

PHOENIX DISTRICT OFFICE NEPA COMPLIANCE RECORD  
FOR CATEGORICAL EXCLUSIONS  
AND ADMINISTRATIVE DETERMINATIONS

Type of Compliance Record:

NEPA#: DOI-BLM-AZ-P010-2012-014

Related #: AZA-35467

X Categorical Exclusion (CX) [Complete Parts I, II (A) & (B), IV & V]

\_\_\_\_\_ Administrative Determination (AD) [Complete Parts I, III, IV & V]

Proposed Action Title/Type: Right-of-Way (ROW) for an Existing Road

Location of Proposed Action:

Gila & Salt River Meridian, Maricopa County, Arizona

T. 9 N., R. 4 W., sec 5, S½NE¼, S½;

T. 9 N., R. 4 W., sec 6, S½;

T. 9 N., R. 4 W., sec 8, NW¼.

The USGS Quad Map: Yarnell Quadrangle, Arizona – Yavapai County 7.5 Minute Series (topographic).

Description of the Proposed Action: The proposed action requests authorization to use and maintain an existing road for a period of 30 years. The road is located partially on private land but does cross onto BLM land in three places (see map attachment B). The length of the existing road in area one is 820 feet and varies from 2 feet to 17 feet in width, for a total of approximately .208 acres. The length in area two is 800 feet with an average of 11 feet (which widens to 23 feet in a hairpin turn) for a total of approximately .184 acres. The length of area three is 1,212 feet, with an average of 11 feet in width, totaling approximately .310 acres. The total acres involved are .720. The road will be used year-round to access a communication site which has already been constructed on private land. The applicant does not want to change the road's existing length or width but simply be able to improve (grade/maintain) it from time to time.

#### PART I - PLAN CONFORMANCE REVIEW

This proposed action is subject to the following land use plan: **The Bradshaw-Harquahala Record of Decision and Approved Resource Management Plan (RMP)**, approved April 2010. The proposed action has been reviewed for conformance with this plan [43 CFR 1610.5-3, BLM Manual 1601.04 C.2, BLM Manual Supplement (MS) 1617.3, Departmental Manual (DM) 516 and DM 11.5 (effective 5/8/08)]. It has been determined that the proposed action does comply with the objectives, terms, and conditions of the RMP. Specifically, this type of action is provided for under Decisions Applicable to the Entire Planning Area, Land Health Standards, Lands and Realty Management, Land Use Authorizations number LR-24 which states, **“Continue to issue land use authorizations (rights-of-way, leases, permits, easements) on a case-by-case basis and in accordance with resource management prescriptions in this land use plan.”**

#### PART II - CATEGORICAL EXCLUSION DETERMINATION

A. Verification of Listing: This proposed action qualifies as a CX under 516 DM 2, Appendix 1 (effective 9/26/84). It falls under the criteria for 516 DM 6, Appendix 5.4E(16) (effective 3/11/71), 516

DM 11.9E(16) (effective 5/8/2008), as well as BLM National Environmental Policy Act Handbook (H-1790-1) Appendix 4, E(16) (dated 1/2008). Each of the three citations states, “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.”

And

B. Exception Review: 516 DM 2.3A(3) and 516 DM 2, Appendix 2 provides for the review of the following criteria to determine if exceptions apply to this project. [NOTE: Appropriate staff should determine exception, comment and initial for concurrence. If exceptions apply to the action or project, and existing National Environmental Policy Act (NEPA) documentation does not address it, i.e., Part III, then further NEPA analysis is required].

CRITERIA:

	Comment (YES/NO)	Staff Initial
1. Have significant impacts on public health and safety?	<u>NO</u>	<u>HC</u>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness or wilderness study 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 (Executive Order 13186); and other ecologically significant or critical areas?	<u>NO</u>	<u>HC, CC, BL</u>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]?	<u>NO</u>	<u>HC, BL</u>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?	<u>NO</u>	<u>HC, CC, BL</u>
5. Establish a precedent for future action, or represent a decision in principle about future actions, with potentially significant environmental effects?	<u>NO</u>	<u>HC, CC, BL</u>
6. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?	<u>NO</u>	<u>HC</u>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the Bureau or office?	<u>NO</u>	<u>BL, HC, CC</u>
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?	<u>NO</u>	<u>CC, HC</u>
9. Violate a Federal law, or a State, local, or tribal law or requirement	<u>NO</u>	<u>BL, CC, HC</u>



REVIEWER:     /S/      
Leah Baker, Planning & Environmental Coordinator

DATE:   2012/06/13  

PART V – DECISION:

I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no further environmental analysis is required. This action will not have a direct or indirect adverse impact on energy development, production, supply and/or distribution. It is my decision to implement the project, as described, with the mitigation measures identified below.

