

RECORD OF DECISION

for

SCHOOL FIRE SALVAGE RECOVERY PROJECT

[Forest Plan Amendment to modify Eastside Screens' wildlife standard at 6d. (2) (a)]

and

FINDING OF NON-SIGNIFICANT AMENDMENT

USDA Forest Service
Umatilla National Forest

Pomeroy Ranger District
Columbia and Garfield Counties, Washington

Sections 13, 24 and 25 T. 9N., R. 40E.; Sections 1-4, and 8-36 T. 9N., R. 41E.; and
Sections 1-12, 14-23, and 29-32 T. 9N., R. 42 E., Willamette Meridian.

Background

The following narrative describes a series of events that have led up to this record of decision for the School Fire Salvage Recovery Project. A clear understanding of this history will help place this decision into context with documents and events that preceded this decision.

The final environmental impact statement (FEIS) for School Fire Salvage Recovery Project was issued July 2006 and a record of decision (ROD) signed August 14, 2006, which authorized about 9,430 acres of salvage harvest. Also in August, three timber sales (Milly, Oli and Sun) were awarded covering about 3,670 acres with an estimated volume of 28 million board feet (MMBF).

On August 15, 2006, the Lands Council, Oregon Natural Resources Council, Hells Canyon Preservation Council, and Sierra Club (plaintiffs) filed suit against Forest Supervisor Kevin Martin and the Forest Service in The Lands Council et al. v. Martin et al., Civ. No. 06-229, District Court of the Eastern District of Washington (District Court), challenging School Fire Salvage Recovery Project. Plaintiffs alleged the Forest Service failed to adequately analyze impacts to certain undeveloped areas, failed to consider a reasonable range of alternatives, failed to comply with the Eastside Screens to protect old-growth trees, failed to adequately consider the scientific controversy regarding “Factors Affecting Survival of Fire-Injured Trees” (Scott et al. 2002, 2006), and failed to adequately analyze cumulative environmental impacts. Timber sale purchasers, Boise Building Solutions Manufacturing, LLC and Dodge Logging, Inc., along with American Forest Resource Council joined the lawsuit as Defendant-Intervenors.

On September 11, 2006, the District Court denied plaintiffs’ request for a temporary restraining order and preliminary injunction, finding that the Forest Service had not failed in its duty to take the requisite “hard look” at the environmental consequences. Thereafter, the three awarded salvage timber sales began operations. On September 15, the District Court denied plaintiffs’ request for stay and on September 18, the 9th Circuit Court of Appeals (Appeals Court) denied plaintiffs’ request for an injunction pending appeal.

On February 5, 2007, the Appeals Court heard oral argument on the District Court's denial of the preliminary injunction. The Appeals Court issued an opinion on February 12, 2007, that the Forest Service had adequately disclosed the impacts to the unroaded areas, but that the Forest Service violated the Forest Plan (Eastside Screens) prohibition of cutting "live trees" ≥ 21 inches diameter at breast height (dbh) when it designated dying trees for harvest. The intent of the Eastside Screens interim management direction was to restrict timber harvest in those areas that scientific analysis indicated were important to certain fish, wildlife, and ecosystem structure.

The Appeals Court reasoned that in the absence of an adopted technical definition of "live trees," the common understanding of the word "live" from the Merriam Webster's Collegiate Dictionary (10th ed. 1993) meant "to be alive," which meant "not dead," and concluded "the common meaning of the term 'all live trees' is all trees that have not yet died." Opinion at 12. Thus, according to the Appeals Court, dying trees designated for harvest were not yet dead, and remained "live" for the purposes of the Eastside Screens. The Appeals Court further opined that "[t]he Forest Service is free, of course, to amend the Eastside Screens to allow logging of old-growth dying trees, either by adding a definition of the term 'live trees' or by changing the requirement to maintain all live trees of a certain size." Opinion at 14.

The Appeals Court remanded the case to the District Court to issue an injunction consistent with its findings. The District Court issued an injunction on February 14, 2007, requiring that "The Forest Service shall not harvest from the three timber sales areas any 'live tree' ≥ 21 inches dbh." This includes any tree of requisite size with green needles or that is not yet dead." District Court Order at 2. The Appeals Court definition of a "live tree" does not reflect Forest Service silvicultural practice and interpretation, and it deters the Forest Service from achieving the purpose and need of the School Fire Salvage Recovery Project.

