



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

MEDFORD DISTRICT OFFICE

ASHLAND RESOURCE AREA



DECISION RECORD

For the

MERIWETHER RIGHT-OF-WAY PROJECT

(DOI-BLM-OR-M060-2010-0025-EA)

This document describes my decision, and reasons for my decision, regarding the selection of a course of action to be implemented for the Meriwether Right-of-Way Project. The Revised Environmental Assessment (EA), for the Meriwether Right-of-Way Project, documents the environmental analysis conducted to estimate the site-specific effects on the human environment that may result from the implementation of the Meriwether Right-of-Way proposal. The original Meriwether Right-of-Way EA was issued for public review on July 27, 2010; the public review period ended on August 16, 2010. The Revised Meriwether Right-of-Way EA was issued for public review on May 27, 2011; the public review period ended on June 17, 2011.

BACKGROUND

Meriwether Southern Oregon Land & Timber, LLC requested an amendment to an existing reciprocal right-of-way and road use agreement to allow for the construction of a new road to provide long-term access to their private land adjoining BLM-administered land. The applicant holds an existing reciprocal right-of-way and road use agreement with the Bureau of Land Management for land near the project area. The proposed Meriwether Right-of-Way Project would amend an existing reciprocal right-of-way and road use agreement to allow for the construction of a new road and would add existing BLM-administered roads 38-3-5 and 38-3-6 to the agreement. Public Land Survey System description for the Meriwether Right-of-Way Project Area is: T. 37 S., R. 3 W., in Section 31, and T. 38 S., R. 3 W., in Sections 5 and 6, Willamette Meridian, Jackson County, Oregon.

THE DECISION

As the Responsible Official, it is my decision to implement Alternative 2 as described in the Revised Meriwether Right-of-Way EA.

My decision authorizes the following actions:

- The implementation of Alternative 2 will authorize the amendment of the M-660 right-of-way and road use agreement held by Meriwether Southern Oregon Land & Timber, LLC as described in the EA (Revised EA, pp. 7 to 9).
- Construction of a new road that will measure approximately 2,225 feet (0.42 mile) in length, with clearing limits ranging from 35 to 50 feet, with about 85 percent of the route at 35 to 40 feet clearing width, and 15 percent at about 50 feet (Revised EA, p. 7).

- The addition of existing BLM-administered roads 38-3-5 and 38-3-6 to the agreement will provide Meriwether Southern Oregon Land & Timber, LLC with legal access from the end of County Road 842 to the start of the proposed new road construction (Revised EA, p. 7).
- All Project Design Features (PDFs) will be incorporated as required conditions of this project. A complete listing of the PDFs can be found in Chapter 2 of the Revised EA (pp. 7 to 9). In addition to Required Project Design Features listed in the Revised EA, I am also requiring the applicant to monitor the new road for the establishment of noxious weed populations and treat any sites detected according to State and Federal Laws and BLM policies.

DECISION RATIONALE

My decision to authorize the implementation of Alternative 2 is in compliance with the 2008 Medford District Record of Decision and Resource Management Plan (ROD/RMP); the 2008 Medford District ROD/RMP specifically states: “provide needed rights-of-way ... consistent with federal and state law” (p. 49) (Revised EA p. 3).

Reciprocal rights-of-way agreements are an important tool used by the BLM for acquiring access to BLM lands through cooperation with private forest land owners. These agreements establish cooperation among landowners for road use and land access. Reciprocal agreements and road right-of-way agreements stipulate conditions of use for both the BLM and private land owners while using or constructing roads across private or public lands under agreement. Alternative 2 will provide the private applicant, Meriwether Southern Oregon Land and Timber Company, with a legal right-of-way and road use agreement across BLM-administered lands, providing the applicant with long-term access to their private land (Revised EA, p. 1). Therefore, I have determined that Alternative 2 best meets the purpose and need for this project, as identified in Chapter 1 of the Revised Meriwether Right-of-Way EA.

Based on analysis documented in the Revised EA, it was determined there would be no significant impacts as a result of implementing the Meriwether Right-of-Way Project (FONSI, pp. 1-6). Furthermore, I have reviewed and considered all written comments received in response to the Meriwether Right-of-Way Project proposal. Based on review of the Revised Meriwether Right-of-Way EA and my knowledge of legal requirements and BLM policies, I have determined that the EA addresses issues raised by the public during the EA review period. A Response to Comments was prepared for all substantive comments received in response to the May 2011 Revised Environmental Assessment (Revised EA, Appendix B).

After consideration of the relative merits and consequences of either implementing or not implementing the Meriwether Right-of-Way Project, which included consideration of all public comments and concerns received, I determined Alternative 2 to be the best course of action for the Meriwether Right-of-Way Project.

MONITORING

Implementation monitoring is accomplished through BLM’s right-of-way and road use agreement administration process. Project Design Features included in the project description are carried forward into the reciprocal agreement as required special provisions of the agreement. BLM personnel will monitor the landowner’s operations to ensure that all special provisions are implemented as designed. If work is not being implemented according to required Project Design Features and special provisions, the landowner will be required to correct any deficiencies.

