

**SCREENING FORM FOR LOW-EFFECT HCP DETERMINATIONS
WHISKEY CREEK HCP**

I. Project Information

A. Project name:

Whiskey Creek Habitat Conservation Plan

B. Affected species:

Bald Eagle (*Haliaeetus leucocephalus*)

C. Project size (in acres):

The project area is approximately 5.3 acres

D. Brief project description including minimization and mitigation plans:

Three private landowners are proposing to implement a site management plan that preserves a bald eagle nest tree, retains existing perch trees and minimizes disturbance to nesting eagles from human activity. The proposed project is located adjacent to Netarts Bay in Tillamook County, Oregon (Figure 1).

A bald eagle territory was discovered on the site in the Spring of 2001. The territory has been occupied each year since its discovery but has not been productive. The bald eagle nest is located in a mature Sitka spruce tree within a young Western hemlock/Douglas-fir stand that includes red alder (Ruggiero *et al.* 1991). One other mature Sitka spruce tree that is approximately 60 inches diameter at breast height (DBH) is located immediately adjacent to the nest tree; both these trees constitute the "nest trees". The spruce trees are not likely susceptible to wind-throw because of the stand's different age classes (the trees are considered open grown). Whiskey Creek Road, a major roadway, is located 400 feet from the bald eagle nest trees. The predominant land-use around the nest trees is rural residential. An existing residence and a restaurant are located within 400 feet of the project area.

The proposed project comprises three undeveloped lots, which the landowners have an interest in developing or selling for later development. The two smaller lots (approximately 80 feet wide and 200 feet deep) are coincident with one another and the bald eagle nest trees are located on the shared property line. Tillamook County land use and zoning regulations currently allow three home sites on the 5.3 acres. The proposed site management plan identifies several actions to minimize and mitigate the effects of the proposed development on the bald eagle. These actions include:

1. Preserving both large Sitka spruce trees (the nest trees) and establishing a tree protection zone (40 to 50 feet radius) around each tree that prohibits construction activity or tree removal within the zone;
2. Protecting all suitable perch trees (greater than 30 inches DBH) except for the 36-inch DBH tree in the proposed house footprint on the northern lot that will be removed. Four trees greater than 30 inches DBH along the drive to the northern house will be avoided but the proposed right-of-way will fall within the drip line of four of the trees with a DBH greater than 30 inches. Road excavations adjacent to these four trees will be limited to what is practicable and what is safe. Tree root disturbance will be reduced by minimizing deep excavations for the driveways and by using porous materials for the roadways. If excavation can be avoided, gravel will be placed on a scraped surface to remove the duff layer (i.e., six inches or less). If one or more of these four trees do not survive and if they present a safety hazard, they will be removed;
3. Preserving canopy closure by retaining all trees greater than 30 inches DBH during the site development (except as noted in item 2) and removing trees greater than 16-inches DBH only within the construction footprint of the house envelopes, utility rights-of-way, septic systems, and parking areas;
4. Providing a septic system that minimizes the area needed for operation (e.g., sand filter on Lots 400 and 500 instead of a septic tank);
5. Prohibiting outdoor construction (except for safety purposes such as repairing damage due to a storm, vandalism or other repairs to maintain the integrity of the house) during the bald eagle breeding period based on bald eagle nest monitoring. Examples of allowed activities include maintenance on: roof and other exterior siding that might allow wind or rain to enter the house, trees leaning on or about to lean on the house, downed electric or phone lines, malfunctioning water or sewer lines and trees blocking the road or walkway access to the houses. Outdoor construction activities will be prohibited from 15 January to 15 August of any year if the nest is active and from 15 January to 15 May of any year if the nest is inactive or is unoccupied;
6. Planting western hemlock and/or western red cedar trees (greater than four feet tall) to screen the driveways and parking areas. Trees will be staggered (not lineal) on approximately 15-foot centers. Existing evergreen trees can be substituted for and serve as screen trees;
7. Seasonally prohibiting (15 January to 15 August) activities that may

result in significant noise disturbance. Native plants will be used for restoration along driveway parking lots and the side of houses facing the nest trees. Lawn will only be planted on the side(s) of the houses away from the nest trees. Yard maintenance equipment used during this time period will be non-motorized (e.g., rake, broom, push mower). No two-cycle engines will be allowed during this time period. The only exception will be an electric mower if the permittees choose a lawn instead of native plantings.

