



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Medford District Office  
3040 Biddle Road  
Medford, Oregon 97504  
email address: BLM\_OR\_MD\_Mail@blm.gov

IN REPLY REFER TO:

2800(060)

JUN 21 2012

Dear Interested Public:

This letter transmits to you a copy of my amended decision on the Hoxie Road Right-of-Way Project. Although the decision has not changed, the effective date of decision was corrected. The decision for the Hoxie Right-of-Way is under 43 CFR 2800 and not under 43 CFR 2810 Subpart as stated in the previous decision record dated June 12, 2012. Decisions under Part 2800 are full force and effect when the NEPA decision is signed. If you have any questions regarding my decision for this project, please contact me at (541) 618-2438.

Sincerely,

John Gerritsma  
Field Manager  
Ashland Resource Area

Enclosures



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
MEDFORD DISTRICT OFFICE  
ASHLAND RESOURCE AREA



**AMENDED DECISION RECORD**  
**For the**  
**HOXIE ROAD RIGHT-OF-WAY PROJECT**

(DOI-BLM-OR-M060-2012-0004-EA)

This document describes my decision, and reasons for my decision, regarding the selection of a course of action to be implemented for the Hoxie Road Right-of-Way Project. The Environmental Assessment (EA), for the Hoxie Road 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 Hoxie Road Right-of-Way proposal. The Hoxie Road Right-of-Way EA was issued for public review in December 2011 and the public review period ended on February 3, 2012.

### **BACKGROUND**

In January 2009 the BLM received a request from a private land owner for road ingress and egress to their private land parcel on the east side of Howard Prairie Lake. The private parcel (TL 5800, in Section 31, T. 38., R. 4 E.) is located on a point of land extending into the lake and can only be reached by crossing public land. The applicant has requested a seasonal access to their property for summer recreational purposes, which would include driving a *"small camp trailer, which is self-contained and any subsequent trailers of motor homes will also be self-contained"*, onto their property. The applicant stated they do not intend to leave the trailer or motor home on the property year round.

The proposed right-of-way follows existing road(s) which cross public land in Section 32 and a small portion of Section 29, T. 38 S., R. 4 E., Willamette Meridian, Jackson County, OR. The proposed new road construction is located on public lands in the NE ¼ of Section 31, T. 38 S., R. 4 E. The road to be decommissioned is located in the SW ¼ of Section 29, T. 38 S., R. 4 E.

### **THE DECISION**

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

My decision authorizes the following actions:

- The implementation of Alternative 2 would authorize the issuance of a long-term (30 years) right-of-way grant in accordance with Federal Land Policy and Management Act (FLPMA) regulations. The issuance of this right-of-way would grant the applicant with 1) legal access to their private parcel along BLM-

managed roads, 2) permission to replace the log and earth barricade that currently exists on the 38-4E-32.3 road, with a gate and large boulders, 3) the right to construct approximately 1,445 feet of new road on BLM land, and 4) the right to conduct maintenance work along the right-of-way where needed. The applicant would be required to decommission a user created jeep road as a condition of the right-of-way. (EA, p. 2-1)

- Installing a gate to replace the barricade and placing large boulders (36"+) on each side of the gate would preclude unauthorized vehicle traffic (including OHVs) and would effectively block vehicle access from this point. (EA, p. 2-1).
- Decommissioning of the jeep road within the northern portion of the Hoxie Creek ACEC in Section 29 of T. 38 S., R. 4E. Road decommissioning would involve tilling or scarifying the compacted surface; adequately blocking the road (e.g. tank traps, dirt berm, large boulders, or fencing or combination thereof) to prevent vehicle access to the road and camouflaging the road using logs, slash and boulders; and seeding with native grass species. (EA, p. 2-1 & 2-2)
- 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 EA (pp. 2-3 to 2-4).

## **DECISION RATIONALE**

My decision to authorize the implementation of Alternative 2 is in compliance with the 1995 Medford District Record of Decision and Resource Management Plan (ROD/RMP); the 1995 Medford District ROD/RMP specifically states: "Continue to make BLM-Administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this RMP." (ROD p. 82) The proposed ROW is in an existing ACEC which is identified as an "avoidance area" in the RMP (ROD p. 83) but the RMP discloses that "Rights-of-way may be granted in avoidance areas when no feasible alternate route or designated rights-of-way corridor is available." (ROD p. 83)

## **MONITORING**

Implementation monitoring is accomplished through BLM's right-of-way and road use agreement administration process. 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 and this project is covered by a Biological Opinion, dated October 8, 2009 (#13420-2009-F-0147). It was determined that the loss of one (1) acre of spotted owl NRF habitat from the home range of the Howard Junction spotted owl site is not likely to further destabilize this site. The basis of this determination is due to the fact that the net change to spotted owl NRF habitat is so small; it is expected that owls will continue to use the habitat in the same way post-project implementation (USDI 2009).

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 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 2011 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.

## **PUBLIC INVOLVEMENT**

Scoping began for the Hoxie Road 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 in December of 2011 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 February 3, 2012; two comment letters were received. Written comments received in response to the Hoxie Road Right-of-Way Project EA were reviewed by the interdisciplinary team and responsible official, and substantive comments were addressed in Appendix A, BLM's Response to Comments for the Hoxie Road Right-of-Way Project EA.

## **PLAN CONFORMANCE**

Due to previous ongoing litigation, the Medford District initially designed this project to be consistent with both the 1995 RMP and the 2008 Western Oregon Plan Revision (WOPR). On May 16, 2012, U.S. District Court (*Pacific Rivers Council et al v. Shepard*) vacated the 2008 Records of Decision/Resource Management Plans for western Oregon BLM districts and reinstated the BLM's 1995 RODs/RMPs. As of May 16, 2012, the Medford District has reverted back to its 1995 ROD/RMP as the official land use plan record. 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).

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Sherman, et al.*, No. 08-1067-JCC (W.D. Wash.), granting Plaintiffs' motion for partial summary judgment and finding NEPA violations in the *Final Supplemental to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (USDA and USDI, June 2007). In response, parties entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. Projects that are within the range of the northern spotted owl are subject to the survey and management standards and guidelines in the 2001 ROD, as modified by the 2011 Settlement Agreement.

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.

## **EFFECTIVE DATE OF DECISION**

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2800. All BLM decisions under 43 CFR 2800 will remain in effect pending appeal unless the Secretary of the Interior rules otherwise. [70 FR 21058, Apr. 22, 2008] 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). Petitions for the stay of a decision shall be filed with the Office of Hearings and Appeals, Department of the Interior. [45FR 44526, July 1, 1980, as amended at 53 FR 17702, May, 1988]

## **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)).

## **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. 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, Suite 607, Portland, Oregon 97232. In taking an appeal, there must be strict compliance with the regulations.

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. Please find enclosed form 1842-1 for guidance on the procedures that must be followed in filing an appeal.

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.

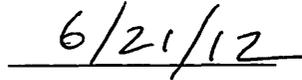
The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

**AUTHORIZATION**

It is my decision to implement the Hoxie Road 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



Date

Enclosure: form 1842-1

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

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

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

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

**43 CFR SUBPART 1821--GENERAL INFORMATION**

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

**STATE OFFICES AND AREAS OF JURISDICTION:**

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

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

---

(Form 1842-1, September 2006)