



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
MEDFORD DISTRICT OFFICE  
ASHLAND RESOURCE AREA  
3040 Biddle Road  
Medford, Oregon 97504



## RIGHT-OF-WAY REQUEST OR 63650

### DECISION RECORD

and

## FINDING OF NO ADDITIONAL SIGNIFICANT IMPACT (FONASI)

### INTRODUCTION

This Decision Record documents my decision and rationale for the selection of a course of action to be implemented for the Right-Of-Way Request OR 63650 project. The Environmental Assessment (EA) for Right-Of-Way Request OR 63650 documents the environmental analysis conducted to estimate the site-specific effects on the human environment that may result from the implementation of the project. The Right-Of-Way Request OR 63650 EA was issued for public review on July 25, 2007; the public review period ended on August 9, 2007. One comment was received that favored the issuance of the right-of-way grant.

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) received an application requesting a right-of-way for the construction/reconstruction of approximately 250 feet of road on public land in the Howard Prairie Reservoir area. The applicant requested this right-of-way to obtain legal ingress and egress to private land. The application is being processed in accordance with the Federal Land Policy and Management Act (FLPMA) regulations. The private land is described as tax lot 8200, in Section 36, T. 38 S., R. 3 E., W. M. In the past, the applicant attempted but was not successful in acquiring an easement for legal access over private land located on the west side of their parcel that met their needs<sup>1</sup>. It is BLM policy is to cooperate with private land owners in providing for legal access when other reasonable access is not obtainable.

### THE DECISION

It is my decision to authorize the implementation of the proposed action as described under Alternative 2, the Proposed Action, in the Right-Of-Way Request OR 63650 EA. BLM will authorize the issuance of a long term (30 years) FLPMA right-of-way grant (about 250 feet in length) to the applicant. The issuance of this grant will result in about 200 feet of new road construction and 50 feet of road renovation, to connect the private parcel to the nearby County road. About 50 feet of the proposed right of way follows

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<sup>1</sup> The adjacent landowner did offer an easement across their private land but the conditions of use were not acceptable to the applicant.

an existing old road which will be upgraded. Road construction will result in the removal of 3 to 4 trees; one 20-inch diameter ponderosa pine, one 7-inch diameter sugar pine, and one 10-inch fir (double stem). The road width will be about 12 feet, the right-of-way ingress and egress easement will be 20 feet wide. The following project design features will be required as a condition of constructing/reconstructing and using the new road on BLM administered land.

### **Project Design Features**

- Crossing of the dry draw will be accomplished through the use of a ford.
- The grade of the road through the draw will approximate the contour of the draw in a way such that flow of water during periods of high runoff is neither impounded by a road surface situated higher than the draw, captured by a road surface constructed lower than the grade of the draw, nor captured in roadside ditches capable of channeling flow into the draw.
- To minimize the spread of noxious weeds:
  1. Vehicle and equipment use off existing roads in the project area will be limited to the dry season.
  2. Mechanical equipment (e.g. graders, loaders, etc.) will be power washed and cleaned of all soil and vegetative material before entering the project area.
  3. Seeding of native grasses and/or an approved seed mix on highly disturbed soil will occur.
  4. There are currently no noxious weed populations in the project area. Noxious weeds will be inventoried and treated by BLM. Inventories will occur the first three years after completion of road construction and then periodically thereafter. Treatments will be scheduled by priority and will occur based on the potential of the weed population to cause economic or environmental harm or harm to human health.
- The applicant will be required to protect all trees along the edge of the road right-of-way during construction activities. Trees determined to be a safety hazard to workers will be removed in accordance with Occupational Safety and Health Administration regulations (none have been identified at this time).

### **RATIONALE FOR THE DECISION**

Based on the analysis documented in the EA, the anticipated effects of the construction/reconstruction of about 250 feet of road to access private land will be contained to the immediate vicinity of the project site through the implementation of required project design features. My decision to authorize Right-of-Way Request OR 63650 provides for reasonable access to private land with an acceptable level of environmental effects. Based on my review of the EA for Right-of-Way Request OR 63650, the 1995 Medford District Resource Management Plan, and 43 Code of Federal Regulations Subpart 2800 (Rights-of-Way Grants Under the Federal Land Policy Management Act), and my knowledge of applicable laws and policies, I have also determined the implementation of this project is compliant with applicable Federal and State laws and consistent with management direction for BLM-administered lands.

### **PLAN COMPLIANCE**

The above project has been reviewed and found to be in conformance with and tiered to the 1995 *Medford District Record of Decision and Resource Management Plan*, as amended by the *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (USDI, USDA 2001). The Medford District Resource Management Plan incorporated the *Record of Decision and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl*. (NWFP) (USDA and USDI 1994). These documents are available at the Medford BLM office.

