

DECISION MEMO

EMPIRE STONE COMPANY, LLC REQUEST TO EXPLORE FOR DECORATIVE STONE

USDA Forest Service
Bend/Fort Rock Ranger District, Deschutes National Forest
Deschutes County, Oregon
T. 18 South, Range 12 East, Section 6, (Willamette Meridian)

I. DECISION TO BE MADE

A. Decision

I have decided to issue a special use permit for prospecting to Empire Stone Company, LLC (Empire Stone) to explore for decorative stone material.

B. Location of the Project

The project area is located south of the High Desert Museum and east of Highway 97 in Township 18 South, Range 12 East, Section 6, Willamette Meridian (See Exhibit A). The project area is located in Deer Habitat Management Area 7 as designated under the Deschutes National Forest Land and Resource Management Plan (Forest Plan). The goal of the management area is to “To manage vegetation to provide optimum habitat conditions on deer winter and transition ranges...” as described in the Forest Plan, page 4-113. No activities will be within Old Growth Management Areas. No permanent lakes or streams are located within the project area. Activities will not occur within Inventoried Roadless Areas.

II. PURPOSE AND NEED FOR ACTIVITIES

A. Purpose and Need

The Bend-Fort Rock Ranger District received a letter in April of 2005 from Empire Stone requesting permission to explore for decorative stone material. Empire Stone is a commercial company that sells stone for masonry and landscape use. The company is interested in developing new sources to meet the demands for their products generated by the building boom in Central Oregon. The primary purpose for allowing the exploration is to determine if there is an economically viable stone source in the area described above.

B. Description of Project Activities

The project will consist of digging up to 10 holes approximately 5'x5' in size in pre-selected locations to determine the depth and range of the desired material. When rock is encountered, it will be hand-drilled to test for quality. Heavy equipment needed consists of a backhoe or excavator and pickup truck to haul the drill equipment and generator to power the drill. No trees will be removed. All excavated sites will be filled in.

C. Measures to Reduce or Eliminate Unwanted Impacts Include, But Are Not Limited To:

Measures to reduce the risk of noxious weed introduction and spread.
Protection or avoidance of cultural sites

Botany

1. Clean all equipment before entering National Forest System lands. Remove mud, dirt, and plant parts from project equipment before moving it into the project area and before proceeding to the next project.
2. Known weed sites will be flagged prior to commencement of the project and the permittee will be given instructions as to the locations of the site(s) and the operator will not drive machinery or park vehicles on or adjacent to these sites.

Archaeology

1. Avoid known cultural sites. The permittee will be required to cease operations immediately if a previously unknown site is discovered.

III. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 section 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

This project may be categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

A. Category Of Exclusion

The appropriate category of exclusion is found in the Forest Service Handbook 1909.15 Section 31.2 Category 8: short-term (one year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road or use and minor repair of existing roads.

B. Relationship To Extraordinary Circumstances

In determining the appropriateness of using the categorical exclusion, a determination of the potential impact to the resource conditions identified in FSH 1909.15 Section 30.3(2) must be made. The following is the list of the potential effects to the resource conditions from the project activities.

1. Federally listed Threatened or Endangered Species or designated habitat or species proposed for Federal listing or proposed critical habitat

No federally listed threatened or endangered plant, wildlife or aquatic species or their habitat occurs within the project area.

2. Forest Service Sensitive Species

Plant species: There are no sensitive plant species or habitat within the project area.

Aquatic Species: There are no sensitive aquatic species or habitat within the project area. There are no wetlands, streams or lakes within the project area.

Wildlife Species: There are no sensitive wildlife species or habitat within the project area.

3. Flood plains, wetlands, or municipal watersheds

Floodplains: Executive Order 11988 provides direction to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, "...the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year."

There are no floodplains within the project area

Wetlands: Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, "... areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and

reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.”

There are no wetlands within the project area.

Municipal Watersheds: There are no municipal watersheds within the project area.

4. Congressionally designated areas such as wilderness, wild and scenic rivers, and national recreation areas

The planning area is located approximately 4 miles east of the Deschutes River Wild and Scenic River corridor. No activities would take place adjacent to or within the river corridor.

The planning area is located approximately 1 mile east of Newberry National Volcanic Monument. No activities would take place adjacent to or within the Monument.

The planning area is not located within a wilderness or a national recreation area.

5. Northwest Forest Plan

The planning area is located outside of and to the east of the Northwest Forest Plan boundaries.

6. Inventoried Roadless Areas

There are no inventoried roadless areas in the planning area. The project would not construct any permanent or temporary roads.

7. Research Natural Areas

There are no existing or proposed Research Natural Areas in the planning area.

8. American Indian and Alaska Native religious or cultural sites, archaeological sites or historic properties of areas

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites

that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items.

