

NEWS Release

BUREAU OF LAND MANAGEMENT

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BLM
Prineville District Office

For Release: June 8, 2016

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BLM and Waibel Ranches Find Path Forward on Teaters Road

PRINEVILLE, Ore. -- The Bureau of Land Management (BLM) Prineville District Office and Waibel Ranches, LLC, have worked cooperatively to find a solution to the 2015 closure of Teaters Road that will restore public access from Highway 380 (Paulina Highway) north to the North Fork Crooked River area and the Ochoco National Forest.

Under the mutually acceptable resolution, Waibel Ranches, LLC has offered to build a new, high-quality road to the west of Teaters Road, solely on private property and at its own expense. The new road will be donated to Crook County upon completion. Once accepted by the county, the road will become a Local Access Road open to the public with the same kinds of access to the BLM North Fork Crooked River area and Ochoco National Forest that Teaters Road has provided.

While the new road is under construction, Teaters Road will remain closed to public access, in part to minimize the risk of vandalism to road construction equipment. However, if the new road is not complete and open to the public by August 10, 2016, Teaters Road will be opened for public use from that date through November 30, 2016 to allow access to BLM and Forest Service lands to the north during fall hunting season. Teaters Road would be closed again after November 30, 2016, while road construction continues. If the new road is still not complete and open by August 1, 2017, though, Teaters Road would be opened again for public use until the new road is complete and available for public use.

These dates could change; however, if there is evidence of poaching, trespass, or vandalism on Waibel Ranch lands adjacent to Teaters Road while the gates are open, and the parties jointly agree that the damage warrants closure of the gates. Throughout this time, Waibel Ranches, LLC, has indicated it will allow the use of Teaters Road for emergency purposes or BLM administrative access at any time.

The BLM and Waibel Ranches, LLC, appreciate the public's patience while they have been working out this path forward. The public is asked to continue to be respectful of private property rights and to report to authorities any suspicious activity or witnessed vandalism to the Waibel Ranches property. You can find more information about the Prineville District at: www.blm.gov/or/districts/prineville

About the BLM: The BLM manages more than 245 million acres of public land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's mission is to manage and conserve the public lands for the use and enjoyment of present and future generations under our mandate of multiple-use and sustained yield. In Fiscal Year 2015, the BLM generated \$4.1 billion in receipts from activities occurring on public lands.

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

WAIBEL RANCHES, LLC, an Oregon Limited
Liability Company, and WAIBEL
PROPERTIES, LCC, an Oregon Limited
Liability Company,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND
MANAGEMENT,

Defendant.

Case No.: 2:15-cv-2071-SU

**JOINT MOTION FOR FURTHER
EXTENDED STAY OF PROCEEDINGS**

**Expedited Consideration & Ruling
Respectfully Requested**

Pursuant to Fed. R. Civ. P. 7(b) and LR 7.1, Plaintiffs Waibel Ranches, LLC, and Waibel

Properties, LLC, and Defendant Bureau of Land Management (“BLM”) hereby respectfully and jointly move for a further extension of the stay currently pending in the above-captioned action up to and including July 31, 2016, on the basis of the conditions laid out in the body of this motion below, and subject to additional potential joint extensions as further described below.

As they explained in their most recent Joint Status Report (Dkt. #28), the parties are continuing to work together cooperatively in an effort to accomplish three primary objectives in addressing the issues at stake in this case: (1) restoring public access from Highway 380 to the public lands and National Forest System lands that lie to the north of Plaintiffs’ property in a timely fashion; (2) ensuring compliance with all applicable laws and regulations; and (3) achieving a mutually acceptable resolution that will obviate the need to litigate the claims in this Court, thereby allowing the parties to devote their energies and resources toward pursuing, reaching, and implementing such a resolution instead of expending them on any such litigation if possible.

Along these lines, the parties are now in a position to report the following with respect to the next steps each of them intends to take toward the end of satisfying all of these objectives.

First, on their own initiative and at their own expense, and for the purpose of providing an alternate route that will provide for access to the same public lands to the north and the same types of uses at a similar level as those which have historically been provided by Teaters Road, and will be designed so as to require maintenance at no greater a level than that which has generally been required on Teaters Road during the period of its public use, Plaintiffs intend to construct a new road (“New Road”) solely on Plaintiffs’ private property on Waibel Ranch near the ranch’s western boundary, substantially along the route depicted on the map attached as Appendix A. In planning the lay-out of the New Road, Plaintiffs will confer with their

neighbors, including a local representative of The Nature Conservancy (“TNC”), which owns the parcel immediately to the west of where Plaintiffs intend to construct the New Road, in an effort to address any reasonable concerns that TNC or other neighbors may have with any potential effects of the New Road on adjoining parcels.

