



**DECISION NOTICE**  
**MOUNT AVERY SPUR ROAD**  
**SPECIAL USE PERMIT REQUEST**

**USDA Forest Service**  
**Rogue River-Siskiyou National Forest Service**  
**Powers Ranger District**  
**Curry County, Oregon**  
**July 2016**

**DECISION**

I, Robert G. MacWhorter, Forest Supervisor for the Rogue River-Siskiyou National Forest, am the responsible official for this project. I received a request for action from Christian Futures Incorporated (CFI). Based upon my review of the *Mount Avery Spur Road Special Use Permit Request Environmental Assessment* (EA), I have decided to implement **Alternative 2, the Proposed Action**. This decision is based on the need to respond to a request from CFI to construct a 330 foot (ft) road at the end of National Forest System (NFS) road 5201-200 to gain access to their private property.

Under alternative 2, I will issue a special use permit to allow construction of this private spur road. A road use permit will be required for CFI to use this spur road as well as road 5201-200 for commercial timber haul. The construction of the gravel road will take three days to complete. The road will be constructed to a width of 14 ft and length of 330 ft. The road extension will be primarily on a ridge top of 7 percent (%) to 10% grades and gentle side slopes of 25% to 35%. The first sixty ft of the road will be built from the end of the NFS road 5201-200 and has steeper side slopes of approximately 65%, but the road can be full bench constructed. Excavators will be employed during construction and a rock base will be applied. The road will be constructed during dry conditions and utilized when weather conditions allow access. CFI will be responsible for sourcing suitable material for the construction of the road.

Forty trees with diameters of 14 inches (") to 16" will be removed. These trees are approximately 35 years old. These trees will be removed, including the root wad, and placed on the downhill side of the road and positioned so they do not roll down slope to create down wood. No large or legacy trees will be cut or removed as none are present.

CFI requests one year to build the spur road and permission to use and maintain it for timber management for a number of years. The length of these terms under special use permit will be appropriate to the needs of the permittee (5 to 20 years). CFI will install and maintain a gate at the end of road 5201-200 and the beginning of the new spur road. All costs of construction, operation, and maintenance will be provided by CFI, and completed to Forest Service specifications.

**Mitigation Measures**

Reasonable and appropriate mitigation measures will be employed to eliminate or reduce impacts to resources. Mitigation, as defined in the Council on Environmental Quality (CEQ) Regulations (40 Code of Federal Regulations [CFR] 1508.20) includes: 1) avoiding the impact altogether by not taking a certain action or parts of an action, 2) minimizing impacts by limiting the degree or magnitude of the action and its implementation, 3) rectifying or eliminating the impact over time by preservation and maintenance

operations during the life of the action, 4) compensating for the impact by replacing or providing substitute resources or environments, and 5) rectifying the impact by repairing, rehabilitating or restoring the affected environment.

The standards and guidelines of the 1989 *Siskiyou National Forest Land and Resource Management Plan* (LRMP) (USDA Forest Service, 1989), as amended by the Northwest Forest Plan (USDA Forest Service and USDI Bureau of Land Management [BLM], 1994), are incorporated by reference as required mitigation measures. In response to known concerns for projects in general and to ensure compliance with standards, guidelines, laws, etc., mitigation measures were developed to ease the potential adverse effects this decision may cause. All of the listed mitigation measures include project design features, design criteria, best management practices, and standards and guidelines. The *Forest Service National Core Best Management Practices* (USDA Forest Service 2012) and the *Region 6 General Water Quality Best Management Practices* (USDA Forest Service 1988), particularly in relation to road management best management practices, are incorporated by reference and incorporated into the development of site specific mitigation measures for the Mount Avery Spur Road project. In addition, any other methodology for implementation of the proposed action will comply with all requirements and standards for protection of threatened and endangered species, in compliance with the Endangered Species Act (16 United States Code [USC] 1531).