8. Moving the property line of Lot 400 to the north in order to maintain the tree protection zone within Lot 400.

An incidental take permit is needed because the human disturbance associated with the residential development and occupancy could result in the incidental take of bald eagles at the nest site. The proposed conservation measures are intended to minimize and mitigate for the impact of this disturbance to the listed species.

II. Does the HCP fit the low-effect criteria in the HCP Handbook? *{The answer must be yes to all three questions below in order to be considered a low-effect HCP. If the answer is no to any question, then the project should not be considered a low-effect HCP. Each "yes" must be accompanied with an explanation.}*

A. Are the effects of the HCP minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan? (Handbook pg. 1-8 and 1-9) *{In making this determination, actions undertaken by the applicant to avoid "take" are not considered mitigation.}*

Yes: The proposed development of three home sites within close proximity to the bald eagle nest trees may result in periodic or complete nest abandonment from human disturbance. The risk of abandonment of this nest site and its significance to the bald eagle breeding population along the Oregon Coast is considered minor because: 1) the bald eagle breeding territories (and population) have increased significantly in recent years, forcing some birds into marginal nesting habitat, 2) the territory is located in an area that currently experiences human disturbance from nearby residences and a major roadway so the birds may adjust more easily to any new disturbances, 3) nesting attempts have failed and the birds have not been productive since the nests were discovered in 2001, and 4) the Oregon Coast Recovery Zone population (45 occupied territories) and productivity (greater than 1 fledged bird per territory and 65 percent success rate) goals have been exceeded, significantly reducing the overall risk to the population. Isaacs and Anthony (2003) documented 80 occupied territories, 1.15 fledged birds per territory and a 70 percent success rate.

The effects of the proposed project on the birds will be minimized by: 1)

maintaining the site's habitat potential through the preservation of suitable nest and perch trees and the existing canopy closure, 2) completing any outdoor construction activities outside of the breeding season, and 3) prohibiting activities that result in significant noise disturbance. Direct modifications to listed species habitat are so limited that the impacts to the species are negligible and indirect effects, such as human disturbance, will be managed by seasonal restrictions.

The project will not affect any other listed, proposed or candidate species or their habitats.

B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g. air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, etc.) prior to implementation of the mitigation plan? (Handbook pg. 1-8 and 1-9) {In making this determination, actions undertaken by the applicant to avoid "take" are not considered mitigation. }

Yes: The proposed project involves the development of three lots that are regulated by the land-use and zoning regulations of Tillamook County. The applicant proposes restrictions that exceed those necessary to develop the property. State and local regulations will require that best management practices be implemented to minimize effects to other environmental values or resources, such as water quality and any wetlands that are near the site.

Air quality of the area would not be significantly affected because of the small construction site size and limited duration of construction (about nine months); emissions from construction related activities would be localized and limited to short periods of time. All construction equipment will be permitted by the State of Oregon and will be within acceptable levels of motor vehicle emissions.

Water quality and quantity of the area should not be affected because ground-disturbing activities will require the implementation of best management practices by Tillamook County through the grading and building permit process. Roadways will use porous surfaces.

An archaeological survey was conducted on September 16, 2004, and no cultural resources were discovered in the project area. Therefore, no impacts to cultural resources are expected to occur.

No major changes in land-use or the socio-economic environment are expected to occur, beyond what is lawfully permitted by state and local ordinance, as a result of implementing the HCP.

Implementation of the HCP is not likely to affect any recreational activities in the area. The project area is currently privately owned so public recreational use is not

anticipated.

Visual resources of the area will not be significantly affected by the proposed residential development. A significant number of the existing trees will remain, screening the homes from the roadway. The area's land use zoning is rural residential and the actions proposed in the HCP are consistent with this land use.

C. Would the impacts of this HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant? (Handbook pg. 5-3). *{The same concept is also included in the exception to categorical exclusions, III. F.}*

Yes: No significant cumulative effects are expected to occur under the preferred alternative.

Approximately a third of Oregon's bald eagle territories are on private lands (generally private timberlands) (Isaacs and Anthony 2003). However, the U.S. Fish and Wildlife Service (Service) has received few, if any, proposals in the Oregon Coast Recovery Zone in which private landowners proposed to develop residences in close proximity to a bald eagle nest tree. Based on this information, the probability of significant cumulative impacts within the recovery zone from similarly situated projects is low.

We do expect that juvenile birds may encounter marginal or less suitable nesting habitat as the bald eagle population continues to increase. Oregon's occupied territories have increased by over 200 percent from 176 to 416 territories between 1990 and 2003 (Isaacs and Anthony 2003). This circumstance may increase the likelihood of private landowners seeking incidental take coverage, however the accompanying bald eagle population increase will reduce the environmental significance of future development actions.

