



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

MEDFORD DISTRICT OFFICE

ASHLAND RESOURCE AREA



## 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 or 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).

There were no other public suggestions made during scoping or to comments in the EA regarding alternative routes. However, the BLM explored several road location options. Alternate routes #1 and #2 were reviewed in the field by Resource Area specialists. It was determined that the level of disturbance and environmental effects would not change by moving the proposed road construction, and both routes would still involve new road construction within the former ACEC (EA p.2-4 and 2-5). Therefore, Alternative 2 road location (as requested by the applicant) was analyzed in detail. None of the road options could avoid the ACEC.

However, suggestions were made during scoping for alternative options to constructing a road. Suggestions include taking the motor home to the site via boat or helicopter, or construct a yurt on the property in lieu of using a motorhome. BLM is unaware of any ferry service on the lake that could accommodate the shuttling of motorhomes across the lake. Furthermore, the route from the beach to the motorhome site is steep and would require a long and winding road to reach the trailer/motorhome site. Such a road would likely be partially located on the ACEC, would require partial to full benching for construction, and would likely have high visual impacts visible from the lake. While there are helicopter services in the region, it is unreasonable for the landowner to absorb expensive fees (estimated at \$5,000+) twice each year to move a trailer or motorhome to and from the site. In addition, there would still be a need to move construction equipment to and from the site (without a road) for the purpose of building a pad on which to site the trailer or motorhome, and/or shuttle the motorhome or trailer from the beach to the recreational site. A yurt does not meet the needs of the applicant. In addition, the suggestions of a helicopter service, ferrying the motorhome across the lake, or constructing a yurt are not within the Purpose and Need of the project, and were, therefore, not considered as alternatives.

## 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.

## **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

6/12/12

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 A

## Response to Comments for the Hoxie Road Right-of-Way Project EA

### Introduction

Written comments received in response to the December 2011 Hoxie Road 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

### 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. Two comment letters were received, one representing the Klamath-Siskiyou Wildlands Center, Cascadia Wildlands Project, Oregon Wild, and the Soda Mountain Wilderness Council, and one from Susan Given representing Friends of the Greensprings during the EA comment period (December 2011 to February 2012). Substantive comments were identified and summarized/paraphrased into 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 Environmental Assessment (EA).

**Comment 1:** *Purpose and Need* Commenter states that the applicant does not "need" the Hoxie Road right-of-way. Commenter also states concern for the Hoxie Creek ACEC

**Response:** The purpose of the action is to provide the private landowner with legal access across public land managed by the BLM to their parcel of land (TL 5800) located in the NW ¼ of section 31, T. 38 S., R. 4 E., Willamette Meridian, Jackson County, Oregon. The need for the action is established by the BLM's responsibility under the *Federal Land Policy and Management Act of 1976* (FLPMA) to respond to a request for a Right-of-Way Grant for legal access to private land over existing BLM roads and a short segment of new road to be constructed across public land. The purpose and need statement for an externally generated action describes the BLM's purpose and need, not an applicant's or external proponent's purpose and need.

The Hoxie Creek ACEC was nominated in 1992 due to its remaining old-growth, natural systems, wildlife and botanical values. The proposed new road construction in the Hoxie Creek ACEC would modify approximately one (1) acre of habitat. This one acre represents 0.40 percent of the 255 acres in the ACEC and 0.26 percent of late-successional habitat within ½ mile of the ACEC. This narrow linear gap in the stand, although not a naturally occurring event, would not represent a barrier to any Bureau Species of concern because of the natural surface and the limited vehicle use (EA p. 3-12). The proposed action will have minimal negative impacts to the ACEC and it will continue to function as it did when it was nominated in 1992 (EA pp. 3-12, 3-13).

From a botanical standpoint, the impact on old-growth characteristics in this stand would be minimal because of the small scale of change in stand conditions. Therefore, implementing the proposed action will have a minimal effect on existing old growth characteristics for which the ACEC was nominated (EA p. 3-20).

This project is not expected to adversely affect long-term population viability of any wildlife species, including any federally listed or bureau sensitive species, known to occur in the area. Additionally, this project combined with other actions in the area would not contribute to the need to federally list any species, because of the small scope of the proposed action compared to the available habitat adjacent to the project area (EA p. 3-17).

**Comment 2:** *Commenter states that the proposed right-of-way through spotted owl habitat constitutes a significant action.*

**Response:** When entering consultation with the US Fish and Wildlife Service (USFWS) regarding this proposed ROW, it was determined that NRF habitat at the home range and core area scales was below suggested levels (USDI/USDA 2008). This was in part due to its proximate location to the reservoir. In combination with the proposed action passing through the spotted owl nest patch on an existing road prism, these factors triggered the LAA mention in the above comment. Further in the planning process, the proposed new road construction was delineated in order to avoid large trees and potential nest trees. BLM biologists then determined that the effects of the road construction would be minimal and the stand would continue to function as NRF habitat post-project implementation.