CONSULTATION AND COORDINATION

Pursuant to the Endangered Species Act (ESA), formal consultation was completed with the US Fish and Wildlife Service in 2009. The USFWS authorized the incidental take of one spotted owl site due to loss of up to 2 acres of suitable nesting, roosting, and foraging habitat (Revised EA p. 25; Biological Opinion 13420-2009-F-0147, p.45), and concluded that implementation of the proposed action would not jeopardize the continued existence of the

northern spotted owl (Revised EA p. 25; Biological Opinion 13420-2009-F-0147, p. 44) The Meriwether Right-of-Way Project is not located in, nor would it have any effect on designated northern spotted owl critical habitat (Revised EA p. 25). Biological Opinion 13420-2009-F-0147 is available for review on the Medford District BLM's Website <<http://www.blm.gov/or/districts/medford/plans/consultation.php>>

The BLM determined the project will have no effects on coho or their critical habitat (Revised EA p. 19; FONSI, p. 5).

The BLM determined there would be no effects on *Fritillaria gentneri* (Revised EA p. 34; FONSI, p. 5).

The Klamath Tribe, the Confederated Tribes of the Siletz, the Confederated Tribes of the Grand Ronde, Cow Creek Band of Umpqua Indians, and the Quartz Valley Indian Reservation were sent a copy of the EA during the 2010 public review period; no comments were received.

Jackson County Commissioners, Oregon Department of Fish and Wildlife, and Oregon Department of Forestry were also sent a copy of the EA during the public review period. The Oregon Department of Fish and Wildlife provided comments on the original EA and were mailed a revised EA on May 27, 2011. No subsequent comments were received.

PUBLIC INVOLVEMENT

Scoping began for the Meriwether Right-of-Way project when notice of the proposed action appeared in the Ashland Resource Area's Schedule of Proposed Actions published in Medford's Messenger (BLM's quarterly newsletter) beginning with the Spring 2010 edition. The Environmental Assessment (EA) was completed on July 26, 2010 and mailed to adjacent landowners and individuals and groups who are maintained on a general mailing list used for notification of projects occurring on the Ashland Resource Area. The EA was also posted to BLM's Medford District Website. The comment period closed on August 16th, 2010; two comment letters were received. In response to public comments received, the BLM revised the EA and reissued the EA for additional public review in May 2011. The revised EA was sent to those who provided comments on the July 2010 EA for an additional review period (May 27 through June 17, 2011). The Revised Meriwether Right-of-Way Project EA was also posted on BLM's Medford District Website. Written comments received in response to the Revised Meriwether Right-of-Way Project EA were reviewed by the interdisciplinary team and responsible official, and substantive comments were addressed in Appendix B, BLM's Response to Comments for the Revised Meriwether Right-of-Way Project EA.

PLAN CONFORMANCE

The proposed action was initiated under the *1995 Medford District Record of Decision and Resource Management Plan (RMP)*, which 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*.

Following the March 31, 2011 decision by the United States District Court for the District of Columbia in *Douglas Timber Operators et al. v. Salazar*, which vacated and remanded the administrative withdrawal of the Medford District's 2008 ROD and RMP, this project was evaluated for consistency with the 2008 ROD and RMP. Based upon this review, we have determined that the selected alternative is consistent with the Medford District's 1995 RMP and the 2008 ROD/RMP. The proposed Meriwether Right-of-Way project is located on lands allocated by the 2008 Medford District RMP to Uneven Age Timber Management and Riparian Management Area. The 2008 Medford District ROD/RMP specifically states: "provide needed rights-of-way ... consistent with federal and state law" (p. 49). Although the selected alternative contains some design features not mentioned

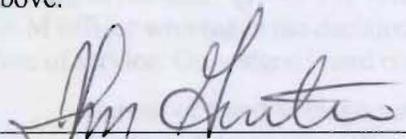
specifically in the 2008 ROD and RMP, these design features are consistent with the ROD and RMP. For example, the Meriwether Right-of-Way project contains Project Design Features that apply Best Management Practices of the 1995 RMP (Appendix D); the application of these Best Management Practices is consistent with Best Management Practices contained in the 2008 RMP (Appendix C). Additionally, while the 2008 RMP does not require consideration of components of the 1995 RMP, because the project was initiated under the 1995 RMP the project was designed and analyzed for conformance with 1995 RMP guidance for Riparian Reserves, Late-Successional Reserves, and the Aquatic Conservation Strategy Objectives. Therefore, the Meriwether Right-of-Way Project complies with both the 2008 Medford District RMP as well as the 1995 Medford District RMP.

This project is also designed to comply with 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* (without Annual Species Reviews).

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.

AUTHORIZATION

It is my decision to implement the Meriwether Right-of-Way Project as described in the section titled Decision above.



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

8/30/11

Date

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” (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 (43 CFR § 4.410(d)).

EFFECTIVE DATE OF DECISION

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 28 12. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after the date of service) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

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” (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

Bureau of Land Management
Medford Interagency Office
3040 Biddle Rd
Medford, OR 97504

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 Meriwether Southern Oregon Land & Timber LLC 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.

APPENDIX B: Response to Comments for the Revised Meriwether Right-of-Way Project EA

Introduction

Written comments received in response to the May 2011 Revised Meriwether Right-of-Way Project EA were reviewed by the interdisciplinary team and responsible official. Substantive comments were considered and the EA was further updated in response to comments received as well as to complete minor corrections. The changes made did not reflect additional analysis rather they added additional discussion for clarification. The following changes were made to the Revised EA:

Page 5 – The second to last sentence of the last paragraph was updated to reflect the organizations providing comments to the original July 2010 EA.

Page 15 – The following statement was added to the sentence to clarify the Project Design Feature objective: “so that no fill would be available to potentially fail and be transported downslope”.

