

**Maxfield Creek Density Management\Woodland Restoration\Upland
Restoration\Aquatic Habitat Restoration**

Final Decision and Decision Rationale for Maxfield Creek Project 1, Upland
Habitat Restoration (FY 2008)

Environmental Assessment Number OR080-04-19

June, 2008

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

Township 10 South, Range 5 West, Sections 19 and 29, Township 10 South, Range 6 West,
Section 22, Willamette Meridian
Luckiamute River 5th field Watershed.
Benton County, Oregon

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BLM
Salem District



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BLM/OR/WA/PL-08/044+1792

I. Introduction

The Bureau of Land Management (BLM) conducted an environmental analysis documented in the *Maxfield Creek Density Management\Woodland Restoration\Upland Habitat Restoration\Aquatic Habitat Restoration Project Environmental Assessment* (Maxfield Creek EA), and the associated project file. A Finding of No Significant Impact (FONSI) was signed on December 8, 2005 and the Maxfield Creek 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 Maxfield Creek EA, and is specific to a subset of actions within Project 1 of that EA. It authorizes the implementation of only those activities directly related to and included within Project 1, Upland Habitat Restoration that are expected to occur after the completion of the sold and awarded Maxfield Creek Timber Sale, in 2008 or later. Specifically, it includes the following restoration activities described in the Maxfield Creek EA: Fireline construction, prescribed broadcast burning, oak planting, brush and small tree cutting, and snag habitat creation. The proposed action will occur within Adaptive Management Area and Riparian Reserve Land Use Allocations (LUA's).

The actions documented in this decision are a component Project 1, that also includes actions to perform density management, restore meadow, Oregon white oak and woodland habitat, and to realign and decommission portions of a road to improve watershed health. These actions will have begun prior to this decision, so a separate decision was issued earlier for them.

II. Decision

I have decided to implement Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008), as described in the proposed action (EA pp. 6-18) hereafter referred to as the "selected action". The selected action is shown on the maps attached to this DR. This decision is based on site-specific analysis in the Maxfield Creek EA, the supporting project record, management recommendations contained in the *Mill Creek, Rickreall Creek, Rowell Creek and Luckiamute River Watershed Analysis* (MEGAWA, September, 1998) and the *Luckiamute, Ash Creek and American Bottom Watershed Analysis* (Appendix I) (June 2004); as well as the management direction contained in the Salem District Resource Management Plan (May 1995), which are incorporated by reference in the EA.

Since the release of the EA, there is a need to correct some information included in the EA.

Changes to the EA

The EA included outdated information concerning Conformance with Land Use Plans, Policies, and Programs (p. 3).

- *Record of Decision and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (S&M ROD, January 2001) and results of the 2002 Annual Species Review (IM OR-2003-050, March 14, 2003 Table 1-1); *Final Supplemental Environmental Impact Statement For Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (S&M FSEIS, November 2000); *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 and *Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines*, (SSSP/SEIS) January 2004.

This DR changes the above conformance paragraph as follows:

- *2007 Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl*, July 2007 *Final Supplement to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines*, (SEIS) June 2007 and Instruction Memorandum No. OR-2007-072 (Update to the State Director's Special Status Species List, July 2007).

The following is a summary of this decision.

Fireline Construction and Broadcast Burning:

The selected action will include prescribed broadcast burning applied to two areas: 1: north of Maxfield Creek in Township 10 South, Range 5 West, Section 19, (267 acres) and 2: Township 10 South, Range 6 West, Section 22, Willamette Meridian (13 acres). The areas total about 280 acres. In preparation for prescribed broadcast burning, brush and non-merchantable trees will be felled within planned burn areas, where cutting has not previously occurred or there is an additional need due to re-growth. Control lines will consist of Roads #10-5-20.1, 10-5-20, 10-6-14, and Pit Road and handlines constructed along the property boundaries connecting roads. Burning will be conducted in the spring or fall during periods of vegetation dormancy. Prescribed broadcast burning intensity will be sufficient to reduce understory shrub layers, reduce thatch, and improve conditions for the germination and growth of native species. To maintain the meadows and woodland conditions, prescribed broadcast burning will be repeated at intervals of 3-5 years following initial burning. Operations will be conducted to adhere to the project description and terms and conditions within the Biological Opinion (BO) returned by the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) December 21, 2006 through the consultation process for ESA listed Upper Willamette River steelhead trout. These conditions include provisions for turbidity monitoring and a water withdrawal plan for intended Maxfield Creek water sources.

The following design features have been added, modified or clarified as part of the BO:

No fireline construction to mineral soil within riparian buffer: Within 50 feet of any stream, firelines will be cleared of brush only and not cleared to mineral soil.