The USFWS concurred in their biological opinion (#13420-2009-F-0147) and stated:

“After reviewing the current status of the spotted owl, the environmental baseline, effects of the proposed action, and the cumulative effects, it is the Service's biological opinion this proposed action, proposed by the District, *is not likely to jeopardize* the continued existence of the spotted owl. The Service reached this conclusion because the action area is expected to continue to fulfill its role in the survival and recovery of the spotted owl because implementation of the proposed action will retain 99 percent of currently occupied or unsurveyed spotted owl NRF and dispersal habitats in the action area. The Service has determined this strategy (maintenance of currently occupied habitat and minimization of unoccupied habitat loss) will provide sufficient habitat for spotted owl survival and recovery.” (USDI FWS 2008)

“Take is not anticipated in association with the Hoxie ROW because implementation of this activity will occur at the outer edges of the home range, well beyond the nest area of spotted owls at the Howard Junction spotted owl site.”

The commenter also states that there is a lack of interior old-growth habitat and more forest fragmentation will be detrimental to the spotted owl.

**Response:**

On page 3-12 of the EA under the environmental consequences for the Hoxie ACEC section it was stated that “(linear gaps) could open up additional foraging opportunities for some forest interior species” and that “there is potential for additional light to reach the forest floor that could increase browse, sapling cover objects for prey species and gleaning opportunities for insectivorous birds.” Spotted owls were not mentioned directly but the spotted owl is considered an interior species.

Although not mentioned specifically in the spotted owl effects analysis, it should not be unreasonable to consider that there may be potential foraging benefits realized with openings in a forest canopy. Studies have shown that gaps are an important feature in old growth stands (Spies et al. 1990). While some reports suggest negative impacts of thinning on flying squirrels (Wilson 2010, Holloway and Smith 2011), there is also some counter research as to these effects (Gomez et al. 2005, Ransome et al. 2004, Waters and Zabel 1995). Woodrats, both bushy-tailed and dusky-footed are important components of the spotted owls' diet in the project area (Forsman et al. 2004). Some beneficial effects to dusky-footed woodrats due to shrub development in thinned stands may be possible (Sakai and Noon 1993, Suzuki and Hayes 2003).

The fact that there is large scale fragmentation surrounding the proposed project area is not debatable. This point is recognized on page 3-5 of the EA where it was stated that, “The Plateau forests are uneven aged due to past fire regimes and timber management activities. Shrub density is low, but grasses and forbs are abundant and dense. Other prominent habitat features on the Plateau are the expansive network of meadows and large reservoirs.” It is this scale of increased fragmentation caused by the proposed new road construction that is difficult to quantify due to its relatively small footprint. There is little published research available that clearly defines interior habitat and what the disturbance thresholds are for a stand to still be considered interior habitat.

**Comment 3:** *“The EA largely fails to actually analyze the cumulative impacts of past projects....*

*“BLM relies on illegal CEQ guidance for consideration of past actions in the cumulative effects analysis.”*

**Response:** Cumulative environmental effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” (See definition of “cumulative impact” in 40 CFR § 1508.7).

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 Hoxie Road Right-of-Way Project analysis area as well as the incremental effects of implementing the proposed right-of-way project. Analysis was performed at multiple scales, and included the consideration of past actions, as reflected in current conditions, current actions, and foreseeable future actions on both private and federal lands (EA, Chapter 3, Affected Environment & Environmental Consequences). No significant cumulative impacts were identified.

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 4:** *Great Gray Owl Surveys and meadow habitat*

*BLM refused to conduct surveys for great gray owls because the protocol does not require conducting pre-disturbance surveys adjacent to man-made openings or natural openings less than 10 acres. Please note page 2-2 of the EA indicates that project activities will occur in a “meadow” and page 3-3 of the EA acknowledges that GGO habitat is “suspected” by the BLM.*

**Response:** The project activities described on page 2-2 of the EA is decommissioning of an illegal user created jeep road and will not affect any great gray owl habitat. This meadow, which fluctuates in size because of reservoir levels, is beyond the distance from the proposed new road construction to trigger surveys. Road decommissioning activities will be subject to a seasonal restriction in order to reduce noise disturbance to unknown nesting great gray owls in the project area.

Page 3-3 of the EA actually states that great gray owls are suspected to occur in the project area, not just suitable habitat. For purposes of the analysis, a project area is a larger area delineated around the habitat disturbing activities. This allows the specialist to better address the effects of an activity to a species that may be more mobile or have larger home ranges (e.g. an owl versus a mollusk).