Page 23 – The last sentence of the second paragraph “NSO populations in southern Oregon remain statistically stable” was revised to read “Forsman et al., 2011 detected a decline but lacked statistical precision to determine if it was real or an artifact of sampling.”

Page 25 – The sixth paragraph discussing northern spotted owl consultation with U.S. Fish and Wildlife Service was updated to discuss the Services authorization, as documented in the October 9, 2009 Biological Opinion 13420-2009-F-0147, for the incidental take of one spotted owl site.

Throughout the Revised EA – In some instances the length of the proposed road (2,224 feet) had been rounded up to 2,225 feet; the length of the proposed road was rounded up to 2,225 feet for all references made for the purpose of consistency.

Response to Comments

Substantive Comments are those that:

- Provide new information pertaining to the Proposed Action or an alternative;
- Identify a new relevant issue or expand on an existing issue;
- Identify a different way (alternative) to meet the purpose and need;
- Identify a specific flaw in the analysis;
- Ask a specific relevant question that can be meaningfully answered or referenced;
- Identify an additional source of credible research, which if utilized, could result in different effects.

Non-substantive comments are those that:

- Primarily focus on personal values or opinions;
- simply provide or identify a preference for an alternative considered;
- Restate existing management direction laws or policies that were utilized in the design and analysis of the project (or provide a personal interpretation of such);
- Provide comment that is considered outside of the scope of the analysis (not consistent or in compliance with current laws and policies, is not relevant to the specific project proposal, or is outside of the Responsible Officials decision space);
- Lack sufficient specificity to support a change in the analysis or permit a meaningful response, or are composed of general or vague statements not supported by real data or research.

RESPONSE TO COMMENTS

This section lists comments received and the BLM's response to comments. One comment letter representing the Klamath-Siskiyou Wildland's Center, Cascadia Wildlands Project, Oregon Wild, Rogue River Keeper, and the Siskiyou Project was received during the Revised EA comment period (May 27, 2011 to June 17, 2011). Substantive comments were identified and summarized/paraphrased in to comment statements. The comments and responses are intended to be explanatory in nature and where applicable to guide the reader towards analysis or information contained in the Revised Environmental Assessment (EA).

Comment 1: Was there a scoping notice for this project? NEPA requires that the agency inform and involve interested parties in the scoping process in order to identify significant issues and reasonable alternatives.

Response: In regard to public involvement, Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) direct agencies to encourage and facilitate public involvement to the fullest extent possible (40 CFR 1500.2(d)). Specifically, CEQ regulations require agencies 1) make diligent efforts to involve the public in preparing and implementing their NEPA procedures and 2) provide public notice of NEPA related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected (40 CFR §1506.6). Scoping is the process the BLM uses to identify issues related to the proposal (40 CFR 1501.7) and determine the extent of environmental analysis necessary for an informed decision. It is used in the NEPA process to identify (1) the issues to be addressed, (2) the depth of the analysis, and (3) potential environmental impacts of the Proposed Action. Public scoping began for the Meriwether Right-of-Way project when notice of the proposed action appeared in the Ashland Resource Area's Schedule of Proposed Actions published in Medford's Messenger (BLM's quarterly newsletter) beginning with the Spring 2010 edition. The Schedule of Proposed Actions provides contact information for each upcoming project; Medford's Messenger also provides a form that interested public may use to request additional information about a project. No inquiries were received in response to notification of the Meriwether Right of Way Project: Amendment to M-660 Right of Way and Road Use Agreement (OR 048747 FD) in Medford's Messenger.

The Environmental Assessment (EA) for the Meriwether Right-of-Way Project: Amendment to M-660 Right-of-Way & Road Use Agreement (OR 048747 FD) was completed on July 26, 2010 and mailed to adjacent landowners and individuals and groups who are maintained on a general mailing list used for notification of projects occurring on the Ashland Resource Area. The comment period closed on August 16th, 2010; two comment letters were received. In response to comments received, the BLM revised the EA to address public comments, concerns, and issues; the Revised Meriwether Right-of-Way EA was published May 27, 2011. An additional road location was identified and considered that would avoid the 100-acre Late-successional Reserve altogether; however, was eliminated from detailed analysis as it would have had greater impacts on watershed conditions because it would have involved an additional 1,271 feet of road construction and two additional riparian area crossings in comparison to the proposed action.

The public involvement process for the Meriwether Right-of-Way Project Environmental Assessment meets CEQs regulations for preparing an Environmental Assessment (40 CFR 1500.2 (d) and 1506.6).

Comment 2: Ashland Resource Area is unwilling to address findings of the Middle Applegate Watershed Assessment (WA). Specifically, the EA does not implement the recommendation of the WA (page 95) to reduce road density, let alone propose an action alternative that would accomplish this “high priority”.

Response: While the BLM recognizes the importance of watershed restoration, it does not drive the purpose and need for every project. BLM develops proposals in response to meeting an identified purpose and need. The identified purpose and need for the Meriwether Right-of-Way Project is to respond to the private landowner’s application to amend their existing M-660 Right-of-Way and Road Use Agreement. The need for this action is established by CFR 43 Subpart 2812 under the authority of the Federal Land and Policy Management Act and the Oregon and California (O&C) Lands Act of 1937. The purpose of this action is to provide the applicant, Meriwether Southern Oregon Land and Timber Company, with a legal right-of-way and road use agreement across BLM-administered lands to provide the applicant access to their private land located along the western edge of T. 37 S., R. 3 W., Section 32.

