



United States
Department of
Agriculture

Forest
Service

January 2013



Environmental Assessment and Draft Finding of No Significant Impact

FLYING H RANCH LLC CULTIVATION SPECIAL USE PERMIT

Superior Ranger District, Lolo National Forest
Mineral County, Montana



The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer.

Table of Contents

Draft Finding of No Significant Impact.....	FONSI -1
Environmental Assessment	
Introduction.....	EA-1
Purpose and Need for Action.....	EA-1
Public Involvement.....	EA-2
Issue Resolution.....	EA-2
Alternatives.....	EA-2
Environmental Consequences.....	EA-4
Threatened, Endangered and Sensitive Plants.....	EA-5
Heritage Resources.....	EA-5
Hydrology and Fisheries.....	EA-6
Soil Resources.....	EA-6
Wildlife.....	EA-6
Weeds.....	EA-7
Agencies and Persons Consulted.....	EA-7
Literature Cited.....	EA-7
Appendix A – Proposed Action Map: Aerial View	EA-9
Appendix B – Proposed Action Map: Contour Map	EA-10

DRAFT FINDING OF NO SIGNIFICANT IMPACT

After considering the environmental effects described in the Flying H Ranch LLC Cultivation Special Use Permit Environmental Assessment (EA), I have determined that the proposed action will not have a significant effect on the quality of the human environment based on the context and intensity of its impacts (40 CFR 1508.27). Therefore, an environmental impact statement will not be prepared.

DRAFT

TAWNYA BRUMMETT
District Ranger
Superior Ranger District
Lolo National Forest

Date

I base my findings on the following:

The special use authorization will permit the adjacent landowner to conduct cultivation and incidental livestock grazing, activities which have been occurring on this parcel for at least 40 years. These activities are allowed under the Lolo Forest Plan. The issuance of a permit will provide the Forest Service with administrative control through site-specific clauses to minimize environmental effects on the designated area.

The Forest Service found no significant issues or unresolved conflicts concerning alternative uses of available resources that warrant consideration of additional alternatives. Implementing regulations for NEPA (40 CFR 1508.27) provide criteria for determining the significance of effects. Significance, as used in NEPA, requires consideration of both context and intensity.

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale, rather than the world as a whole. Both short- and long-term effects are relevant (40 CFR 1508.27).

The effects of the proposed actions are limited in context. The project activities are limited in size (35 acres) and duration (The term of the special use permit would be for 10 years. At the end of the 10 years, a new environmental analysis would be completed if the permittee requests a new authorization). Effects are local in nature and are not likely to significantly affect regional or national resources.

Within the context of the landscape as a whole, the ecological consequences are not found to be significant in either the short- or long-term.

(b) Intensity. This refers to the severity of impact. The following ten aspects are considered in the evaluation of intensity (40 CFR 1508.27).

1. Impacts that may be both beneficial and adverse

I considered beneficial and adverse impacts associated with the proposed action as presented in the Flying H Ranch LLC Cultivation Special Use Permit EA. These impacts are within the range of effects identified within the Lolo National Forest Plan. Based on the detailed specialist reports contained within the project file and summarized in the EA, I conclude that the specific direct, indirect, and cumulative effects of the proposed action are not significant, and this action does not rely on beneficial effects to balance adverse environmental effects.

No Effects

Site-specific permit clauses will effectively eliminate or reduce to negligible most of the potential impacts, therefore, implementation of the proposed action will result in no negative effects to the following resources: Federally listed Threatened or Endangered species (EA, pages 5-7); heritage resources (EA, page 5); fisheries (EA, page 6); water quality (EA, page 6); wildlife (EA, page 6); soil resources (EA, page 6); and weeds (EA, page 7).

Beneficial Effects

The authorization will ensure continued management of the 35-acre parcel for noxious weeds and forage for wildlife. Allowing for fencing of the south portion of the permit boundary will prevent livestock from entering the non-permitted National Forest lands and competing with the surrounding wildlife for forage.

Potential Adverse Effects

There are no potential adverse effects anticipated.

