

# **Categorical Exclusion Determination and Decision Record for Rabitoy Right-of-Way OR68250**

**DOI-BLM-OR-M050-2015-0004-CX**

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## **Description of Proposed Action**

The BLM received an application from Sheryl Rabitoy for a right-of-way grant for ingress and egress to the applicant's private property. Access would be across road #34-4W-28 (Ditch Creek Road), a paved BLM-controlled road. Driveway access to the property already exists. The right-of-way grant would allow the applicant year-round access for a term of 30 years. The proposed right-of-way is 25 feet wide and 0.5 mile long.

The proposed right-of-way is located in the Evans Creek fifth field watershed in the W $\frac{1}{2}$ SE $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  section 28, Township 34 South, Range 4 West, Willamette Meridian, Jackson County, Oregon.

## **Plan Conformance Review**

This proposal is in conformance with objectives, land use allocations, and management direction of the 1995 Medford District Record of Decision and Resource Management Plan (ROD/RMP) and any plan amendments in effect at the time this document is published.

This project is consistent with the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (Northwest Forest Plan).

This project is also consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Stands and Guidelines (Survey and Manage), as incorporated into the ROD/RMP. This project uses the December 2003 species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews, with the exception of the red tree vole. For the red tree vole, the Ninth Circuit Court of Appeals in *KSWC et al. v. Boody et al.*, 468 F3d 549 (9<sup>th</sup> Circuit 2006) vacated the category change and removal of the red tree vole in the mesic zone and returned the red tree vole to its status as existed in the 2001 Survey and Manage ROD, which makes this species Category C throughout its range.

The BLM designed this project to be consistent with laws, regulations, and policies that include the following: 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 the Medford District 1995 ROD/RMP (p. 82) objective to

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.