Watershed analysis is one component of the Aquatic Conservation Strategy under the 1995 Medford District Resource Management Plan and the Northwest Forest Plan. The purpose of the watershed analysis is to summarize and synthesize what is known about a watershed at the time watershed analysis is completed; the Middle Applegate Watershed Analysis was completed in 1995. Watershed analysis is not a decision making process, rather it provides information and non-binding recommendations for agencies to establish the context for subsequent planning and project development (Revised EA, p. 4). Watershed analysis documents influence decisions on land-disturbing activities, such as timing of activities and application of design features, including best management practices (1995 RMP, p. 97).

The BLM identified high road densities as a relevant issue in the Revised EA (p. 6) and BLM’s hydrologist, fish biologist and wildlife biologist noted the high road densities and discussed the effects of high road densities on terrestrial and aquatic habitats, hydrologic function, and water quality (July 2010 EA, Chapter 3, Affected Environment and Environmental Consequences). The Revised EA was updated to also disclose the Middle Applegate Watershed Analysis recommendation that calls for reducing high road densities (Revised EA, pp. 4 and 6). BLMs specialists included Project Design Features that would be required to apply Best Management Practices; these Project Design Features also meet watershed analysis recommendations for managing a transportation system. For example the Middle Applegate Watershed Analysis calls for applying Best Management Practices of the RMP (Middle Applegate Watershed Analysis, p. 84).

It is also important to note that watershed analysis documents often contain conflicting recommendations. For example, the Middle Applegate Watershed Analysis recommends reducing road densities (1995 Middle Applegate Watershed Analysis, pp. 86, 93, and 94), while at the same time, it recommends that BLM maintain and implement reciprocal road right-of-way agreements and manage a transportation system that serves the needs of users (1995 Middle Applegate Watershed Analysis, p. 84). It is through the NEPA process that issues regarding conflicting uses of resources are resolved to the extent possible through project design and the application of Best Management Practices. Decisions are based on consideration of the analysis documented in the EA, its supporting documents (e.g. watershed analysis, consultation documents, and other relevant assessments and plans), as well as consideration of laws, regulations, and policies guiding the management of public lands.

Since the implementation of BLM’s 1995 Medford District Resource Management Plan, the BLM has decommissioned approximately 6 miles of road, improved drainage and decreased sedimentation on 10 miles of road, and replaced 9 large culverts (6 feet+ diameter) in the Middle Applegate Watershed. Maps (not available electronically) with locations and year of completion are available for viewing at the Medford District Office.

Sufficient information concerning high road densities in the Forest Creek Watershed is available to the decision maker to inform the decision making process.

Comment 3: *The EA does not analyze the impacts of new road construction on forest values.*

- *We request that the decision maker “consider the conclusions found in the peer-reviewed article by Trombulak and Frissell (2000)” concerning the impacts of road construction and use on terrestrial and aquatic ecosystems. The articles by Ortega and Capen (1999) and Marsh and Beckman (2004) are submitted for BLMs consideration and analysis of the Meriwether Right-of-Way Project.*
- *Barricades don’t mitigate edge effects and microclimate changes that roads produce.*

Response: BLM’s resource specialists did analyze and disclose the impacts of existing roads and proposed new road construction on forest values. You suggest that BLM consider the articles referenced above, stating that BLM continues to largely ignore the impacts of roads as described in the Ashland Resource Area’s Deadmans Palm EA. The Deadman’s Palm EA states that barricades don’t mitigate the effects that roads have on wildlife habitats, specifically microclimate and edge effects. The BLM does not disagree with the findings of the Deadman’s Palm EA. The BLM finds that you have largely ignored the analysis concerning the effects of roads as presented in the Meriwether Right-of-Way Project EA, which is in general agreement with those effects described in the Deadman’s Palm EA, as well as the articles you have referenced above. You have not provided any specific rationale or evidence to explain why you believe that the discussion of the effects of roads in the Meriwether Right-of-Way EA is in error.

The BLM does not debate that there is an array of possible negative effects associated with road building. The magnitude of the effects associated with the proposed Meriwether Right-of-Way Project, including road use and new road construction, were assessed and documented in the July 2010 EA as well as the Revised May 2011 EA. The EA has disclosed the effects of the proposed new road on water resources and aquatic and terrestrial habitats. The primary effects discussed in the EA are sedimentation to waterways and aquatic habitats, (Revised EA, pp. 14, 17-18), removing land from vegetation production (Revised EA, p. 16), habitat fragmentation, loss of habitat, noise disturbance to wildlife, and changes in animal behavior (Revised EA, pp. 24-26, 32-33), and the potential for introduction and spread of noxious weeds and non-native species (Revised EA, pp. 35-38). Additionally, the May 2011 Revised EA included a more detailed discussion concerning the ecological effects of roads on wildlife and their habitats (Revised EA, pp. 24-25) and included references to the literature you cite above as well as other scientific literature.

The BLM included required Project Design Features to avoid or limit adverse impacts on terrestrial wildlife, water quality, aquatic and riparian habitats, fish, and plant communities (Revised EA, pp. 7 to 9). Specifically, to minimize the potential for effects to hydrologic function, water quality, and aquatic habitats, the road would be designed to be out-sloped at 2-4% with rolling dips; excavation would be minimized where the proposed road crosses swales; channel approaches would be designed to minimize fill in the intermittent channel; approaches to the intermittent channel would be rocked for a distance of 50 feet either side of the channel (the entire road would be rocked if wet weather use is planned); where full bench construction is proposed, excavated material would be end-hauled and placed in an approved stable location; slash would be windrowed at the base of newly-constructed fill slopes to catch sediment; all fill-slopes and other areas of loose fill shall be seeded with an approved seed mix and mulched with weed free material prior to fall rains; road construction would only occur during the dry months; road maintenance should occur as necessary to maintain effective drainage.

