



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
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## DECISION RECORD

for the

### Goat Mountain Hardrock Prospecting Permit Applications

(DOI-BLM-OR-934-2012-0001-EA)

This document describes my decision to select Alternative 3 as described in the Environmental Assessment (EA) and the reasons and the rationale for my decision to grant two prospecting permits to Ascot USA, Inc. This document also details the terms and conditions of the permits and outlines the specific type and location of exploration activities authorized. In making my decision, I have worked closely with the United States Forest Service (USFS), Gifford Pinchot National Forest (GPNF). I relied on that agency's determination of plan conformance and its determination that prospecting activities will not interfere with the primary purposes for which the lands were acquired as provided in the GPNF Decision Notice and Finding of No Significant Impact (FONSI) dated December 4, 2012.

### **BACKGROUND**

This decision, the Bureau of Land Management (BLM) FONSI, and the supporting EA address the permit applications submitted by Ascot USA, Inc., on November 29, 2011 (#WAOR-066628 and #WAOR-066973). These applications, as amended, request authorization for exploratory drilling within Mineral Survey (MS) parcels 708, 774, 779, 1329, and 1330. A revised Plan of Operations containing the Exploration Plan dated October 5, 2011, was included as part of these applications. Ascot USA, Inc., withdrew the previously submitted, second phase Exploration Plan for MS-708 and submitted an Exploration Plan for all MS parcels.

The Plan of Operation as submitted includes:

- Exploratory drilling within MS parcels 708, 774, 779, 1329, and 1330 adjacent to existing and former logging and other USFS decommissioned non-system roads;
- Drilling 63 NQ (2.75-inch diameter) with HQ diameter casing (3.78 inches, as needed) core holes from 23 pad sites;
- Temporary reactivation of approximately 1.69 miles (about 3.07 acres) of existing decommissioned roads, including removal of trees and other vegetation that have sprouted on the roads since previous reclamation;
- Implementation of runoff and sediment controls;

- Installation of drill pads;
- Installation of temporary sumps to contain drilling fluids;
- Use of drilling fluids that contain water and additives;
- Removal of rock core samples for off-site analysis; and
- Site reclamation.

In order to process the Prospecting Permit Applications, the BLM and the United States Forest Service (USFS) have jointly prepared an EA (DOI-BLM-OR-934-2012-0001-EA) consistent with the December 2011 Memorandum of Agreement (MOA) in which Ascot USA, Inc.; the USFS; and the BLM defined procedures and responsibilities for completing the assessment.

The EA was issued for public review on June 28, 2012, and a 45-day comment period was provided. Thousands of letters and e-mails were submitted for agency consideration. Based on public comments, the EA has been revised, and it is the modified EA that is referenced by this Decision Record. The complete text of the modified EA is available at:

[www.blm.gov/or/programs/minerals/prospecting/documents.php](http://www.blm.gov/or/programs/minerals/prospecting/documents.php).

A summary of the substantive changes to the EA are discussed below under “**PUBLIC INVOLVEMENT**” below.

Neither Ascot USA, Inc.’s, prospecting permit applications nor the Plan of Operation propose any mining activities beyond the exploration outlined above. Consequently, the EA, the FONSI, and this Decision Record do not address or authorize any other types of mining activities. Authorization for any additional activities, including additional exploration, would require separate application(s), environmental analysis, and approval by the BLM.

## **AUTHORITIES**

The BLM has responsibility for management of the Federal mineral estate, including the responsibility to implement regulations for minerals available and subject to prospecting and exploration (43 CFR 3505) on acquired lands. The authority to grant prospecting permits lies with the BLM (lead Federal agency). In this instance, because National Forest System lands are involved, the BLM and USFS have worked cooperatively to evaluate the environmental impacts of the proposed prospecting consistent with the National Environmental Policy Act (NEPA) and the implementing regulations.

Under 43 C.F.R. § 3503.20 (c), the USFS, as the surface managing agency, must decide whether or not to consent to the BLM issuing prospecting permits within the approximately 898 acres of acquired National Forest System lands for exploration for hardrock minerals including copper, molybdenum, silver, gold, and associated minerals. The USFS may also specify stipulations for use and protection of the National Forest System lands.

Both agencies have based their respective decisions on the information, issues, and effects analysis presented in the modified interagency EA dated November 30, 2012. As the surface managing agency, the USFS has used the analysis to determine that the exploration activities

would not interfere with the primary purposes for which the lands were acquired. In addition, the USFS has determined that prospecting in the Project Area as defined in Figure 3 of the EA (Project Area) is consistent with the Gifford Pinchot National Forest Land and Resource Management Plan, as amended (GPNF Plan). The USFS has provided specific stipulations as conditions of USFS consent. The USFS determinations and decision have been documented in a FONSI and Decision Notice dated December 4, 2002.

## **THE DECISION**

As the Responsible Official, it is my decision to grant prospecting permits to Ascot USA, Inc., for mineral exploration activities (exploratory drilling) within MS parcels 708, 774, 779, 1329, and 1330 as described in the Plan of Operations (Exploration Plan) dated October 5, 2011, with the changes, limitations, mitigation measures, and stipulations as described in Alternative 3 of the EA and in Appendix F of the EA. In addition, the USFS Specified Conditions described in the USFS Decision Notice are adopted verbatim and listed below. Ascot USA, Inc., shall submit for BLM approval a revised Plan of Operations that incorporates these changes, limitations, mitigation measures, and stipulations prior to issuance by the BLM of a Notice to Proceed (NTP).

### **USFS Specified Conditions**

1. The Forest Service shall be given reasonable advance notice of on-the-ground activities and/or operations, including pre-construction field visits, as appropriate. Advance notice is required in order to enable the USFS to work jointly with BLM and/or the permittee to minimize environmental impacts and provide for public safety during surface disturbing activities authorized and conducted under the prospecting permits.
2. Pursuant to the provisions of the act of March 4, 1917 (16 USC 520), Section 402 of the Reorganization Plan No. 3 of July 16, 1946 (60 Stat. 1097, 1099), the Act of August 7, 1947 (30 USC 352), and the National Environmental Policy Act of 1969 (42 USC 4321 et seq.), as said authorities have been or may hereafter be amended, no mineral development of any type is authorized hereby, and consent to the issuance of this prospecting permit as required by law and regulation (43 CFR 3507.11 (d)) and 43 CFR 3507.19(c)) is given subject to the express stipulation that no mineral lease may be issued for the land under permit without the prior consent of the USDA Forest Service and the proper rendition of an environmental analysis in accordance with the National Environmental Policy Act of 1969, the findings of which shall determine whether and under what terms and conditions for the protection of the land involved the lease may be issued.
3. *Standard Stipulation for Lands of the NFS Under the Jurisdiction of the Department of Agriculture (FSM 2822.42):* The permittee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the prospecting permit. The Secretary of Agriculture's rules and regulations must be complied with for: (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the

Secretary of the Interior; (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior; and (3) use and occupancy of the NFS not authorized by a permit/operating plan approved by the Secretary of the Interior. All matters related to this stipulation are to be addressed to Cowlitz Ranger District at: 10024 US Highway 12, P.O. Box 670, Randle, WA 98377-9105, telephone number (360) 497-1100.

