

Categorical Exclusion Determination and Decision Record for the Pine Flat Property Owners Association R/W, OR 65808 DOI-BLM-OR-M050-2009-0029-CX

Description of Proposed Action

The Pine Flat Property Owners Association (POA) requested a Right-of-Way grant for the purpose of legal ingress and egress over BLM road 33-1E- 33.2, starting in the SE ¼ of the SW ¼ of section 33 and continuing into the SW ¼ of the SW ¼ of section 33 (see map). The Right-of Way is located in Township 33 South, Range 1 East, Section 33, in Jackson County, Oregon.

Plan Conformance Review

The Bureau of Land Management did not scope this proposal and the public was not involved in its development. This proposal is consistent with policy directed by the following:

- *Final Environmental Impact Statement for the Revision of the Resource Management Plans of the western Oregon Bureau of Land Management and Record of Decision and Resource Management Plan for the Medford District* (EIS, 2008 and ROD/RMP, 2008)
- *Medford District Integrated Weed Management Plan Environmental Assessment* (1998) and tiered to the *Final-Northwest Area Noxious Weed Control Program Environmental Impact Statement* (EIS, 1985)

The proposed action is 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, Federal Land Policy and Management Act of 1976, Endangered Species Act of 1973, Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990 (as amended), and Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the Medford District Resource Management Plan that directs the BLM to “provide needed rights-of-way, permits, leases, and easements over BLM-administered lands in a manner that is consistent with federal and state laws” (USDI 2008, p. 49).

Project Design Features

1. Roadwork will take place within the existing road prism.
2. Roadwork will not deepen nor widen the existing roadbed.
3. Road maintenance equipment will not be parked outside of the existing roadbed.
4. Prior to roadwork, equipment will be power washed including tires and undercarriages to remove noxious weed plant parts and seeds to reduce the spread of noxious weeds.
5. The holder will be responsible for all preventive and corrective access road maintenance. This may include, but not be limited to, blading the roadway, cleaning the ditches and drainage facilities, dust abatement, or other requirements as directed by the Authorized Officer.
6. All maintenance activities shall be confined to the minimum area necessary and shall not exceed the right-of-way width granted herein.

7. The Holder shall not use dirt roads as access routes when such use would cause severe rutting or erosion, as determined by the Authorized Officer. Maintenance activities shall be suspended on public lands if soil condition warrants, as determined by the Authorized Officer.
8. In the construction of channel changes and stream-crossing embankment sections, natural stream flow shall be maintained at all times, unless otherwise provided.
9. No tree 8 inches in diameter or over at breast height shall be cut without prior written approval from the Authorized Officer .
10. The Holder(s) shall not place signs, gates, or barricades on public land, its resources, or improvements without prior written approval from the Authorized Officer.
11. The Holder shall be required to obtain an O&C permit for hauling any non-Government commercial forest products over the road(s) authorized for use under this grant.
12. The Holder shall be permitted to remove snow and ice from roads authorized for use under this grant only when prior approval has been secured from the Authorized Officer. The Holder shall submit a written request for permission to remove snow and ice in advance of the date operations are to begin. Upon receiving written authorization for the snow and ice removal, the Holder shall perform the work according to the conditions and equipment requirements set forth in the Authorization.

Categorical Exclusion Determination

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9 E (16). This section allows for acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances," included in the Code of Federal Regulations (CFR) at 43 CFR 46.205(c) must be reviewed for applicability. After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

Contact Person

For additional information concerning this project, contact Joe Hoppe, Project Leader, at (541) 618-2310.