III. Do any of the exceptions to categorical exclusions apply to this HCP? (from 516 DM 2.3, Appendix 2) *{If the answer is yes to any of the questions below, the project can not be categorically excluded from NEPA.}* Each "No" must be accompanied by an explanation.

Would implementation of the HCP:

A. Have significant adverse effects on public health or safety?

No. The area affected by the project is very small making impacts to resources such as air and water negligible, and resulting in no impacts to public health or safety.

The proposed development will require county grading and building permits and inspections. These permits are issued to ensure public health and safety.

B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?

No. There are no historic or cultural resources, parks, registered National Landmarks, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, or prime farmlands at the site. Although wetlands and floodplains do occur in the area, these resources would not be affected. Ground disturbing activities would be conducted outside of these areas and would follow Tillamook County best management practices to minimize any potential for erosion or sedimentation into the wetlands.

C. Have highly controversial environmental effects?

No. The Service has not identified any highly controversial environmental effects through discussions with the applicant or through contact with local and state agencies.

D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

No. The proposed actions may result in nest failure as a result of human disturbance. However, the nesting attempts have failed each year since the nest trees were discovered in 2001 and no nesting occurred again in 2004. Failure of a territory is normal for a newly established territory and also occurs periodically at well established, productive sites (Isaacs 2003). The proposed action will preserve the habitat potential of the site, reducing the risk of territory abandonment.

E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?

No. Future actions would be reviewed on their own merits. The proposed action and the Services' biological review are based on the site specific characteristics and the bald eagle territory breeding history. The site is located in a rural residential area with a residence and a restaurant within 400 feet of the nest tree. A major roadway, Whiskey Creek Road, is located within 400 feet from the bald eagle nest trees. The roadway is part of the Three Capes Scenic Loop and experiences a significant amount of seasonal traffic. The bald eagle territory is newly established and is close to two other well established territories to the north and south. These other territories have a long history and are often productive. The close proximity of these three

the protection of the environment?

No. We are not aware of any Federal, State, local and/or tribal laws or requirements imposed for the protection of the environment that would potentially be violated under the HCP.

IV. ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. Based on the analysis above, the Whiskey Creek HCP qualifies as a "Low Effect" HCP as defined in the U.S. Fish and Wildlife Service Habitat Conservation Planning Handbook (November 1996). Therefore this action is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation will be made.

Other supporting documents (list):

Habitat Conservation Plan

Site Vicinity Map

Concurrence:

Will R. Corbett
(1) State Supervisor

4/6/05
Date

Cynthia D. Boker
(2) Deputy Regional Director **Acting**

4/19/05
Date

territories limits the available habitat for the establishment of new or alternative nest sites. The Whiskey Creek territory has not yet been productive so the birds may be adjusting to the site. The unique circumstances of the project would make it unlikely that issuance of a permit would establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?

No. The proposed HCP is not related to any other action with potentially significant cumulative environmental effects.

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. There are no properties that are listed or eligible for listing on the National Register of Historic Places in the project area.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species? *{Note: Consider the degree or amount of take and the impact of the take on the species. Although take may occur under project implementation, it may be so minor as to result in negligible effects. The same concept applies when considering effects to Critical Habitat.}*

No. Although take of bald eagle may occur in the form of harassment due to nest abandonment (human disturbance), the existing bald eagle nesting habitat will be maintained and eight actions to minimize and mitigate effects will be implemented to address the potential for human disturbance. The nest trees are located in close proximity to residential housing and a major roadway. The proposed project to construct three houses will not significantly change this setting and the accompanying human disturbance level. No statutory critical habitat has been designated or proposed for this species; therefore, none will be affected.

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

No. The proposed project addressed in the HCP will not impact wetlands or floodplains and thus not require compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.

J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for

References

- Isaacs, F. 2003. Personal Communication. Wildlife Biologist. Oregon State University. Corvallis, Oregon.
- Isaacs, F. and R. Anthony. 2003. Results of the 2003 bald eagle nest survey. Oregon State University. Corvallis, Oregon.
- Ruggiero, L.F., Aubry, K.B., Carey, A.B. and M.H. Huff (eds.). 1991. Wildlife and vegetation of unmanaged Douglas-fir forests. U.S. Department of Agriculture, Forest Service. General Technical Report PNW-GTR-285. 532 pp.