4. The permittee must comply with standards and guidelines in the *Gifford Pinchot Land and Resource Management Plan* (1990), as amended by the “Northwest Forest Plan” (1994).
5. Certain lands within the permit areas are also within the Tumwater Inventoried Roadless Area (IRA), including portions of Mineral Surveys 708, 774 and 1330. Activities within the IRA are subject to the rules and regulations of the Secretary of Agriculture pertaining to road construction, reconstruction and timber harvest consistent with the 2001 USFS Roadless Rule at 36 CFR 294 and the Forest Plan Standards and Guidelines for Minerals and Geology (Forest Plan, p. IV-93, 1990).
6. Certain lands within the permit areas (Application WAOR-066628) are within ¼ mile of the Green River and activities must comply with applicable Forest Plan Standards and Guidelines (Forest Plan, IV-111). Reasonable mitigation and reclamation measures are required to minimize surface disturbance, sedimentation and visual impairment to protect the outstanding values of wild and scenic rivers and rivers suitable and eligible for inclusion in the National Wild and Scenic Rivers System.
7. To avoid potential noise-related disturbance, no operations within the known range of the northern spotted owl are to be conducted between March 1 and June 30.

## **DECISION RATIONALE**

Under the Mining and Minerals Policy Act of 1970, the Federal Government’s overall policy is to foster and encourage private enterprise in the development of economically sound and stable industries and in the orderly and economic development of domestic resources to help assure satisfaction of industrial security and environmental needs.

My decision to approve the applications and to issue prospecting permits for lands within the GPNF is based on the following four factors:

- Decision Factor 1 – Compliance with requirements at 43 CFR 3505 and 43 CFR 3509.45.
- Decision Factor 2 – Compliance with applicable environmental requirements.
- Decision Factor 3 – Determination that issuance of the prospecting permit is in the public interest.
- Decision Factor 4 – Consent of the USFS, the surface managing agency.

## **Decision Factor 1**

I have determined that the authorized actions comply with requirements at 43 CFR 3505 and 43 CFR 3509.45 for the following reasons:

A complete application Exploration/Operation Plan, dated October 5, 2011, was submitted by Ascot USA, Inc., for the proposed exploration within the approximately 898 acre Project Area. The first year's rental and application processing fees have been submitted by the applicant. Ascot USA, Inc., will submit a revised Plan of Operations that incorporates the changes, limitations, mitigation measures, and stipulations contained in Alternative 3 and Appendix F of the EA and those specified by the USFS prior to issuance of an NTP by the BLM.

Ascot USA, Inc., has demonstrated its qualifications for a fractional interest prospecting permit through a purchase option agreement for the 50 percent undivided interest in the mineral estate encompassed by lands within MS 708.

Insufficient information is currently available for the BLM to determine the existence of a valuable deposit. Before issuing any prospecting permits, the BLM must make and document a finding that "prospecting is needed to determine the existence of a valuable deposit" on the subject lands (43 C.F.R. § 3501.10(a)). The BLM will issue prospecting permits under 43 C.F.R. § 3505.10 and § 3509.40, for the permittee to collect geotechnical information necessary for the BLM to determine if a valuable deposit exists. "Valuable deposit" means "an occurrence of minerals of such character that a person of ordinary prudence would be justified in the further expenditure of his or her labor and means, with a reasonable prospect of success in developing a profitable mine" (43 C.F.R. § 3501.5). This is a higher regulatory standard than the previous "workability standard," which did not take into account costs other than direct costs. Ascot USA, Inc., and other parties who have held or expressed interest in these same lands have generally represented existing data as inadequate to make informed geotechnical, mineralogical, and engineering feasibility determinations as to whether a valuable deposit exists. Additional geotechnical exploration will validate and expand upon existing data and related published reports.

## **Decision Factor 2**

I have determined that the authorized actions meet applicable environmental requirements and will not have a significant effect on the human environment.

### Geologic and Mineral Resources

Extraction of the drill core geologic samples for analysis and study will provide information needed to make sound decisions regarding possible future exploration and/or the economic value and viability of the mineral resources within the Project Area. The analysis and study of the Project Area's subsurface will help better define the current geology, including faults, physical stability, mineralization, and potential for generation of acid rock drainage (ARD).

The amount of non-mineralized and mineralized material that will be removed from the Project Area as part of the Proposed Action and Alternative 3 is considered to be negligible. Alternative 3 requires sealing the entire well column of all drill holes by methods and materials that are appropriate to prevent movement of water within, into, and around the abandoned drill hole. Bentonite/cement mixtures such as described in Washington State Minimum Standards for Construction and Maintenance of Wells (WAC 173-160) would be used to abandon all drill holes that encounter artesian flow. Sealing all drill holes will prevent sulfide minerals from being exposed to water and oxygen. This stipulation will limit atmospheric oxygen contact with the sulfide minerals, preventing ARD production. (See sections 3.2.3 and 3.3.2.3.1 of the EA.)

The BLM decision to issue prospecting permits confers exclusive rights to the permit holder to prospect on and explore the specific lands within a permit area to determine the existence of a valuable mineral deposit. If the permit holder discovers what it believes to be a valuable mineral deposit, the permit holder, or its successor(s), may apply for a non-competitive lease to develop the minerals discovered under the prospecting permit. However, any subsequent application for a lease would be subject to a separate determination by the BLM that a valuable mineral deposit has been located and preparation of a NEPA analysis. Future application(s) would be evaluated independently and would require a BLM leasing authorization subject to the consent of the USFS.

#### Hydrology and Hydrogeology

No significant impacts to hydrologic or hydrogeological resources have been identified.

No wetlands, springs, or floodplains have been mapped within the immediate vicinity of the Project Area. Project-related activities are not proposed in locations associated with relatively flat spots along the intermittent or seasonal streams that may have wetland characteristics.

The prospecting permits authorize the use of groundwater from previously drilled exploratory drill hole MM-10 and Duval Hole 06 under artesian (flowing) groundwater conditions as needed as a source of water for drilling fluids.

