

**RECORD OF PLAN CONFORMANCE AND
CATEGORICAL EXCLUSION (CX) DETERMINATION
Bureau of Land Management (BLM)**

CX Log #: DOI-BLM-OR-L040-2009-0012-CX Lease or Serial #: OR 45051
 Project Name: PacifiCorp Communication Site Right-of-Way Renewal OR 45051
 Project Location: Hamaker Mountain County: Klamath
 BLM Office: Lakeview District, Klamath Falls Resource Area Phone: (541) 883-6916
 Applicant: PacifiCorp, 825 N.E. Multnomah, Suite 1700, Portland, OR 97232

A. Description of the Proposed Action

The proposed action is to grant PacifiCorp a renewal for their existing communication site right-of-way on Hamaker Mountain. The right-of-way will be renewed for an additional 20 year period. Renewal would continue authorization of the subject right-of-way which has been in existence since 1989 without significant negative impact. Renewal of this right-of-way will not convey any additional rights to those contained in the original authorization and will occupy the same acreage as before. See attached map.

B. Implementation Date

Not applicable - this is an existing situation.

C. Plan Conformance

The above proposed action has been reviewed and found to be in conformance with one or more of the following BLM plans or NEPA analyses:

- Klamath Falls Resource Area Record of Decision and Resource Management Plan (KFRA ROD/RMP), approved December 2008. Refer to Page 50.
- Final EIS for the Revision of the Resource Management Plans of the Western Oregon Bureau of Land Management (2008)

D. Compliance with the National Environmental Policy Act

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with **516 DM 11.9, E(9)** – *Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.*

The proposed action is categorically excluded from further analysis or documentation under the National Environmental Policy Act (NEPA) provided none of the Extraordinary Circumstances listed in 516 Departmental Manual 2, Appendix 2 (5/27/04) are met. The proposed action will:

CX Extraordinary Circumstances Documentation		
The proposed categorical exclusion action will:	YES	NO
2.1 Have significant impacts on public health or safety.		X
Rationale: The action involves the renewal of an existing right-of-way and would not have an impact on public health or safety.		
2.2 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.		X
Rationale: No significant impact on any resources.		
2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		X
Rationale: The renewal of an existing right-of-way is not highly controversial.		

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
Rationale: The effects of renewing an existing right-of-way are not uncertain or unknown.		
2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
Rationale: No precedence is being established by renewing an existing right-of-way. Renewing of existing rights-of-way is customary and routine procedure.		
2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
Rationale: Renewal of an existing right-of-way will not have any cumulative environmental effects.		
2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		X
Rationale: Right-of-way renewal will not impact any known NHRP properties.		
2.8 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.		X
Rationale: Renewal of an existing right-of-way will not have significant effects on endangered species or their habitats.		
2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		X
Rationale: This action does not violate any law.		
2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		X
Rationale: This action will not affect low income or minority populations.		
2.11 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).		X
Rationale: Access to sacred sites will not be affected by this renewal action.		
2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native 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).		X
Rationale: A stipulation will be placed in the right-of-way grant requiring the Holder be responsible for weed control on the disturbed areas within the limits of the rights-of-way.		

The proposed action would not meet any of the above extraordinary circumstances and complies with Executive Order 13212 (Actions to Expedite Energy-Related Projects) – to avoid direct or indirect adverse impact on energy development, production, supply, and/or distribution.

E. Surveys and Consultation:

Surveys and/or consultation may be needed for special status plants and animals, for cultural resources, and other resources as necessary (appropriate fields are Initialed and Dated by responsible resource specialist):

Surveys	Are Completed	Will Be Completed	Are Not Needed
SS Animals			SGH 04/14/09
SS Plants			MJB 5/1/09
Cultural Resources			BMB 4/20/09
Consultation	Is Completed	Will Be Completed	Is Not Needed
SS Animal Consultation*			SGH 04/14/09
Botanical Consultation			MJB 5/1/09
Cultural Consultation			BMB 4/20/09
*(SS = Special Status)			

F. Contact Person:

For additional information concerning this CX review, contact:

Daniel Stewardson, Lakeview Resource Area, 1301 South G Street, Lakeview, Oregon 97630 or telephone: 541-947-2177.

