Categorical Exclusion Determination and Decision Record for Ames Right-of-Way Grant OR 068543

DOI-BLM-OR-M050-2016-0003-CX

Description of Proposed Action

The BLM received a request from a private landowner for a right-of-way grant over an existing road and bridge across BLM land to access private property located near Trail, Oregon. The grant would authorize residential ingress/egress and the rights to maintain a private bridge for a term of 30 years. The right-of-way would be an estimated 1,220 feet long by 30 feet wide (approximately 0.84 acre).

The proposed right-of-way is located in the Trail Creek fifth field watershed in Northwest ¼ Northwest ¼, section 9, Township 33 South, Range 1 West, Willamette Meridian, Jackson County, OR (see attached map).

The BLM had previously issued a right-of-way grant (OR 51189) to another private landowner in February 21, 2001 for the same road and bridge. This grant was relinquished in 2008. The previous grant authorized the re-construction of the private bridge over Toothacher Creek.

Plan Conformance Review

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan* (RMP). The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (Northwest Forest Plan) (USDA and USDI 1994).

This proposal is consistent with management direction in the Medford District 1995 ROD/RMP (p.82) that directs the BLM to "Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance area identified in this RMP."

The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*. This project utilizes the December 2003 Survey and Manage species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews (ASRs) with the exception of the red tree vole. For the red tree vole, the Ninth Circuit Court of Appeals vacated the category changes and removal of the red tree vole in the mesic zone, and returned the red tree vole to its status as existed in the 2001 ROD Standards and Guidelines, which make the species Category C throughout its range.

This project is not a habitat disturbing activity, as defined in page 22 of the Standards and Guidelines of the*2001 Record of Decision and Standards and Guidelines,* for any Survey and Manage species. Because the project is not habitat disturbing, the Survey and Manage

provisions, including pre-disturbance surveys, are not required under the *2001 Record of Decision and Standards and Guidelines,* (Standards and Guidelines, p. 7, 21-22).

The proposed action is also in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