Groundwater use is allowed under a Washington State Department of Ecology groundwater withdrawal exemption in which up to 5,000 gallons per day (gpd) can be withdrawn for industrial purposes, including mineral exploration. If more than 5,000 gpd per day is necessary, Ascot USA, Inc., must obtain a Washington Department of Ecology groundwater water right permit. Daily on-site water use would be recorded using a totalizing flow meter. Duval Hole 06 and MM-10 would be abandoned in accordance with Washington Administrative Code (WAC) 173-160-381 to the extent technically feasible following cessation of the drilling program. The requirement for recirculation of drilling fluids under Alternative 3 is anticipated to reduce ground water use.

Under Alternative 3, the potential future risk of release of groundwater to the surface and movement of groundwater within drill holes would be eliminated since all drill holes that encounter artesian flow will be abandoned by sealing the entire well column with cement or grout.

Potential risks to surface water and groundwater at the site through leaks and spills of petroleum-based fuels, lubricants, and hydraulic fluids associated with the operation of mechanical equipment, such as the drilling equipment, generators, pumps, and other support equipment and vehicles, have been reasonably mitigated by requiring a Project Spill Prevention Control and Countermeasures (SPCC) plan. Potential risks to surface water and groundwater have been reasonably mitigated by requirements that all drilling fluids and cuttings that are circulated to the ground surface will be collected within lined sumps or tanks and the residue removed from the project site following drilling, all containers of hazardous substances be labeled and handled in accordance with Mine Safety and Health Administration (MSHA) regulations, environmentally safe drilling fluids and procedures consistent with adherence to Chapter 173-162 WAC are used, and the applicant implement the SPCC plan. A key component of the SPCC plan is the requirement that spill containment kits be located in operating areas to allow site workers to respond to spills and releases if they occur.

Riparian impacts will be minor. Some tree clearing (<12-inch diameter at breast height (dbh)) and minor brush removal will occur in association with drill Pads 6 and 7. Road reactivation and drilling are consistent with the Aquatic Conservation Strategy (ACS) Objectives (see Table 3.3-1) and also comply with the Minerals and Road Management Standards and Guidelines established for Riparian Reserves in the GPNF Plan. The limited impact to upland vegetation and the few trees cleared relative to the existing forest cover have minimal potential to alter temperature conditions or otherwise affect nearby streams.

A finding that the project “meets” or “does not prevent attainment” of the ACS objectives has been made by both the BLM and the GPNF. See Table 3.3-1 in the EA. The 1994 Northwest Forest Plan requires that proposed projects on Federal lands must be consistent with the ACS Objectives.

### Soils

Total surface disturbance associated within the Project Area will be 3.3 acres, including reactivation of existing decommissioned roads. The work will be performed in areas with grades of 3 to 35 percent. The area’s in-place soils have a low risk of erosion from surface water flows as indicated by an erosion K factor of 0.15. The Plan of Operation will implement all erosion control measures and BMPs listed in Appendix F of the EA.

### Wildlife

Direct, indirect, and cumulative impacts to wildlife (including Federal Endangered Species Act (ESA) and/or USFS Sensitive Species, Management Indicator Species (MIS), Survey and Manage (S&M), and others such as migratory and resident birds and mammals) resulting

from the project are expected to be minor due to the nature and minimal extent of the action at each individual pad site, scheduling, and the temporary duration of the project. Alternative 3 further reduces the potential impacts to the northern spotted owl by imposing a timing restriction that avoids the nesting season. Impacts may include tree removal, noise, presence of workers and equipment, and lighting at one drill site at a time. These impacts are considered minor because, while the project may temporarily impact individuals or habitat, the project will not contribute to a trend toward listing of any species under the Federal ESA or cause a loss of viability to the population or species or result in a permanent loss of habitat. Juvenile birds or other low-mobility or slow-moving wildlife species (salamanders, small mammals) have the potential for direct mortality as a result of the movement of equipment if they are occupying the space where the equipment is moving. Alternative 3 reduces this potential impact by requiring a qualified employee to clear each drill pad site of low-mobility wildlife prior to operations (Appendix F, MM-62). However, the old roadbed and pad locations and edges of active roads are not highly attractive habitats for any of these species. Adult birds and other mobile wildlife would be expected to temporarily vacate habitat adjacent to the areas where equipment is operating because of noise and human activity but are expected to return after the activity ceases.

Of the 39 species listed under the Federal ESA and USFS Sensitive Species, MIS, and/or S&M lists which are documented or suspected to occur in the GPNF, only 13 species have potential to occur within the Project Area or the immediate vicinity. Only those species identified as having a potential to be affected by this project were analyzed in detail in the EA. The remaining 26 species, with no habitat present and no documented presence in the Project Area, were eliminated from further analysis. A brief summary of the analysis and conclusions in the EA are included below. See Section 3.5 of the EA for additional details.

Northern spotted owl (*Strix occidentalis caurina*, Federal ESA Threatened, USFS MIS): Northern spotted owls are documented to occur in the project vicinity (USFS 2012). According to USFS GIS data, the nearest northern spotted owl observation record from surveys in 2003 is located approximately 2.5 miles north of the project site. According to the same data, the nearest observed “activity polygon” for northern spotted owls is approximately 3.75 miles northeast of the project. The young, second-growth habitat lower in elevation in the Project Area is not suitable habitat for northern spotted owls. Impacts to northern spotted owls are addressed in the project-specific Biological Assessment and summarized here. See Appendix E of the EA for more detail.

There is potentially suitable habitat in the mature timber stand around or adjacent to drill Pads 10, 11, 12, 13, 22, 23, 24, and 25. While there have been no surveys to indicate whether northern spotted owls occur nearby, it may be assumed that the habitat is occupied. The exploration activities will occur at the edge of the suitable habitat along existing, decommissioned roads to be reactivated. It is estimated that approximately 68 trees would be removed along the edge of suitable habitat. However, no trees greater than a 12-inch dbh would be removed; therefore, the suitability of the habitat will be unchanged.

Under the Proposed Action and Alternative 3 there will be no impact to designated critical habitat for northern spotted owls under the ESA designations in 1992, 2008, and the recent 2012 final critical habitat rule.

Under Alternative 3, drilling at Pads 10, 11 12, 13, 22, 23, 24, and 25 located near northern spotted owl nesting sites or adjacent to potentially suitable habitat in mature timber stands, will be restricted to only occur after the nesting season (February 28 through July 1). To reduce impacts to surrounding areas due to noise, a drill shack with baffles and/or insulation would be used. To reduce the impacts due to operating lights, lighting is to be directed toward the drill. Alternative 3 will have a reduced impact if owls are present within the potentially suitable habitat when compared to the Proposed Action.