Implementation Monitoring Report: A monitoring report will be submitted annually to NOAA NMFS describing the project progress and its success in meeting the terms and conditions contained in the Biological Opinion (BO).

Maintain canopy in stream buffer: Conduct prescribed broadcast burn to maintain 80 % of existing stream buffer canopy.

Snag Habitat Creation:

In the portion of Unit 19A south of Road #10-5-20.1, and all of Units 19B and 22A, (about 98 acres) snags will be created at a rate of approximately 1 per acre, as a result of Douglas-fir being girdled or topped that cannot be felled without damaging oak trees, and by girdling trees in meadow interior and perimeter. These trees will remain on site as snag habitat and as a continuing source of down wood. Additionally, Oregon white oak designated for release will contribute to long-term cavity habitat. Outside of these units, within upland habitat restoration areas, snags will be created by girdling Douglas-fir trees greater than 9 inches DBHOB that infringe on meadow habitat or overtop oak trees.

Oak Planting:

Oregon white oak trees will be planted in meadow perimeters and in six oak regeneration areas, totaling about 17 acres, using mulch mats and tree tubes to aid seedling survival.

All design features and mitigation measures described in the EA (pp. 11 - 15) specific to the actions in this decision will be incorporated into further plans and contracts.

The Maxfield Creek EA includes other actions that are not included in this decision. The following is a summarized description of the other actions not included and why.

- Project 1, Density Management/Woodland Restoration on approximately 268 acres, by commercial density management and creation of patch cuts, to reduce conifer density, release Oregon white oak, and restore woodland and meadow habitat, and timber sale-related road work will occur earlier and carries different procedures for protest/appeal.
- Some elements of Project 1, Upland Habitat Restoration: Non-commercial tree removal and their disposal by lopping or by piling and burning; oak enhancement; native species enhancement; control of non-native plants; and vegetation monitoring will begin prior to this decision.
- Project 1, Transportation Aquatic Habitat Restoration (two road re-alignment) are not related to this decision.
- Project 2, Aquatic Habitat Restoration, which includes replacement of a perched culvert and large woody debris placement in Maxfield Creek by helicopter (source trees to be removed from upland meadow habitat), are likewise not related to this decision.

III. Compliance with Direction:

The analysis documented in the Maxfield Creek 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. 6 & 7), All of these documents may be reviewed at the Marys Peak Resource Area office.

Survey and Manage 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.

“On July 25, 2007, the Under Secretary of the Department of Interior signed the 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, I have designed this project to be consistent with the 2001 Survey and Manage ROD as modified by subsequent annual species reviews as allowed by the modified October 11, 2006 injunction.”

The decision is consistent with the Northwest Forest Plan, including all plan amendments in effect on the date of the decision. The Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008) conforms with the *2007 Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* and Instruction Memorandum No. OR-2007-

072 (Update to the State Director's Special Status Species List, July 2007).

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 Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008) meets the Aquatic Conservation Strategy in the context of PCFFA IV and PCFFA II.

Existing Watershed Condition

The Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008) area is in the 82,000-acre Luckiamute River 5th field watershed which drains into the Willamette River.

Four percent of the watershed is managed by BLM and 96 percent is managed by other landowners. Late seral and/or old-growth (greater than 80 years old) forests comprise 35 percent of the BLM managed lands in the watershed. We can infer then, that commercial harvest or stand replacement fire has occurred on 65 percent of the BLM managed lands in the watershed. The earliest harvests on BLM managed lands 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 seral to the early seral class.

Review of Aquatic Conservation Strategy Compliance:

I have reviewed this analysis and have determined that the project meets the Aquatic Conservation Strategy in the context of PCFFA IV and PCFFA II [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 (pp. 51-54). The project will comply with:

Component 1 – Riparian Reserves: by maintaining canopy cover along all streams and 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 will occur within Riparian Reserves;

Component 2 – Key Watershed: by establishing that the Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008) is not within a key watershed;

Component 3 – Watershed Analysis: The *Luckiamute\Ash Creek\American Bottom Watershed Assessment Appendix I* (2004) describes the events that contributed to the current condition such as early hunting/gathering by aboriginal inhabitants, road building, agriculture, wildfire, and timber harvest. The following are watershed analysis findings that apply to or are components of this project:

Historical accounts and archeological records indicate that the Kalpuyan peoples periodically burned the meadows of the valley floor to facilitate hunting large game, clearing meadows for the harvest of camas, a major staple to their diet, and promoting growth of seed-producing grasses. These burnings may have occurred as frequently as several times a year or in intervals of every 5 years (*Luckiamute\Ash Creek\American Bottom Watershed Assessment* p.124).

