

Decision Memo
and
Continuation Determination
for
Recreation Residence Term Special Use Permit Renewal

Still Creek Recreation Residence Tract

USDA Forest Service
Zigzag Ranger District, Mt. Hood National Forest
Clackamas County, Oregon

Background

Recreation cabins are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation cabins, their families, and guests. To the maximum extent practicable, the recreation residence program is managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service direction to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation cabins (FSM 2347.1).

The Forest Service Recreation Residence program gives private citizens the opportunity to own a single-family cabin in designated areas on the National Forests. They are commonly called "summer homes" or "recreation cabins". These privately owned cabins (improvements) are located within formally established "tracts" on "lots" designated for that purpose and are authorized and administered under the terms and conditions of a special use authorization called a Term Special Use Permit. The individual owns the improvements but not the land. The permit specifies that the cabins shall not be the owner's primary year round residence; and requires the payment of an annual rental fee based upon fair market value of the land, not including improvements, as determined by an appraisal.

Recreation cabins have been on the Mt. Hood National Forest since the Term Occupancy Act was enacted by Congress in 1915. There are currently ten tracts containing 554 lots with cabins on them. This decision memo documents the decision for the Still Creek tract, which covers approximately 23 acres and contains 57 cabins. The legal description for the tract is: T3S., R7E., Sections 2, 3, & 11; Willamette Meridian (see attached map).

The current 20-year Term Special Use Permits will expire on December 31, 2008. A new recreation residence policy outlining procedures for issuance of new permits upon the expiration of current permits was published in the Federal Register on June 2, 1994. The first step in reissuing these permits was to conduct a Forest Plan Consistency Review to determine whether current permits for the 554 recreation cabins on the Mt. Hood National Forest were consistent with Forest Plan direction. This Consistency Review was completed and signed on June 29, 2006, and found that all ten tracts are consistent, or can be made consistent, with the direction, management prescriptions, and Standards and Guidelines contained in the Mt. Hood National Forest Land and Resource Management Plan (Forest Plan) of 1990. The recreation residence

tracts are also consistent with the management direction and Standards and Guidelines contained in the Record of Decision (ROD) for the Northwest Forest Plan of 1994. The Finding of Consistency led to this decision as to whether recreation residence use within the Still Creek tract may continue for another 20 years following the expiration of the current term permit.

Decision

It is my decision to authorize continued recreation residence use on the Still Creek tract within the Mt. Hood National Forest for a 20-year period beginning January 1, 2009 with no change to the current authorized use. As a result of this decision, new Term Special Use Permits with standard terms and conditions will be issued to each occupied lot within the tract. Only currently approved existing improvements will be authorized. Existing recreation cabin owners will be eligible to renew their permits for a term of twenty years, *provided* they are in compliance with the terms and conditions of their permits, or take appropriate steps to ensure compliance with the terms and conditions of their permits. Compliance needs will be identified and cabin owners will be required to complete the identified compliance items for their individual lots and cabins by December 31, 2007. In rare cases where extenuating circumstances may prevent a cabin owner from completing their compliance provisions by December 31, 2007, the cabin owner may apply for a written extension which if granted, would extend the deadline for completing compliance provisions to September 1, 2008. Recreation cabin owners who do not complete the compliance provisions may forfeit the privilege to continue to use National Forest System lands for a recreation residence.

The decision to issue new term permits for each of the existing recreational cabins in the Still Creek tract is categorically excluded from documentation in an environmental impact statement or environmental assessment pursuant to Forest Service Handbook 1909.15, WO Amendment 1909.15-2006-1, Section 31.2(15), "Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or recreation cabin owner is in full compliance with the terms and conditions of the special use authorization."

Finding of No Extraordinary Circumstances

Resource conditions that were considered in determining whether extraordinary circumstances related to the proposed action warranted further analysis and documentation in an environmental assessment (EA) or an environmental impact statement (EIS) are: 1) Federally listed threatened and endangered species or designated critical habitat; 2) Species proposed for Federal listing or proposed critical habitat; 3) Forest Service sensitive species; 4) Flood plains, wetlands, or municipal watersheds; 5) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreations areas; 6) Inventoried roadless areas; 7) Research Natural Areas; 8) American Indians and Alaska Native religious or cultural sites, archaeological sites, or historic properties or areas. The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

The analysis completed on this proposal resulted in a finding that no extraordinary circumstances exist that might cause the action to have significant effects. Therefore, this action can be categorically excluded from documentation in an EA or EIS.

Northwest Forest Plan Survey and Manage Species

I have reviewed the Northwest Forest Plan Survey and Manage reports included in the Biological Evaluations and have considered the recommendation of the resource specialist, the probability of species being present and concur with their findings that there would be No Impact to Survey and Manage Aquatic Snails or their habitats. This project is consistent with the 2001 Record of Decision for Survey and Manage standards and guidelines as amended or modified as of March 21, 2004.

Public Involvement

This project has continually been listed in the Schedule of Proposed Actions under the Planning, Appeals and Litigation System Reports (PALS) system since April, 2005. Projects listed in PALS are also posted on the Mt. Hood National Forest web site at: <http://www.fs.fed.us/r6/mthood/publications/>. In addition, on July 10, 2006 a letter describing the Consistency Review and Continuation Determination project was mailed to the Mt. Hood Forest Homeowners Association; the Oregon Homeowners Association, and several other groups, agencies or individuals who have previously expressed an interest in projects on the Zigzag Ranger District.