2. The degree to which the proposed action affects public health or safety

There will be no effect to public health or safety. The public will continue to have access to the permitted 35-acre parcel from the south and west. The permit will not grant any type of authorization to the public for crossing any private property to access National Forest System land.

3. Unique characteristics of the geographic area, such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas

The proposed action will not impact any known historic or cultural sites (EA, page 5). The project area does not contain any parklands, wild and scenic rivers, wetlands, or ecological critical areas. The majority of the 35-acre parcel could be considered farmland, but not prime

farmland. The parcel is surrounded on two sides by farmland. The purpose of the special use authorization is to allow the adjacent property owner to maintain the historic use of the 35-acre parcel as farmland. Based on this information, I conclude that the proposed action will have no effects on unique resources.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial

Based on the limited context of the project, my review of the public comments received, and the analysis documented in the EA and Project File, I do not find any controversial effects to the human environment. In the NEPA context, “highly controversial” does not encompass all public opposition to a proposed action, but instead only applies to a substantial dispute as to the size, nature, or effect of an action.¹ While one person expressed disagreement with the use of public land for “personal profit” (which the Forest Service has addressed in the EA on page 2) this person has not presented a substantial dispute as to the size, nature, or effect of this proposal.

I conclude that the effects of the proposed action are not considered highly controversial by professionals, specialists, and scientists from associated fields of forestry, wildlife biology, soils, fisheries, and hydrology.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risk

Based on my review of public comments received on this project and the analysis documented in the EA and Project File, I conclude that there are no uncertain or unique characteristics in the project area which have not been previously encountered or that would constitute an unknown risk to the human environment.

A technical analysis (EA and Project File) that discloses potential environmental impacts (which is supportable with use of accepted techniques, reliable data, and professional judgment) has been completed, and I believe that the impacts of implementing this decision are within the limits that avoid thresholds of concern.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

The Flying H Ranch LLC Cultivation Special Use Permit request is a site-specific project that does not set precedence for future actions or represent a decision in principle about future considerations. Any proposed future project must be evaluated on its own merits and

¹ Indiana Forest Alliance, Inc. v. United States Forest Service 325 F.3d 851 (10th Cir.2003) citing Wetlands Action Network v. United States Army Corps of Engineers, 222 F.3d 1105 (9th Cir.2000); Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir.1998) citing Greenpeace Action v. Franklin, 14 F.3d 1324, 1335 (9th Cir.1993)); Sierra Club v. United States Forest Service, 843 F.2d 1190, 1193 (9th Cir.1988) (accord); LaFlamme v. Federal Energy Regulatory Commission, 852 F.2d 389, 400-01 (9th Cir.1988)

effects. The proposed action is consistent with the Lolo National Forest Plan and the capabilities of the land.

7. Whether the action is related to other actions with individual insignificant but cumulative significant impacts

Connected, cumulative, and similar actions have been considered and included in the scope of the analysis. The analysis accounts for past, present, and reasonably foreseeable future actions. There are no other actions proposed or currently ongoing within the project area. Based on my review of the analysis and disclosure of effects in the EA, specialists' reports, Biological Assessments and Evaluations, and other analyses in the Project Record, I conclude that the Flying H Ranch LLC Cultivation Special Use Permit will not contribute potential cumulative adverse impacts (EA, pages 4-7).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources

A comprehensive evaluation of heritage resources was conducted and there are no known sites that will be impacted (EA, page 5). In the event that such resources are discovered during project implementation, they will be evaluated and protected.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973

This project would have no effect on any threatened or endangered species or its habitat (refer to #1 above).

10. Whether the proposed action threatens a violation of Federal, State, or local law requirements imposed for the protection of the environment

The proposed action meets all federal, state, and local laws, including those for heritage resources (EA, page 5), water quality (EA, page 6), and threatened and endangered species (EA, pages 5-7). It also meets the National Environmental Policy Act disclosure requirements (Flying H Ranch LLC Cultivation Special User Permit EA and Finding of No Significant Impact).

The proposed action is consistent with the National Forest Management Act (NFMA) and the Lolo National Forest Plan. Proposed activities are consistent with the standards, goals, and objectives of Management Areas 23, as determined in the Forest Plan. This proposal does not require any Forest Plan amendments.