Riparian areas on south slopes likely had much less conifer forest cover under past conditions that favored meadows and Oregon white oak savanna. Today, only about 22 acres (6%) of the Riparian Reserves are non-forested (p. 4).

The condition most specific to the Maxfield parcels is the elimination of frequent, low-intensity fire that maintained meadow and Oregon white oak habitat and associated plant communities, and affected the structure of conifer forests on dry sites. The Maxfield parcels, under reference conditions, may have been dominated by meadows and oak woodlands/ savanna. Species associated with Willamette Valley ecosystems (meadows, oak woodland, and a more open mixed conifer hardwood forest) may have been more common in the area during reference conditions. The abundance of Oregon white oak and meadow habitat has greatly decreased from the past as a result of fire exclusion and loss to agriculture and development (*Luckiamute\Ash Creek\American Bottom Watershed Assessment Appendix I* p. 6).

Consistent with Adaptive Management Area and Aquatic Conservation Strategy objectives, approximately 220 acres of conifer forest is available for commercial density management and 156 acres is available for conifer woodland, meadow, and oak restoration, most within this decade (*Luckiamute\Ash Creek\American Bottom Watershed Assessment Appendix I* p. 8).

Consider preparing a prescribed fire plan for underburning in stands, meadows, and oak savanna to increase structural diversity and maintain desired stand and vegetation conditions (*Luckiamute\Ash Creek\American Bottom Watershed Assessment Appendix I* p. 10).

Component 4 – Watershed Restoration: The project is specifically designed for watershed restoration. The project will maintain and restore meadow and woodland habitat conditions.

In addition I have reviewed this project against the ACS objectives at the project or site scale.

Table 1: Aquatic Conservation Strategy Objectives

Aquatic Conservation Strategy Objectives (ACSOs)	Maxfield Creek LWD Placement on Private Land/Meadow Restoration Project
<i>1. Maintain and restore the distribution, diversity, and complexity of watershed and landscape-scale features.</i>	Does not prevent the attainment of ACSO 1 . Enhancing meadow habitats, will help restore the distribution and complexity of landscape features in the watershed. Management recommendations to maintain and restore oak, meadow and woodland habitat in conifer stands is consistent with this objective and will not prevent attainment of ACS objectives.
<i>2. Maintain and restore spatial and temporal connectivity within and between watersheds.</i>	Does not prevent the attainment of ACSO 2 . Long term connectivity of terrestrial watershed features will be improved by increasing the availability and proximity of functioning riparian habitat.
<i>3. Maintain and restore the physical integrity of the aquatic system, including shorelines, banks, and bottom configurations.</i>	Does not prevent the attainment of ACSO 3 . Within meadow restoration areas, no-treatment buffers adjacent to all surface water will maintain the physical integrity of the aquatic system.
<i>4. Maintain and restore water quality necessary to support healthy riparian, aquatic, and wetland ecosystems.</i>	Does not prevent the attainment of ACSO 4 . Although some short-term effects to water quality may occur (primarily increased fine sediment loads following prescribed fire), the proposed project will help restore water quality over the long-term by restoring more natural channel conditions.
<i>5. Maintain and restore the sediment regime under which aquatic ecosystems evolved.</i>	Does not prevent the attainment of ACSO 5 . Project will partially restore pre-settlement vegetation and disturbance regime. Sediment regime assumed to be closely linked
<i>6. Maintain and restore in-stream flows sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment, nutrient, and wood routing.</i>	Does not prevent the attainment of ACSO 6 . This project will likely result in some small increase in water yield which correlates with the removal of smaller conifers, the death of larger conifers by girdling, and a reduction in vegetation cover through prescribed burning. However, other than increased peak flows, the increase in fall and winter discharge from forest activities is likely to have little biological or physical significance (U.S.E.P.A. 1991). The proposed timber cutting will affect only 0.012% of the current forest cover in the watershed.
<i>7. Maintain and restore the timing, variability, and duration of floodplain inundation and water table elevation in meadows and wetlands.</i>	Does not prevent the attainment of ACSO 7 . None of the meadows contain wetlands. Streams are steep headwaters with minimal to no flood plain development. Recommendations to restore and maintain oak, meadow, and woodland habitat are consistent with this objective and will not prevent attainment of any ACS objective.
<i>8. Maintain and restore the species composition and structural diversity of plant communities in riparian areas and wetlands.</i>	Does not prevent the attainment of ACSO 8 . Within riparian zones and wetlands, current species composition will be maintained, except as necessary to restore meadow, oak savanna, and oak woodland habitats that occurred there under reference conditions.
<i>9. Maintain and restore habitat to support well-distributed populations of native plant, invertebrate and vertebrate riparian-dependent species.</i>	Does not prevent the attainment of ACSO 9 . . Vegetation management will help restore habitat by increasing species diversity and enhancing meadows.