After careful consideration and weighing all the options available, I decided to amend the Umatilla National Forest's Land and Resource Management Plan (Forest Plan) and prepare a draft supplemental environmental impact statement (DSEIS). The DSEIS was listed in the Federal Register on March 9, 2007 (Vol. 72 No.46 Page 10749) for a 45-day comment period. The supplemental statement provided documentation of a Forest Plan amendment to modify Eastside Screens' wildlife standards at 6d. (2) (a) to define both live and dead trees in support of the School Fire Salvage Recovery Project FEIS and ROD (signed August 14, 2006).

The final supplemental EIS (FSEIS) and this record of decision (ROD) tier to and reference the 2006 FEIS and ROD. The two environmental impact statement documents therefore, must be thought of and used together as if they are one statement. This ROD supports and compliments the ROD signed August 14, 2006.

The decision to be made with this ROD is whether or not the Forest Supervisor should amend the Forest Plan and modify the Eastside Screens' wildlife standard at 6d. (2) (a) to define both live and dead trees only for the site-specific project called School Fire Salvage Recovery Project. This ROD documents that choice.

Paper copies of School Fire Salvage Recovery Project 2006 FEIS and ROD, and 2007 FSEIS, and ROD are available upon request by contacting Terri Jeffreys at Pomeroy Ranger District. These documents may be viewed or downloaded from the following Internet site:

<http://www.fs.fed.us/r6/uma/projects/readroom/>

Decision

After careful review and consideration of public comments and analyses disclosed in the School Fire Salvage Recovery Project FEIS, FSEIS, and project file I have decided to select Alternative B as described in the FSEIS, Chapter 2, pp. 2-1 to 2-2. My decision amends the Umatilla National Forest's Land and Resource Management Plan Eastside Screens' wildlife standard at 6d. (2) (a) to read as follows:

Maintain all remnant late and old seral and/or structural live trees ≥ 21 dbh that currently exist within stands proposed for harvest activities. Live trees are defined as trees rated to have a high probability of surviving the effects of fire, and trees rated to have a moderate probability of survival where sampling indicates that at least 50 percent of their basal cambium is alive. Dead trees are defined as trees rated to have a low probability of surviving the effects of fire, and trees rated to have a moderate probability of survival where sampling indicates that more than 50 percent of their basal cambium is dead. Survival probability is determined using "Factors Affecting Survival of Fire Injured Trees: A Rating System for Determining Relative Probability of Survival of Conifers in the Blue and Wallowa Mountains" (Scott et al. 2002, as amended) (commonly referred to as the Scott Guidelines).

This amendment applies to, and only for the duration of, the site-specific project called School Fire Salvage Recovery Project. Other than amend the Forest Plan, this decision supports the decision made in, but does not change any other aspect of, School Fire Salvage Recovery Project ROD, signed August 14, 2006.

Reasons for the Decision

I carefully considered the issues and concerns raised by those who participated and commented in this analysis to help make my decision. I considered eleven alternatives, two were analyzed in detail and nine were considered but eliminated from detailed study for the reasons stated in the FSEIS, Chapter 2, pp. 2-2 to 2-5. The following narrative presents why I did not select Alternative A (no action). I also discuss how my decision responds to the purpose and need and how I considered the issues most relevant to me in making my decision.

Reasons for Not Selecting No Action

I considered, but did not select Alternative A (no action) because with no amendment to the Eastside Screens' wildlife standard there would be no additional salvage harvest of dying trees ≥ 21 inches dbh. Large diameter dead and dying trees have greater economic value as compared to smaller diameter dead and dying trees. Potential economic benefits of salvaging dead and dying trees would be reduced by excluding larger diameters from the sale package. Thus, this alternative does not address the purpose and need to salvage harvest as rapidly as practicable before decay and other wood deterioration occurs to maximize potential economic benefits.

The Appeals Court's definition of a "live tree," which does not reflect Forest Service silvicultural practice and interpretation, frustrates the ability of the Forest Service to achieve the purpose and need of the School Fire Salvage Recovery Project as stated above. No action would have excluded further harvest of any "live trees" ≥ 21 inches dbh, including any tree of requisite size with green needles or that is not yet dead.

Purpose and Need

In detailing the purpose and need, I chose to keep the scope and context as narrow and focused as possible to address only those findings in the Appeals Court's opinion they believed were not appropriately addressed. Their remanded direction to the District Court was very specific and only addressed a conflict in our interpretation and definition of a "live tree." I believe my decision affirmatively addresses and fulfills the purpose and need for action and this decision and amendment will satisfy the Appeals Court's findings and allow the remainder of the School Fire Salvage Recovery Project to continue.