This decision complies with the cited Acts. Surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision. Consultation will occur under the Programmatic Agreement with the State Historic Preservation Office (SHPO). All cultural sites will be avoided.

Conclusion

Based on the conclusions regarding the effect to the resource conditions listed above, no extraordinary circumstances exist with the proposed project activities that may result in a significant direct, indirect, or cumulative effect on the quality of the human environment.

C. Other relevant resource conditions considered

Noxious Weeds: This project poses a ‘HIGH’ risk of noxious weed introductions or spread since there are two known weed sites in or near the project area. Results of surveys are on file at the Bend-Fort Rock District office. The mitigation measures discussed above will be implemented to avoid introducing new populations of weeds and to avoid spreading the known sites.

IV. PUBLIC INVOLVEMENT

A scoping letter was mailed to 58 individuals, organizations, and agencies on November 7, 2005. Also, a legal notice was also published in The Bulletin on November 8, 2005. The scoping period was closed on November 18, 2005. The following tribal governments were contacted with letters: Confederated Tribes of the Warm Springs Reservation, Burns Paiute Tribe, and the Klamath Tribes.

Two (2) commenters responded to scoping. The following concerns were raised:

Comment: “There is no need to start a new quarry on public land to obtain this material.”

Response: *National Forest System lands are open for removal of mineral materials. Removal of material is speculative at this time as this decision is limited to allowing exploration to determine if there is material, not removal of material.*

Comment: “Exploring (then mining) for decorative stone is a new corporate incursion onto the public domain that should not be allowed...Exploration often leads to mining and cannot be treated as a limited, benign activity.”

Response: *National Forest System lands are open for removal of mineral materials. Removal of material is speculative at this time as this decision is limited to allowing exploration to determine if there is material, not removal of material.*

The Decision Memorandum for the project was made available for a 30 day Notice and Comment period on December 21, 2005. Copies were mailed to 58 individuals, organizations and agencies. Also a legal notice was published in The Bulletin on December 21, 2005. The Notice and Comment period was closed on January 20, 2006. The following tribal governments were contacted with letters: Confederated Tribes of the Warm Springs Reservation, Burns Paiute Tribe, and the Klamath Tribes.

One commenter responded during the 30 day Notice and Comment period. The following concerns were raised:

Comment: “I feel the disruption to the land, animals, and ground waters caused by the heavy equipment and drilling is unwarranted.”

Response: *National Forest System lands are open for removal of mineral materials. Removal of material is speculative at this time as this decision is limited to allowing exploration to determine if there is material, not removal of material. Excavation will not occur deep enough to encounter ground water. Disruption to wildlife is not expected to occur due to the limited scope of the exploration project.*

V. FINDINGS REQUIRED BY OTHER LAWS

This project is consistent with the Deschutes National Forest Land and Resource Management Plan (Forest Plan) as required by the National Forest Management Act. The Plan is amended by Inland Native Fish Strategy, which provides standards and guidelines for protection of watersheds and riparian habitat conservation areas. There are no riparian habitat conservation areas within the planning area. The project is designed in conformance with Forest Plan standards and incorporates appropriate guidelines for Deer Habitat management allocations.

VI. APPEAL INFORMATION

This decision is subject to appeal pursuant to 36 CFR 215. Any written notice of appeal must be fully consistent with 36 CFR 215.14, “Appeal Content”. The notice of appeal must be filed hard copy with the Regional Forester, ATTN: 1570 APPEALS, 333 S.W. First Avenue, P.O. Box 3623, Portland, Oregon 97208-3623, faxed to (503) 808-2255, sent electronically to appeals-pacificnorthwest-regional-office@fs.fed.us, or hand delivered to the above address between 7:45 AM and 4:30PM, Monday through Friday except legal holidays. The appeal must be postmarked or delivered within 45 days of the date the legal notice appears in The Bulletin. The publication of the legal notice in The Bulletin is the exclusive means for calculating the time to file an appeal and those wishing to appeal should not rely on dates or timeframes provided by any other source. Electronic appeals must be submitted as part of the actual e-mail message, or as an attachment in Microsoft Word, rich text format or portable document format only. E-mails submitted to e-mail addresses other than the one listed above or in other formats than those listed above or containing viruses will be rejected. Only individuals or organizations who submitted substantive comments during the 30 day notice and

comment period may appeal. This project may be implemented 50 days after this legal notice if no appeal is received. If an appeal is received, the project may not be implemented until 15 days after the appeal decision.

For additional information concerning this decision, contact Linda Carlson, Special Uses Administrator at the Bend-Fort Rock Ranger District, 1230 NE Third Street, A-262, Bend, OR 97701 or via telephone at 541-383-4000. The project can also be viewed at the Deschutes National Forest website: www.fs.fed.us/r6/centraloregon/index.html.

Phil Cruz
PHIL CRUZ
District Ranger

2-13-06
Date