Equipment noise, lights, and human activity may affect, but are not likely to adversely affect, northern spotted owls. The United States Fish and Wildlife Service (USFWS) has reviewed and accepted the BLM/USFS prepared Biological Assessment and has concurred with the agency determination that the Proposed Action, with the timing restriction imposed under Alternative 3, is may affect/not likely to adversely affect.

Pine marten (*Martes americana*, USFS MIS), Pileated woodpecker (*Dryocopus pileatus*, USFS MIS), and Tree cavity excavating birds (USFS MIS): The pileated woodpecker is common throughout the GPNF in mature and late-successional forests. The GPNF Plan designated the hairy woodpecker as the representative cavity excavator for this Management Indicator category. Hairy woodpeckers are common on the GPNF. The habitat that is suitable for northern spotted owls is also suitable for pine martens, pileated woodpeckers, and tree cavity excavating birds. The noise, activity, and removal of tree cover along roadways associated with the project might affect individual animals, causing them to move away from exploration activity areas. However, individuals would be expected to return when activity ceases following reclamation. Effects to these species are anticipated to be minor and temporary. The effects will be further reduced under Alternative 3 by the timing restrictions imposed on drilling at Pads 10, 11 12, 13, 22, 23, 24, and 25.

Roosevelt elk (*Cervus elaphus*, USFS MIS): The habitat in the Project Area is suitable as general forage and cover habitat for roosevelt elk, but it is not particularly suitable for use for calving (no ponds or wetlands nearby) nor for winter range (elevations are marginal and forage is not abundant). The Proposed Project does not lie within the identified elk wintering habitat boundary. The noise and human activity associated with the project would be expected to displace roosevelt elk from the Project Area while the exploration activities are occurring, but they would return to the area after the exploration activities cease.

Blacktail deer (*Odocoileus hemionus*, USFS MIS): The habitat in the Project Area is suitable as general forage and cover habitat for blacktail deer, but it is not particularly suitable for winter range (elevations are marginal and forage is not abundant). The noise and human activity associated with the project would be expected to displace blacktail deer from the Project Area while the exploration activities are occurring, but they would return to the area after the exploration activities cease.

Wolverine (*Gulo gulo luteus*, Federal ESA Candidate; USFS Sensitive): The USFS considers this species to be documented in the GPNF. Wolverines are extremely unlikely to occur in the Project Area because they are thought to require large tracts of wilderness habitat in forested and mountainous areas. Thus, suitable habitat is not available in the project area for all stages of their life. If wolverines are present, impacts would be minor because the exploratory drilling activities would only temporarily impact individuals or habitat; it will not contribute or cause a loss of viability to the population or species or a permanent change to or loss of habitat.

Townsend's big-eared bat (*Corynorhinus townsendii townsendii*, USFS Sensitive): The exploratory drilling activities will not result in disturbance of potential habitats such as adits, abandoned mines, caves, or unoccupied buildings. These bats may potentially be found in mature forest habitat. If present, they may avoid the immediate vicinity during the exploration activities due to noise and disturbance. Individuals of this species may also be attracted to nighttime illumination while hunting for insect prey which gathers around light, and this may be a temporary benefit to individuals.

Van Dyke's salamander (*Plethodon vandykei*, USFS Sensitive and MIS), Cascade torrent salamander (*Rhyacotriton cascadae*, USFS Sensitive), Larch Mountain salamander (*Plethodon larselli*, USFS Sensitive and S&M): Each species requires specific habitat. Van dyke's salamander requires bedrock outcrops and cobbly stream substrate. Cascade torrent salamanders require rocks bathed in a constant flow of water or rocky stream substrate. The larch mountain salamander utilizes talus, scree, gravelly soils, and other areas where interstitial spaces exist. The Project Area is missing the key habitat elements for these species. It is very unlikely that the van dyke's salamander, cascade torrent salamander, or larch mountain salamander occur in the Project Area; therefore, no impact to these species is anticipated.

Bald eagle (*Haliaeetus leucocephalus*, USFS Sensitive Species, Bald and Golden Eagle Protection Act): The bald eagle is considered a winter resident of the GPNF. They are most commonly seen near riparian areas associated with rivers. No winter roosting sites have been documented in the Project Area. The Project Area has no riparian habitat associated with large rivers which would provide habitat for the bald eagle. It is very unlikely that the bald eagle would utilize the habitat in the Project Area for anything other than transiting between other areas with suitable habitat. No impact to this species is anticipated.

Cumulative effects on wildlife and wildlife habitat are mostly related to additional, small increments of the same kinds of effects as have occurred in the past. Past activities in the vicinity of the proposed exploration include previous limited mineral development, previous timber harvest, and previous mineral exploration. Current or ongoing activities would include recreational use and timber management, both of which also include road and trail use and maintenance. The collective consequences of these small incremental impacts are negligible.

## Fisheries

The Proposed Action and Alternative 3 have no effect on listed or candidate fish species including Lower Columbia River (LCR) chinook, LCR coho, and LCR steelhead or on designated Critical Habitat for chinook salmon and steelhead trout because of distribution-limiting barriers downstream at the confluence of the Green River with Falls Creek at River Mile 24.95 and at River Mile 31.3. The Project Area occurs around River Mile 32, which is approximately seven miles upstream from the first anadromous barrier and far enough upstream from the anadromous barrier for any ESA-listed salmonid species to not be affected by the project activities; it is also consequently located beyond designated Essential Fish Habitat.

The 1993 GPNF stream surveys (Haapala 1993) documented the likely presence of cutthroat, brook trout, and resident rainbow trout in the Green River and its tributaries within the Project Area. Cutthroat/steelhead is designated an MIS by the GPNF Plan. Bull trout, the other fisheries MIS designated by the GPNF Plan, is not present in the Project Area.

By implementing and maintaining impact avoidance and minimization measures consistent with the ACS guidelines and the USFS National Core Best Management Practices (BMP) for Water Quality Management (WQM) in Minerals Management (MM) Activities (FS-990a), impacts to surface water will be minimized to the point of being negligible. The ACS Guidelines and USFS Manual (FSM) MM BMPs that are particularly relevant have been added as stipulations to the prospecting permit and are included in Appendix F of the EA.

Minor displacement of soil may result from the project's ground-disturbing activities (e.g., equipment operation) but would not manifest itself as sediment in fish-bearing waters. A small volume of soil (< 1 yd<sup>3</sup>) may be mobilized but is expected to be retained as surface soil and/or captured in intermittent channels. The small quantity of fine sediment that might get into any streams would be immeasurable above baseline conditions and will have no adverse effects to any life stage of fish or aquatic life, including downstream fish habitat in the Green River.