Issues

Both individuals and groups raised issues and concerns during the development of this project and I considered them to help me make my decision. More detailed information about issues considered can be found in Chapter 2, pp. 2-4 to 2-9 and Chapter 3 of the FEIS and Chapters 1, 2, and 3 of the FSEIS. The decision rationale for issues (pp.6-9) described in the August 14, 2006 ROD apply to, and are unchanged by this decision to amend the forest plan.

Harvest of Dying Trees

I recognize there remains a high degree of controversy about the harvest of fire damaged trees. Several respondents commented that our basis for differentiating between dying and living trees is either questionable or untenable for scientific and other reasons. Often these comments specifically addressed use of the Scott Guidelines (Scott et al. 2002, 2003) and assert there are more appropriate methods that would better predict tree mortality for the School Fire Salvage Recovery Project.

Controversy about this topic has been evident to me even before I decided to proceed with this project following the School Fire in the fall of 2005. The FEIS and my August 14, 2006 decision considered and acknowledged this important issue. Indeed the need for the FSEIS and this ROD arose from this very controversy.

I believe I have considered the most recent science regarding what constitutes a living tree and dead tree in a post-fire context and how that determination is made. In an attempt to further explore the issue, I revisited an in-depth comparison of the most recent scientific methods for assessing tree mortality from Appendix K of the School FEIS. Since that time, the Scott Guidelines have been amended to reflect new science and monitoring data. With so much at stake, I felt this comparison was important enough to disclose in the body of the FSEIS and not hide it in an appendix. Therefore, pages 3-5 through 3-25 are specifically designed to highlight the comprehensive comparison of each of the different tree mortality assessment methods and conclusively demonstrate that the Scott Guidelines are most appropriate for School Fire Salvage Recovery Project. With this comparison, I conclude the Scott Guidelines are the best available scientific process and procedure for our local geographic area, timber types, fire types, and associated insects and diseases to determine whether a fire damaged tree is living, expected to live, dead, or expected to die. In addition, I believe the Scott Guidelines to be the best comprehensive assessment of potential tree mortality relative to other associated prediction methods because it considers the effect of fire injuries on the whole tree rather than just one or more of its parts.

The amended wording to the Eastside Screens' wildlife standard at 6d. (2) (a) provides a clear definition of live trees and dead trees. Lastly, I believe my decision is fully consistent with and affirmatively responds to the Appeals Court's recommended remedy of adding a definition of "live trees" to the Eastside Screens (Forest Plan).

Public Involvement

The Forest Service sought information, comments, and assistance from federal, state, local tribes, local agencies, elected officials and from other groups and individuals interested in or affected by the proposed action. The Forest's *Schedule of Proposed Activities* (SOPA) was updated quarterly to inform the public of changes in project status beginning with the fall 2005 SOPA edition. A detailed list of contacts, contact dates, and actions taken to involve and make information known to interested parties is disclosed in the FEIS, Chapter 2, pp. 2-1 to 2-4. Meeting notes are in the project file.

Date	Action
October 25, 2005	Notice of Intent (NOI) in the Federal Register for School Fire Salvage Recovery Project
October 27, 2005	Project description and proposed action letters mailed to 230 interested parties
April 20, 2006	Letters regarding the availability of the Draft EIS and 45-day comment period mailed to 297 interested parties.
April 28, 2006	EPA's Notice of Availability (NOA) of the Draft EIS in the Federal Register
April 29, 2006	Legal Notice in the <i>East Oregonian</i> (newspaper of record) on the availability of Draft EIS and request for comments
June 12, 2006	Comment period on Draft EIS ends (22 responses received)
July 10, 2006	Letters regarding the availability of the Final EIS mailed to 297 interested parties
July 14, 2006	EPA's Notice of Availability (NOA) of Final EIS in Federal Register
August 14, 2006	Record of Decision (ROD) signed and letters mailed to 297 interested parties announcing ROD was signed and included information on appeal procedures.
August 15, 2006	Legal Notice in the <i>East Oregonian</i> that a ROD was signed along with information on appeal procedures.
September 29, 2006	Appeal Period ends (2 appeals received)
November 8, 2006	Letters (2) from the Appeal Deciding Officer to affirm the Forest Supervisor's decision and to deny requested relief to appellants.
February 26, 2007	Notice of Intent (NOI) in Federal Register to prepare a Supplemental EIS to School Fire Salvage Recovery Project to amend the Forest Plan
February 28, 2007	Letters mailed to 297 interested parties regarding the availability of a Draft Supplemental EIS and a request for comments.
March 7, 2007	Legal Notice in the <i>East Oregonian</i> on the availability of the DSEIS and request for comments
March 9, 2007	EPA's Notice of Availability (NOA) and request for comments on the DSEIS
April 23, 2007	Comment period on DSEIS ends (12 responses received)
May 2, 2007	Letters mailed to 297 interested parties announcing availability of Final Supplemental EIS (FSEIS)
May 11, 2007	EPA's Notice of Availability (NOA) of FSEIS

Alternatives Considered

The 2006 FEIS considered in detail three alternatives, including no action. Twelve other alternatives were considered but not analyzed in detail. All alternatives are described in detail in Chapter 2 of the 2006 FEIS and are summarized in the ROD (August 14, 2006).