G. Decision:

Based on the available information and review by the interdisciplinary team, it is my determination that:

- the applicant has established a reasonable need for the requested reauthorization,
- the proposed action is in conformance with the approved land use plan,
- the categorical exclusion cited in this Categorical Exclusion Review is applicable to this action and there are no extraordinary circumstances potentially having effects that may significantly affect the environment, and
- implementation of the proposed action does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS).

It is my decision to implement the action as described and approve Right-of-Way Grant OR 45051 to PacifiCorp for a twenty (20) year term, including the supplemental Terms and Conditions in Exhibit B.

Authorizing Official: /s/ Donald J. Holmstrom Date: 5/18/2009
(Signature)

Donald J. Holmstrom
Field Manager
Klamath Falls Resource Area

ADMINISTRATIVE REMEDIES:

Administrative review of right-of-way decisions requiring National Environmental Policy Act (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 (a) - (c). Other than the applicant/proponent for the right-of-way action, 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 that they have a "legally cognizable interest" and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d).

EFFECTIVE DATE OF DECISION:

This is a decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (See 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. Thus, 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 the date of service. Only signed hard copies of a notice of appeal that are delivered to the address below will be accepted. 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 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 (PacifiCorp) at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (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 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, you 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.

CONTACT INFORMATION

For additional information contact:

