

## DECISION RECORD & CATEGORICAL EXCLUSION REVIEW

**Project Name:** OR 65390 LaMinora Road Right-of-Way (DOI-BLM-OR-M060-2010-0008-CX)

**BLM Office:** Ashland R.A., Medford District.

**CONTACT PERSON:** Joe Hoppe @ 541-618-2310

### DESCRIPTION & LOCATION OF THE PROPOSED ACTION:

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) proposes to authorize a right-of-way grant to a private landowner to provide legal ingress and egress to a private parcel they own. If approved, this authorization will be issued pursuant to Title V of the Federal Land Management Policy Act (FLPMA) of October 21, 1976 (90 Stat. 2776: 43 USC 1761 for a term of thirty (30) years. The proposed R\W is located on public land in the NW ¼ NW ¼ of Section 1, T. 39 S., R. 3 E., Willamette Meridian, Jackson County, Oregon. The route includes use of two existing BLM roads (portions of) 39-3E-1.0 and 39-3E-1.1 and an old skid\haul road that is blocked but still exists on the ground. The old skid\haul road is not numbered at this time. If the R\W grant is approved the skid road would need to be improved (rocked) and it would be assigned a road number. The total length of the R/W is approximately 1,100 feet. The first 463 feet of the proposed route is on the 39-3E-1.0 road, then the route goes east on the 39-3E-1.1 road for approximately 200 feet. The route then goes onto the old unnumbered skid\haul road S\SE for approximately 400 feet (marked with orange ribbon). If the proposed R/W is granted, the private land owner will have legal access to their parcel (TL 102) in the N ½ of Section 1, T. 39 S., R. 3 E., Willamette Meridian, Jackson County, Oregon.

The following Project Design Features (PDF's) are required conditions for this project;

*For Watershed Protection (Soils, Water Quality, Hydrological Functions, and Riparian Reserves):*

- Restrict construction activities to dry periods.
- Install a minimum of 6" of aggregate base or pit run material on the entire length (400 feet) of the old haul/ skid road.
- Install rolling water dips in locations flagged by Ashland hydrology staff.
- All disturbed surfaces outside the road alignment and other areas of loose fill shall be seeded with an approved seed mix and mulched with weed free materials as work progresses. Consider using native mulch such as pine needles.
- Any stockpile areas of loose soil or other materials shall have perimeter control such as straw wattles or silt fence around the down slope perimeter when precipitation is occurring or is imminent.
- Restore all road drainage features or install additional drainage that minimizes the concentration of water. Where the opportunity exists, ensure that road drainage is dispersed in such a manner that is does not directly enter adjacent or nearby drainages.

*To minimize the spread of noxious weeds:*

- All equipment shall be washed prior to entering the project area at a site where any mud or debris from the equipment will not contribute to the spread of noxious weeds.
- If available, weed-free rock shall be used to weatherize the natural surface road.
- If rock is not certified weed-free, the road shall be monitored for weed infestations until no weeds are found for two consecutive years.

### PLAN CONFORMANCE

The proposed action is in compliance with the 1995 Medford District Record of Decision and Resource Management Plan (RMP) which states to "continue to make BLM-administered lands available for needed rights-of-way" (p. 82). 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).

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*. On July 25, 2007, the *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* amended the 1995 Medford District Resource Management Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines.

The proposed action is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated in the 1995 Medford District RMP.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects (including timber sales).

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because this meets the provisions of the last valid Record of Decision, specifically 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 (not including subsequent Annual Species Reviews). 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 REVIEW**

Department of the Interior Regulations (43 CFR § 46.205(c)) require that any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in 43 CFR § 46.215. An action would meet one of the extraordinary circumstances if the action may:

<b>Yes</b>	<b>No</b>	<b><u>Categorical Exclusion Exception</u></b>
( )	(X)	1. Have significant adverse effects on public health or safety.
( )	(X)	2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resource; 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)	3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)] not already decided in an approved land use plan.
( )	(X)	4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.

- ( ) (X) 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- ( ) (X) 6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects. (40 CFR 1508.7 and 1508.25(a)).
- ( ) (X) 7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
- ( ) (X) 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) 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
- ( ) (X) 10. Have disproportionate significant adverse impacts on low income or minority populations (Executive Order 12898).
- ( ) (X) 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) 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).

**COMPLIANCE WITH NEPA**

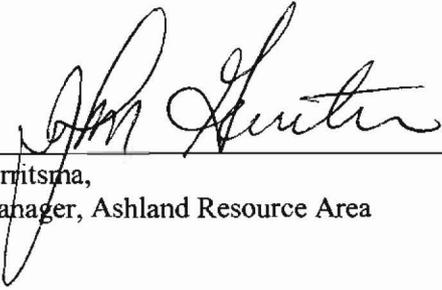
In accordance with 43 CFR §§ 46.205(c) and 46.215, the proposed action has been reviewed against the twelve criteria above and I have determined that none of the extraordinary circumstances described in 43 CFR § 46.205(c) apply to this project. The project qualifies as a categorical exclusion under Departmental Manual 516 DM 11.9 E (16) which allows for the *“issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.”*

**DOCUMENT PREPARATION AND REVIEW**

Joe Hoppe	Realty Specialist	12-15-2009
Prepared by	Title	Date
Stephanie Larson	Assistant Environmental Coordinator	03-04-2010
Reviewed & Edited by	Title	Date

## DECISION

It is my decision to implement the proposed action, as described in the above documentation for the NEPA Categorical Exclusion Review. BLM will issue the right-of way grant (OR 65390) to the private land owner for legal access to their parcel (TL 102) and will allow the skid/haul road to be improved (rocked) and will assign it a new road number.



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John Gerritsma,  
Field Manager, Ashland Resource Area

Date

3/25/10

## ADMINISTRATIVE REMEDIES

Notice of this decision will be posted on the District internet website. In accordance with 43 CFR 2801.10, this decision is in effect immediately and will remain in effect pending any appeal to the Interior Board of Land Appeals under 43 CFR Part 4, unless a stay is granted under 43 CFR § 4.21(b). You may petition for a stay of a BLM decision under this part with the Office of Hearings and Appeals, Department of the Interior.