

North Berry Creek Unilateral Right-of-Way and Road Construction Permit

Bureau of Land Management
South River Field Office, Roseburg District Office
Environmental Assessment
EA# OR-105-08-01

Decision:

It is my decision to authorize road construction and timber hauling requested by Swanson Group, LLC, implementing Alternative Two of the North Berry Creek Unilateral Right-of-Way and Road Construction Permit Environmental Assessment (EA, p. 3).

Swanson Group, LLC is authorized to construct an extension to BLM Road No. 29-7-7.0 for the purpose of accessing private timberlands, located to the east of BLM-managed lands, in the S½SE¼ of Section 7, T. 29 S., R. 7 W., Willamette Meridian.

The road construction will be temporary in nature. As described in the EA (p. 3), upon completion of logging projected to take place between June and October of 2008, the road will be decommissioned by ripping the road bed, constructing waterbars, and seeding and mulching the road bed with native grasses. The road extension will be blocked at its point of origin to prevent further vehicular use.

Use of BLM Road Nos. 29-7-7.0, 29-7-18.2, and 29-8-1.0 by Swanson Group, LLC for the hauling of timber accessed by extension of Road No. 29-7-7.0 is also authorized, subject to the following restriction. As described in the EA (pp. 3 and 6), a part of the haul route passes through unsurveyed suitable murrelet habitat in the northeast corner of Section 13, T. 29 S., R. 8 W. within 65 yards of the occupied murrelet site. As a consequence, Daily Operational Restrictions on timber hauling will be required from April 1 until August 5, prohibiting hauling until two hours after sunrise and cessation of hauling two hours before sunset.

Rationale for the Decision

Implementation of Alternative Two of the North Berry Creek Unilateral Right-of-Way and Road Construction Permit EA will meet the objective of making BLM-administered lands available for rights-of-way needed for the removal of timber and forest products. Alternative One will not achieve this objective.

Public Comment

A 15-day period for public review and comment on the EA was provided, commencing with the legal notice of availability published in *The News-Review*, Roseburg, OR, on January 8, 2008. Copies of the decision were also mailed to state and federal government agencies, and to individuals and organizations expressing an interest in the project.

Comments on the EA were submitted by two parties. The comments largely expressed opinions that are not relevant to the action being authorized or raised issues over the management of private timber resources that are not within the BLM's administrative authority.

Selected comments are addressed below.

“The EA failed to give us the land allocation of the new road construction. From our perspective, this is one of the most important components in considering the environmental impacts.”

This was an oversight. The lands involved are allocated as General Forest Management Area. The land use allocation does not influence the environmental effects of an action, as the status of the lands merely establishes the pertinent management direction and objectives.

“We appreciate that the BLM will allow only a temporary new road. However, we are unclear on the methods used to decommission the road. The EA says, page 3: "Decommissioning would consist of ripping the road bed, constructing waterbars, and seeding and mulching to revegetate the roadbed and reduce the risk of erosion." The decision should make it clear that the revegetation of the road bed is with conifers, not with a grass seed mixture intended to inhibit conifer re-establishment . . .”

The EA provides a clear description of the manner in which the road would be decommissioned after use. Seeding and mulching with native grasses is necessary to prevent erosion, as described on page 3 of the EA, and to prevent establishment of noxious weeds and invasive non-native plants as discussed on page 10 of the EA. Planting the roadbed with conifer seedlings would not achieve these objectives.

“On page 11, the impacts of the no-action alternative was considered, which looked pretty horrendous, such as building a mid-slope road across the steep face of the slope or downhill yarding. However, Swanson Group also has the option of helicopter logging or deferring logging or a non-extractive land management option. Just because clearcutting, using the most damaging extractive techniques available, is their likely choice doesn't mean the BLM has to claim it is their only choice.”

As is described on page 1 of the EA, the private lands to be logged belong to the Delores P. Loftin Trust which has sold the timber deed to Swanson Group, LLC. Deffering logging is not a relevant option.

Swanson Group, LLC submitted a specific proposal to the BLM to build road, effectively limiting the range of alternatives to be considered. There would be no purpose in analyzing an alternative that would utilize helicopter yarding.

“The EA failed to disclose the impacts of downhill yarding - how far downhill would it be and if done with appropriate techniques, what ARE the environmental impacts of yarding downhill. The EA did not contain a map of the no-action alternative, so we are unsure where the potential mid slope road, or road downhill yarded to, would be.”

BLM's analysis of environmental effects is limited to the federal lands and resources involved. To speculate as to the site condition on private land and the exact location of roads that Swanson Group, LLC might build if the ridge top road was unavailable is neither required nor possible.