ENVIRONMENTAL ASSESSMENT

INTRODUCTION

In 2011, the Lolo National Forest acquired a 120-acre parcel of land, known as the “Marble Creek Parcel,” from the Montana Department of Natural Resources and Conservation (DNRC) located in the S ½ SW ¼ and SW ¼ SE ¼ of Section 16; T17N; R27W P.M.MT approximately 4 air miles southeast of St. Regis (see maps in Appendices A and B).

Approximately 35 acres of this parcel was cultivated for hay production by former adjacent landowner Warnkin Inc. when it was under DNRC management. The current owner of the adjacent property, Flying H Ranch LLC, has requested a special use authorization from the Forest Service to continue the historic use on the 35-acre portion.

PURPOSE AND NEED FOR ACTION

The purpose of the project is to issue a special use permit to Flying H Ranch LLC of Superior for hay production and incidental livestock grazing on ± 35 acres of National Forest System land adjacent to their private property. The term of the permit would be for 10 years with renewal rights. This authorization would also include approximately 385-feet of existing underground irrigation pipe located on National Forest land and approximately 2,900-feet of existing fencing marking a portion of the south and east boundary of the special use authorization area.



Figure 1: Permit area requested for hay production and pasture.

Cultivation of the National Forest portion of the field by Flying H Ranch LLC constitutes a “special use” of National Forest System lands. This requires a special use authorization from the Lolo National Forest in accordance with 36 Code of Federal Regulations (CFR) 251.50(a) which states, “Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer.”

Public Involvement

On March 31, 2012, the letter describing the proposal was mailed to adjacent landowners, organizations, other agencies, and individuals who have previously requested notification about special uses on the Lolo National Forest. This letter was also posted on the Lolo National Forest website. In addition, the project has been listed on the Lolo National Forest Schedule of Proposed Actions since April 2012, which is also available on the Lolo National Forest website. Legal notices soliciting public comment were published in the *Missoulian*, *Clark Fork Valley Press*, and *Mineral Independent* on April 4, 2012.

There were two comments received and four requests to be kept on the mailing list. One comment was in favor of the proposal and one was against. The opposing comment expressed an opinion that public land should not be cultivated for personal profit.

Issue Resolution

Public and internal comments were reviewed to identify concerns and issues related to the proposed action. The Forest Service found no significant issues or unresolved conflicts concerning alternate uses of available resources. No additional issues were identified that would require another alternative to address them. The comment that expressed concern about personal profit from public lands is briefly addressed below.

The Forest Service administers and manages National Forest System lands in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C.528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600-1614); and the National Forest Management Act of 1976. These laws authorize the Forest Service to grant many forms of land and resource uses to the general public through the issuance of permits or leases. This particular request by the Flying H Ranch is considered a “special use” and may be authorized under 36 Code of Federal Regulations (CFR) 251.50(a). Although the individual permittee would benefit from the use of this land through hay production and incidental livestock grazing after the hay has been harvested, they would be required to pay the Forest Service a yearly fee for use of the land. 36 CFR 251.57(a) states, “The fee shall be based on fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.”

ALTERNATIVES

Section 102 (2)(E) of the National Environmental Policy Act (NEPA) requires the Forest Service to study, develop, and describe appropriate alternatives to recommended courses of

action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. The Forest Service did this with the No Action and Proposed Action alternatives described below.

NO ACTION

This alternative provides a baseline for comparison of environmental consequences of the proposed action to the existing condition and is a management option that could be selected by the Responsible Official. The results of taking no action would result in the following current and future condition of the project area:

- 1) No special use authorization would be issued for cultivation or incidental livestock grazing.
- 2) The adjacent property owner would be required to fence the forest boundary to ensure livestock did not access National Forest lands.
- 3) That portion of existing hay field on National Forest land would be left to naturally transition back to the habitat type of the surrounding vegetation.
- 4) The 35-acre parcel would not receive noxious weed treatments by the adjacent property owner currently conducted in conjunction with his property. The Forest Service would not integrate treatment of this area into their weed management plan due to funding and access issues.
- 5) There would be no revenue generated from the issuance of a special use authorization.