Prepared by:

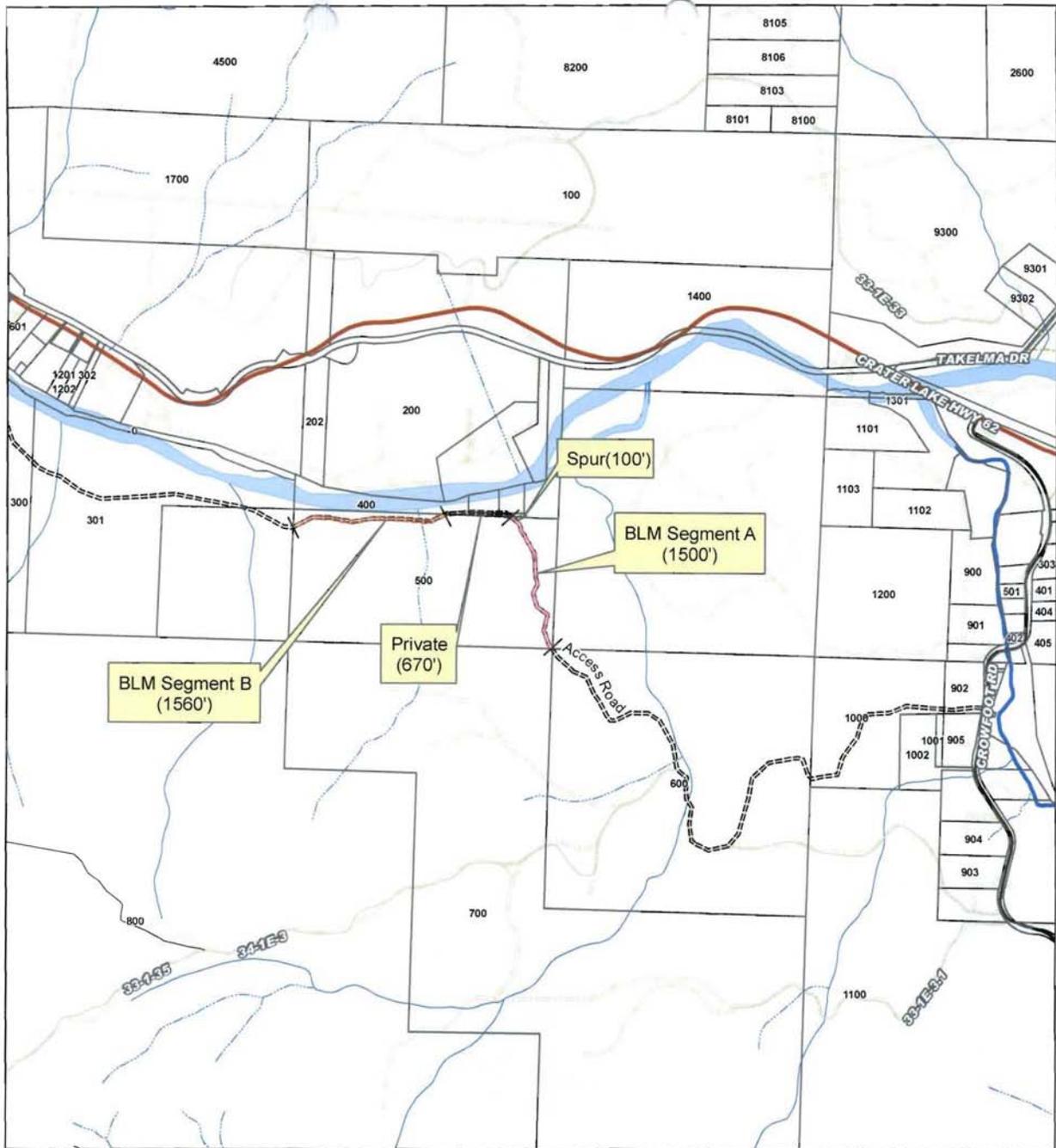

Joe Hoppe
Lands and Realty Specialist

4/27/2009
Date

NEPA Compliance:


Jean Williams, Environmental Specialist
Butte Falls Resource Area

4/27/2009
Date



Legend

- Taxlots
- Access Road
- Rural Roads

Access Road Map Exhibit A

Pine Flat Property Owners Association

Date: January 2009 0.25 0.125 0 0.25 Miles

CSA Planning, Ltd.