IV. Alternatives Considered

Pursuant to Section 102 (2) (E) of NEPA (National Environmental Policy Act of 1969, as amended), Federal agencies shall “Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. An unresolved conflict concerning prescribed broadcast burning (section 102(2) (E) of NEPA) was identified. The majority landowner adjacent to the proposed project areas expressed concern about prescribed broadcast burning risks to their young stands. Other scoping comments were received that supported prescribed broadcast burning. Prescribed broadcast burning is an appropriate restoration or maintenance treatment for the habitats identified in the project area and is included in the proposed action. However, considering the risks to adjacent landowners and the considerable operational difficulties of conducting prescribed broadcast burning in the area, an action alternative was analyzed to meet the purpose and need without prescribed broadcast burning (Project 1, Alternative 2).

V. Decision Rationale

Considering public comment, the content of the EA and supporting project record, the management recommendations contained in the *Mill Creek, Rickreall Creek, Rowell Creek and Luckiamute River Watershed Analysis* (MEGAWA, September, 1998) and the *Luckiamute, Ash Creek and American Bottom Watershed Analysis* (Appendix I) (June 2004), 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:

- As an integral part of the overall project, the selected action meets the purpose and need of the project as a whole (EA section 2.1), 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. 6 & 7).
- Maxfield Creek Project 1, Upland Restoration (FY 2008) is in full and complete compliance with the *2007 Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl*, July 2007, Instruction Memorandum No. OR-2007-072 (Update to the State Director's Special Status Species List, July 2007) and *Final Supplement to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines*, (SEIS) June 2007.
- Will not have significant impact on the affected elements of the environment (EA FONSI pp. i-iv) 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 (EA section 2.1)

Purpose and Need (EA section 2.1)	Alternative 1 Proposed Action	Alternative 2 No Broadcast Burning	No Action
To restore in dry grand fir/meadow habitat types the structure and species composition of oak-conifer woodland, oak savanna and meadow habitat to conditions believed to have existed during a regime of frequent, low-intensity fire.	Increases oak habitat by planting oak seedlings within oak re-establishment areas. Broadcast burning will help restore woodland and meadow structure and establish native species and remove conifer reproduction, but carries risks.	Without broadcast burning, understories will have higher shrub composition and opportunity to establish native species will be lower. Without additional cutting of future conifer reproduction, conifer encroachment will continue. Low risk of escaped fire.	Many existing oak trees will eventually be overtopped by conifers and die. Overall, 20-40% of the existing meadow habitat could disappear within 30 years. Woodland habitat will not be restored, and closed conifer stands will be the predominant feature.

2. Alternative 2 was not selected for the following reasons: Alternative 2 does not meet the purpose and need as fully as Alternative 1. The understory structure of oak-conifer woodland, oak savanna and meadow habitat to conditions believed to have existed during a regime of frequent; low-intensity fire would have been dominated by grasses and forbs, rather than shrubs and small trees. Fire was the process that historically maintained that structure, and re-introducing fire appears to be the best way to maintain it by reducing shrub and tree cover. Prescribed broadcast burning is expected to create much more favorable conditions for establishing more native grasses and forbs on site, and for removing conifer establishment. Furthermore, Alternative 2 allows the opportunity to test the use of prescribed fire in maintaining habitats, as recommended in the RMP (p. 20). The interdisciplinary team determined that the environmental effects of Alternative 2 are acceptable. If Alternative 1 is selected and burning does not occur for any reason, the impacts of the action will be within those analyzed in the EA; however if Alternative 2 were selected, there would be no opportunity to re-introduce fire through prescribed broadcast burning.
3. 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 (EA section 2.1), as shown in Table 2.

VI. Public Involvement/Consultation/Coordination

Scoping: A description of the proposal was included in the Salem Bureau of Land Management Project Update which was mailed to more than 1070 individuals and organizations. A scoping letter was mailed September 1, 2004 to approximately 80 potentially interested parties. Five comment letters were received. Field trips were made to the area with one member of the public, native species restoration specialists, and a representative of the adjacent landowner. A tour of the project area was conducted by the BLM on August 13, 2005 and was attended by approximately 8 individuals representing the Luckiamute Watershed Council.

EA and FONSI Comment Period and Comments:

The EA and/or notice of availability of EA were mailed to approximately seventy-eight agencies, individuals and organizations on December 9, 2005. A legal notice was placed in a local newspaper soliciting public input on the action from December 9 to January 9, 2006. Two comment letters (Oregon Natural Resources Council and Starker Forests, Inc.) were received. Responses to their comments can be found in the Maxfield Creek NEPA file.