Categorical Exclusion Determination

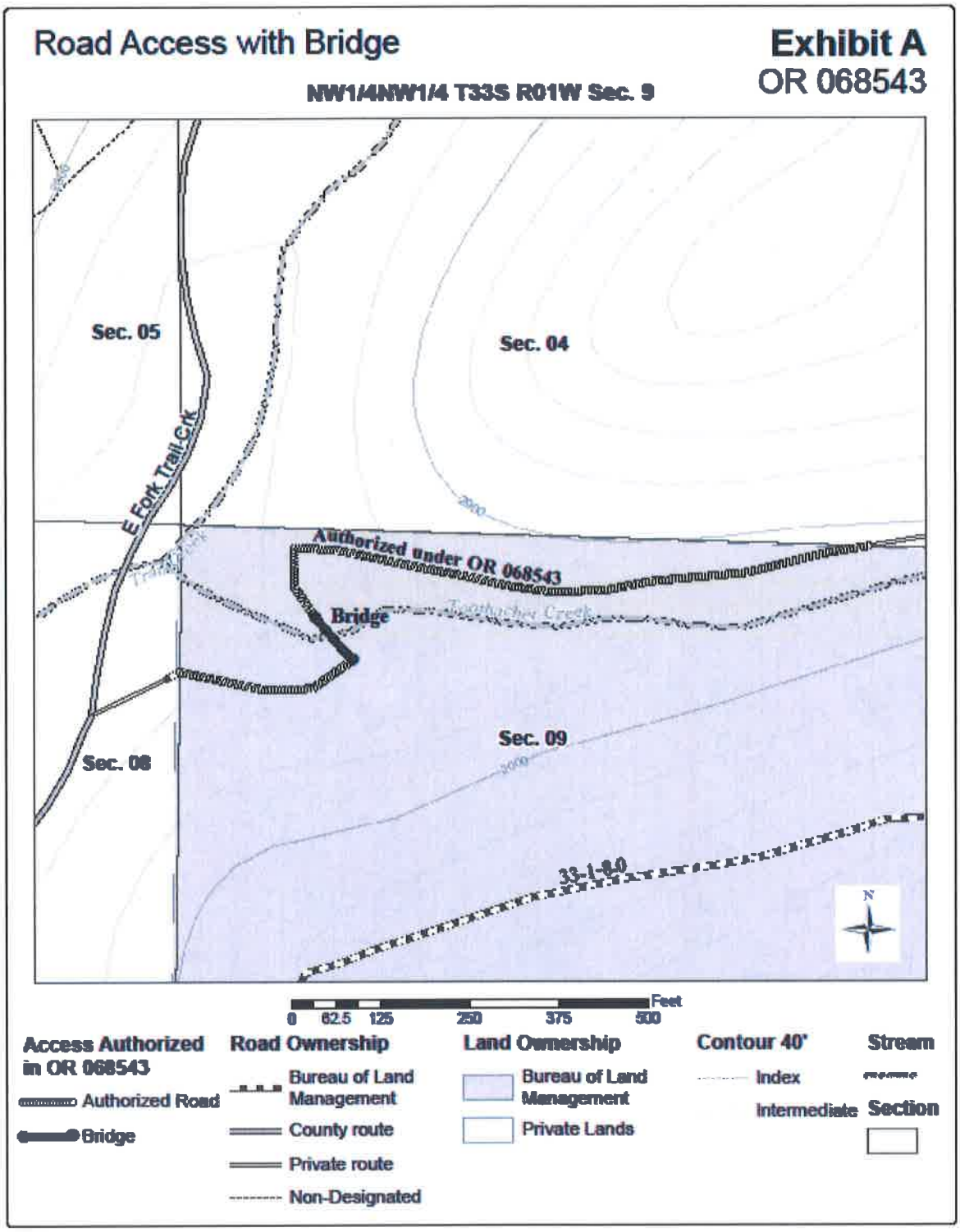
This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9 E(16) as follows:

Acquisition of easement for an existing road or issuance of leases, permits, or right-of-way for the use of existing facilities, improvement, or sites for the same or similar purposes.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances that have effects that may significantly affect the environment. Before any action described in the list of categorical exclusions may be used, the extraordinary circumstances, included in the Code of Federal Regulation (CFR) at 43 CFR 46.205(a-l) must be reviewed for applicability.

Contact Person

For additional information concerning this project, contact Tanya Dent, Realty Specialist, Medford District BLM, 3040 Biddle Road, Medford, Oregon 97504 or telephone (541) 618-2477.


Road Access with Bridge
Exhibit A
OR 068543
NW1/4NW1/4 T33S R01W Sec. 9
Sec. 05
Sec. 04
E Fork Trail Crk
Authorized under OR 068543
Bridge
Sec. 09
Sec. 08
33-1-8.0
N
0 62.5 125 250 375 500 Feet
Access Authorized in OR 068543
Authorized Road
Bridge
Road Ownership
Bureau of Land Management
County route
Private route
Non-Designated
Land Ownership
Bureau of Land Management
Private Lands
Contour 40'
Index
Intermediate
Stream
Section

NEPA Categorical Exclusion Review

Proposed Action: The proposed project is to authorize a right-of-way grant to a private landowner as described in the proposed action.