NEPA Categorical Exclusion Review

Proposed Action:

Right-of-Way grant for the purpose of legal ingress and egress over BLM road 33-1E- 33.2, starting in the SE ¼ of the SW ¼ of section 33 and continuing into the SW ¼ of the SW ¼ of section 33. The Right-of Way is located in Township 33 South, Range 1 East, Section 33, in Jackson County, Oregon.

The Code of Federal Regulations at 43 CFR 46.205(c) requires that “any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215” (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may:

- 1. *Have significant impacts on public health or safety.*

Yes No

Initial QW Remarks:

- 2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

Yes No

Initial QW Remarks:

- 3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes No

Initial QW Remarks:

- 4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

Yes No

Initial QW Remarks:

- 5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes No

Initial QW Remarks:

- 6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes No

Initial SLS Remarks:

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7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

Yes No

Initial AK Remarks: Cultural Report # O R110-09-42

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

Plants Yes No Initial mw Remarks:

Animals Yes No Initial D.R. Remarks:

Fish Yes No Initial JK Remarks:

9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

Yes No

Initial AK Remarks:

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

Yes No

Initial OW Remarks:

11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

Yes No

Initial AK Remarks:

12. Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Yes No

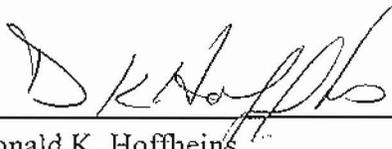
Initial mw Remarks:

Decision

It is my decision to issue a right-of-way grant to the Pine Flat Property Owners Association for the purpose of ingress and egress over BLM road 33-1E- 33.2, as described in the Proposed Action.

Decision Rationale

The proposed action has been reviewed by Butte Falls Resource Area staff and appropriate Project Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the human environment and no further environmental analysis is required.



Donald K. Hoffheins
Field Manager
Butte Falls Resource Area



Date

ADMINISTRATIVE REMEDIES

In accordance with BLM's Rights of Way regulations (See 43 CFR § 2801.10), administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case" (See 43 CFR § 4.410). Other than the applicant for the right-of-way, 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 of their alleged injury through their participation in the decision-making process [See 43 CFR § 4.410(b) and (c)]. The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30 day appeal period.

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. **All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal** (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as "in full force and effective immediately" upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case" (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after publication of this decision on the Medford district website. Only signed hard copies of a notice of appeal that are delivered to the Medford District Office (3040 Biddle Road, Medford, OR 97504) will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision [See 43 CFR § 4.410(d)]. Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed [See 43 CFR § 4.410(c)].

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 Pine Flat Owners Association 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.

HOW TO FILE AN APPEAL

The instructions for properly filing an appeal are contained in the attached form 1842-1.

CONTACT INFORMATION

For additional information contact Donald K. Hoffheins, Butte Falls Field Manager, 3040 Biddle Road, Medford, OR, 97504; (541) 618-2260. Additional contact addresses include:

- U.S. Department of the Interior
Office of Hearings and Appeals, Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, VA 22203
- Regional Solicitor
Pacific Northwest Region, USDI
805 SW Broadway, Suite 600
Portland, OR 97205
- Pine Flat Owners Association
Attn: Milissa Stiles
4497 Brownridge Terrace, Suite 101
Medford, OR 97501

Categorical Exclusion Reviewers:

Name	Title	Date	Initials
Jean Williams	NEPA Coordinator	4/27/09	JW
Marcia Wineteer	Botanist	4/23/09	mw
Dave Roelofs	Wildlife Biologist	4/16/09	D.R.
Steve Liebhardt	Fisheries Biologist	4/27/09	SL
Shawn Simpson	Hydrologist	4/24/09	SS
Ken Van Etten	Soil Scientist	4/27/09	KBV
Al Mason	Fire/Fuels Specialist	4/16/09	APM
Ann Ramage	Archaeologist	4/20/09	AR
Randy Bryan	Engineer	4/17/09	RRB
Traish Lindaman	Outdoor Recreation Planner	4/17/09	TL

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