Consultation/Coordination:

Wildlife: The Biological Assessment for the Maxfield Creek Density Management\Woodland Restoration\Upland Habitat Restoration\Aquatic Habitat Restoration EA was submitted for Formal Consultation with the U.S. Fish and Wildlife Service (USFWS) as provided in Section 7 of the Endangered Species Act (ESA) of 1973 (16U.S.C. 1536 (a)(2) and (a)(4) as amended).

Consultation was completed on March 27, 2006 (Biological Opinion (BO) Reference number 1-7-06-F-0080). As a result of consultation, the USFWS concluded that the Maxfield Creek Project 1, Upland Habitat Restoration (FY 2008) is not likely to jeopardize the continued existence of the spotted owl and marbled murrelet. The actions in this decision do not contribute to a 'may affect, likely to adversely affect' determination for the northern spotted owl and marbled murrelet.

The Taylor's checkerspot butterfly is a Federal Candidate species and is considered a listed species according to BLM policy. The proposed action, including the actions in this decision, will have a positive effect on the Taylor's checkerspot butterfly because the action will restore, improve, and maintain meadow habitat used by the butterfly. The Fender's blue butterfly is a Federal Endangered species and Kincaid's lupine is a Federal Threatened species. The proposed action, including the actions in this decision, will have a positive effect on both the Fender's blue butterfly and Kincaid's lupine because the action may restore, improve, and maintain habitat for the lupine and butterfly. The proposed action, including the actions in this decision, may affect, but is not likely to adversely affect Kincaid's lupine or Fender's blue butterfly. The USFWS made a conservation recommendation in the BO to develop an adaptive management plan for the Maxfield Creek Area in order to emphasize the establishment of native species including Kincaid's lupine and Fender's blue butterfly.

The proposed action will have no effect on the bald eagle or its habitat since it does not occur in or adjacent to the proposed project area and potential nesting and foraging habitat is not being modified. Oregon chub is listed as endangered under the Endangered Species Act. Currently there are no known chub populations residing in the Luckiamute River Watershed.

Fish: Consultation with National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) is required for all actions which 'may affect' ESA listed fish species and critical habitat. A determination has been made that the proposed Maxfield Creek Projects 1 and 2 'may affect, likely to adversely affect' Upper Willamette River steelhead trout as well as its designated critical habitat. The determination is due the proposed actions broadcast burning, road decommissioning, stream crossing treatments, and large wood placement that are expected to have negative effects on several habitat indicators. Consultation was therefore initiated with NOAA NMFS in June, 2006. The NOAA NMFS returned a completed Biological Opinion (BO) with terms and conditions for project implementation and monitoring on December 21, 2006, completing the consultation process. The BO is on file at the Salem District office. The actions in this decision do contribute to the 'may affect, likely to adversely affect' determination for Upper Willamette River steelhead trout and are bound by the BO terms and conditions.

The NOAA NMFS has listed spring Chinook salmon in the Upper Willamette River Evolutionarily Significant Unit (ESU) as threatened under the Endangered Species Act. Chinook salmon is known to reside in the lower reaches of the Luckiamute River, 32 miles downstream from the project area. Chinook distribution is 11.25 miles downstream from the project area in Soap Creek and 8.3 miles downstream in Berry Creek. No effects are anticipated to Chinook salmon or its habitat due to the distance to occupied habitat.

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. Coho salmon are over 4 miles downstream from the project area; there will be no effects to EFH for coho salmon. The proposed Maxfield Creek Project 1, Density Management\Woodland Restoration\Upland Habitat Restoration\Aquatic Habitat Restoration is not expected to affect EFH due to distance of all activities associated with the project from occupied habitat.

VII. Conclusion

I have determined that change to the Finding of No Significant Impact (FONSI – December 2005) for the Maxfield Creek Project 1, Density Management\Woodland Restoration\Upland Habitat Restoration\Aquatic Habitat Restoration 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.

Protest and right to appeal: Within 30 days of publication of this notification, individuals have the right to appeal this decision to the BLM, Salem District Manager and thereafter appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations of 43 Code of Federal Regulations, Part 4. The appeal to the District Manager must be filed in writing to the Salem District Office of the Bureau of Land Management. The appellant has the burden of showing that the decision appealed from is in error. If no appeals are filed, this decision will become effective and be implemented after 30 days of the date of this notification.

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:

- (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.

