

(3410-11)

DEPARTMENT OF AGRICULTURE

Forest Service, Rogue River-Siskiyou National Forest

Mt. Ashland Ski Area Expansion, Jackson County, Oregon

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement to analyze and correct NFMA and NEPA violations found by the United States Court of Appeals for the Ninth Circuit in CV-05-03004-PA, to conditionally authorize expansion of the Mt. Ashland Ski Area.

SUMMARY: In September 2004, the Forest Service issued a Record of Decision (ROD) for the Mt. Ashland Ski Area (MASA) expansion, selecting Alternative 2 with some modifications adopted from Alternative 6. The Forest Service received twenty-eight notices of appeal to the ROD. In December 2004, the Forest Service denied all administrative appeals to the ROD. In January 2005, Oregon Natural Resources Council (ONRC) filed suit against the Forest Service and Regional Forester Linda Goodman seeking declaratory and injunctive relief on the grounds that the MASA expansion project violated both the NEPA and the NFMA. On February 9, 2007, after considering cross-motions for summary judgment, a United States District Court entered summary judgment against ONRC. ONRC filed a timely notice of appeal to the Ninth Circuit Court of Appeals. Upon review, the Court of Appeals remanded the case to the district court and instructed it to promptly enjoin the MASA expansion project contemplated in the 2004 ROD until the Forest Service corrected the NFMA and NEPA violations found

in Opinion CV-05-03004-PA.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for this action.

The Draft Supplemental Environmental Impact Statement (SEIS) is expected March 2010 and the Final Supplemental Environmental Impact Statement is expected May 2010.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Siskiyou Mountains Ranger District, Rogue River-Siskiyou National Forest, 645 Washington Street, Ashland, Oregon, 97520, Telephone (541) 552-2900; FAX (541) 552-2922.

SUPPLEMENTARY INFORMATION: The Court of Appeals identified several NFMA and NEPA claims, including failure to conduct a proper Biological Evaluation for the Pacific fisher that addresses the five steps referenced in the Land and Resource Management Plan (LRMP). The Court of Appeals found it necessary to understand the type of habitat the Pacific fisher requires for food, shelter and reproduction. A link between mapping of habitat and habitat needs must be made in order to use habitat as a proxy for population census. Potential impacts of displacing fisher and damaging habitat in the corridor between the Siskiyou and Southern cascades must be understood. Cumulative effects of foreseeable future projects on fisher habitat must be understood. The Court of Appeals also found failure to appropriately designate Riparian Reserve and Restricted Watershed land allocations and to properly analyze against LRMP standards and guidelines for soils. Landslide Hazard Zone 2 should have been designated as Riparian Reserve.

Purpose and Need for Action

The purpose and need for this supplemental document is to analyze and correct specific violations identified by the Ninth Circuit Court of Appeals which will allow a

determination on whether and to what extent analysis of supplemental information might alter the decision to allow ski area expansion. This action is needed to address the appropriateness of the previous decision and to be responsive to the Court of Appeals Opinion and district court injunction.

Responsible Official

The Rogue River-Siskiyou and Klamath National Forests are jointly responsible for public land management of the Special Use Permit area. The Rogue River-Siskiyou National Forest has been authorized to make decisions regarding implementation of ski area expansion activities at Mt. Ashland under the terms of a February 4, 2004 Intra-Agency Agreement (No. 03-IA-11061002-005), between the Klamath National Forest and the Rogue River-Siskiyou National Forest and renewed on May 12, 2009 Intra-Agency Agreement (09-IA-11061001-003).

Decision Framework

The Forest Service will use the results of supplemental analysis to determine if and how the violations identified by the Ninth Circuit will affect the 2004 decision. The Forest Service will decide whether to withdraw the 2004 decision, or issue a new or supplemental decision. If a new or supplemental decision is issued following preparation of the Final Supplemental Environmental Impact Statement, that decision will be subject to appeal in accordance with 36 CFR 215.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft SEIS will be prepared for comment. Comments received on the Draft SEIS will be considered in the preparation of the Final SEIS. The Draft SEIS is now expected to be

filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2010. The comment period on the Draft SEIS will be 45-days from the date EPA publishes the Notice of Availability in the Federal Register. At the end of the comment period on the Draft SEIS, comments will be analyzed and considered by the Forest Service in preparing the Final SEIS. The Final SEIS is scheduled to be completed by May 2010. The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final SEIS. To assist the Forest Service in identifying and considering issues and concerns, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed

in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and address of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. (Authority: 40 CFR 508.22; 36 CFR 220.5)

SCOTT D. CONROY

Forest Supervisor

DATE