No impacts to resident fish are anticipated from the Proposed Action because the BMPs and other limitations, mitigation measures, and stipulations protect hydrologic, aquatic, and riparian resources.

The cumulative effects on fish and aquatic habitat is related to additional small increments of the same kinds of effects as have occurred in the past, such as timber management, road maintenance, equestrian activities, and other recreational activities. In areas that are to be disturbed, re-growth of vegetation that serves to prevent erosion and sedimentation may be affected. The collective consequences of these small, incremental impacts are minor and considered negligible.

## Vegetation

No significant impacts to vegetation are anticipated because of the very limited amount of vegetative disturbance.

The Proposed Action and Alternative 3 will not impact future use of the area for timber production and are compatible with the existing Matrix designation because they will not impact the future productivity of the existing or future forest stands.

The Project Area is in the traditional and accustomed use area of the Yakama, Puyallup, and Cowlitz Tribes. It is likely that plant species of cultural importance are located in the Project Area. However, information about traditional plant use is sensitive in nature and cannot be shared without permission of the Tribes. The Cowlitz Indian Tribe has indicated during government-to-government consultation that the Tribe views plants as a natural resource of cultural value. (Source: William Iyall, Chairman, Cowlitz Indian Tribe, from a letter dated March 16, 2012.) Because the authorized exploration activities involve a very limited amount of vegetation disturbance, the loss of native plants from these modifications is anticipated to be minor and would not occur in areas where any culturally significant plant is abundant enough to be harvested.

The USFS has records for two noxious weed species in the Project Area; scot's broom (*Cytisus scoparius*) and tansy ragwort (*Senecio jacobaea*). Surface-disturbing activities associated with the Proposed Action and Alternative 3 present a high risk of spreading noxious weeds. These risks have been reasonably mitigated by requiring implementation of BMPs and other limitations, stipulations, and mitigation measures. See Appendix F of the EA.

No Federal ESA-listed plant species occur on the GPNF. In addition, no known locations of any special status plant species are known to occur in the project vicinity.

## Heritage and Cultural Resources

The Proposed Action and Alternative 3 will not directly impact natural, historic, or archaeological resources of the upper Green River fork of the Toutle River that contribute to its being considered a culturally significant landscape by the Cowlitz Indian Tribe or any sites deemed eligible for nomination to the National Historic Register. See section 3.8.2.2 of the EA.

The Project Area falls within the St. Helen's Mining District, which was designated in 1892 as a 156-square mile area along the flanks of Goat Mountain and headwaters of the Green River (McClure 1984). Over 400 mining claims were filed between 1892 and 1911, with copper, gold, and silver being the most sought-after minerals. Specifically, the Germania Mining and Milling Company filed historic mining claims circa 1900, including the Germania, Germania Jr., Germania Secundus, and Adamantine No. 2 lodes of Mineral Claim 708, which overlap the Project Area. Though a small amount of exploration re-occurred in the 1930s, most mineral development activity was suspended until larger mining corporations

re-filed many old claims in the 1960s and 1970s (McClure 1984:4-5). Previous drilling was conducted in the same location by the Duval Corporation in the 1970s and 1980s. The Duval Corporation suspended operations following acquisition by Pennzoil and the 1980 eruption of Mount St. Helens. The project drill sites are all located on a previously constructed road system on drill pad sites dating to the Duval Corporation period of use or salvage logging following the 1980 Mount St. Helens eruption.

Several previously documented archaeological resources are located within approximately one mile of the Project Area; nearly all are historic mining-related sites. Peeled cedars associated with American Indian use have also been documented.

Previous inventories along Goat Mountain Trail 217 and in the Green River Horse Camp did not identify cultural resources.

Field visits were conducted by URS Corp. cultural resource personnel. Following the same field methods utilized in 2010 by USFS (Taber 2010a), individual drill pad sites were inventoried using a 25-foot diameter radius around the outer dimensions of each pad site. Decommissioned roads, where reactivation is planned, were also surveyed, along with a buffer of 15 feet on each side of the road prism, unless precluded by steep slopes. A metal detector was used to search for potential buried historic materials, since the results of a record search indicated the potential for such site types to be found in the general vicinity. Older trees, where present, were examined for cultural scarification. No cultural or historic resources were identified during these surveys.

Given the negative findings of past and current field investigations (Taber 2010a, 2010b; McDaniel and Stegner 2012 forthcoming; also McClure 1982a, 1982b) combined with the extent of prior disturbance related to previous road building and drill pad installation within the Project Area, the project is not anticipated to have direct impacts to currently known archaeological resources. It is possible, but unlikely, that the project would result in impacts to as yet unidentified archaeological resources during reactivation/installation. Ascot USA, Inc., and its agents will be required to adhere to protocol outlined in an Inadvertent Discovery Plan. Should any cultural resources or human remains be encountered, further ground-disturbing activities will be suspended until the site has been properly investigated and cleared.

### Visual/Scenic Resources

The Visual Quality Objectives (VQO) established in the GPNF Plan for the Project Area are Retention and Partial Retention in the foreground and Modification in the middle ground viewing zones. The effects of both the Proposed Action Alternative and Alternative 3 on visual resources are consistent with GPNF Plan Visual Quality Objectives (VQO).

Drilling operations occurring at nine locations, along FS Road 2612 and the road leading to the Green River Horse Camp (Pads 1, 2, 3, 4, 5, 6, 7, 14, and 15), will be seen by recreational users. The remaining drill sites and reactivated, decommissioned roads will be screened from the public view by existing vegetative cover and by restricting access to these

reactivated roads. The project would result in short-term visual impacts caused by initial surface disturbance at drill sites located in the immediate foreground along FS Road 2612 and the road leading to the Green River Horse Camp.

No drill sites or drilling equipment will be seen from Mount St. Helens National Volcanic Monument.

After drilling is completed, roads and pad areas will be reclaimed and will return to their original condition. There will be some visible impacts for approximately one season until the vegetation becomes established. Until vegetation becomes established, this disturbance may be visible along existing roads but will not attract attention, nor will it be apparent to the casual observer. No long-term visual effects from either the Proposed Action or Alternative 3 are anticipated.

### Air Quality

The Proposed Action and Alternative 3 will not significantly impact air quality or alter the existing classification under the Clean Air Act.

Air quality in the Project Area is generally good due to the limited population and lack of industrial activity. The Project Area falls within the Southwest Clean Air Agency (SCAA) jurisdiction. The area is in a rural setting and considered "unclassifiable/attainment" as established in 40 CFR 81.348. The Project Area is treated as an attainment area and is categorized as a Class II area under the Clean Air Act regulations.