Plaintiffs intend to construct the New Road to standards so that it may and will function as a haul route. More particularly, they intend to construct the New Road with a design speed of 20 mph, and to standards described herein as well as the following specific road-design standards:

- a) Minimum of 20 feet in width
- b) Maximum grade of 12% in any given location
- c) Provision of adequate drainage by placement of ditch relief culverts to account for slope and soil conditions, following the direction set forth in the table attached as Appendix B
- d) Layback slopes on cut slopes at 2:1 and fill slopes or 3:1 with super-elevation rates for curves at 2-6%
- e) Minimum of 12 inches of compacted base aggregate (6 inches of 1-1/2" - 1" and 6 inches of 3/4" - 0)
- f) Minimum curve radius of 50 feet in any given location
- g) Vehicle turnouts every 600-1,000 feet along entire road
- h) 2-4 % crowning of the compacted surface aggregate along the entire road

Any design features of the New Road not addressed by the standards explicitly referenced above will be designed in accordance with the 2012 version of the Oregon Department of Transportation (“ODOT”) Design Manual.

In constructing the New Road, Plaintiffs further intend to carry out such construction in compliance with the standards specified in the 2015 version of ODOT’s Oregon Standard

Specifications for Construction.

In addition, Plaintiffs intend to have a certified professional engineer produce a set of engineered plans for the New Road, to be stamped and certified by that certified professional engineer, that will meet and be consistent with all of the design and construction standards referenced either generally or specifically above. Furthermore, Plaintiffs intend to hire a certified professional engineer to ensure that the New Road is constructed in accordance with the above-referenced engineered plans and specifications, and to provide quality assurance consistent with industry standards, to include the review and oversight of the implementation of Plaintiffs' construction quality-control plan. When the New Road is completed, the certified professional engineer that Plaintiffs have retained for these purposes will produce a stamped letter certifying that the New Road has been constructed in accordance with all of the engineered plans and specifications, design standards, and construction standards referenced either generally or specifically above.

Plaintiffs also agree to maintain the New Road following completion of its construction, including routine maintenance (which, at a minimum will provide for periodic surface grading and drainage, including ditch and culvert maintenance), repair of any road failures, and repairs necessary to address the underlying causes of any failures that might occur, for a period of two years or, if it were to occur earlier, until such time as BLM acquires an easement and/or right-of-way over the New Road from the County in conformance with any and all legal requirements that apply to such an acquisition, as is proposed to occur as described below, at which point, if it does occur, BLM would intend to take on such maintenance responsibilities.

Notwithstanding any other language in this motion, Plaintiffs are solely responsible, and reserve their exclusive rights, to make all determinations about the ultimate placement and

manner of construction of the New Road. Plaintiffs intend to begin construction of the New Road as soon as is practicable upon the Court's granting of this motion, with the goal of having it completed and available for public use no later than Aug. 10, 2016, to the extent feasible.

Second, upon completion of the New Road, Plaintiffs intend to donate it, and all ownership interests associated with it, to Crook County ("County"). To facilitate this donation and transfer of fee ownership of the New Road to the County, the parties have conferred with elected officials of the County, including County Judge Mike McCabe, who has, by letter dated Feb. 11, 2016 (which is attached as Appendix C), expressed on behalf of the County its agreement in principle to accept Plaintiffs' donation of the New Road upon its completion as a Local Access Road (Public Way) as defined under ORS§ 368.031. It is the parties' understanding that, when the County does formally accept the New Road upon its completion in accordance with its current agreement in principle as expressed in the above-referenced letter, the County will keep it open and available for all appropriate uses given its nature, specifications, and condition, subject to the need for the County to effect temporary closures from time-to-time for emergencies or purposes of public safety or other similar exigencies. It is further the understanding of the parties based on their conferment with elected officials of the County that the County intends to provide the United States with an easement and/or right-of-way that encompasses the entire length of the New Road and is substantially the same as the one the United States currently holds on Teaters Road and will therefore allow BLM, the Forest Service, and any other agencies or instrumentalities of the U.S. government to use and maintain the New Road, and allow members of the public to use the New Road, at a minimum, for the same purposes and uses as have been made of Teaters Road through early 2015. The parties will submit any further documentation reflecting the County's implementation of any of these steps that it is their understanding the

County intends to take along with future joint status reports or joint motions for further extensions of the pending stay.