“How far exactly is the proposed road building into the outer edge of a Northern Spotted Owl home range? We think those boundaries are set for a reason and should not be short-changed in anyway. Otherwise, the letter of the law is not being met.”

The effect of habitat modification on spotted owls associated with forest management is assessed by assigning a generalized home range to each spotted owl site. As stated in the EA (p. 6), a Klamath Province home range is represented as a 1.3-mile radius circle centered on an owl activity center. Since the project site is on the outer edge of the home range, it follows that the project site is approximately 1.3 miles from the activity center.

A home range is not an administrative unit with fixed boundaries. The road construction was judged to have no effect to spotted owls for either habitat modification or disturbance. Consequently, no conferencing or consultation with the U.S. Fish and Wildlife Service was necessary, pursuant to the requirements of the Endangered Species Act. The project analysis and project implementation are in conformance with all applicable laws.

“No clearcutting including for road building purposes should happen near a community where people rely heavily on water from wells and springs. Everyone knows that Olalla is short on quantity of drinking water. Many people already must haul in their water supply late in the summer. Some people do year round. Water quality also must be considered. Once a water supply is contaminated it is very expensive to recover if not impossible. We object to any project that could possibly deplete or adversely effect the water supplies . . .”

The effects on the road construction and timber hauling were analyzed. As described in the EA (p. 8) there is only one registered surface water right for domestic use located within one mile of the project site. The point source is not connected to any stream and will not be affected.

Water quality and peak flows will not be affected, as discussed in the EA (p. 15) because the road will be built on a ridge top location and not connected to any drainage network, and because existing roads to be used will not increase the likelihood of sedimentation to stream channels or increased peak flows.

“When was the last time the area was surveyed for wildlife? We’ve owned this property since 1981. When we first moved there, we were told there were Spotted Owls living on the top ridge not far from the proposed action site. If you’ve not surveyed there for quite awhile, then we have the right to submit that information. We think marbled murrelet habitat should be surveyed rather than just accept it as “unsurveyed” marbled murrelet habitat. If there’s any chance of federally-threatened marbled murrelets in neighborhood, we want them protected.”

The spotted owls described in the EA are the same referred to in the comment. They reside to the south of Ben Irving Reservoir. As noted in the EA (p. 12), there is no suitable nesting, roosting and foraging habitat for spotted owls within 1,000 feet of the construction site that would require surveys. Marbled murrelet surveys were conducted in conjunction with a proposal for a trail around the reservoir, resulting in a determination that there was occupancy, as is discussed in the EA. Additional surveys for murrelets are unnecessary as no suitable nesting habitat is to be removed. Daily Operational Restrictions on timber hauling will alleviate the potential for disturbing nesting birds.

Wildlife

As discussed in the EA (p. 12), road construction on BLM-managed lands will occur on the outer edge of one occupied **northern spotted owl** home range but will not result in the removal of any suitable nesting, roosting and foraging habitat. The location is more than one mile from any activity center in this home range, and greater than 1,000 feet in distance from any unsurveyed suitable habitat. These distances are well in excess of the 65-yard disruption threshold for heavy equipment operation. Consequently, the road construction will have no effects to northern spotted owls associated with either habitat modification or disruption.

As described in the EA (pp. 12-13), road construction will not remove any suitable **marbled murrelets** nesting habitat on BLM-managed lands. The site of the construction is greater than 1,000 feet from any potential nesting habitat, a distance well in excess of the 100-yard disruption threshold for heavy equipment operation. Consequently, the road construction will have no effects to marbled murrelets associated with either habitat modification or disruption.

As described in the EA (p. 13) and noted above, in the northeast corner of Section 13, Road No. 28-7-12.0 crosses unsurveyed suitable habitat that is within 65 yards of a known occupied murrelet stand. As this is within the 100-yard disruption threshold, there is a potential for disturbance caused by noise from log hauling. In order to minimize the potential that adult murrelets would be disturbed when visiting the nest to feed offspring, a Daily Operational Restriction will be applied to log hauling activities.

Botany

As documented in Appendix C of the EA, surveys were conducted and no Special Status vascular plants, bryophytes or lichens were found. Consequently, no effect to any of these species is expected.

No know Bureau Sensitive fungi sites are located in proximity to the construction site. Since surveys are not practical, there may be unknown sites that could be lost as a result of the proposed road construction. Such a loss, if one were to occur, is not be considered likely to contribute to a need to list any species under the Endangered Species Act as the area that will be subject to disturbance would only be about one-quarter of an acre of early-seral forest.