One group, the Oregon Natural Resources Council (ONRC), responded by stating that recreation cabins located within Riparian Reserves should meet standards and guidelines for vegetation, water quality and wildlife habitat. The environmental analysis conducted for the Consistency Review, and this Decision Memo, concluded that impacts to Riparian Reserves are minimal and that issuing new term special use permits for recreation cabins within the Still Creek tract conforms, or can be made to conform, to Riparian Reserve standards and guidelines. The Consistency Review (available on the Mt. Hood National Forest web site at: <http://www.fs.fed.us/r6/mthood/projects/>) lists all of the applicable Forest Plan standards and guidelines (including standards and guidelines for Riparian Reserves) and explains how the proposal to issue new Term Special Use Permits is consistent with the standards and guidelines.

A second letter was mailed to the above groups on May 31, 2007 for the purpose of soliciting issues and concerns related to the permit re-issuance project. At this time no responses have been received.

Findings Required by Other Laws

This decision is consistent with the Mt. Hood Forest Plan as required by the National Forest Management Act. Renewal of the recreation residence term special use permits follows Forest Plan Direction, and standards and guidelines.

This project (renewal of the term recreation residence permits) was designed in conformance with Forest Plan direction and incorporates appropriate Forest Plan standards and guidelines for heritage resources, visual resources, facilities, recreation, wildlife, soil and water, lands and special uses, insect and disease management, and vegetation management in the administration of the term special use permits.

The issuance of term special use permits for the recreation cabins is considered an undertaking per the National Historic Preservation Act (NHPA). The issuance does not in itself authorize changes or activities that could affect significant heritage resources. Therefore, this project can be classified as an undertaking with no potential to affect significant heritage resources and is in compliance with NHPA.

In accordance with the Endangered Species Act, a Biological Assessment and Evaluation was completed for the Still Creek tract. It was determined the project will have no effect to any proposed, endangered, sensitive, or threatened species, their critical habitats or their proposed critical habitats, is not likely to trend toward listing any sensitive species listed for the Mt. Hood National Forest, and will not impact the population trend for any Management Indicator Species (MIS) species on the Mt. Hood National Forest.

The project will have No Adverse Affect on Essential Fish Habitat for chinook or coho salmon under the 1996 Amendment to the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

There are no permitted water withdrawals by any of the 57 permittees and thus no adverse effects to water quality are expected.

Administrative Review or Appeal Opportunities

This decision is not subject to appeal pursuant to Forest Service regulations at 36 CFR 215.8. Under 36 CFR 215.8(a) (4): Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in FSH 1909.15, Section 31.1 and 31.2 are not subject to appeal. A review of *Earth Island Institute v. Ruthenbeck*, No. CIV F-03-6386 JKS (E.D. Cal., October 19, 2005) revealed that the use of a categorical exclusion in this matter (i.e., renewal of existing compliant recreation special use permits) would not conflict with the October 19, 2005 ruling by the Federal District Court for the District of California and subsequent clarification of that ruling by the Chief, US Forest Service.

This decision is subject to appeal pursuant to 36 CFR 251, Subpart C, by those who hold or, in certain instances, those who have applied for a written authorization to occupy and use National Forest System lands, if that authorization would be affected by this decision. Any written notice of appeal of this decision must include sufficient narrative evidence and argument to show why this decision should be changed or reversed and be fully consistent with 36 CFR 251.90, Content of Notice of Appeal. Appeals can be hand delivered, or submitted by mail, email, or FAX. They must be postmarked and sent to the Appeal Deciding Officer within 45 days of the date of this letter. The appeal must be sent to the Appeal Deciding Officer: Forest Supervisor Gary Larsen, Attn: Appeals, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055, FAX, (503)

668-1794; email, appeals-pacificnorthwest-mthood@fs.fed.us. Simultaneously, a copy must be sent to Zigzag District Ranger, Bill Westbrook (Deciding Officer), 70220 E. Hwy 26, Zigzag, OR 97049, FAX, (503) 622-5622.

Electronic appeals must be submitted as part of the actual e-mail message, or as an attachment in Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf) only. E-mails submitted to email addresses other than the one listed above, or in formats other than those listed or containing viruses, will be rejected. It is the responsibility of the appellant to confirm receipt of appeals submitted by electronic mail. For further information regarding these appeal procedures, contact the Forest Environmental Coordinator Mike Redmond at 503-668-1776.

Project Implementation

Implementation will involve issuing a new permit for each of the existing occupied lots. New permits will be in effect by January 1, 2009. Implementation of this decision may occur on, but not before, 5 business days from the close of the 45-day appeal filing period described above. If an appeal is filed, implementation may not occur for 15 business days following the date of appeal disposition (36 CFR 215.10).

This Decision Memo and the Forest Plan Consistency Review can be downloaded from the Forest web site at <http://www.fs.fed.us/r6/mthood> in the Projects & Plans section.

For further information contact Mike Malone or Christy Covington; Zigzag Ranger Station, 70220 E. HWY 26, Zigzag, OR 97049. Phone: (503) 622-3191

Responsible Official:

BILL WESTBROOK
District Ranger

Date Published

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