This alternative proposes no actions that are contained in the proposed action.

PROPOSED ACTION

The proposed action includes the following actions:

- 1) Issuance of a special use permit in accordance with 36 CFR 251.50 that would authorize the following improvements on National Forest land:
 - a. Cultivation of approximately 35 acres for hay production;
 - b. Maintenance of approximately 2,930-feet of fencing consisting of 4 strands of wire to prohibit unauthorized livestock access to non-permitted National Forest land. The fence includes three-rail high gates every 1,000-feet to be left open when livestock is not present to provide easy access for wildlife to the 35-acre parcel.



Figure 2: The fence controls livestock movement and prevents access to unpermitted areas of National Forest System land to the right of the fence.

- c. Use and maintenance of approximately 385-feet of buried 4-inch metal irrigation line at its current location;
 - d. Incidental grazing of livestock during early spring and late fall periods when the field is not used for hay production.
- 2) Continuation of the historic management of the 35-acre parcel as it was under Montana Department of Natural Resources and Conservation ownership.
 - 3) Issuance of the special use authorization would be for a term of 10 years with renewal rights provided the parcel is still needed for cultivation and incidental livestock use.
 - 4) Annual monitoring by Forest Service personnel to ensure that the terms of the permit are being followed.

ENVIRONMENTAL CONSEQUENCES _____

This section provides a summary of the environmental effects of the proposed action. It provides the necessary information to determine whether or not to prepare an environmental impact statement. The associated Draft Finding of No Significant Impact (FONSI) discusses whether the proposed action has significant effects. Further analysis and conclusion about the potential effects are available in reports for each resource and other supporting documentation cited in those reports. These documents are contained within the project file, which is available at the Superior Ranger District office in Superior, Montana.

Consistent with 36 CFR 220.4(f) and CEQ guidance, the past, present, and reasonably foreseeable actions were considered for analysis of cumulative effects where appropriate for

each resource. Past actions considered in cumulative effects analysis include those that contributed to establishing the baseline conditions of the project area today. Past management activities within the project area include timber harvest, grazing and cultivation.

The Lolo National Forest acquired the approximately 120-acre parcel in the S ½ of the S ½ of Section 16; T17N; R27W from the Montana DNRC in October 2011. Prior to this date all activities within this 120-acre area were conducted and managed by the DNRC. The DNRC conducted timber harvest activities on the entire 120 acres in early 2000. They acquired a road use permit from then owner Warnken Inc. to gain access to the parcel. There was no long-term, legal access across the Warnken property by the DNRC. The current Forest Service and public access to the parcel is through the adjacent National Forest parcels on the south and west although there are no roads.

Warnken Inc. was permitted by the DNRC to cultivate the 35 acres that was directly adjacent to his property for hay production and grazing. Warnken Inc. had a fence constructed with steel fence posts that held two strands of electrical wire to keep the cattle out of the timbered section of the parcel. Each year, cattle were put in the pasture after the hay was harvested. The electric fence was removed yearly when the cattle were shifted to another pasture to prevent damage from wintering populations of deer and elk.

The long term Forest Service holdings south and west of the former DNRC parcel is classified as Management Area (MA) 23 under the Lolo National Forest Plan dated February, 1986. The majority of the 120-acre Marble Creek parcel was also designated MA 23 with that portion in Marble Creek designated MA 13 (Decision Notice and Finding of No Significant Impact; DNRC-Lolo Land Exchange).

Threatened, Endangered, and Sensitive Plants

The project would have no direct, indirect, or cumulative effects on any federally listed Endangered or Threatened plants because no habitat for them occurs in or near the project area.

Forest Service sensitive plant species, identified by the Regional Forester, are species for which population viability is a concern. The project would have no direct, indirect or cumulative effects on any sensitive plants because none were found during botanical surveys conducted within the project area. Since the site has been cultivated, mowed, grazed, and treated with herbicide for several decades, it is unlikely that any listed species would be present (Botany report, dated 4/10/2012).

Heritage Resources

The issuance of a special use authorization would have no direct, indirect, or cumulative effects on heritage resources. The project area was surveyed and no heritage resources were found (Heritage report, dated 4/24/2012). The special use permit would contain a standard provision for the protection of heritage sites should any be located during project activities. The proposed action complies with the National Historic Preservation Act.