Third, because the New Road will be a Local Access Road (Public Way) as defined under ORS § 368.031, and to serve its objective of ensuring that the New Road provides for the same kinds of access and uses as Teaters Road has up through early 2015, BLM proposes that it take on the responsibility to maintain the New Road to the extent its available funding and resources will allow, consistent with the conditions and time frame set forth above. In stating its proposal in this regard, BLM is not committing to a final decision, or to the expenditure of future funds that the Congress has not yet appropriated, and nothing in this paragraph or motion violates or shall be construed in a manner that would result in a violation of the agency's obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, the Antideficiency Act, 31 U.S.C. § 1341 *et seq.*, or any other statute or regulation by which the agency is bound.

Fourth, upon completion of the New Road and its acceptance by the County as a Local Access Road (Public Way) as described above, the County intends immediately to open and make available for public use the New Road, and Plaintiffs will not erect any barriers or otherwise take any action to impede access to, or otherwise restrict use of, the New Road.

Fifth, if Plaintiffs construct the New Road in accordance with their intent as expressed above, and if the County accepts Plaintiffs' intended donation of the road and offers to convey to the United States an easement and/or right-of-way in accordance with the parties' understanding of intent as expressed above, BLM intends to undertake an appropriate analysis pursuant to NEPA of the proposed action of relinquishing and/or amending to preclude public use of the easement and/or right-of-way the United States presently holds on Teaters Road. This NEPA analysis would also likely include consideration of the acceptance of the County's offer of an

easement and/or right-of-way on the New Road and making a decision to take on the responsibility for maintenance of the New Road, consistent with BLM's proposal to do so, as discussed above. In announcing its intent in this regard, BLM is not committing to any particular final decision, but only stating an intent to analyze such a proposed action if and when Plaintiffs and the County take the previously described steps. Nor is BLM committing to any particular form of or scope for its analysis; in fact, it would note that its intended analysis may include the potential disposition or exchange of the 160-acre federal parcel that BLM manages within the Ranch's borders or related issues. Although BLM has informally received input about the prospective New Road from a variety of interested parties and adjoining landowners to date, one of the objectives of its intended NEPA analysis would be to provide a more formal opportunity for all affected persons or entities to provide input on the intended proposed action as eventually formulated, and any potential environmental effects it is likely to have, prior to the agency's reaching any final decision in this regard.

Plaintiffs acknowledge that BLM is required to collect processing costs from an applicant for the realty actions it takes upon the request of that applicant, which would be the case for both the proposed modification or relinquishment of the existing easement and/or right-of-way on Teaters Road and the acquisition of a new easement and/or right-of-way on the New Road as referenced above. Thus, Plaintiffs understand that they would need to pay the processing costs of BLM's realty actions if, after NEPA analysis, the agency were to modify or relinquish the existing easement and/or right-of-way on Teaters Road and/or acquire a new easement and/or right-of-way on the New Road, as well as any other related realty actions involving Plaintiffs' parcel, which, at this time, BLM estimates could amount up to approximately \$70,000. These realty action costs would only be assessed to the extent necessary or actually incurred, however,

depending on what such actions would end up entailing. In addition, Plaintiffs indicate their willingness to pay BLM for its direct and indirect costs and expenses associated with preparation of the agency's NEPA analysis on the above-referenced intended proposed action up to an amount that does not exceed \$100,000 in total, accounting for both the realty action costs BLM ultimately incurs for those realty actions within the scope of the NEPA analysis and the costs of the NEPA analysis itself. To effectuate this payment, once BLM has defined the scope of the proposed action (including the associated realty actions subsumed within that proposed action) on which it would carry out the NEPA analysis as outlined above, and prior to carrying out the NEPA analysis or such realty actions, BLM would provide an itemized accounting of the projected costs associated with the analysis and realty actions in accordance with its regulations, the total amount of which Plaintiffs would then pay to BLM (again, up to \$100,000), subject to adjustment and/or eventual refund based on the actual costs and expenses ultimately incurred.