The proposed action and alternatives are 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.

### **FINDING OF NO ADDITIONAL SIGNIFICANT IMPACT (FONASI)**

I have considered both context and intensity of the impacts anticipated from implementing the Right-Of-Way Request OR 63650 project relative to each of the ten significance criteria suggested by the CEQ. I have determined that my decision to implement the proposed action as described in this Decision will not have any additional significant adverse effects beyond those effects described in broader analyses which includes the *1994 Medford District Proposed Resource Management Plan/Environmental Impact Statement*, *1994 Final SEIS On Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl*, and the *2001 Final Supplemental Environmental Impact Statement For Amendment to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guideline* or the effects have been determined to be insignificant. The estimated effects of the Proposed Action are described below relative to each of the ten significance criteria suggested by the CEQ with regard to the significance criteria.

*1) The effects of this project on soil, vegetation, water quality, hydrologic function (water flow), and fish and wildlife habitats are within those effects described in the Medford District PRMP/EIS and/or have been determined to be insignificant.*

The Environmental Assessment completed for Right-of-Way Request OR 63650 did not identify any significant effects to affected resources (EA Section H, Environmental Consequences) and based on the effects documented in the EA I have determined the effects of this project are consistent with those anticipated in the Medford District RMP/EIS and have been determined to be insignificant for this project.

*2. The implementation of this project will not have significant adverse effects on public health or safety.*

No aspects of the project have been identified as having the potential to significantly and adversely impact public health or safety. All operations on BLM-administered lands are required to meet Occupational Safety and Health Association regulations for worker and public safety (EA p. 17).

*3. The implementation of this project will have no significant, adverse effects on unique geographic characteristics or features, or on special designation areas such as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; sole or principle drinking water aquifers; or prime farmlands.*

The EA for Right-Of-Way Request OR 63650 did not identify any affects to parks, refuge lands, wilderness areas, wild or scenic rivers, principal drinking water aquifers, or prime farmlands as non exist in the project area. Nor does the project area involve any ecologically significant areas such as significant caves, Areas of Critical Environmental Concern, National Monuments, Wilderness Study Areas, Research Natural Areas, or areas listed on the National Register of Natural Landmarks as none exist in the project area. (EA Section H, Environmental Consequences).

The project will have no effect on cultural resources; a cultural resource survey was completed and no resources were found (EA p. 16).

This project would not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area. Executive Order 13007 (Indian Sacred Sites). (EA p. 16).

This project would have no effect on Indian Trust Resources as none exist in the project area (EA p. 16).

The project was reviewed for the potential to change the characteristic landscape. A visual contrast rating worksheet was completed for this project; changes to the characteristic landscape will be low (EA p.17) consistent with Visual Resource Management (VRM) Class II objectives (EA p. 16, RMP p. 70).

*4. This project does not involve highly controversial environmental effects (40 CFR 1508.1).*

No significant or unique level of controversy concerning the effects of this project has been identified. The EA was published for public review; only one comment was received supporting the project (EA p. 17 and EA project record on file at the Medford District BLM).

*5. The implementation of this project will not have any highly uncertain or potentially significant environmental effects or unique or unknown environmental risks.*

The process for estimating the anticipated effects are well known and this project is limited in scope and intensity. The estimated environmental effects identified for this project have been determined to be within the effects described in the Medford District Proposed Resource Management Plan Environmental Impact Statement and have also been determined to be insignificant as the project is designed to avoid or minimize the potential for adverse environmental effects (EA Section H, Environmental Consequences and EA p. 17).

*6. My decision to implement this action will not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.*

Other projects of this nature are implemented on a regular basis on federal lands across the Medford District and in the vicinity of the project area. The Medford District Resource Management Plan provided program direction for rights-of-way across public lands (RMP p. 82). Therefore, this decision will not establish precedent for future projects. (EA p. 17)

*7. Potential for significant cumulative environmental effects.*

Implementation of the proposed action would create a slight increase in compacted ground and overall road mileage within the drainage. Overall, there has been a net decrease in road mileage of about 14.8 miles on Medford District BLM-administered land within the Jenny Creek Watershed since the implementation of the NWFP in 1995. (EA p. 5-6).

The potential for significant impacts to hydrologic conditions is low. The hydrologic system in this area is highly modified due to the presence of the reservoir immediately downstream. The terrain at the site is gentle and rolling, and with implementation of the Project Design Features it is unlikely that any sediment would be transported more than a few yards off site except during a flood event if it occurred. Water resources would not be affected. (EA p. 6).