To reduce the effects of disturbance on wildlife, specifically a historic northern spotted owl activity center, the original proposed road location was eliminated from detailed analysis and the applicant was required to relocate the proposed route to the outer edge of the 100-acre northern spotted owl buffer (Revised EA, p. 10). Additionally, the road would be barricaded when not in use by the applicant. As you point out, barricades don't eliminate the effects of roads on wildlife habitat. The EA does not suggest this, it states "[i]mpacts associated with motorized disturbance would be reduced by gating or barricading the new road when not in use by the applicant" (Revised EA, p. 25). Additionally, no road construction would be allowed from March 1 to June 30 to avoid disturbance during the northern spotted owl nesting period, unless it is determined by protocol surveys that the activity center is not occupied, the owls are non-nesting, or nesting attempts failed (Revised EA, p. 8).

To reduce the risk for the introduction and spread of noxious weeds, Project Design Features would require the washing of logging and construction equipment before initial and subsequent move-ins into the project area; seeding of native grasses and/or an approved seed mix on highly disturbed soil (e.g., cut and fill slopes, etc.); and pre-treatment of existing noxious weed populations found in the project area (Revised EA, p. 38).

The Meriwether Right-of-Way Project EA has adequately discussed the concerns you have raised above and the BLM is requiring Project Design Features to minimize the disclosed effects to the extent possible.

Comment 4: The EA assumes that the road can be closed to off-highway vehicle (OHV) use after completion of the project. This assumption is not reasonable.

Response: The BLM believes that it is reasonable to assume that roads can be closed to off-highway vehicles. The issue for potentially increasing OHV access and associated effects to resources was identified in the June 2010 and Revised 2011 EA (p. 6). A Project Design Feature PDF (Revised EA, p. 8) would require the applicant to close the road when not in use and to maintain an effective closure. Several methods of closure were suggested by resource specialists, including large boulders and dragging large woody material into the roadway. BLMs specialists also noted that steep side slopes should help to effectively close the road when not open for its intended use (Revised EA, pp. 26 and 33). BLM has recently successfully closed roads and trails to OHV use in the vicinity of the requested right-of-way using large boulders. A good example is at Bunny Meadows parking area, where large boulders and fencing were placed to prevent OHV use in the riparian area located along the edge of the parking area. A skid road in the same vicinity was also closed to OHV use by installing water bars every 50 feet over its total length of 0.5 miles. It was then seeded and covered with straw and debris (rocks, branches, trees). At the beginning and end of the skid road, a 4 foot tall wire fence was erected to discourage users from attempting to traverse the skid road and the area was signed. Based on BLMs observations, both closures have been successful. Over the last 3 years, only one set of tire tracks has been observed where someone attempted to climb the hill. They were unsuccessful. In another example, a simple closure with hay bales and signage on a cooperative project on Jacksonville Park lands has also remained very successful. A concentration of law enforcement in the Timber Mountain OHV Area has also produced a high degree of compliance.

Comment 5: No actual analysis or disclosure of cumulative impacts has been attempted by the BLM for this road construction project.

- *The BLM cannot rely on its programmatic land management plans and associated Environmental Impact Statements for the analysis of cumulative effects.*
- *BLM relies on illegal CEQ guidance for consideration of past actions in the cumulative effects analysis.*

Response: BLM specialists conducted site-specific environmental analysis of the proposed Meriwether Right-of-Way Project including the potential for the proposed action to contribute to significant cumulative effects; the results are documented in the EA (July 2010 and Revised 2011).

In summary,

- This project does not appreciably increase road density in the Forest Creek Watershed (0.10 percent increase) and does not increase openings in the transient snow zone, indicators used to assess the risk for adverse cumulative watershed effects; therefore, no additional cumulative watershed effects are anticipated as a result of project implementation (Revised EA, p. 15).
- The effect of new road construction on site productivity at the watershed scale would be minor and insignificant as there would only be a slight increase in the percent of the watershed affected by roads and trails (less than one percent) (Revised EA, p. 16).
- Implementation of Project Design Features, implementing Best Management Practices, would be effective in minimizing sedimentation to stream channels (Revised EA, pp. 15, 18).
- Although this new road construction would yield a slight increase in road density, the increase would be relatively small and inconsequential to aquatic habitat in the intermittent stream and would not add a measurable or meaningful effect to fish or fish habitat in the Forest Creek subwatershed (Revised EA, p. 19).
- The removal of less than one (1) acre of suitable northern spotted owl habitat was considered cumulatively in the 2009 Biological Opinion (13420-2009-F-0147) and the Service concluded the proposed action will not jeopardize the continued existence of the northern spotted owl (Revised EA, p. 25).
- The slight reduction in late-successional habitat in the Forest Creek Watershed (0.4 percent of the existing late-successional habitat in the watershed) would not contribute to significant adverse impacts to late-successional associated species (Revised EA, p. 33).
- There would be no effects to special status or survey and manage botanical species as none were located in the project area (Revised EA, p. 38).
- While there is some risk for introducing and spreading noxious weeds, Project Design Features, including washing logging and construction equipment before initial and subsequent move-ins into the project area; seeding of native grasses and/or an approved seed mix on highly disturbed soil (e.g., cut and fill slopes, etc.); and pre-treatment of existing noxious weed populations found in the project area would prevent significant adverse cumulative effects to plant communities from noxious weeds (Revised EA, p. 38).