With respect to the intended NEPA analysis described above, the parties acknowledge that the proposed action may allow for the United States to retain its current right-of-way or easement on Teaters Road insofar as it allows for administrative and haul route uses by BLM and the Forest Service, or those acting pursuant to their express authority. To the extent practicable, however, and in light of the condition of the New Road upon its completion, BLM notes that its present intention would be to use Teaters Road for administrative purposes only to access its 160-acre parcel within Waibel Ranch from the south gate, if necessary, unless and until it were to dispose of this parcel, although BLM's final determination along these lines will need to await and be subject to prior NEPA analysis before it can be made as well. Notwithstanding the foregoing or any final determination in this regard, Plaintiffs do not intend to prevent the use of Teaters Road to the extent it needs to be used for a haul route or for the moving of heavy

equipment and/or in the instance of a fire or other emergency.

Sixth, Plaintiffs have been working with, and intend to continue to work with, members of the Oregon congressional delegation and their staffs to pursue enactment of legislation in the near term addressing the potential relinquishment or amendment of the easement and/or right-of-way the United States presently holds on Teaters Road and the potential disposition or exchange of the 160-acre federal parcel referenced in the preceding paragraph, and possibly other issues related to Plaintiffs' property. BLM would note that it is not involved, and will not become involved, in Plaintiffs' efforts to pursue any such legislation, nor would it be appropriate for the agency to be, but it is aware of Plaintiffs' efforts along these lines and will provide information that the delegation or their staffs may request in considering any such proposals, as it does in response to all such congressional requests.

Seventh, the parties agree not to pursue any disputed claims or relief related to the validity or scope of the existing easement and/or right-of-way that the United States presently holds and owns for the use of Teaters Road so long as the pending stay in this case is in effect, or the New Road, having been built in accordance with the engineered plans and specifications, design standards, and construction standards referenced or specified above and donated to the County, remains open to the public and federal, state, and local agencies and their agents or contractors for the same uses and providing for the same access to the same public lands to the north and the same types of uses at a similar level as those which have historically been provided by Teaters Road prior to early 2015. In addition, so long as Plaintiffs are continuing to make reasonable progress in constructing the intended New Road in accordance with the standards referenced and specified above so as to provide as soon as is practicable for the same kinds of access and uses as those that Teaters Road has provided prior to early 2015, or for so long as the New Road is

continuing to provide for these same kinds of access and uses, the parties agree to jointly move for one or more further extensions of this stay beyond the one sought by the present motion, until all of the foregoing intended steps set forth above have been completed. At the same time, both Plaintiffs and BLM reserve the right to move to lift the stay in this case, if one or more of the intended steps described above has been renounced, abandoned, or is no longer being pursued.

In addition, if the New Road is not completed and available for public access as described above by Aug. 10, 2016, Plaintiffs agree to open the existing gates on Teaters Road for such access from Aug. 10-Nov. 30, 2016, and otherwise note their intent to keep the existing gates on Teaters Road closed (except for the authorized uses specifically described above) until Aug. 1, 2017. If the New Road is still not completed and open for public access as described above by Aug. 1, 2017, Plaintiffs agree that they would as of that date open the existing gates on Teaters Road to allow for such access until such time as the New Road is completed. These dates are subject to modification, however, if there is evidence of poaching, trespass, or vandalism on Waibel Ranch lands adjacent to Teaters Road while the existing gates on that road are opened in accordance with this paragraph and the parties jointly agree that the injury from such activities warrants closure of the gates. Any such closure in accordance with the foregoing would remain in effect until the parties jointly agree that reasonable measures have been taken to redress or prevent a recurrence of the types of activities that led to the closure, or the completion and opening of the New Road for the access described above, whichever were to occur first.

By way of clarification as to all of the foregoing expressions of intent and understandings on behalf of each of the respective parties, they would also like to add and confirm that their willingness to move jointly for this stay and proceed with the intended steps set forth above is predicated on a desire to work together collectively and amicably for the common good; this is

particularly the case given that Plaintiffs and BLM are adjoining landowners – “neighbors,” less formally. Thus, neither the filing of this motion by the parties, nor the representations made in it, nor the Court’s granting of any of the relief sought by the motion is intended to or should be construed as or may be relied upon as an admission of liability or any indication as to the relative merits of any of the parties’ positions on any of the issues involved in the litigation. Along these same lines, the parties agree not to rely upon this motion or its eventual granting as a basis for seeking compensation or reimbursement for fees, costs, or expenses associated with this case.

In light of the foregoing, the parties respectfully and jointly submit that good cause exists for the Court to extend the pending stay in this action until July 31, 2016. The parties also agree to file another joint motion for a further extension of the stay beyond that date as described above and/or another joint status report prior to that date to apprise the Court of the latest developments related to effectuation of the intended steps described above.

Jointly and respectfully submitted this 20th day of May 2016.

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