

Decision Record - Memorandum

Prepared by
U.S. Department of the Interior
Bureau of Land Management

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Chapter 1. Scott Luber Filming

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1.1. Introduction

Scott Luber has filed an application proposing to obtain an authorization for filming after the fact pursuant to Title III of FLPMA. The applicant utilized public lands to film for personal use back in August 2008, but has since started a business and now wants to market the film.

1.2. Summary

This proposal would give Mr. Luber an after the fact authorization to use public lands for filming a camping and hunting trip that took place between August 8 and August 15, 2008.

1.3. Alternatives Considered

No other alternatives were considered except the “No Alternative Option” and was not selected as it would not allow for an authorization to be issued and since Mr. Luber already used the lands is really a moot point.

1.4. Decision

Rationale:

1. The proposed action is consistent with the use of public lands under the authority of Title III of the Federal Land Policy and Management Act and the regulations found in 43 CFR 2920.
2. All concerns are appropriately addressed in the DNA DOI-BLM-AK-03000-2014-0007. This includes cultural resources and subsistence concerns (see attached NHPA Section 106, ANILCA 810 findings, boundary risk and wilderness characteristic assessments and essential fish habitat. The project has been considered in the context of public health and safety and consistency with regards to Federal, State, and local laws.

It is my decision to authorize a permit to Mr. Scott Luber for filming on public lands from August 8, 2008 through August 15, 2008 at mile post 210 on the Dalton Highway (after the trip was already taken) which would now allow Mr. Luber to sell the video.

1.5. Management Considerations

This proposed action is within the Utility Corridor Resource Management Plan and Final Environmental Impact Statement approved January 11, 1991. The proposed action is in conformance with plan because it is specifically provided for in the following planning decision (objectives, terms, and conditions):

Appendix N Lands Program Objectives (page N 7- 9)

19. Issuance of a short-term (3) years or less) rights-of-way or land use authorizations for such uses a storage sites, apiary sites, and constructions sites where the proposal includes uses rehabilitation to restore the land to is natural original condition.

The Environmental Assessment and supporting documentation have been prepared consistent with the requirements of various statutes and regulations, including but not limited to:

- Alaska National Interest Lands Conservation Act of 1980 (ANILCA)
- Federal Land Policy and Management Act of 1976 (FLPMA)
- National Environmental Policy Act of 1969 (NEPA)
- National Historic Preservation Act of 1966 (NHPA)
- Utility Corridor Resource Management Plan — January 11, 1991

1.6. Public Involvement

Due to the remoteness of this area and the fact that the filming had already been completed it was determined that no scoping is necessary.

Appeal or Protest Opportunities:

This decision may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with 43 CFR Part 4 and DOI Form 1842-1. The notice of appeal must be filed in the Bureau of Land Management, Central Yukon Field Office, 1150 University Avenue, Fairbanks, Alaska 99709 within 30 days from receipt of this decision. If you decide to file an appeal, you must carefully follow the procedure described on the enclosed form 1842-1. If you do not file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed form 1842-1. You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice appeal. You have the burden of showing a stay is justified. The Board will grant a stay only if you provide sufficient justification based on the following standards:

1. The relative harm to the parties if the Board grants or denies the stay,
2. The likelihood of the success of your appeal on its merits,
3. The likelihood of immediate and irreparable harm if the Board does not grant the stay, and;
4. Whether the public interest favors granting a stay.

1.7. Approval from Authorized Official:

Field Office Manager Recommendation

Having considered a full range of alternatives, associated impacts, and public and agency input, I recommend the adoption and implementation of the attached in conformance with the Utility Corridor Resource Management Plan.

Recommended:

Gary M. Foreman
Signature
for Nichelle W. Jacobson
Field Manager

February 12, 2014
Date

Central Yukon Field Office

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Appendix A. — Essential Fish Habitat Assessment

NEPA Code: DOI-BLM-AK-03000-2014-0007-DNA

Prepared by: David A. Esse

Date: 1/27/2014

EFH Finding: No anadromous species are present in the project area so the effects on EFH are expected to be nonexistent in the area encompassed by this permit. Based on this fact, the proposed action is assigned the EFH determination: will not affect, and no further EFH consultation is required.

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Appendix B. — Wilderness Characteristics Assessment

NEPA Document No.: DOI-BLM-AK-F030-2014-0007-DNA

Serial No.: F-96734

Applicant(s): Scott Luber

Location: Mile post 210 off the Dalton Highway, more particularly described as Secs. 13, T. 33 N., R. 10 W., Fairbanks Meridian, Alaska, containing approximately 640 acres.