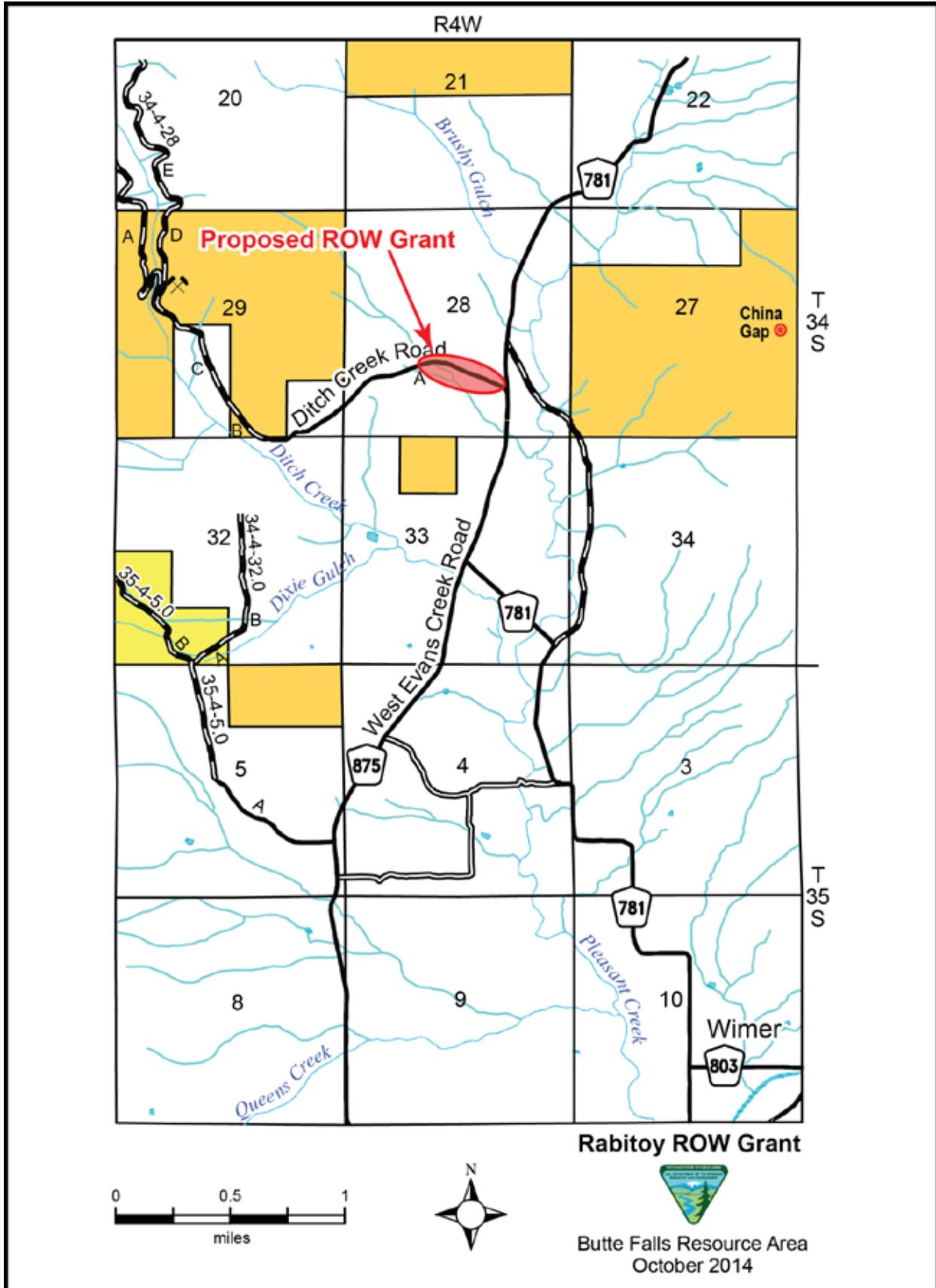
**Categorical Exclusion Determination**

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 Juanita Wright, Project Leader, at (541) 618-2345.



**NEPA Categorical Exclusion Review**

**Proposed Action:** Authorization of a right-of-way grant across Ditch Creek Road to Sheryl Rabitoy for ingress and egress to private property.

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 RW

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 SL

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 RW

Remarks:

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

Yes     No    Initial RW

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 RW

Remarks:

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

Yes     No    Initial SL

Remarks:

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 sjl

Remarks:

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:

Wildlife  Yes  No Initial JK 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 sjl

Remarks:

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

Yes  No Initial RW

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 sjl

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:

**Categorical Exclusion Reviewers:**

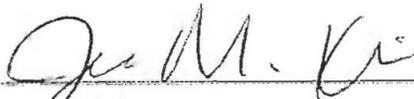
| Name            | Title                      | Date     | Initials |
|-----------------|----------------------------|----------|----------|
| Robyn Wicks     | NEPA Coordinator           | 11/12/14 | RW       |
| Marcia Wineteer | Botanist                   | 11/6/14  | mw       |
| Dave Roelofs    | Wildlife Biologist         | 11/3/14  | DR       |
| Jon Raybourn    | Fisheries Biologist        | 11-3-14  | JR       |
| Shawn Simpson   | Hydrologist                | 11/7/14  | SLS      |
| Amy Meredith    | Soil Scientist             | 10/31/14 | AM       |
| Al Mason        | Fire/Fuels Specialist      | 11/3/14  | AM       |
| Stephen Summers | Archaeologist              | 11/12/14 | SS       |
| Jeff Brown      | Engineer                   | 11/7/14  | JB       |
| Trish Lindaman  | Outdoor Recreation Planner | 10/31/14 | TL       |

**Decision**

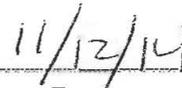
It is my decision to authorize the issuance of right-of way grant OR68251 to Sheryl Rabitoj for access to private property across Ditch Creek Road for a term of 30 years, as described in the Proposed Action.

**Decision Rationale**

The proposed action has been reviewed by Butte Falls Resource Area staff. 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.



Jeanne M. Klein  
Acting Field Manager  
Butte Falls Resource Area



Date

## Administrative Review or Appeal Opportunities

In accordance with BLM's Rights-of-Way regulations (43 CFR § 2801.10), administrative review of right-of-way decisions requiring 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** (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; therefore, 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 this decision is approved (or the date the affected parties received notice of the decision). Only signed hard copies of a notice of appeal that are delivered to the Bureau of Land Management, Butte Falls Field Manager, 3040 Biddle Road, Medford, Oregon 97504 will be accepted. **Faxed or e-mailed 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 (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 (43 CFR §4.410[d]). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental document or that have arisen after the opportunity for comments closed (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 the right-of-way applicant at the same time such documents are served on the deciding official at this office. Service must be accomplished within 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 Board will review any petition for a stay and may grant or deny the stay. If the Board 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 the Board makes a final ruling on the case.