The Proposed Action and Alternative 3 will utilize small displacement, diesel-powered equipment as outlined in the Plan of Operation to clear existing, decommissioned roads and prepare pad locations. Diesel-powered water pumps may also be used. As needed, a water truck would be used to import water from off-site, potable water sources for drilling and to reduce dust emissions caused by project activities. After road reactivation is completed, and the majority of pad installation is complete, the track mounted drills, an ATV, two four-wheel-drive pickup trucks, portable pumps, and additional equipment will remain in use to support the exploration program.

The BLM prospecting permits authorize the use of on-site water sources. Use of on-site water sources will significantly reduce the road traffic and fugitive dust caused by water trucks. No restriction on the quantity of on-site water use is imposed by the prospecting permits. Water use limitations of 5,000 gpd are imposed by the Washington State Department of Ecology, unless a permit is obtained. The BLM and USFS have determined that restricting use of on-site water sources could require up to five water truck round trips per day from the Randle area. Hauling water to the site on a regular basis would increase the amount of exhaust from the water truck fuel emissions, create additional fugitive dust from vehicle use, and increase road use/wear.

## Transportation and Access

Under the Proposed Action and Alternative 3, approximately 15 to 20 project employees will commute to the Project Area, primarily from the towns of Randle and/or Morton, Washington. This level of use is lower than the average recreation use during the peak hunting season and will not add significantly to the existing average daily traffic. Increased travel on the USFS road system may lead to accelerated wear and rutting. As part of the project, Ascot USA, Inc., will be responsible for completing road maintenance and repairs as determined by the USFS.

The Proposed Action and Alternative 3 will reactivate 1.69 miles (about 3.07 acres) of decommissioned roads for access to 14 drill pad sites. This includes 1.35 miles (2.45 acres) of previously reactivated then decommissioned roads from the 2010 drilling program and 0.34 miles (0.62 acres) of newly reactivated, decommissioned roads. Installation of a gate will preclude public access to the temporarily reactivated roads. Drilling will occur on the sides of FS Road 2612 and the road used to access the Green River Horse Camp (Pads 01-07, 14, and 15). Drilling will not occur directly within the public road and will not restrict public or administrative access along FS Road 2612 to the Green River Horse Camp. Drilling in the vicinity of Green River Horse Camp (Pads 6 and 7) is restricted under Alternative 3 and will not conflict with the peak use period during the fall hunting season.

All reactivated roads will be decommissioned and reclaimed at the conclusion of exploratory drilling activities.

## Recreation

Impacts to recreation use under the Proposed Action and Alternative 3 will be limited to the immediate vicinity of the Project Area and, more specifically, to individual drill pad sites at the time of drilling activity. Any proposed disruption would be temporary and of a nature that would not permanently impair recreation opportunities or public access within the Project Area.

The Goat Mountain vicinity provides a wide variety of recreational activities for visitors including hiking, horseback riding, bicycling, kayaking, camping, picnicking, fishing, hunting, wildlife and bird watching opportunities, sightseeing, and pleasure driving. There are also opportunities for gathering special forest products including berries, mushrooms, boughs, beargrass, and floral greens.

Primary use areas are the Green River Horse Camp, Green River Trail #213, and Goat Mountain Trail #217. The use season is July through late October, primarily based on practical accessibility of local trails. This equates to approximately 35 weekend days and 90 weekdays. Peak use of 20 to 40 visitors per day occurs during the fall hunting season (usually full week stays). Alternative 3 prohibits drilling activities at pads 6 and 7 located within the Green River Horse Camp during the fall hunting season. This restriction eliminates potential disturbance of 20 to 40 visitors per day from sounds and lights associated with drilling operations.

Under the Proposed Action and Alternative 3, all recreational activities would continue, except within the immediate vicinity of the proposed drill sites. Temporarily reactivated roads will not be available for motorized use by the general public and will be gated at the intersection with FS Road 2612 throughout the project.

Noise and human activity from exploration activities will reduce the opportunity for solitude in the immediate vicinity of each individual drill pad during periods of active operations.

Increased traffic from approximately 15 to 20 workers commuting from Randle and Morton would add some additional vehicle traffic to the Goat Mountain site; however, employee vehicles will be parked behind the security gate leading north off of FS Road 2612, so would not interfere with visitors to the Green River Horse Camp or trailheads and the associated parking.

Under the Proposed Action and Alternative 3, wildlife viewing, bird watching, and hunting activities will not be adversely impacted except in areas immediately adjacent to operations.

The GFNF has determined that values contributing to Wild and Scenic River eligibility on National Forest lands will not be impacted by the Proposed Action or Alternative 3. The USFS has provided a specific stipulation (#6) that addresses Wild and Scenic River eligibility. The BLM has incorporated this stipulation verbatim into this decision document.

The GFNF has determined that the Tumwater Inventoried Roadless Area will not be impacted by the Proposed Action or Alternative 3 because no surface disturbing activities are proposed within the boundary. The USFS has provided a specific stipulation (#5) that addresses applicable regulations and Standards and Guidelines in the GPNF Plan. The BLM has incorporated this stipulation verbatim into this decision document.

### Socioeconomics

Unemployment in the City of Morton, Lewis County, and Cowlitz County in 1990, 2000, and 2010 was generally higher than the State of Washington. Although unemployment in Skamania County was lower than the State in 2010, historically, it has been higher. A portion of increasing unemployment can be attributed to declining employment in natural resource industries. See Section 2.7 of the EA.

Some work associated with exploration activities requires specialized skills not typically available locally. However, Ascot USA, Inc., has stated that it typically attempts to hire local residents for support positions. This will provide temporary employment opportunities during drilling activities for local residents. Typical operations would require one drill foreman, two to four drillers, two to four drill helpers, two to three geologists, and two to three core technicians. Support workers might include two local trail and pad contractors and one security employee. In addition, lodging of non-local workers and local purchases of fuel, food, and other supplies will likely occur as a result of the Proposed Action and Alternative 3 thereby creating a positive economic benefit to the local community.

The Proposed Action and Alternative 3 will not have disparate effects on any consumers, minority groups, women, civil rights, or social/ethnic groups. See section 3-13.2 of the EA.

Future timber harvest in the area would not be precluded or impacted by the Proposed Action or Alternative 3.