Donald Holmstrom, Field Manager

Klamath Falls Resource Area, Lakeview District

Bureau of Land Management

2795 Anderson Avenue, Bldg 25

Klamath Falls, OR 97603 (541) 883-6916 or

Don Hoffheins (Klamath Falls Environmental Planner) at (541) 885-4105

U.S. Department of the Interior

Office of Hearings and Appeals Interior Board of Land Appeals

801 N. Quincy Street, MS 300-QC

Arlington, Virginia 22203

Office of the Regional Solicitor

Pacific Northwest Region U.S. Department of the Interior

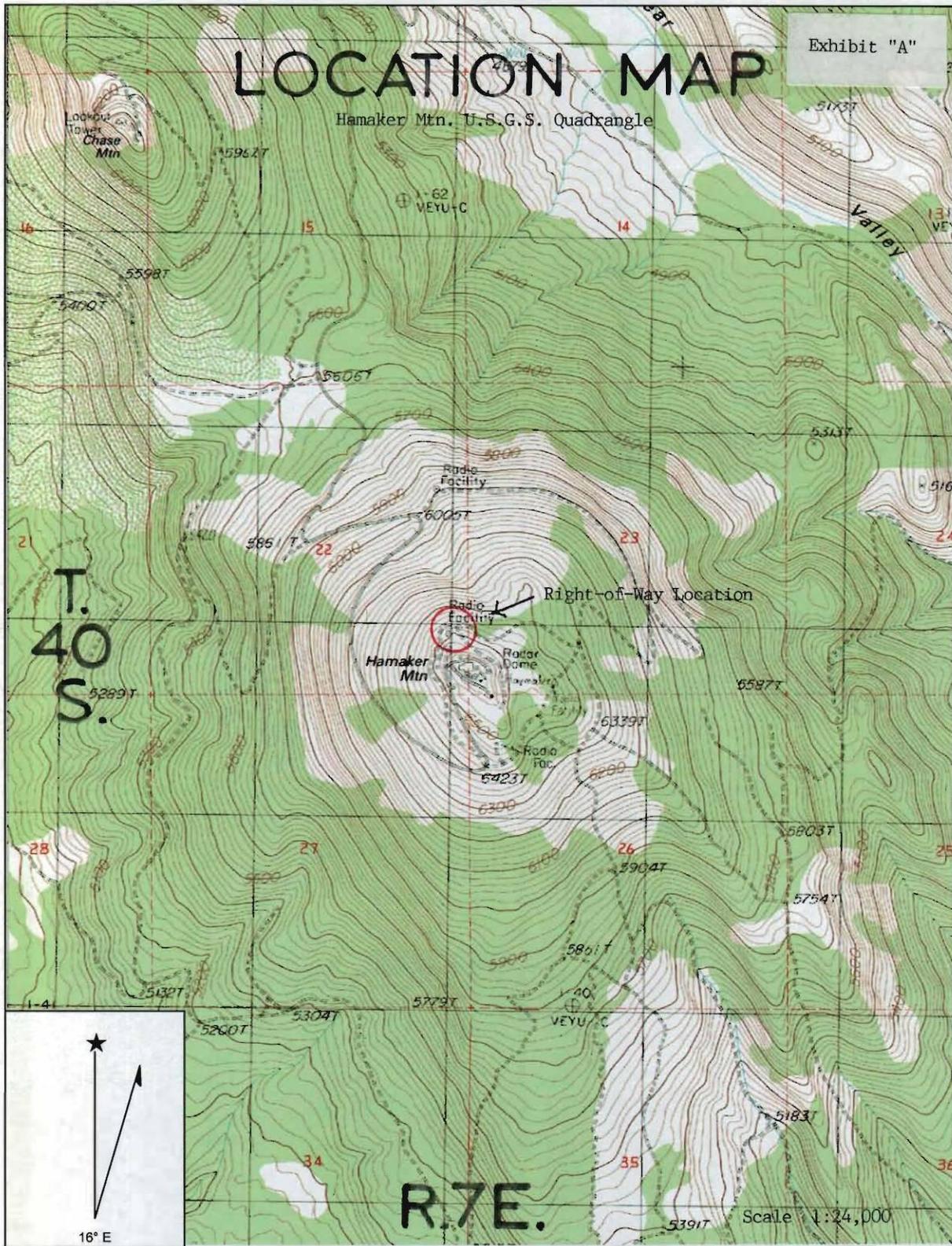
805 SW Broadway, Suite 600

Portland, OR 97205

Attachments:

Exhibit A – Map

Exhibit B – Supplemental Terms and Conditions



**PacifiCorp Communication Site Right-of-Way
Supplemental Terms and Conditions**

1. The Holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way area. The Holder is responsible for consultation with the Klamath Falls Resource Area Manager, hereinafter referred to as the Authorized Officer for acceptable weed control methods.
2. All vehicles and equipment will be cleaned prior to operating on BLM lands. Removal of all dirt, grease and vegetative parts that may carry noxious weed seeds is required and may be accomplished by pressure washing.
3. When noxious weed populations are present on the right-of-way, all vehicles and equipment operating off of the main roads shall be cleaned prior to leaving the site. Removal of all dirt, grease and vegetative parts that may carry noxious weed seeds is required and may be accomplished by pressure washing.
4. Use of pesticides/herbicides shall comply with the applicable Federal and state laws. Pesticides/herbicides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides/herbicides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s)/weeds to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the Authorized Officer. Emergency use of pesticides/herbicides shall be approved in writing by the Authorized Officer prior to such use.
5. The Holder agrees to indemnify the Bureau of Land Management against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Control, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, *et seq.*) on the authorized use area (unless the release or threatened release is wholly unrelated to the Holder's activity on the authorized use area). This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.
6. Pursuant to 43 CFR 10.4(g), any human remains, cultural and/or paleontological resource (historic or prehistoric or vertebrate fossil site or object) discovered by the Holder, or any person working on his/her behalf, on public or Federal land shall be immediately reported by telephone to the Authorized Officer. The Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation and the Authorized Officer will make any decision as to proper mitigation measures after consulting with the Holder. In some cases it may be necessary to suspend authorized operations in the area of the discovery for as much as 30 days.

7. During any construction/reconstruction or maintenance on the right-of-way area, the Holder shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration or damage. If a corner point (monument) is in danger of being lost or damaged, the corner shall be referenced in such a manner that the point can be reestablished and remonumented or rehabilitated after construction. If a bearing tree or other corner accessory is damaged or lost, a new corner accessory shall be properly marked and referenced to the corner. A registered professional land surveyor who shall file a full and complete record of all action taken with the appropriate county surveyor's office shall perform all work. A copy of the record shall be sent to the State Director, Bureau of Land Management, and P.O. Box 2965, Portland, Oregon 97208.
8. For in field construction inspection purposes, the Holder shall notify the Authorized Officer at least five (5) working days prior to construction commencement.
9. All communication site related construction/modification and future maintenance shall occur within the authorized right-of-way area and the level of surface disturbance held to as minimal a size as possible to accommodate the subject activity.
10. All field and construction personnel shall be briefed and made thoroughly aware of the right-of-way terms and conditions prior to the commencement of any construction/modification or future maintenance activities.
11. The Holder shall be responsible for complying with all applicable provisions in the Klamath Falls Resource Area's Hamaker Mountain Communications Site Management Plan, attached as Exhibit "C".
12. The Holder or the Holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
13. This right-of-way is issued subject to the Holder's compliance with all applicable regulations contained in 43 CFR 2800.