The FSEIS considered in detail, no action and a Forest Plan amendment to modify the Eastside Screens' wildlife standard at 6d. (2) (a) to define both live and dead trees. This amendment will apply to, and only for the duration of, the site-specific project called School Fire Salvage Recovery Project. Nine alternatives were considered but not analyzed in detail (FSEIS, Chapter 2).

Findings Required by Other Laws

National Forest Management Act

The ROD (August 14, 2006) for School Fire Salvage Recovery Project documented consistency with the National Forest Management Act (page 12). This decision to amend the Forest Plan for School Fire Salvage Recovery Project does not change the 2006 findings. This decision is also consistent with the National Forest Management Act (NFMA). A detailed discussion of NFMA compliance is included in Chapter 3 of the FEIS as supplemented.

The 2006 FEIS and ROD for School Fire Salvage Recovery Project documented consistency with the Umatilla National Forest Land and Resource Management Plan Final Environmental Impact Statement, Record of Decision, the accompanying Land and Resource Management Plan, as amended, (USDA Forest Service 1990), dated June 11, 1990 (FEIS Chapter 3, pp. 3-21, 3-45, 3-46, 3-47, 3-100, 3-101, 3-102, 3-121, 3-150, 3-165, 3-171, 3-221, 3-222, 3-230, 3-244, 3-249, 3-253, 2-269, and 3-272 and ROD, p. 12). This decision to amend the Forest Plan for School Fire Salvage Recovery Project does not change the 2006 findings.

Finding of Non-Significant Amendment

Consistent with 36 CFR 219.14, as amended by the September 29, 2004 Interpretive Rule, this amendment uses the provisions of the planning regulation in effect before November 9, 2000. The Forest Service Land and Resource Management Planning Handbook (Forest Service Handbook 1909.12) lists factors to be used when determining whether a proposed change to a Forest Plan is significant or not significant: timing; location and size; goals, objectives and outputs; and management prescriptions.

Timing: The timing factor examines at what point over the course of the Forest Plan period the plan is amended. Both the age of the underlying document and the duration of the amendment are relevant considerations. The handbook indicates that the later in the time period, the less significant the change is likely to be. As noted in the FSEIS (Chapter 1 p. 1-3, and Chapter 2 p. 2-1) and this ROD (page 3) the amendment is limited in time in that the amendment would only apply to, and for the duration of, the School Fire Salvage Recovery Project. The Forest Plan was signed in 1990 and this amendment occurs in year 17 in the life of the plan. The Forest Plan is in the process of being revised.

Location and Size: The key to location and size is context, or the relationship of the affected area to the overall planning area. The smaller the area affected, the less likely the change is to be a significant change in the Forest Plan. The planning area for the Umatilla National Forest is about 1.4 million acres (Forest Plan, p. 1-4). The amendment will affect less than half of one percent of the Forest planning area.

Goals, Objectives, and Outputs: The goals, objectives, and outputs factor involves the determination of whether the change alters the long-term relationship between the level of goods and services in the overall planning area. This criterion is always analyzed when considering effects on the overall Forest Plan and other various multiple-use resources that may be affected. In this criterion, time remaining in the 15-year planning period to move toward multiple-use goals and achieve objectives and outputs are relevant considerations.

The amendment adds narrative wording to the Eastside Screens' wildlife standard at 6d. (2) (a) to define a "live tree" and applies to, and only for the duration of, the School Fire Salvage Recovery Project.

The amendment does not delete wording from the Forest Plan. The amendment does not change standards and guidelines for other resources in the Forest Plan. The amendment does not change the goals and objectives for other resources in the Forest Plan.

The amendment is not expected to preclude or require other actions across the forest and incorporation of this management direction will not change the amount of timber made available for public use outside this project area; will not require changes in grazing permits; plans of operation for mining; or the access and travel management plan (FSEIS, Chapter 3). Therefore, anticipated changes brought about by this amendment in the levels of resource activities and outputs (Forest Plan, page 4-16) projected for this planning period are expected to be non-significant and immeasurable.

