oregon Department of Environmental Quality (DEQ) prior to the parcel being conveyed out of federal ownership. (See EA pages 24-25). In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), conveyance documents will include a covenant that the United States will conduct any corrective action for hazardous substances attributable to the time when the United States owned and operated the the property. Conveyance documents will include a clause granting the United States access to the property to conduct the response or corrective action.
3. There will be no significant effects on unique characteristics of the area, because there are no unique characteristics or ecologically critical areas such as historic or cultural resources, park lands, wetlands, wild and scenic rivers, range or forest land on this parcel. The property meets the criteria set forth in the USDA Land Policy (7 CFR 6 part 657) as Prime Farmland for the 157 acres of irrigated land. The intent of this directive is to minimize the impact of agency activities on Prime Lands. Without a surface irrigation right, this land would not be considered Prime Lands. (See EA pages 18-26). Once in private ownership, the parcel would be subject to local land use authorities reflecting the urbanization of the area. Neighboring residential areas, zoning, and more lucrative uses would limit the site from being used as productive or prime farmland in the future. Statistics have been reviewed for Deschutes County showing that as of 1992 there were a total of 139,483 acres of land in farms in the County. Of this, 39,656 acres were cropland and 83,937 acres were range and pasture lands. I believe that potential loss of 157 acres of farmland is not significant in the context of total farmland in the County.
4. The effects on the quality of the human environment are not likely to be highly controversial. There is no known scientific dispute or controversy over the impacts of the project. The EA provides factual information to support the

decision. (See EA pages 8-26).

5. We have considerable experience with the types of activities to be implemented. The effects analysis shows that the effects are not uncertain and do not involve unique or unknown risks. (See EA pages 8-26).
6. The action is not likely to establish a precedent for future actions with significant effects, because the size and scope of this conveyance is specific and relatively small, and the Region has only one tree nursery that is no longer essential for National Forest purposes. The Forest's land adjustment program is guided by established law, regulation, and policy, with each case evaluated individually, and typically each case has its own unique circumstances and issues. (See EA pages 1-2).
7. The cumulative impacts are not significant. Impacts to the social environment would be small in comparison with the ongoing impacts of population growth regardless of the conveyance of the Bend Pine Nursery property. There would be a negligible cumulative impact to the natural resource of the area or of the Forest. (See EA page 24).
8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, because there are no listed or eligible sites. The action will also not cause loss or destruction of significant scientific, cultural, or historical resources, because inventories of the property and structures did not result in locating any significant historic or pre-historic archaeological resources. An evaluation of the buildings and landscape indicates that these features are not eligible for the National Register of Historic Places (see EA page 18). The Oregon Historic Preservation Officer has been consulted (see EA page 27).
9. The action will not affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act (ESA) of 1973, because there are no endangered or threatened species or habitats as listed under the ESA associated with the project area (see EA page 23). The US Fish and Wildlife Service was consulted through the 2001-2003 Programmatic Biological Assessment (BA). This project meets all appropriate project design criteria found in the BA, and so no further consultation was necessary (EA page 27). The environmental analysis finds that there will be no cumulative effect or loss of viability across the Forest for any potential, endangered, threatened, or sensitive (PETS) species, or forest species of concern with implementation of this project.
10. The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see EA pages 8-26). The action is consistent with the Deschutes National Forest Land and Resource Management Plan (LRMP) (see EA page 24), and with the amended Facility Master Plan for the Deschutes National Forest.

Findings Required by Other Laws and Regulations

This decision to implement Alternative 2, (conveying out of federal ownership the portion of the Bend Pine Nursery property that is no longer needed for National Forest purposes, including approximately 185 acres of land, 5 buildings or structures, 157 acres of surface irrigation water rights, a water well, groundwater rights for supplemental irrigation and frost protection, and several easements) is consistent with the intent of the 1990 Forest Land and Resource Management Plan (LRMP). Long term goals and objectives listed in the LRMP on pages 4-87, will be met by meeting the Forest Plan's land adjustment goal of providing for efficiency of management. The project was designed in conformance with Forest LRMP standards and incorporates appropriate LRMP guidelines. The LRMP identified "Group 4" lands as those isolated parcels of federal land and within non-federal lands being managed for intensive uses (e.g. high yield forestry). Federal lands in this group will normally be available for disposal. The Bend Pine Nursery lies within this Group 4 area (LRMP, page 4-87).

Irreversible and irretrievable commitments of resources are minimal and do not include impacts to timber production, wildlife habitats, soils, or water quality that have not been addressed in the Final Environmental Impact Statement for the Forest LRMP (EA, page 25).

Under Section 120(h) of CERCLA, the Forest Service is required to identify whether property is potentially contaminated prior to conveyance. If the property is found to be contaminated, the Forest Service is required to clean up the contamination prior to conveyance, which is described above in FONSI item #2. (EA, page 24-25).

The conveyance complies with Executive Orders 11988 and 11990 (floodplains and wetlands), and no wetlands or floodplains would be affected (see EA, page 26).

The conveyance complies with Executive Order 12898, Environmental Justice. Effects are expected to be similar for all human populations, regardless of nationality, gender, race, or income (see EA page 24).

This decision complies with all applicable laws and regulations, including but not limited to the Bend Pine Nursery Land Conveyance Act (PL 106-526).

Implementation Date

If no appeal is received, implementation of this decision may occur on, but not before, 5 business days following the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

Administrative Review or Appeal Opportunities

This decision is subject to appeal in accordance with 36 CFR 215.7. A notice of appeal must be in writing and clearly state that it is a Notice of Appeal being filed in pursuant to 36 CFR 215.7. Appeals must be filed with the Reviewing Officer within 45 days of the date the legal notice of this decision appears in the Oregonian (Portland, Oregon). File a notice of appeal with:

Dale N. Bosworth
Chief, USDA Forest Service
STOP CODE 1104
1400 Independence Avenue, SW
Washington, D.C. 20250-1104
Attention: 1570 Appeals, NFS-EMC STAFF

For Further Information

For additional information concerning this decision or the Forest Service appeal process, contact Susan Skakel, Forest Planning and Environmental Coordination, at (541) 383-5563 or Alice Doremus, Project Manager, at (541) 383-5580, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon, 97701.

/s/ Linda
Goodman
January 15, 2003

LINDA
 GOODMAN
 Regional Forester
 Pacific Northwest Region (R-6)

Date

[Link to EA](#)

[Link to location map and map showing lands to be conveyed](#)

[top](#)

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