The Code of Federal Regulations at 43 CFR 46.205(c) requires that "any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215" (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may:

1. Have significant impacts on public health or safety.

   ☐ Yes ☒ No Initial SK

   Remarks:

2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

   ☐ Yes ☒ No Initial SK

   Remarks:

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

   ☐ Yes ☒ No Initial SK

   Remarks:

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

   ☐ Yes ☒ No Initial SK

   Remarks:

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

   ☐ Yes ☒ No Initial SK

   Remarks:

6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

   ☐ Yes ☒ No Initial SK

   Remarks:

7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

   ☐ Yes ☒ No Initial AE

   Remarks:

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

   Plants ☐ Yes ☒ No Initial MW Remarks:

   Wildlife ☐ Yes ☒ No Initial DYR Remarks:

   Fish ☐ Yes ☒ No Initial AJD Remarks:

9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

   ☐ Yes ☒ No Initial TJT

   Remarks:

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

    ☐ Yes ☒ No Initial TJT

    Remarks:

11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

    ☐ Yes ☒ No Initial AE

    Remarks:

12. Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

    ☐ Yes ☒ No Initial MW

    Remarks:

Categorical Exclusion Reviewers:

Name	Title	Date	Initials
Tanya Dent	Realty Specialist	10/5/2015	tld
Marcia Winteer	Botanist	10/5/2015	mw
Dave Roelofs	Wildlife Biologist	10/6/2015	DR
AJ Donnell	Fisheries Biologist	10/6/2015	AJD
Shawn Simpson	Hydrologist	10/6/2015	SLS
Amy Meredith	Soil Scientist	10/6/2015	ACM
Al Mason	Fire/Fuels Specialist	10/7/15	APM
Aaron Ennis	Archaeologist	10/8/15	AE
Jeff Brown	Engineer	10/06/2015	JAB
Trish Lindaman	Outdoor Recreation Planner	10/5/15	TL
Stephanie Kelleher	Planner/Environmental Coordinator	10/20/15	SK

Decision

It is my decision to authorize the private landowner a right-of-way grant for ingress/egress and maintenance over an existing road and bridge on BLM as described in the Proposed Action.

Decision Rationale

The proposed action has been reviewed by Butte Falls Resource Area staff. After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the human environment and no further environmental analysis is required.

Teresa J. Trulock 10/20/15

Teresa J. Trulock
Field Manager
Butte Falls Resource Area

Date

Administrative Review or Appeal Opportunities

In accordance with BLM's Rights-of-Way regulations (43 CFR § 2801.10), administrative review of right-of-way 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" (see 43 CFR § 4.410). Other than the applicant for the right-of-way, in order to be considered a "party to the case" the person claiming to be adversely affected by the decision must show that they have notified the BLM of their alleged injury through their participation in the decision making process (see 43 CFR § 4.410[b] and [c]). The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30-day appeal period.

Effective Date of Decision

This is a land decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (43 CFR §2801.10) unless the Secretary rules otherwise. Rights-of-way decisions that remain in effect pending an appeal are considered as "in full force and effective immediately" upon issuance of a decision; therefore, this decision is now in effect.

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" (see 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 this decision is approved (or the date the affected parties received notice of the decision). Only signed hard copies of a notice of appeal that are delivered to the Bureau of Land Management, Butte Falls Field Manager, 3040 Biddle Road, Medford, Oregon 97504 will be accepted. **Faxed or e-mailed appeals will not be considered.**

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case (43 CFR §4.410[b]). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision (43 CFR §4.410[d]). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental document or that have arisen after the opportunity for comments closed (43 CFR §4.410[c]).

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 from 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 your 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, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You 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 petition for stay must be served upon the Board, the Regional Solicitor, and the right-of-way applicant 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 your notice of appeal, you 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 Board will review any petition for a stay and may grant or deny the stay. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until the Board makes a final ruling on the case.

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE	
NOTICE OF APPEAL	U.S. Department of the Interior, Bureau of Land Management Medford District Office 3040 Biddle Road Medford, OR 97504
WITH COPY TO SOLICITOR	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
3. STATEMENT OF REASONS	Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 9720
4. ADVERSE PARTIES	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
5. PROOF OF SERVICE	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
6. REQUEST FOR STAY	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. **Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office --------- Alaska
Arizona State Office -------- Arizona
California State Office ------- California
Colorado State Office ------- Colorado
Eastern States Office -------- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ---------- Idaho
Montana State Office --------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ---------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)