**Specially designed for this project** and under current management direction for the marbled murrelet, the project analysis area is assumed to be occupied. Because occupation is assumed and appropriate mitigation measures are required, surveys are not necessary. No suitable nesting habitat will be removed or altered (EA page 39). This decision will create no effects that could potentially harm murrelets or habitat. **All road construction and activities with any noise above ambient levels will take place outside of the murrelet breeding and nesting period of April 1 to September 15.**

**Final mitigation measures are detailed in Attachment A to this Decision Notice (DN).** These measures are to be applied to all special use permits or road use permits associated with this spur road.

## **DECISION RATIONALE**

I have reviewed the EA and have determined that there is sufficient information to provide a reasoned decision. In making my decision, I have considered information in the EA related to the needs for the proposal, issues identified for this project, Forest Plan direction, conditions in the project area, analysis by the interdisciplinary team, and comments from the public. The LRMP 9-4 (IV-52) states “The objective of Special Use Management is to provide for the use and occupancy of the National Forest land when such use is consistent with Forest Management area goals and objectives.” The No Action Alternative will not further this objective and was not selected for this reason.

### **Meeting the Purpose and Need for Action**

I have selected the Proposed Action over the No Action Alternative because it meets the purpose and need for action while being responsive to public comments and concerns. I have considered private access while providing adequate protections to NFS lands and resources. My decision will comply with all applicable laws and policies. It is consistent with 36 CFR 212.6, which states:

**§ 212.6 Ingress and egress.** (a) *Policy in acquiring and granting access.* To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and

other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.

### **Consideration of Public Comments**

Under 36 CFR 218.2, specific written comments are those submitted to me during a designated opportunity for public participation provided for a proposed project. For the purposes of this rule, specific written comments are within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for me to consider.

**Specific written comments received during a 30-day comment period are responded to in Attachment B to this DN.** The following summarizes the response to the main issues and comments.

#### ***Habitat***

Concern was expressed over the cutting of “large trees” and that these effects are excessive and detrimental to wildlife habitat. An impact of 0.11 acres with 40 trees to be felled and left on site for down wood is not considered “excessive” and these 40 trees with diameters of 14” to 16” are not considered to be “large.” The trees are not currently functioning as habitat for late successional species. A determination of *no effect* was made for listed species dependent on late successional forest habitat.

#### ***Construction and Maintenance Costs***

Commenters were uncertain about the costs of constructing and maintaining the road (if allowed to be constructed). They asked if the maintenance costs will be borne by the public (taxpayers) into the future.

In regard to costs for road construction and maintenance, all costs for the requested privately-owned road segment will be borne by the requestor (CFI) under the terms of the special use permit. The initial permit will allow construction of the spur road. An additional road use permit will be required from the Forest Service to use the road, as for example, when being used for commercial access and timber haul. This road use permit will also cover the entire haul route on NFS lands and will require appropriate maintenance.

As stated in the EA (page 20) the private spur road will be maintained at maintenance level 1 as defined in FSH 7709.58-10-12.3. As a privately-owned road, the new 330 ft spur will be gated at the end of the existing NFS road 5201-200; this gate will be installed and maintained by CFI. Therefore, as with any maintenance level 1 road, the road will be closed to public use and motorized access. There will be no obligation to the Forest Service (or to the public or taxpayer) for costs now or into the future associated with this privately-owned road access.

#### ***Travel Management Process and Roads Analysis***

Comments asked for the relationship of the forest’s travel analysis process and this special use request for a new spur road. Comments also question the need of the road and ask for a “roads analysis” process.

Maintenance level 1 routes are not part of the forest’s travel management process under 36 CFR Subpart B because they are not open to motorized public use. In this case, if and when being used, the new private spur road will be classified as a maintenance level 2 road under a special use road permit, and not part of the forest-wide designation for public use of motorized routes.