MITIGATION MEASURES/OTHER REMARKS:

Mitigating measures will be attached to the grant as stipulations. The stipulations for the grant request are located in the attached document (Attachment A). Enclosures also include a Conceptual Site Plan (Attachment B), Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects (Attachment C) and location map of the proposed site area (Attachment D).

1. All applicable regulations in accordance with 43 CFR 2800.
2. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder or any person working on the holders behalf, on public or federal land, shall be immediately reported to the authorized officer (AO), Hassayampa Field Office (HFO) Field Manager, D. Remington Hawes, at 623-580-5530. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the AO. An evaluation of the discovery will be made the AO to determine the appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation and any decision as to the proper mitigation measures will be made by the AO after consulting with the holder.

SIGNATURE:     /S/      
D. Remington Hawes, HFO Field Manager

DATE:   06/14/2012

# Attachment A

## BLM Mitigating Measures for AZA-35467 Road Right-of-Way (ROW)

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800 and regulations to be promulgated by the Secretary of the Interior pursuant to Public Law 94-579.
- b. The holder shall comply with all applicable State and Federal laws and regulations applicable to the authorized use and such additional State and Federal laws, along with the impending regulations, existing or hereafter enacted or promulgated, during the term of the grant. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the ROW or on facilities authorized under this ROW grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the AO concurrent with the filing of the reports to the involved Federal agency or State government;
- c. The ROW herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States (U.S.), so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the U.S.;
- d. Access to site will be across existing roads only.
- e. If there is an incident involving hazardous waste, the holder will immediately notify the authorized officer (AO), of the incident and then submit written documentation of the corrective action taken;
- f. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- g. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- h. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- i. The holder shall comply with all Federal, State, and local regulations whether or not specifically mentioned within this grant.

- j. The right-of-way will be brush-hogged to prevent unnecessary disturbance. Only those areas where safety, absolute need for construction or other regulations may warrant the use of topsoil removal by blading or scalping. This right-of-way clearing shall be limited to the limits of the right-of-way. Suitable topsoil material removed in conjunction with clearing and stripping shall be conserved in stockpiles within the right-of-way.
- k. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
- l. The holder shall inform the authorized officer within 48 hours of any accidents on federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195.
- m. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
- n. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
- o. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
- p. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

- q. No routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of **four** inches deep, the soil shall be deemed too wet to adequately support construction equipment.
- r. During construction, drilling and other activities covering trenches and slope ends to prevent animals from becoming trapped.
- s. Care should be taken to look for and avoid desert tortoises during the construction and operation of the facility. Before construction occurs, project personnel should search the construction area thoroughly for desert tortoises and avoid desert tortoises during construction activity. If desert tortoises must be moved to prevent harming them, they should be moved according to the Arizona Game and Fish Tortoise Handling Guidelines (Attachment C). It is a violation of state law to harm Sonoran desert tortoises;
- t. Any exceptions to these requirements must have prior written approval from the authorized officer. Please be advised that due to limits on the available time of qualified personnel, the unpredictability of wildlife, and future weather conditions, request for exceptions to impending wildlife stipulations will only be considered in the event of extraordinary and unavoidable occurrences over which the company has little or no control. Additionally, construction of the road needs to be started in a time frame which would allow for reasonably normal completion prior to the beginning date of wildlife protection stipulations.
- u. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation;
- v. The holder shall re-contour the disturbed area and obliterate all earthwork by removing embankments, backfilling excavations, and grading to re-establish the approximate original contours of the land in the right-of-way.
- w. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities, prior to use, for acceptable weed control methods (within limits imposed in the grant stipulations).
- x. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- y. The holder shall meet Federal, State, and local emission standards for air quality.
- z. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
- aa. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer.
- bb. The holder shall comply with the construction practices and mitigating measures established by 33 CFR 323.4, which sets forth the parameters of the "nationwide permit" required by Section 404 of the Clean Water Act. If the proposed action exceeds the

parameters of the nationwide permit, the holder shall obtain an individual permit from the appropriate office of the Army Corps of Engineers and provide the authorized officer with a copy of same. Failure to comply with this requirement shall be cause for suspension or termination of this right-of-way grant.

- cc. The holder of Right-of-Way No. AZA-35467 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
- dd. Upon demand of the AO, the holder of the ROW shall pay to the U.S. such sums as the AO shall determine to be required to reimburse the U.S. for all administrative and other costs incurred directly or indirectly by the U.S. in monitoring the construction, operation, maintenance, and termination of this grant;
- ee. This ROW may be renewed. If renewed, the ROW will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest;
- ff. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.
- gg. This ROW reserves to the Secretary of the Interior, or his lawful delegate, the right to grant additional ROWs or permits for compatible uses over, under or adjacent to the land involved in this grant;