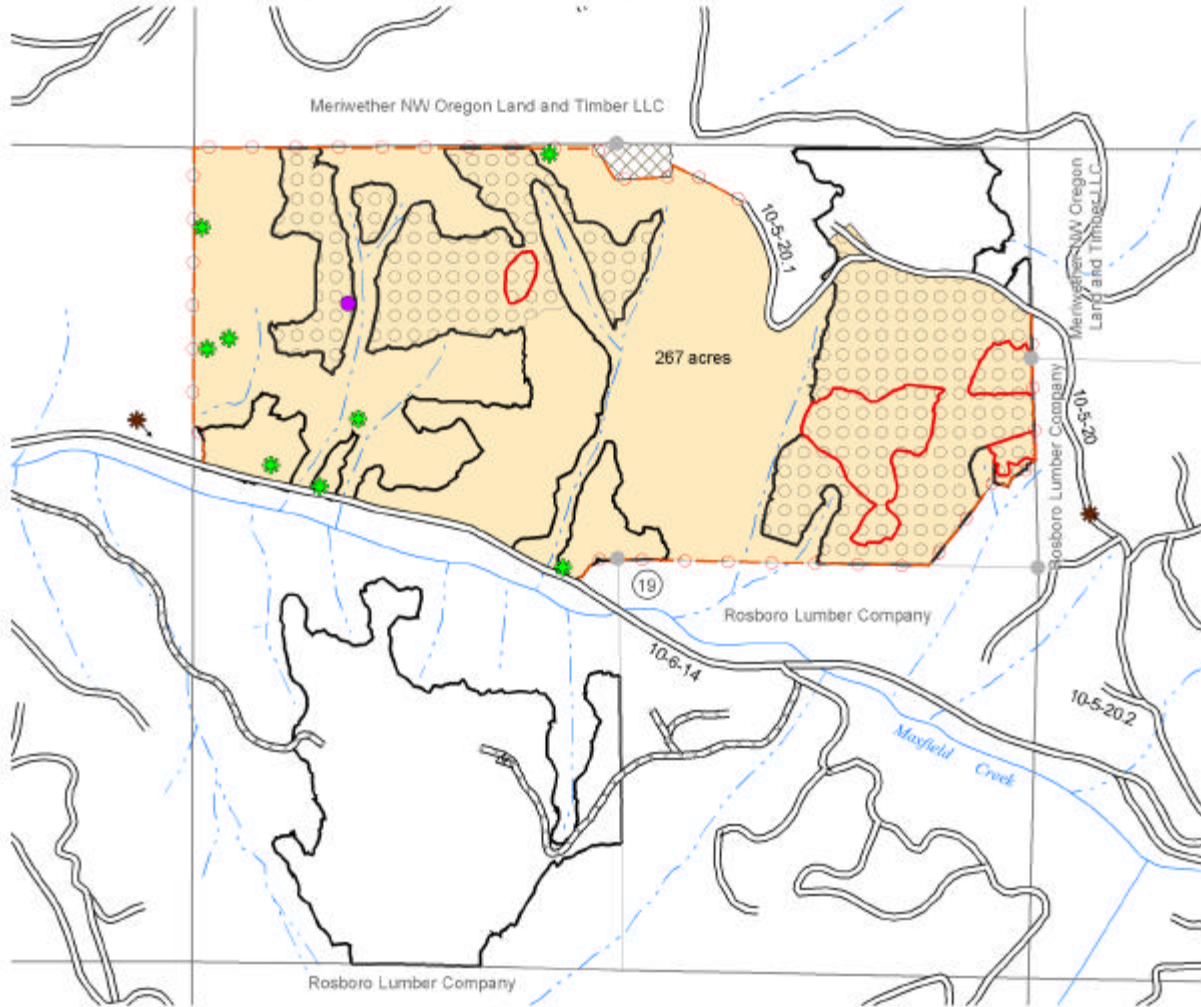
Contact Person: For additional information concerning this decision, contact Hugh Snook (503) 315-5964, Marys Peak Resource Area, Salem BLM, 1717 Fabry SE, Salem, Oregon 97306.

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

7/1/08
Date

MAXFIELD CREEK MAP Upland Habitat Restoration (2008)

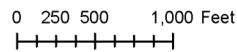
T. 10 S., R.5 W., Sections 19 and 29, T. 10 S., R. 6 W., Section 22, 23, and 24 W. M. - SALEM DISTRICT - OREGON