A roads analysis was conducted for the entire Rogue River-Siskiyou National Forest and documented in January 2004. Under guidance from this analysis, a site-specific review was conducted for this road construction and use. The environmental costs to the Forest Service are rated low. The access benefits are also rated low. There will be no federal costs for maintenance as costs are to be borne by the permittee under the terms of the special use permit. The EA for the Mount Avery Spur Road project clearly

provides analysis and consideration of soil and water resources, ecological processes, and biological communities, and therefore is a project-scale roads analysis.

### ***Marbled Murrelet Surveys and Mitigation Measures***

Comment asked for formal surveys for marbled murrelet to determine occupation because there may be potential suitable habitat with 150 ft of the proposed road.

The project area is assumed to be occupied. Because marbled murrelet occupation is assumed and appropriate mitigation measures are required, surveys are not necessary. The proposed project will create no effects that could potentially harm murrelets. Road construction and activities with noise above ambient levels will take place outside marbled murrelet breeding and nesting season of April 1 to September 15. No suitable nesting habitat will be removed or altered (EA page 39). Because mitigation is required and the potential murrelet suitable nesting habitat fifty yards (150 ft) from the project site is assumed to be occupied, a confirmed occupation of adjacent potentially suitable habitat will not change the required mitigation, or the potential for adverse effects (as there will be none).

The project area is within a designated Critical Habitat Unit (CHU) and 0.11 acres of non-suitable habitat will be modified; however, no primary constituent elements of murrelet suitable nesting habitat will be impacted. The potentially suitable murrelet habitat fifty yards (150 ft) from the proposed road will not be impacted. The 40 trees to be removed are less than one-half of a site potential tree in height. Based on the current age of the stand that will be affected, it will not be capable of becoming marbled murrelet habitat within 25 years) (USDA and USDI BLM 1994b, USDI FWS 1997). Because of the stand's low height and distance from the potentially suitable habitat, no impacts from exposure or desiccation of trees are likely to occur (EA pages 38 & 39).

### ***Consideration of Risks and Tradeoffs***

The National Environmental Policy Act (NEPA) requires that Federal agencies explore all reasonable alternatives and briefly discuss the reasons for eliminating any alternatives that were explored but not developed in detail (40 CFR 1502.14 (a)). Two alternatives were considered and eliminated from detailed study under the NEPA; see EA page 16 & 17. The primary reason that these alternatives were eliminated is because these alternatives are not located on NFS lands and therefore cannot be considered and analyzed in detail. These routes however are generally considered in my assessment of the risks and tradeoffs associated with this proposal and my decision to authorize Alternative 2.

It is likely that the landowner (CFI) will access and manage these adjacent private lands. These lands were purchased by CFI for that reason. As stated in the EA at page 6, "Because there are alternate routes into CFI's lands through private lands, the Forest Service has discretion on whether to issue this permit." In addition to the proposed action, two alternate access roads lead to the property owned by CFI, coming in from the bottom; this was briefly discussed in the EA (page 17). Preliminary analysis had indicated that these alternative routes into CFI lands will impart substantial addition effects on resources in the area.

Further consideration and analysis of these routes (see Figure 4 of the EA, page 92) has identified the first alternate route that will need to be re-built (reconstructed) is approximately 3.5 miles in. There are multiple slides, washouts, and blowouts along these currently non-maintained and unused roads. length. Much of these road grades are approximately 22-30%. The 22-30% road grades are a major concern for hauling timber. As stated in the EA on page 17:

The Occupational Safety and Health Administration does not allow drivers to drive on road with grades steeper than 20%. (Oregon Administrative Rules 437-002-0223 6g states "*Road grades shall not be too steep for safe operation of vehicles which operate over them and shall not exceed 20*")

*percent in any case unless an auxiliary means of lowering vehicles is provided or unless vehicles are specifically designed and approved for operation on grades on excess of 20 percent.”)*

My decision (authorization of a 330 ft section of new spur road, connecting to an existing NFS road) will have the least environmental impact of the three routes. The construction of the road will occur primarily along a ridge top with gentle side slopes (25-35%) and will have road grades of 7 – 18%. The road will cross no streams and will have a direct but minor effect to the 0.11 acres of land (330 ft long by 14 ft wide) being withdrawn from soil productivity through the creation of the spur road. The road will result in a loss of soil productivity by dedicating the area’s purpose to a graveled road space as an alternative to supporting forest vegetation. The spur road location will take advantage of natural openings and will utilize previous skid roads or road beds. My decision is within the LRMP standards and guidelines (<15%) for the detrimental soil exposure conditions.