Data collected during implementation of the Proposed Action and Alternative 3 could be utilized to demonstrate the existence of a valuable deposit and result in a decision by Ascot USA, Inc., or a successor to pursue mineral lease applications in the future. Significant local support was expressed during the public scoping period in pursuing exploratory drilling because of the potential economic opportunities mineral leasing and development could present. No mineral lease application or proposed development is under consideration at this time. Any subsequent application for a lease would be subject to a separate determination by the BLM that a valuable mineral deposit has been located and preparation of a NEPA analysis. Future applications would be evaluated independently and would require a BLM leasing authorization subject to the consent of the surface managing agency.

### Noise

The use of trucks, excavators, ATVs, and drill rigs, as well as chainsaws and diesel-powered water pumps, will introduce a temporary, increased level of sound into the Project Area. However, the noise generated during drilling and other motorized activities would diminish with distance from the source.

The potential for noise impacts to wildlife and recreation use along with mitigation measures are discussed above. No additional impacts from noise are anticipated.

### **Decision Factor 3**

I have determined that issuance of the prospecting permits and approval of an amended Plan of Operation which incorporates all of the changes, limitations, mitigation measures, and stipulations as described in Alternative 3 and in Appendix F of the EA is in the public interest. No standards defining what constitutes “in the public interest” are directly promulgated within 43 CFR 3505 or 3509. However, the criteria listed in 43 CFR 3515.16(a), which specifically addresses mineral lease exchanges, provides a useful framework for analysis and is utilized here. A mineral lease exchange is not proposed in this action. Text excerpts from the regulation appear in bold to add clarity for the reader.

#### **§ 3515.16 What standards does BLM use to assess the public interest of an exchange?**

The BLM must find that the exchange is in the public interest under the following criteria:

- (a) The benefits of production from your existing lease or preference right to a lease would not outweigh the adverse effects on, or threat of damage or destruction to:**

**(1) Agricultural production potential**

The Project Area is not utilized for commercial agriculture. Forest productivity will not be impacted, and future timber harvest is not precluded by the authorized exploration activities.

**(2) Scenic values**

Drilling operations occurring at nine locations along FS Road 2612 and the road leading to the Green River Horse Camp (Pads 1, 2, 3, 4, 5, 6, 7, 14, and 15) would be seen by recreational users. The remaining drill sites and reactivated, decommissioned roads would be screened from the public view by existing vegetative cover and by restricting access to these reactivated roads. After drilling is completed, roads and pad areas would be reclaimed and would return to their original condition. There would be some visible impacts for approximately one season until the vegetation becomes established. There will be no long-term visual effects from the Proposed Action or Alternative 3.

No drill sites or drilling equipment would be seen from Mount St. Helens National Volcanic Monument.

The GPNF has determined that the effects of the authorized exploration activities on visual resources are consistent with GPNF Plan Visual Quality Objectives.

**(3) Biological values including threatened or endangered species habitat**

Direct impacts to wildlife (including Federal ESA and/or USFS Sensitive Species, MIS, S&M, and others such as migratory and resident birds and mammals) resulting from the project are expected to be minor due to the nature and minimal extent of the action at each individual pad site, scheduling, and the temporary duration of the Proposed Action and Alternative 3. Selection of Alternative 3 further reduces the potential impacts to the northern spotted owl by imposing a timing restriction that avoids the nesting season.

Weeds are not anticipated to spread further as a result of the development of the project.

No Federal ESA-listed plant species occur on the GPNF. In addition, there are no known locations of any special status species within the Project vicinity. Given the limited ground disturbance proposed, it is very unlikely that any sensitive vascular plant species will be impacted.

The small quantity of fine sediment that might get into any streams would be immeasurable above baseline conditions and will have no adverse effects to any life stage of fish or aquatic life, including downstream fish habitat in the Green River. The Proposed Action and Alternative 3 have no effect on listed or candidate fish species including Lower LCR chinook, LCR coho, and LCR steelhead or on Critical Habitat for chinook salmon and steelhead trout because of distribution-limiting barriers downstream at the confluence of the Green River with Falls Creek at River

Mile 24.95 and at River Mile 31.3. No impacts to resident fish are anticipated from the Proposed Action or Alternative 3 because of the BMPs and other preventative measures.

**(4) Geologic values**

Extraction of the drill core samples for analysis and study will provide the applicant with information needed to make sound decisions regarding possible future exploration and/or the economic value and viability of the mineral resources within the Project Area. This information could be utilized in a future application for mineral lease. The BLM and the USFS would consider future applications at the time they are made and complete appropriate NEPA analysis, including public scoping and comment processes and a Federal agency determination regarding the existence of a valuable deposit.

The additional stipulation under Alternative 3 of sealing the entire well column of all drill holes by methods and materials that are appropriate to prevent movement of water within, into, and around the abandoned drill hole. Bentonite/cement mixtures such as described in Washington State Minimum Standards for Construction and Maintenance of Wells (WAC 173-160) would be used to abandon all drill holes that encounter artesian flow. Sealing all drill holes will prevent sulfide minerals from being exposed to water and oxygen. This stipulation will limit atmospheric oxygen contact with the sulfide minerals, preventing ARD production.

**(5) Archeological, historic, or other cultural values**

Because the authorized exploration activities involve a very limited amount of disturbance, the loss of native plants from these modifications is anticipated to be minor and would not occur in areas where any culturally significant plant is abundant enough to be harvested. Completed cultural surveys did not identify any sites of cultural or historic interest. Government-to-government consultation with the Cowlitz Indian Tribe identified numerous resource uses and values within the area that are of interest to the Tribe. No significant impacts to these resource uses or values were identified.

**(6) Other public interest values such as recreational use**

Under the Proposed Action and Alternative 3, all recreational activities would continue, except within the immediate vicinity of the proposed drill sites.

No surface-disturbing activities are proposed within the small portion of the MS units that falls within the boundary of the Tumwater Inventoried Roadless Area. The GPNF has provided a stipulation that all activities within the MS units shall be subject to and all proposed activities would be consistent with the 2001 Roadless Rule at 36 CFR 294. The BLM has incorporated this stipulation verbatim.

**(7) Residential or urban areas**

No residential or urban areas are within the vicinity of the Project Area.

**(8) Potential inclusion in the wilderness or wild and scenic rivers systems**

The GFNF has determined that values contributing to Wild and Scenic River eligibility on National Forest lands would not be impacted by the Proposed Action or Alternative 3. The GPNF has provided specific stipulations that address Inventoried Roadless Area and eligible Wild and Scenic Rivers. The BLM has incorporated these stipulations verbatim.

**(9) Other public uses, including public highways, airports, and rights-of-way from lease operations**

No public uses will be impacted by prospecting activities. Temporary visual, recreation, and noise impacts may impact the quality of visitor experience; however, all public uses in the area are expected to continue without interruption.