The Council on Environmental Quality (CEQ) points out in guidance issued on June 24, 2005, that the “environmental analysis required under NEPA is forward-looking,” and review of past actions is required only “to the extent that this review informs agency decision-making regarding the proposed action.” The CEQ stated in this guidance that “[g]enerally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions.” This is because a description of the current state of the environment inherently includes the effects of past actions. The BLM has described the state of the current environment in the Meriwether Right-of-Way Project analysis area as well as the incremental effects of implementing the proposed right-of-way project. BLM has determined that the Meriwether Right-of-Way project would not contribute to significant cumulative impacts (FONSI, p. 1-6). In regards to your statement that the BLM is relying on “illegal CEQ guidance,” the Ninth Circuit Court of Appeals has on no less than three occasions rejected your view of the CEQ Guidance. *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 549 F.3d 1211, 1217-18 (9th Cir. 2008); *Ecology Ctr. v. Castaneda*, 574 F.3d 652, 666 (9th Cir. 2009); *League of Wilderness Defenders-Blue Mts. Biodiversity Project v. Allen*, 615 F.3d 1122, 1136 (9th Cir. Or. 2010).

Comment 6: There is only one action alternative; NEPA mandates the agency to use the NEPA process to identify and assess reasonable alternatives to the proposed action that would avoid or minimize adverse effects of the proposed action.

Response: As the Ninth Circuit recently re-emphasized, “an agency’s obligation to consider alternatives under an EA [remains] a lesser one than under an EIS.” *Center for Environmental Law and Policy v. United States Bureau of Reclamation (“CELP”)*, – F.3d –, 2011 WL 3629907 at *10 (9th Cir. Aug. 19, 2011). The Ninth Circuit has held repeatedly that a government agency met its obligations under NEPA when it considered in detail two alternatives in an EA – a no action alternative and a preferred alternative. *See, e.g., Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1245-49 (9th Cir. 2005).

The EA considered a range of alternatives designed to meet the BLM’s legal duties, and purpose and need for action. According to the CEQ regulations and the Department of the Interior NEPA regulations, “[t]he range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed” (43 CFR 46.415(b)).

You suggested that the EA should have included alternatives that would have avoided road construction in the 100-acre owl buffer/LSR, constructed a narrower temporary road, and reduced road density as mitigation. The EA provides a rationale why six (6) other alternatives were considered but subsequently eliminated from further analysis (Revised EA, pp. 10-12). One alternative considered but eliminated from detailed analysis included building a road that would have avoided the 100-acre Late-successional Reserve; however, this alternative was eliminated from detailed analysis as it would have increased road density even greater and increased number of channel crossings and risk of sedimentation (Revised EA, pp. 10-11). Temporary road construction and narrower clearing widths were also considered; both were eliminated from detailed analysis as temporary road access would not have met the purpose and need identified for the project, and the road was already designed to minimize clearing widths while taking into consideration site-specific location conditions (Revised EA, p. 12).

Additionally, alternatives that would not involve BLM-administered lands are clearly within the scope of the No-action Alternative (i.e., alternative access across private land) and within the scope of the analysis and the range of options available to the Decision Maker. The likely scenario involving private lands was discussed as part of the No-Action Alternative (Revised EA, pp. 7, 14, 16, 17, 24, 32, and 34).

Comment 7: The BLM has failed to take a hard look at the clearing width associated with its road construction proposal.

Response: The proposal (Revised EA, p. 7) describes clearing limits would range from 35 to 50 feet, with about 15% (about 334 feet) having 50-foot clearing limits. The hydrologist (Revised EA, p. 15), the soils scientist (Revised EA, p. 16), the fish biologist (Revised EA, p. 20), the wildlife biologist (Revised EA, pp. 25-26, 33), and the botanist (Revised EA, p. 34) acknowledged the clearing width limits in their calculations for effects.

Comment 8: The EA is silent as to whether or not the project is located in the transient snow zone.

Response: The EA (p. 13) did disclose that the project was located in rain dominated zone (rather than the transient snow zone).

Comment 9: *BLM neglects to detail the impacts of private land logging that will be facilitated by the federal road construction.*

Response: If the connected non-Federal action and its effects *can be prevented* by BLM decision-making, then the effects of the non-Federal action are properly considered *indirect effects* of the BLM action and must be analyzed as effects of the BLM action (40 CFR 1508.25). In this case, the proponent would pursue alternate access across adjacent private lands (Revised EA, p. 7) and is therefore not prevented by BLM decision-making and not a connected action. Private land logging could occur regardless of whether or not BLM approves the proposed road construction.

Comment 10: *How will the road construction, and connected timber harvest on private land, impact peak flows?*

Response: The potential for new road construction to increase peak flows was analyzed and disclosed in the EA. As stated: “the small reduction in canopy cover (2 acres or 0.04 percent of the analysis area) would not increase the potential for peak flows.” (Revised EA, p. 15)

An amendment to the Meriwether M-660 right-of-way and road use permit would not be a determining factor as to whether ground-disturbing actions would occur on private lands. This is because Meriwether would gain access through other private lands if BLM were to deny the permit. Therefore, timber harvest on private land is not dependent on the road proposed across BLM-administered land and is not a connected activity requiring analysis under this EA.