### **PUBLIC INVOLVEMENT**

A 30-day scoping period was provided pursuant to 36 CFR 215.6. A legal notice was published in *The World* newspaper with a comment period that opened on November 21, 2011 and closed on December 21, 2011. Letters were sent out on November 4, 2011 to interested groups and citizens explaining the project purpose, need, and proposed action and requesting any specific comments, concerns or issues they may have regarding the proposed road management activities. The project appeared in the Rogue River-Siskiyou National Forest *Schedule of Proposed Actions* (SOPA), beginning in the fall of 2011.

During scoping, one comment was received via a public citizen who was in favor of the 330 ft spur road construction off of NFS road 5201-200. This citizen did not have any concerns or issues with the project.

An invitation to comment on the *Mount Avery Spur Road Special Use Permit Request Environmental Assessment* was mailed to individuals and organizations. A legal notice of the 30-day comment period was published in *The World* on November 9, 2014. The comment period extended through close of business, December 8, 2014. Two comment letters were received. Comment letters containing “specific written comments” per 36 CFR 218.2 were summarized and responded to in a separate **Comment Analysis and Response to Comments document, contained as Attachment B to this DN**. Comments centered on the effects to habitat, the short and long term costs of road maintenance, the relationship of this process to roads analysis and the forest’s Motorized Vehicle Use process, marbled murrelet surveys, cumulative effects, clarification of mitigation measures for the marbled murrelet, and the overall costs and public benefits of this spur road. All scoping documents and the original comment letters and copies of Forest Service review and coding are a part of the project record (incorporated by reference).

### **FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

Findings required by other laws and regulations applicable to this project and this decision were discussed in the EA (pages 71 & 72) and are **incorporated by reference**. This action is consistent with the management direction, including standards and guidelines, as outlined in the LRMP as amended, and the Final Environmental Impact Statement documenting the analysis for the Plan (1989).

No significant impact is expected on parkland, floodplains, wetlands, prime farmlands, wild and scenic rivers or ecologically critical areas, as none exist in the project or analysis area. This action will comply with requirements of the Clean Water Act. There are no municipal watersheds, congressionally designated areas, inventoried roadless areas or research natural areas present. There are no anticipated significant impacts on consumers, minority groups, American Indians, women or civil rights. There are no known significant indirect, cumulative, or unavoidable adverse effects on the environment. This action will not pose a significant threat to public health or safety. Implementation of this project meets the resource protection requirements of 36 CFR 219.17.

## Northwest Forest Plan Consistency

This decision complies with the Northwest Forest Plan Record of Decision as amended by the *2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*. Compliance with the nine Aquatic Conservation Strategy (ACS) objectives outlined on Page B-11 of the Northwest Forest Plan is discussed in detail in EA Appendix B. Therefore as an overall evaluation, the impacts associated with this decision, either directly, indirectly, individually or cumulatively, will not prevent attainment of the ACS nor the nine ACS Objectives at the site, watershed or landscape scales.

This decision complies with the Late-Successional Reserve allocation under the Northwest Forest Plan, specifically page C-19. The standard and guideline discussing “Rights-of-Way, Contracted Rights, Easements, and Special Use Permits” states that “access to nonfederal lands through Late-Successional Reserves will be considered and existing right-of-way agreements, contracted rights, easements, and special use permits in Late-Successional Reserves will be recognized as valid uses.” As required, my decision requires mitigation measures to reduce adverse effects on Late-Successional Reserves.