Aquatic Habitat, Fish, and Essential Fish Habitat

As discussed in the EA (p. 14), road construction will have no effect on aquatic habitat conditions, because the construction site is on a ridge top far from any streams. The risk for sediment associated with hauling is judged to be negligible. Stream crossings on privately controlled roads along the haul route have little potential for sediment delivery to streams because crossings have low slope and flat approaches, limiting concentration of road derived sediment in ditches. Cross drains located above stream crossings reroute ditch runoff onto the forest floor where it quickly infiltrates and deposits sediment prior to entering stream channels.

The action will not affect Special Status fish species. Bureau Sensitive Umpqua chub and Oregon Coast coho salmon, also proposed for listing under the Endangered Species Act as a Federally-threatened species, are present in Olalla Creek but in areas downstream from Ben Irving Reservoir which is a barrier to upstream migration.

There will be no effect to Essential Fish Habitat because the project area is in excess of two stream miles above Ben Irving Dam which marks the upper limits of Essential Fish Habitat and none of the streams along the haul route are considered Essential Fish Habitat.

Water Quality

The road construction will be situated along a ridge top, on stable slopes with no connections to any streams there is no potential for sediment delivery to streams. The construction will increase road density within the Lower Olalla Creek seventh-field drainage by less than a one-tenth of one percent, which is not sufficient to create any measurable increases in peak flows associated with roads.

Existing roads that are authorized for timber hauling are paved or aggregate-surfaced roads with adequate drainage, and their use will not increase the likelihood of sedimentation to stream channels or increased peak flows.

Cultural/Historical Resources

As described in the EA (p. 9), the road construction and timber hauling will not affect any cultural or historical resources as past surveys have determined none are present.

Noxious Weeds

As stated in the EA (. 10), management practices that will be implemented in conjunction with authorization of the road construction permit will focus on preventing introduction of new weed infestations or the spread of existing ones, and will include:

- steam cleaning or pressure washing of heavy equipment used in logging and road construction to remove soils and other materials that could transport weed seed or root fragments, and
- use of native seed to revegetate the road bed and associated disturbed areas.

As a consequence there will be negligible changes in noxious weed populations.

Effective Date of the Decision

This is a lands decision on a right-of-way action made in accordance with governing regulations at 43 Code of Federal regulations (CFR) Subpart 2812. All BLM decisions issued under these regulations will become effective on the day after the expiration of the appeal period, 30 days following publication of the legal notice of decision, where no petition for a stay is filed, or 45 days after the expiration date of the appeal period where a timely petition for stay is filed, unless the Director of the Office of Hearing and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR § 4.21 (b).

Right of Appeal

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case” as provided by 43 CFR § 4.410 (d). If an appeal is taken, a written notice of appeal must be filed with this office by close of business (4:30 PM PST) not more than 30 days after the publication of the decision notice in *The News-Review*, Roseburg, Oregon. Only signed hard copies of a notice of appeal that are delivered to the Roseburg District Office will be accepted. Faxed or e-mailed appeals will not be accepted. Information for the filing an appeal is provided on the enclosed Form 1842-1

In addition to the applicant, Swanson Group, LLC anyone who has participated in the National Environmental Policy Act process for this project through the submission of public comments on the environmental assessment will qualify as a party to the case, as provided for in 43 CFR § 4.410 (b). However, in order to qualify as an appellant, a “part to the case,” you also have the burden of showing possession of a “legally cognizable interest” that has a substantial likelihood of injury from the decision, as described above. Furthermore, you may raise on appeal only those issues raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed, as provided in 43 CFR § 4.410 (c).

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay 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.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor, and Swanson Group, LLC at the addresses listed below, at the same time such documents are served on this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations at 43 CFR § 4.413 (a). At the end of your notice of appeal you must sign a certification that service has or will be made in accordance with the applicable rules found in 43 CFR §§ 4.410 (c) and 4.413, and specify the date and manner of such service.

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, MS 300-QC
Arlington, Virginia 22203

Regional Solicitor, Pacific Northwest Region
U.S. Department of the Interior
500 NE Multnomah Street, Suite 607
Portland, Oregon 97232

Swanson Group, LLC
P.O. Box 250
Glendale, Oregon 97442

The Board will review any petition for stay and may grant or deny the stay request. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing an appeal, you may deem the request for stay as denied, and my decision will remain in full force and effect until the Board makes a final ruling on the case.

Ralph L. Thomas
Field Manager
South River Field Office

Date

Enclosure (1):
1 - Form 1842-1