Comment 11: *The EA fails to acknowledge that the proposed road construction is located within un-roaded interior forest habitat.*

Response: This is not an “un-roaded” area. This proposed road right-of-way is in an area considered to have high road densities (Revised EA, pp. 6, 14; KSWC et al. Comment #2, 3). Nor is the location of this proposed right-of-way in interior habitat. The proposed road enters the corner of the late-successional forest stand from an older clear-cut (Revised EA, p. 32, Map 3-3). This section of the road crosses the corner of the 100-acre Late-successional Reserve (as designated by BLM’s 1995 RMP) and this entire section of road is within about 260 feet of the old clear-cut. The original proposed route, slightly over 900 feet in length would have transected the middle of the 100-acre LSR (eliminated from detailed analysis, Revised EA, p. 10). The remainder of the right-of-way is located in an area that has been thinned and has had fuel treatments (Revised EA, p. 25). The corner of the mature stand affected by the proposed right-of-way does not represent interior habitat and would have minimal effect on how the larger stand functions (Revised EA, p. 33).

Comment 12: *The EA is vague concerning what mitigation and monitoring may occur to control the colonization and spread of noxious weeds along the proposed new road construction.*

Response: This issue was identified in the EA, page 6 (Relevant Issues, #11). Project Design Features (PDF)(Revised EA, pp. 7-9) will prevent the extensive spread of noxious weeds due to the direct effects of the proposed projects. These include utilizing weed free materials (PDF#5), using approved seed mixes (PDF#8), restricting and washing vehicles and equipment (PDF#17), and treating weeds (PDF#17). Weed populations within the affected area would be reduced, perhaps eradicated for five years after road construction (Revised EA, p. 36).

The Medford District has a weed detection, data management, eradication, and monitoring program that has been and continues to be adequately funded. There are no indicators that funding will cease in the near future.

A special provision will also be required as part of the amendment requiring Meriwether Southern Oregon Land and Timber Co., LCC to monitor the new road for the establishment of noxious weed populations and treat any sites detected according to State and Federal Laws and BLM policies.

Comment 13: *The Aquatic Conservation Strategy Consistency Analysis does not constitute a hard look. BLM recognizes the proposed road construction will directly inhibit objectives 1, 3, 4, 5, 8, and 9 at the site level.*

Response: Under BLM’s 1995 RMP, the ACS requires that projects “not retard or prevent the attainment of Aquatic Conservation Strategy objectives.” It does not require that improvements be made with every project implemented. Also, “evidence . . . that a project will result in some degradation does not, standing alone, constitute ACS noncompliance.” *Bark v. BLM*, 643 F. Supp. 2d 1214, 1234-1235 (D. Or. 2009). Project design features are included to maintain aquatic and riparian habitat at the drainage and watershed scale, they include: installing a properly sized culvert at the one channel crossing; placing the culvert at grade; minimizing the fill in the channel; rocking the approaches to the channel to minimize the potential for erosion of the road surface and sedimentation to the stream; construction would only occur during the dry period (June-October 15); approved erosion control measures would be required to filter sediment below the worksite; and fill slopes would be seeded and mulched to stabilize soils prior to fall rains. The Meriwether Right-of-Way project EA discloses site or project scale effects. While the EA acknowledges that project or site level effects are anticipated, the EA details how the Aquatic Conservation Strategy Objectives would be maintained at all relevant spatial and temporal scales (Revised EA, pp. 19-21). For the same reasons the court found in BLM’s favor in *BARK*, the effects of this project meet the requirements of ACS, and your EA comment does not show how BLM’s conclusions on this issue are in error.

Comment 14: *The EA does not disclose the impacts of wet weather hauling that may be connected to the proposed action to construct a new logging road.*

Response: The EA discloses that wet season road use can generate turbid runoff and increase stream sedimentation, particularly when the road is unsurfaced (Revised EA, p. 14). However, the applicant would be required to rock the all roads used if wet weather use is to occur. If implemented correctly, this PDF would minimize any effects associated with wet weather use (Revised EA, p. 15).

Comment 15: *Commenters submitted an excerpt from the article titled “Road Sediment Production and Delivery: Processes and Management” authored by Lee H. MacDonald and Drew B.R. Coe and requested that BLM respond to the article.*

Response: The article by Coe and MacDonald acknowledges the discussion contained within the EA regarding roads and their potential effects concerning erosion and sediment delivery to streams. The article then goes on to state that “road surface erosion, the risk of road-induced-landslides, and road sediment delivery can be greatly decreased by improved road designs”. The PDFs for this project contained within the Revised EA (p. 7-8) are designed with this in mind, and as discussed are intended to minimize any adverse impacts that may occur.

Comment 16: *The EA indicates that full bench road construction may occur, yet the EA fails to analyze the impacts of full bench construction.*

Response: The EA disclosed the potential impacts of constructing 2,225 feet of new road, which included full bench construction, and an intermittent stream crossing. As stated in the EA, road failures can occur as a result from slope instability caused by excavation, groundwater interception, saturated fill-slopes, or culvert failure. Also, as disclosed in the EA there was no evidence of high groundwater along the

proposed alignment. Evidence of a high groundwater table, especially along steeper sideslopes where full bench construction would likely occur could elevate the potential for road related slope failures; however this is not the case for this segment of new road. In addition, where full bench construction may occur all excavated material would be removed to a stable location. Consequently, no fill would be available to potentially fail and be transported downslope (Revised EA, pp. 14-15).