Prepared by: Lisa Shon Jodwalis, Park Ranger-Interpretation

Date: 30 January 2014

Proposed Action: The proposed action is for the same use, location and by the same applicant as described in the 0023–CX. The only difference is the year, previously approved in 2009 and now seeking approval for 2008 filming.

Evaluation:

The basis for this evaluation is BLM Manual 6310-Conducting Wilderness Characteristics Inventory on BLM Lands, and BLM Manual 6320 - Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process, which direct offices to conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified Lands with Wilderness Characteristics (LWC) in land use plans and when analyzing projects under the National Environmental Policy Act (NEPA). Effects on wilderness characteristics on BLM lands within the Utility Corridor are evaluated according to the Nonwilderness Assessment, a special project approved by the BLM Director and conducted by the BLM along portions of the Trans-Alaska Pipeline System (TAPS) corridor in 1980. This assessment identified lands under BLM administration that were considered lacking in the wilderness characteristics as defined by the Wilderness Act of 1964. The assessment was conducted in a manner that met the requirements of Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA).

The action being considered is located within the Atigun Segment of the Nonwilderness Assessment, which covered approximately 528,000 acres total in 1980. Portions of these segments meet the 5,000 acre minimum size. However it was determined that the lands where the proposed action will occur did not meet the standards for naturalness due to roads, camps, airfields, pipelines, material sites and associated facilities. These disturbances bisect the entire length of the segment.

FINDING: The proposed action will occur on lands identified as lacking wilderness characteristics and therefore will not affect wilderness characteristics.

Type of Assessment/Sources: U.S. Department of Interior, BLM, 1980. Nonwilderness Assessment: The Alaska Natural Gas Transportation System, Final Decision. Anchorage, Alaska

USGS topographic maps, GIS data, Google Earth images

Personal knowledge of the location and 2013 aerial survey

Appendix C. — Section 810 Analysis

C.1. Compliance with ANILCA Section 810

NEPA Document No.: DOI-BLM-AK-F030-2014-0007-DNA

Applicant(s): Scott Luber

/Serial No.: F-96734

Proposed Action: The proposed action is for the same use, location and by the same applicant as described in the 0023–CX. The only difference is the year, previously approved in 2009 and now seeking approval for 2008 filming.

Location: Mile post 210 off the Dalton Highway

Township/Range: Secs. 13, T. 33 N., R. 10 W., Fairbanks Meridian, Alaska, containing approximately 640 acres.

Evaluation by: Erin Julianus and David Esse

Date: January 27, 2014

Type of Assessment/Sources: : Review of application materials, subsistence database, local knowledge, and interviews with staff knowledgeable of the area and the proposed action.

Effect of the proposal on subsistence uses and needs

Fisheries: The proposed action would not significantly reduce harvestable fisheries resources since this activity will occur near non fish bearing streams (ADF&G 2014). Though streams in the permitted area flow into fish bearing waters the permitted activity will not affect fisheries resources. Therefore, the proposed action also would not alter the distribution, migration or location of harvestable fisheries resources. The proposed action will not create any legal or physical barriers that would limit access by subsistence users of the fisheries resource.

Wildlife:

Other resources: The proposed activity will not significantly impact other resources such as berries, willows, and spruce roots. Subsistence activities that target these resources occur in a much broader area than where the proposed action is to take place. Therefore, the proposed action will not significantly restrict subsistence uses and needs.

Expected reduction, if any, in the availability of resources due to alteration in resource distribution, migration, or location:

The proposed action would not alter the distribution, migration, or location of subsistence resources.

Expected limitation, if any, in the access of subsistence users resulting from the proposal:

None. Access to resources by subsistence users will not be limited by the proposed action.

Availability of other lands, if any, for the purpose sought to be achieved:

Other lands are available for the purpose sought to be achieved. However, the applicant chose to conduct the filming activity on BLM lands.

Other alternatives, if any, which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes:**Findings:**

The proposed action will not significantly restrict subsistence uses. Access to subsistence resources will not be hampered by the proposed activity. There is no reasonably foreseeable significant decrease in the abundance of harvestable resources and in the distribution of harvestable resources due to the proposed action.

References

Alaska Department of Fish and Game (ADF&G). 2014. Fish distribution database. Internet website at: <http://www.sf.adfg.state.ak.us>.