**Decision Factor 4**

I have relied on the written consent and determinations of the USFS. In addition, I have incorporated all of the additional mitigation measures and stipulations provided by the USFS in its Decision Notice and FONSI dated December 4, 2012. That decision outlines the determinations of the Cowlitz Valley District Manager that issuance of prospecting permits within MS parcels 708, 774, 779, 1329, and 1330 conforms with the applicable Land and Resource Management Plans and will not interfere with the purposes for which the lands were acquired.

**CONSULTATION**

**USFWS**

The USFWS has reviewed and accepted the agency-prepared Biological Assessment and has concurred with the agency determination that the Proposed Action, with the timing restriction imposed under Alternative 3 of may affect/not likely to adversely affect.

**National Oceanic and Atmospheric Administration (NOAA) Fisheries**

No consultation with NOAA Fisheries was required because the Proposed Action and Alternative 3 have no effect on listed or candidate fish species, including LCR chinook, LCR coho, and LCR steelhead, due to distribution-limiting barriers downstream at the confluence of the Green River with Falls Creek at River Mile 24.95 and at River Mile 31.3. Designated Critical Habitat for chinook salmon and steelhead trout is not present in the Project Area.

**Government-to-Government**

To date, the Cowlitz Indian Tribe has responded in a letter dated March 16, 2012, requesting formal consultation with the BLM and the USFS. Several concerns were expressed, including: the need for completion of a cultural and archaeological resources survey; the need for known, historic mining resources to be better characterized so that impacts can be avoided; the likely association of trails near the Project Area with pre-contact period Indian trails tied to resource

gathering; the presence of wild goats at Goat Mountain, which were and are an important element of the Cowlitz Indian Tribe cultural heritage; and the importance and presence of berries, for which the Project Area would also have been utilized. Additionally, the upper Green River fork of the Toutle River is considered a culturally significant landscape by the Cowlitz Indian Tribe (William Iyall, Chairman, Cowlitz Indian Tribe, in a letter dated March 16, 2012). An initial, formal government-to-government consultation meeting was held with the Tribal Chairman, the Tribal Historic Preservation Officer, and other staff of the Cowlitz Indian Tribe on March 30, 2012. A second meeting was held via conference call on May 30, 2012, to brief the Cowlitz Indian Tribe on the EA prior to its release for public comment. Additional in-person meetings were held August 28, 2012, and November 16, 2012.

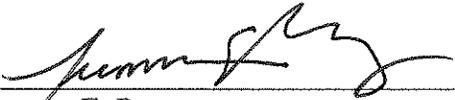
## **PUBLIC INVOLVEMENT**

A summary of substantive changes made to the EA in response to public and internal review are discussed below:

1. Additional information identified during government-to-government consultation with the Cowlitz Tribe regarding resources of cultural concern.
2. Alternative 3, Alternative Based on Scoping Comments, was modified to add the following, additional stipulations and mitigation measures:
  - a. Scheduling Proposed Action activities around wildlife and recreation concerns.
  - b. Balancing water use between on-site sources, re-use of drilling fluids, and water from off-site sources.
  - c. Drilling fluid management to improve re-circulation and minimize subsurface impacts.
  - d. Monitoring the quality of existing water resources during drilling activities.
  - e. Requiring that all drill holes be sealed after completion.
3. The USFS consent decision was clarified in each alternative as to the required, specified conditions for the permit area that will not interfere with the primary purpose for which the lands were acquired under authority of the Weeks Act and for protection of National Forest lands.
4. The BLM decision regarding administrative action on the prospecting permit applications was further clarified to apply only to the exploration plan for the specified parcels consistent with the actions analyzed in the EA.
5. Appendix A, Figure 4, was revised to show the boundaries of the MS units and appended to show the permit boundaries of the two prospecting applications.

## AUTHORIZATION

As the Responsible Official, it is my decision to grant prospecting permits to Ascot USA, Inc., for mineral exploration activities (exploratory drilling) within MS parcels 708, 774, 779, 1329, and 1330 as described in the Plan of Operations (Exploration Plan) dated October 5, 2011, with the changes, limitations, mitigation measures, and stipulations as described in Alternative 3 of the EA and in Appendix F of the EA. In addition, the USFS Specified Conditions described in the USFS Decision Notice are adopted verbatim. Ascot USA, Inc., shall submit for BLM approval a revised Plan of Operations that incorporates these changes, limitations, mitigation measures, and stipulations prior to issuance of an NTP by the BLM.



Jerome E. Perez  
State Director, Oregon/Washington

December 20, 2012.  
Date

## **ADMINISTRATIVE REMEDIES**

Administrative review of prospecting permit decisions requiring NEPA assessment will be available under 43 CFR Part 4 to those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized would cause injury and who have established themselves as a “party to the case” (43 CFR § 4.410 (a)-(c)). Other than the applicant/proponent for the action, in order to be considered, a “party to the case” (the person claiming to be adversely affected by the decision) must show that he/she has notified the BLM that he/she has a “legally cognizable interest” and that the decision on appeal has caused or is substantially likely to cause injury to that interest (43 CFR § 4.410 (d)).

### **Effective Date of Decision**

This is a lands decision in accordance with BLM regulations at 43 CFR Subpart 3505. The BLM decisions under 43 CFR 3505 typically become effective on the day after the expiration of the appeal period (30 days after the date of service) where no petition for a stay is filed or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b). However, in this instance, the BLM decision includes reliance on the determinations and consent of the GPNF. For this reason, the administrative appeal processes for both the BLM and USFS must elapse before the decision becomes effective. The USFS decision will become effective 5 business days after the expiration of the 45-day appeal period where no appeal is filed. If an appeal is filed, the USFS decision will become effective 15 business days following the date of the last appeal disposition. The appeal processes of the BLM and the USFS will run concurrently.

### **Right of Appeal**

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury and who have established themselves as a “party to the case” (43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to either of the following addresses will be accepted:

Bureau of Land Management  
Oregon State Office  
333 SW First Avenue  
Portland, OR 97204

or

Bureau of Land Management  
Oregon State Office  
P.O. Box 2965  
Portland, OR 97208

Faxed or e-mailed appeals will not be considered. The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed is in error. The appeal must clearly and concisely state which portion or element of the

decision is being appealed and the reasons why the decision is believed to be in error. If the notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, those with a legally cognizable interest have the right to petition the Board to stay the implementation of the decision. Should those with a legally cognizable interest choose to file one, the stay request should accompany the notice of appeal. Appellants must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with a petition for a stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within 15 days after filing in order to be in compliance with appeal regulations (43 CFR § 4.413(a)). At the end of the notice of appeal appellants must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, appellants may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.