Hydrology and Fisheries

Project activities would have no measurable direct, indirect, or cumulative effects to water quality, stream beneficial uses, or water yield because there is no surface water present within the proposed permit area. The low spots in the field that hold water after precipitation events are excluded from the permitted area with an existing fence. Marble Creek is approximately 1,050-feet from the edge of the proposed permit area. The west boundary of the Flying H Ranch LLC property is fenced preventing any livestock from direct access to the stream. The fence is approximately 940-feet from Marble Creek.

The permit area is located on relatively flat terrain approximately 1,500-feet to 2,500-feet away from the Clark Fork River. In addition, a county road lies between the permit area and the river. This section of the Clark Fork River has been identified as water quality impaired by the State due to copper, lead, nitrogen and phosphates. However, the continuation of hay production and incidental livestock grazing would not affect the water quality of the river due to the distance between the parcel and the river (Hydrology report, dated 4/24/2012). The project would also have no direct, indirect, or cumulative effects on bull trout, a federally listed threatened species, or westslope cutthroat trout and western pearlshell mussel identified by the Forest Service Northern Region as sensitive species (Fisheries report, dated 4/24/2012). The project is consistent with the Clean Water Act and all state water quality standards.

Soil Resources

The potential for wind erosion is moderate. Under the special use permit, the maintenance of a cover crop and noxious weed control would provide for wind erosion control. The likelihood of extraordinary circumstances based on erosion risk is low (Soils report, 12/05/2012).

Wildlife

The proposed action is consistent with applicable Lolo National Forest Plan goals, direction, and standards. The proposed activities would have no effect on any federally listed threatened or endangered species or any species identified as sensitive in the Forest Service Northern Region (Wildlife report, dated 4/24/2012). The proposed action complies with applicable conservation strategies for wildlife species and is consistent with the Endangered Species Act, the National Forest Management Act, and other laws providing direction and requirements for the management of wildlife species and habitat. The continuation of hay production and the remaining stubble once the crop is harvested would continue to benefit elk by providing supplemental feed in addition to existing native forage.

Threatened and Endangered Species

Section 7 of the Endangered Species Act (ESA) directs federal agencies to ensure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence

of any threatened or endangered species or result in the destruction or adverse modification of their critical habitat. The proposed action is consistent with the ESA.

The project would have no effect on Canada lynx or grizzly bear because the project area is not located within lynx habitat or a grizzly bear recovery zone.

Sensitive Species

The project would have no direct, indirect, or cumulative effects on sensitive species. Although, gray wolves are seen on occasion when the deer and elk herds are present during the spring and winter months, there are no denning sites within the proposed permit area and no known sites within the acquired Marble Creek parcel (Wildlife report, 4/24/2012). The existing lack of tree cover on the proposed permit area makes it unsuitable habitat for black-backed woodpecker, flammulated owls, and peregrine falcons (Wildlife report 4/24/2012). No suitable habitat is present for other listed sensitive species.

Weeds

Under the proposed action, weeds would continue to be treated on the 35-acre parcel by the adjacent landowner to control weed establishment and spread. Under the no action alternative, the area would be susceptible to weed invasion because the Forest Service does not have the funding or access to treat the weeds.