The Project Design Features, including those outlined in the soil and water resources section of this document, are intended to minimize any adverse effects associated with the proposed road new construction. Disturbed soils, both on the fill slopes and in the vicinity of the channel crossing itself, would be mulched and seeded and have a period to stabilize before the onset of wet weather (usually mid to late fall), increasing their resistance to surface erosion. Outslope construction of the road prism, coupled with installation of rolling water dips, would allow the road to dissipate the intercepted water, thus minimizing erosion and failure potential. If the road is to be used during wet weather, the entire length of the road would be rocked to BLM specifications. The rock surfacing would enable the road surface to be much more resistant to erosion, and would greatly limit the potential for road rutting and sediment transport to channels resulting from haul (Revised EA, pp. 14-15).

Comment 17: Content and Consistency with WQRP not disclosed. The EA does not disclose nor analyzed how the project contributes to or detracts from the implementation of the WQRP.

Response: The EA discloses (Revised EA, pp. 14-15) that the proposed action has the potential to adversely affect water resources. However, as stated in the EA “the required Project Design Features ... would be effective in minimizing the potential for fill slope failures and delivery of sediment to stream networks. Specifically, the road would be designed to be out-sloped at 2-4% with rolling dips; excavation would be minimized where the proposed road crosses swales; channel approaches would be designed to minimize fill in the intermittent channel; approaches to the intermittent channel would be rocked for a distance of 50 feet either side of the channel (the entire road would be rocked if wet weather use is planned); where full bench construction is proposed, excavated material would be end-hauled and placed in an approved stable location; slash would be windrowed at the base of newly-constructed fill slopes to catch sediment; all fill-slopes and other areas of loose fill shall be seeded with an approved seed mix and mulched with weed free material prior to fall rains; road construction would only occur during the dry months; road maintenance should occur as necessary to maintain effective drainage. Correct implementation of these measures would, under most circumstances, minimize additional adverse effects, thus avoiding significant impacts, and would ensure compliance with all applicable statutes and management direction, including recommendations contained within the Water Quality Restoration Plan for the Applegate Sub-basin (2005, pp. 46-49).”

As disclosed in the Revised EA (p. 13), the parameters of concern are dissolved oxygen and summer temperatures. The Water Quality Restoration Plan (WQRP) specifically addresses the temperature issue through management recommendations contained within the WQRP (pp. 46-49). Also disclosed in the EA stream temperatures are expected to remain unaffected because the stream in the project area is intermittent and dry during the summer months (Revised EA, p. 15).

Comment 18: A Clean Water Act Discharge Permit is required for this project. The May 17, 2011 (2010) opinion of the 9th Circuit Court of Appeals in NEDC v Brown ruled that culverts and ditches on logging roads constitute a “point source” requiring a discharge permit under the Clean Water Act.

Response: The proposed new road construction is not a point source under the CWA requiring an NPDES permit. The road is out-sloped by design (no roadside drainage ditches would be constructed), thus the road does not concentrate and convey water to a stream, but rather dissipates water so that there is no direct connection with any waterway.

Comment 19: Midslope logging roads on steep ground are not in fact “natural features of the characteristic landscape.” BLMs review of the projects impacts on visual resources will not pass legal muster.

Response: The proposed action is located on lands classified under the 1995 RMP as Visual Resource Management (VRM) Inventory Class III, where lands are managed for a moderate level of change to the characteristic landscape. A visual contrast rating worksheet was completed for the project. The BLM determined that the project would result in a moderate degree of contrast when considering the element of line on the landscape’s feature of vegetation due to an increase in linear contrast and edges from the new road. The proposed Meriwether Right-of-Way Project meets the 1995 RMP Class III objectives as well as the 2008 RMP VRM Class IV, where lands are managed for high levels of change. Overall, the proposed road construction would have a low level of change on the landscape and the existing character of the landscape would remain the same due to the presence of roads in the viewed landscape. The analysis in the Revised EA (pp. 39-40) follows standard methodology for determining the effects of the project on visual resources.

Comment 20: Direct impacts of road construction, logging to facilitate road construction, the connected foreseeable actions of timber harvest on private land, and the increased OHV use may significantly impact and disturb this northern spotted owl site such that the project violates the Endangered Species Act. The agency has not received an Incidental Take Permit for this project.

Response: The issue of the level of effects to the northern spotted owl was analyzed and addressed in the EA (Revised EA, pp. 6, 22-23, and 25). The EA discloses that construction of the road removes less than one acre (about 0.4 acre) of suitable nesting roosting and foraging habitat in a 100-acre owl core (Isabelle South). Consultation was completed with the U.S. Fish and Wildlife Service (USFWS). The USFWS authorized, as documented in Incidental Take Statement contained in Biological Opinion (BO) No. 13420-2009-F-0147, the incidental take of one spotted owl site due to loss of up to 2 acres of suitable nesting, roosting, and foraging habitat (0.005 percent of the 20,110 acres) in the Middle Fork Applegate Watershed. USFWS also concluded that implementation of the proposed action would not jeopardize the continued existence of the northern spotted owl. The EA was updated to provide additional details concerning the consultation process (Revised EA, p. 25). As described above, it was determined that less than one acre of suitable habitat would actually be removed as a result of this right-of-way project. Due to the narrow linear nature of NRF removal, it is anticipated the 100-acre owl core would continue to function as it was designed (BO No. 13420-2009-F-0147). This proposed right-of-way is not located in and would have no effect on designated critical habitat. The effects to this historic owl site have been substantially reduced from the original proposed road location by redesigning the road to only cross the 100-acre core at the outer corner. No significant adverse impacts were identified as a result of this project. This project is being implemented in compliance with ESA.