The quote mentioned in the comment, “because the protocol does not require conducting pre-disturbance surveys adjacent to man-made openings or natural openings less than 10 acres”, is accurate and directly from the great gray owl survey protocol. The proposed habitat disturbing activities are also beyond the distance of what is considered suitable nesting described in the protocol and does not require surveys, even if man-made opening were required to be surveyed. This proposed project is also in compliance with the 2011 Survey and Manage settlement agreement.

**Comment 5: Bald Eagles**

***The BLM cannot elect to only “protect” the bald eagle management area when there are no competing proposals or activities proposed.***

**Response:** The BLM is following the 2007 US Fish and Wildlife Service Bald Eagle Management Guidelines that were released after the bald eagle was delisted. The USFWS developed these guidelines to advise landowners, land managers, and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the Bald and Golden Eagle Protection Act may apply to their activities.

This nest stand has been monitored for 20 years and eagles have continued to use this peninsula with the high recreational use associated with the reservoir. As the USFWS describes in the management guidelines, “The continued presence of nesting bald eagles in the vicinity of the existing activities indicates that eagles in that area can tolerate a greater degree of human activity than we expect from eagles in areas that experience fewer human impacts.”

The bald eagle management area mentioned in the EA was designated in the 2008 Western Oregon Plan Revision. 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 BLM will follow the Service’s bald eagle management guidelines and also require project design features (PDFs) to minimize impacts to bald eagles. The proposed road construction route was laid out with specialists input in order to avoid large snags and potential nesting or roosting trees. There will also be seasonal restrictions on road construction to ensure there is no noise disturbance during the nesting season.

**Comment 6: Migratory Birds and Game Birds**

***“The BLM dismisses the direct impacts of the project and refuses to quantify or analyze the cumulative impacts on the local populations ...”***

**Response:** The BLM does address potential negative impacts to bird species of concern in the EA. The approach of the BLM, which is supported by Partners in Flight, is to analyze the effects at a bioregional scale for these Neotropical and local migrants. Migratory birds have one of the most complex annual cycles of vertebrate animals. Among these cycles, individuals have evolved to cope with a remarkable diversity of ecological and social conditions. Because of this complexity, however, there is still a poor understanding of the factors that influence individual success and overall population dynamics. In addition, avian responses to forest management practices are also difficult to discern, and dependent upon many environmental and ecological factors. The BLM is not a research agency and does not have the resources to carry out long-term studies required to begin to address population dynamics. Currently there are no known completed or ongoing studies locally addressing population dynamics of the species in question.

The current USFWS Birds of Conservation Concern and Game Birds Below Desired Condition that may be found in the project area and may utilize late-seral habitat (band-tailed pigeon, wood duck, purple finch) are not old growth habitat obligates.

**Comment 7: Road Management**

**Response:** Road density is mentioned numerous times in your comment. The short amount of new construction in this proposal is less than the amount of full road decommissioning that will take place on an existing jeep road in the project area. Presently, the road density in the area is 3.2 miles per square mile which is below a threshold of 4 miles per square mile. (EA p.3-24) "The proposed action will not increase road density within the analysis area, and the small reduction in canopy cover would not increase potential for peak flows." (EA p. 3-25)

The road being decommissioned is a "full" decommission. 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. 2-2). The project design features to be implemented incorporate the 1995 RMP Best Management Practices and standard operating procedures. (see Road Decommissioning PDFs, EA, pp. 2-3 & 2-4). Neither the use of the existing portion of the right-of-way nor construction and use of the proposed new segment would have any causal mechanisms to degrade aquatic habitat, while decommissioning of the riparian road segment would yield a long-term beneficial reduction in annual sediment inputs, and would allow for the recovery of approximately 1,000 feet of channel adjacent riparian area (EA p. 3-28).

**Comment 8: Botany, Noxious Weeds**

**Response:** The Medford District BLM Resource Management Plan directs the use of integrated pest management actions to contain and reduce noxious weed infestations. Therefore, the BLM designed the Hoxie Road ROW Project to incorporate project design features (PDFs, see EA page 2-3) as part of the proposed action to control noxious weeds and avoid new infestations. The PDFs include both preventive features and active control.