LEGEND

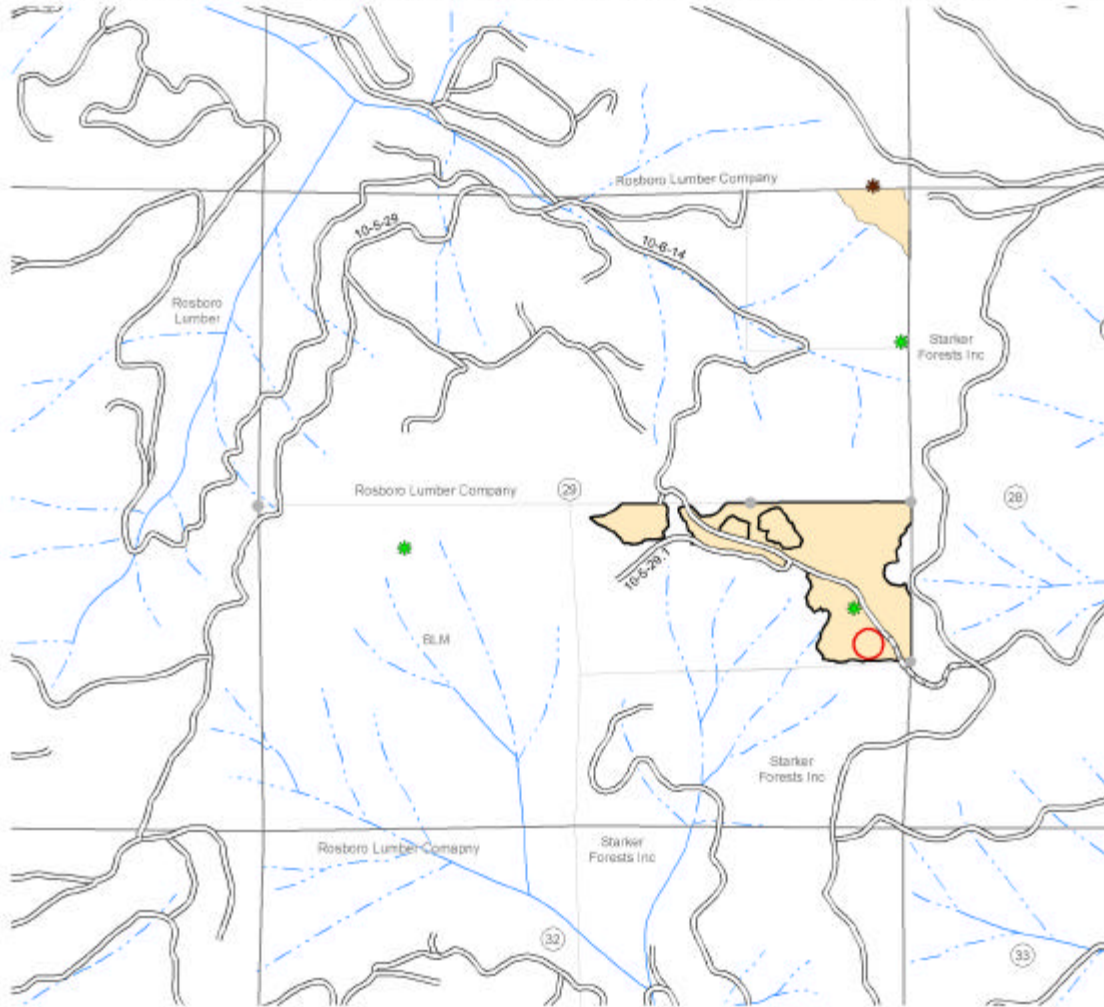
- | | | | | | |
|--|-------------------------------|--|---------------------------------|--|----------------------------|
| | Oak regeneration harvest area | | Non-fishbearing | | Snag Creation Area |
| | False Brome (known site) | | Fishbearing | | Upland Habitat Restoration |
| | Knapweed (known site) | | Hand Fireline to be constructed | | Existing Road |
| | Red-Tailed Hawk Nest | | Impassable Road | | |
| | Found Corner | | | | |

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data was compiled from multiple source data and may not meet U.S. National Mapping Accuracy Standard of the Office of Management and Budget.



MAXFIELD CREEK MAP
Upland Habitat Restoration (2008)

T. 10 S., R. 5 W., Sections 19 and 29, T. 10 S., R. 6 W., Section 22, 23, and 24 W. M. - SALEM DISTRICT - OREGON



LEGEND

- | | | | | | |
|--|-------------------------------|--|---------------------------------|--|----------------------------|
| | Oak regeneration harvest area | | Non-fishbearing | | Upland Habitat Restoration |
| | False Brome (known site) | | Fishbearing | | Snag Creation Area |
| | Knapweed (known site) | | Hand Fireline to be constructed | | Existing Road |
| | Red-Tailed Hawk Nest | | Impassable Road | | |
| | Found Corner | | | | |