Given the flatness of the proposed project area, and that any sediment input would only occur during periods when the dry draw had surface flow, and that displaced sediment would then only migrate into the reservoir and quickly settle out, it is highly unlikely that authorizing this right-of-way for new road construction/reconstruction would impact recreational fisheries resources in Howard Prairie Reservoir (EA p. 6).

The loss of approximately 3 trees (additional trees could be removed if a safety hazard is identified) and 0.05 acre of open-forest habitat would have negligible effects on wildlife due to the very small scale of the project. Some disturbance to wildlife in adjacent areas during construction would have negligible effects since the open-forest habitat is bounded on both sides by roads where vehicular disturbance is common. Species using this habitat are likely to be habituated to a moderate to high level of disturbance. (EA p. 10).

The open-forest habitat does not provide habitat for any listed or proposed Threatened/Endangered species, and the project area is not in critical habitat for any listed species. (EA p. 10).

One Bureau Tracking plant species (*Gilia sinistra ssp. sinisterra*) was documented in the project area; the loss of a portion (about 30 individuals or 0.8%) of the population will not contribute to the need to list this species (EA p. 11).

No Medford District Bureau Sensitive and Survey and Manage (B/F) fungi species are known to exist in the project area; therefore, no effects to these species are anticipated. (EA p. 14).

With noxious weed inventory and treatment, we expect weed establishments, as a result of this project, to remain a low potential to cause harm. (EA p. 16)

*8. This project will have no adverse effects on properties listed or eligible for listing on the National Register of Historic Places. This includes Native American religious or cultural sites, archaeological sites, or historic properties.*

The project will have no effect on cultural resources; a cultural resource survey was completed and no resources were found.

This project would not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area. Executive Order 13007 (Indian Sacred Sites). (EA p. 16).

This project would have no effect on Indian Trust Resources as none exist in the project area (EA p. 16).

*9. The implementation of this project will have no adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or have adverse effects on designated critical habitat for these species.*

There are no populations of threatened, endangered, or sensitive fish species in the vicinity of the proposed construction. (EA p. 6).

The open-forest habitat does not provide habitat for any listed or proposed Threatened/Endangered wildlife species, and the project area is not in critical habitat for any listed species. (EA p. 10).

The project area is not within the range of any federally listed plant species (EA p. 10). One Bureau Tracking plant species (*Gilia sinistra ssp. sinisterra*) was documented in the project area; the loss of a portion of the population (about 30 individuals) would not contribute to the need to list this species (EA p. 11).

*10. Potential for implementation of this project to result in Violation of Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, where non-Federal requirements are consistent with Federal requirements.*

The Proposed Action is 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), Safe Drinking Water Act (SDWA) of 1974 (as amended in 1986 and 1996), the Clean Water Act, and the Archaeological Resources Protection Act of 1979 (ARPA). (EA p. 2).

Project design features are included to reduce the potential for this project to contribute to the introduction, existence, or spread of: Federally listed noxious weeds (Federal Noxious Weed Control Act); or invasive non-native species; Executive Order 13112 (Invasive Species). (EA p. 16).

This project was reviewed for the potential for disproportionately high or adverse effects on minority or low income populations; no adverse impacts to minority or low income populations will occur. *Executive Order 12898 (Environmental Justice)*. (EA p. 17).

This project complies with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act (water resource development projects only). (EA Section H, 1, Environmental Consequences, Soil and Water Resources).

#### **EFFECTIVE DATE OF DECISION**

This is a decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2800. All BLM decisions under 43 CFR 2800 are full force and in effect when this Decision Record is signed. All decisions made under 43 CFR 2800 remain in effect pending appeal (43 CFR Subpart 2801.10).

## ADMINISTRATIVE REMEDIES

Any party to a case who believes they may be adversely affected by a decision of an officer of the Bureau of Land Management has the right to appeal to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR part 4. If an appeal is taken, a notice of appeal must be filed in this office within thirty (30) days of the Notice of Decision for transmittal to the Board. If your notice of appeal does not include a statement of reasons, such statement must be filed with the Board within 30 days after the notice of appeal was filed. A copy of your notice of appeal and any statement of reasons, written arguments, or briefs, must also be served upon the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 500 N.E. Multnomah Street, Suite607, Portland, Oregon 97232. In taking an appeal, there must be strict compliance with the regulations.

According to 43 CFR Part 4, you have the right to petition the Office of Hearings and Appeals to stay the implementation of the decision; however, 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 appellants 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.

Should you choose to file, your stay request must accompany your notice of appeal. A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, and adverse party at the same time such documents are served on the deciding official at this office.

  
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John Gerritsma  
Field Manager, Ashland Resource Area  
Medford District, Bureau of Land Management

8/14/07  
Date

## References

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