AGENCIES AND PERSONS CONSULTED _____

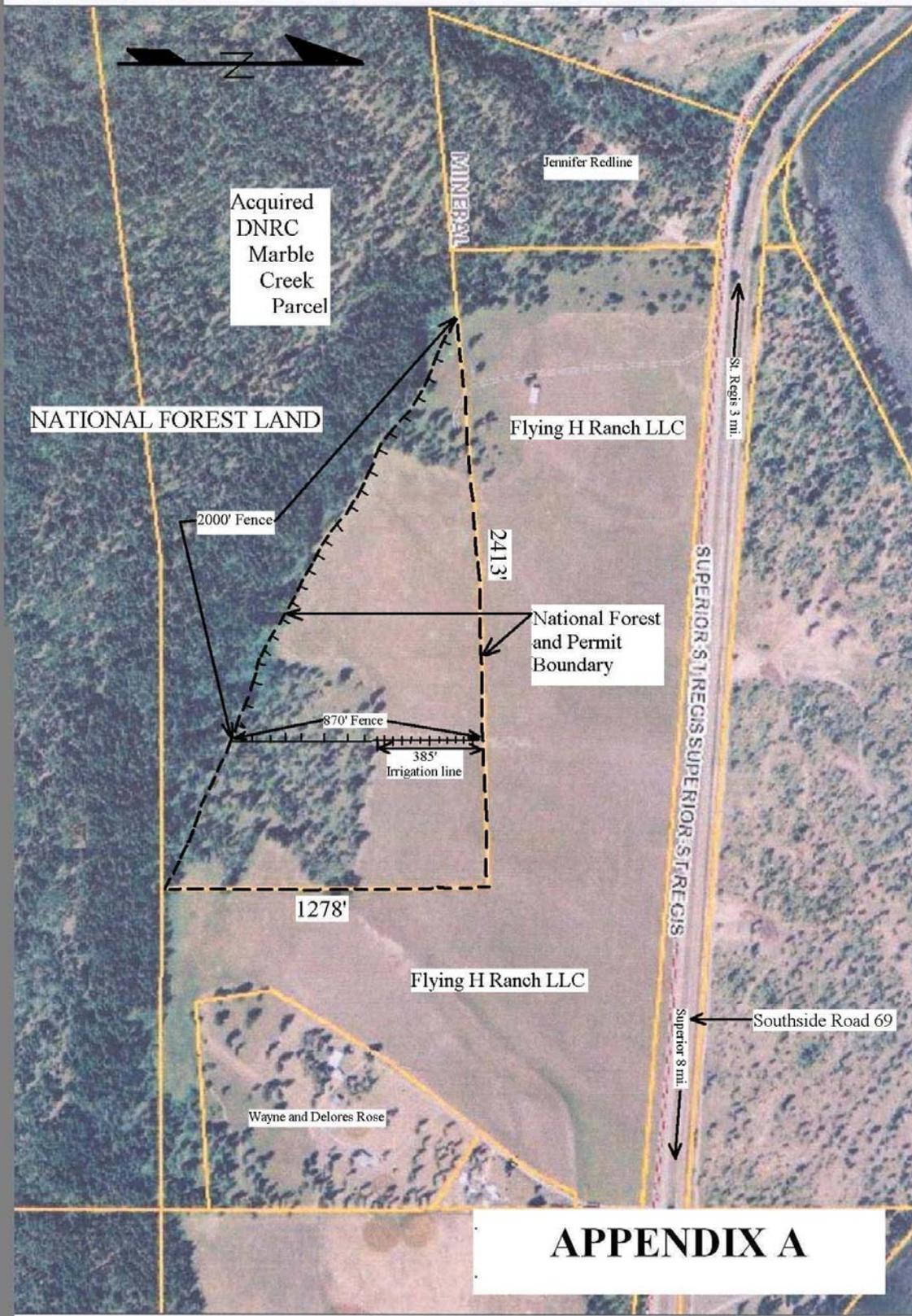
Confederated Salish and Kootenai Tribes
Nez Perce Tribe
Montana Fish, Wildlife & Parks
Adjacent landowners