While construction of the road would increase the amount of ground and areas of less canopy cover, Project Design Features described in Chapter 2 are incorporated into the Proposed Action to minimize the spread of noxious weeds and invasive introduced plant species. PDFs included in the Hoxie Road ROW Project to control noxious weeds are consistent with

- Medford District BLM Resource Management Plan (USDI BLM, 1995, p. 92);
- Medford District BLM Integrated Weed Management Plan and Environmental Assessment (USDI BLM, 1998, p. 10 -14); and the
- Bureau's 2007 Final Programmatic Environmental Impact Statement, *Vegetation Treatments Using Herbicides*, Prevention of Weeds and Early Detection and Rapid Response strategy (USDI BLM, 2007, p. 2-23 to 2-25).

There are no known infestations of noxious weeds in the immediate project area. The BLM land to the east of the 40 acre Hoxie ACEC piece and proposed road construction is devoid of non-native plant species. There is a light infestation of scattered Canada Thistle plants along the shoreline of the lake. These plants were sprayed with Glyphosate in 2010 and 2011. (EA at 3-19)

**Comment 9: *Visual Resource Management***

**Response:** The Visual Resource Management analysis has been addressed in depth in the EA on pages 3-31 through 3-36. The area of the project is also located inside the Hyatt-Howard Special Recreation Management Area (SRMA) which has been identified as an area with high concentrations of recreation use and developed facilities. One of the commenters is concerned that a motor home on private land may be visible from the reservoir. With the project being in the SRMA, (one of high activity and numerous visible structures) if the motor home was visible it wouldn't be viewed as the major focus of a casual observer. However, the property is not adjacent to the reservoir and is screened by vegetation from the lake. Granting of the right-of-way meets the Class II VRM objective of retaining the existing character of the landscape as a low degree of visual change to the characteristic landscape.

**Comment 10: *Commenter states that the applicants proposal may violate Jackson County Land Ordinances***

**Response:** The decision you mention of a Jackson County Hearings Officer indicating that "access to a private parcel via a BLM road is not adequate for establishment of a dwelling" does not seem to apply in this situation. As mentioned in the EA (p. 1-1), the applicant has requested a *seasonal* access to their property for summer recreational purposes. This is for a recreational vehicle and not a primary or permanent dwelling. Applicant has stated they do not intend to leave the trailer or motor home on the property year round. Authorizing access over a BLM road does not warrant a zoning change.

**Comment 11: *Resource Management Plan***

**Response:** After reading your three quotes from the Medford Resource Management Plan I would direct you to page 1-4 of the environmental assessment.

The 1995 Medford District RMP specifies management objectives for an ACEC are to "*maintain, protect, or restore relevant and important values of areas of critical environmental concern*" (USDI 1995a: 56). While the 1995 RMP states to "*avoid locating rights-of-way in an ACEC*", it also states that "*rights-of-way may be granted in avoidance areas when no feasible alternative route or designated rights-of-way corridor is available*" (USDI 1995a: 82-83). The primary objectives of the Hoxie Creek ACEC area to protect natural systems, wildlife, and botanical values (USDI 1995a: 59). The proposed action is designed to balance the need to respond to the applicant's right-of-way request and to meet the 1995 RMP objectives for managing the Hoxie Creek ACEC.

As there is no management plan in place for the Hoxie Creek ACEC, the RMP provides the following direction: "If management plans have not been prepared for previously designated areas, manage in accordance with the guidelines in Table 6" (USDI 1995a: 56). Table 6 management guidelines for Hoxie Creek ACEC are as follows:

- Not available for timber harvest
- OHV use restricted to existing roads
- Mineral leasing subject to No Surface Occupancy (EA pp. 1-4 & 1-5)

**Comment 12: *White Pelicans***

**Response:** American white pelicans (*Pelecanus erythrorhynchos*) are not known to nest on Howard Prairie Reservoir (Hussey and Stephens 2012, Kemper 2002, Marshall et al. 2003). Summer non-breeding birds do use the plateau reservoirs during the breeding season. In summer months, the project area is subject to a high level of recreational disturbance associated with the reservoir. The additional noise from a trailer/RV site, while buffered by a thin stand of conifers on Bureau of Reclamation land, should be minimal when compared to outboard motor noise carrying across water. Currently, white pelicans are not a Bureau Special Status species or a US Fish and Wildlife Service Bird of Conservation Concern and were not addressed in the EA.

Hussey, K.F. and J.L. Stephens. 2012. *Klamath Bird Observatory's contribution to the USFWS Western Colonial Waterbird Survey: Summary of 2011 survey efforts and results*. Rep. No. KBO-2012-0003. Klamath Bird Observatory, Ashland, Oregon.

Kemper, John. 2002. *Southern Oregon's Bird Life*. Outdoor Press. Medford, Oregon.

Marshall, D.B., M.G. Hunter, and A.L. Contreras, Eds. 2003. *Birds of Oregon: A General Reference*. Oregon State University Press, Corvallis, Oregon. 768 Pp.