### FINDING OF NO SIGNIFICANT IMPACT

I am responsible for evaluating the effects of the project relative to the definition of significance established by the CEQ Regulations (40 CFR 1508.13). Discussion and a finding of no significant impact (FONSI) was included in the *Mount Avery Spur Road Special Use Permit Request EA* (pages 72 through 76). **This discussion is incorporated by reference to this DN.**

For the proposed action, the context of the environmental effects was based on the environmental analysis in the EA. This project is limited in scope and is designed to minimize adverse environmental effects. The decision made here applies only to the Mount Avery Spur Road project analysis area within the Powers Ranger District.

The analysis area encompasses the proposed spur road (project area) and also includes a 200 foot buffer area on either side of the proposed road extension to capture all the immediate effects creating a total analysis area of 136,620 square ft (approximately 3.14 acres). The project area is limited in size and the activities are limited in duration. The resources affected by the proposal are described in EA chapter 3. Effects are local in nature and not likely to significantly affect regional or national resources. Based on these factors, I believe the effects of this project will be localized, and will not contribute to significant environmental effects within or beyond the project area.

Intensity is a measure of the severity, extent, or quantity of effects, and is based on information from the effects analysis of the EA and the references in the project record. The effects of this project have been appropriately and thoroughly considered with an analysis that is responsive to concerns and issues raised. The Forest Service has taken a hard look at the environmental effects using relevant scientific information and knowledge of site-specific conditions gained from field visits. My finding of no significant impact was based on the context of the project and intensity of effects using the ten factors identified in 40 CFR 1508.27(b).

After considering the FONSI and environmental effects described in the EA and specialist reports, I determined the decision will not have significant effects 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.

### ADMINISTRATIVE REVIEW (OBJECTION) OPPORTUNITIES

The objection process for the Mount Avery Spur Road decision closed July 19, 2016. No objections were

received. The analysis has been completed and the Mount Avery Spur Road decision is now final. Prior to signing this Decision Notice, an additional waiting period of 5 business days was incorporated to accommodate for any objections that may have been sent by mail.

Only individuals or organizations that submitted specific written comments (as defined in 36 CFR 218.1) during a designated opportunity for public participation (scoping or the 30-day public comment period) may object (36 CFR 218.5). Notices of objection must meet the requirements of 36 CFR 218.8(d); incorporation of documents by reference is permitted only as provided for at 36 CFR 218.8(b).

On 24 May 2016, a review of the mailed responses to commenters and the posted legal ad for the objections notice found that the email inbox for the objections response was wrong. New letters have been sent to the commenters on 24 May 2016 with the updated information: [objections-pnw-regional-office@fs.fed.us](mailto:objections-pnw-regional-office@fs.fed.us). Additionally, the legal ad was posted in the World Link. This is not the correct newspaper of record for this project. The newspaper of record associated for this project is issued through the Medford Mail Tribune. A new legal ad was issued in the Medford Mail Tribune and a new 45 day objection period was based off the Medford Mail Tribune date.

**IMPLEMENTATION**

Implementation of this project is expected to begin in 2016.

**CONTACT INFORMATION**

For more information contact: Jessie Berner, District Ranger, Powers Ranger District; 42861 Highway 242, Powers, OR 97466. Phone: (541) 439-6200. The EA and final Decision Notice can be viewed online at: <http://www.fs.usda.gov/project/?project=36342&exp=overview>.

**AUTHORIZATION**

7/28/16

**Robert G. MacWhorter,  
Forest Supervisor, Responsible Official  
Rogue River-Siskiyou National Forest**

**Date**

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USDA Forest Service, 1989, Final EIS - Land and Resource Management Plan - Siskiyou National Forest, Portland, OR, USDA Forest Service, Pacific Northwest Region.

USDA Forest Service, and USDI Bureau of Land Management, 1994, [Northwest Forest Plan] Record of decision for amendments to Forest Service and Bureau of Land Management planning documents within the range of the northern spotted owl [and] standards and guidelines for management of habitat for late-successional and old-growth forest related species within the range of the northern spotted owl: Portland, OR.