LITERATURE CITED _____

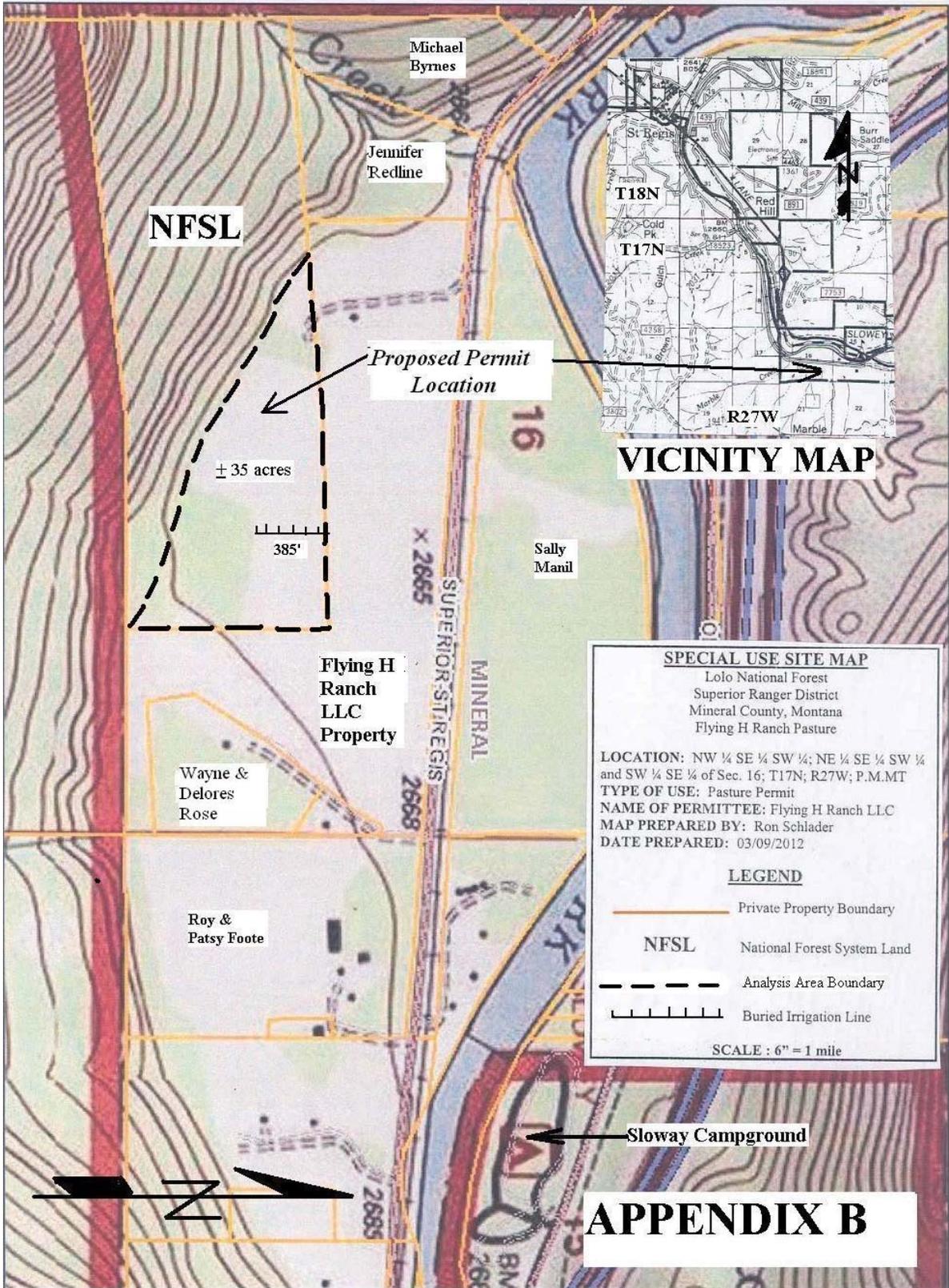
Decision Notice and Finding of No Significant Impact; DNRC-Lolo Land Exchange; May, 2010. Table 6, p. 17.

Lolo National Forest Plan. 1986

Title 36, Code of Federal Regulations, Parts 200 to 299. July 1, 2012.



APPENDIX A



SPECIAL USE SITE MAP
 Lolo National Forest
 Superior Ranger District
 Mineral County, Montana
 Flying H Ranch Pasture

LOCATION: NW ¼ SE ¼ SW ¼; NE ¼ SE ¼ SW ¼
 and SW ¼ SE ¼ of Sec. 16; T17N; R27W; P.M.MT

TYPE OF USE: Pasture Permit

NAME OF PERMITTEE: Flying H Ranch LLC

MAP PREPARED BY: Ron Schlader

DATE PREPARED: 03/09/2012

LEGEND

— Private Property Boundary

NFSL National Forest System Land

- - - Analysis Area Boundary

||||| Buried Irrigation Line

SCALE : 6" = 1 mile

APPENDIX B