Management Prescriptions: The management prescriptions factor involves the determination of (1) whether the change in a management prescription is only for a specific situation or whether it would apply to future decisions throughout the planning area; and (2) whether or not the change alters the desired future condition of the land and resources or the anticipated goods and services to be produced. In this criterion, time remaining in the 15-year planning period and changes in desired future conditions or the anticipated goods and services to be produced are relevant considerations.

This amendment is specific to, and only for the duration of, School Fire Salvage Recovery Project and will not apply to future decisions throughout the planning area (FSEIS, Chapters 1, and 2, and this ROD page 3). The desired future condition and land allocations are not changed by this decision (FSEIS Chapters 1, and 2, and this ROD page 3). As discussed above in “goals, objectives, and outputs,” the long-term levels of goods and services projected in the current plan for the 15-year planning period are non-significantly changed by modifying the Eastside Screens’ wildlife standard at 6d. (2) (a).

Finding: On the basis of information and analysis contained in the FSEIS, and all other information available as summarized above, it is my determination that adoption of the management direction reflected in my decision will result in a non-significant amendment to the Forest Plan.

Environmentally Preferred Alternative

This decision to amend the Forest Plan for the School Fire Salvage Recovery Project does not change the 2006 identification of the environmentally preferable alternative (2006 ROD, p. 16).

Emergency Situation Determination

On June 11, 2007 Chief Gail Kimbell found that an emergency situation existed. An emergency situation is defined in 36 CFR 215.2 as “A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on NFS or adjacent lands; or that would result in substantial loss of economic value to the federal government if implementation of the decision were delayed.” The determination that an emergency situation exists does not exempt an activity from appeal. The determination only eliminates the automatic stays built into the appeal review process. Pursuant to 36 CFR 215.10 (b), Chief Kimbell granted an emergency exemption from stay for the remaining portions of Oli and Sun Salvage Timber Sales as well as Chicken Bone and Ricochet Salvage Timber Sales. The Milly Sale is basically complete and is not in consideration for this request. Chief Kimbell has determined that failure to act quickly will result in substantial economic loss to the Federal Government.

Implementation Date

Implementation of School Fire Salvage Recovery Project determined to be an emergency may proceed immediately (36 CFR 215.10).

Appeal Process and Rights

This decision is subject to appeal pursuant to Forest Service regulations at 36 CFR Part 215. Only individuals or organizations who submitted comments or expressed an interest in the project during the comment period may appeal. Any appeal of this decision must be in writing and fully consistent with the content requirements described in 36 CFR 215.14. A written appeal must be postmarked or received by the Appeal Deciding Officer (the Regional Forester) within 45 days of the date of publication of the legal notice regarding this decision in the *East Oregonian* newspaper.

Send appeals to:

Linda Goodman, Regional Forester
USDA Forest Service
ATTN: Appeals Office
PO Box 3623
Portland, Oregon 97208-3623

Street location for hand delivery is 333 SW First Ave., Portland, OR (office hours: 8-4:30 M-F). Send faxes to (503) 808-2255. Appeals may be e-mailed to:

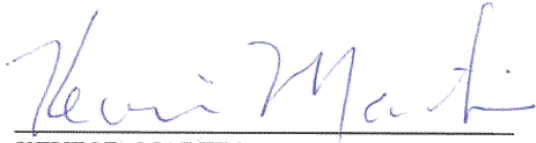
appeals-pacificnorthwest-regional-office@fs.fed.us.

Electronic appeals must be submitted as part of the actual e-mail message, or as an attachment in Microsoft Word, rich text format or portable document format only. E-mails submitted to e-mail addresses other than the one listed above or in other formats that those listed or containing viruses will be rejected. Any written appeal, including attachments must be postmarked or received (via regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) within 45 days of the date of publication of this legal notice. The publication date of the legal notice in the *East Oregonian* newspaper is the exclusive means for calculating the time to file an appeal (§215.5 (a)). Those wishing to appeal should not rely upon dates or timeframe information provided by any other source.

For further information regarding these appeal procedures contact Glen Westlund, Acting Forest Environmental Coordinator, at (541) 278-3869.

Contact Person

For further information about this project, contact Dean R. Millett, Project Team Leader, Pomeroy Ranger District, 71 West Main St., Pomeroy, WA 99347, phone (509) 843-1891.



KEVIN D. MARTIN
Forest Supervisor
Umatilla National Forest



Date

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