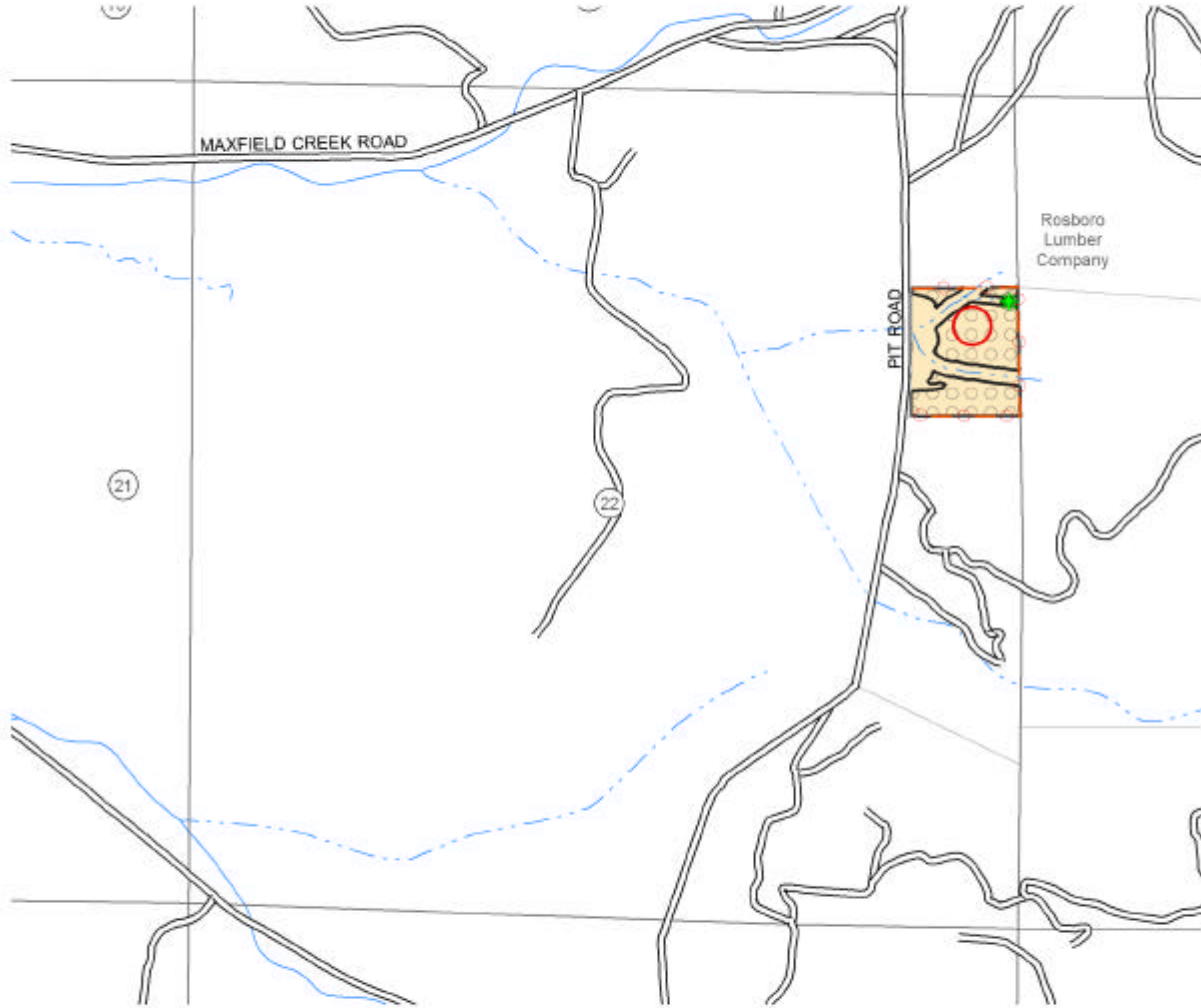
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data was compiled from multiple source data and may not meet U.S. National Mapping Accuracy Standard of the Office of Management and Budget.

0 250500 1,000 Feet






MAXFIELD CREEK MAP
Upland Habitat Restoration (Late)

T. 10 S., R.5 W., Sections 19 and 29, T. 10 S., R. 6 W., Section 22 W. M. - SALEM DISTRICT - OREGON



LEGEND

- | | | | | | |
|---|--------------------------|---|---------------------------------|--|-----------------------------------|
|  | False Brome (known site) |  | Non-fishbearing |  | Snag Creation Area |
|  | Knapweed (known site) |  | Fishbearing |  | Upland Habitat Restoration |
|  | Red-Tailed Hawk Nest |  | Hand Fireline to be constructed |  | Boundary of Oak Regeneration Area |
|  | Found Corner |  | Existing Road | | |
| | |  | Impassable Road | | |

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