

United States Department of the Interior Bureau of Land Management

Environmental Assessment MT- 070-07-023
Case File Number: MTM-96439

Finding of No Significant Impact and Decision Record

September 20, 2007

Sheep Mountain Access Road ROW MTM-96439

Location: Principal Meridian Montana

**T. 9 N., R. 3 W., Sec. 31, Lots: 3, 6, 10 and 11,
SWNE, SENW, NESW, N½ SE.**

T. 9 N., R. 3 W., Sec. 32, Lots: 3, 7, 15 and 16, SWNE, NESW.

U.S. Department of the Interior
Bureau of Land Management
Butte Field Office
106 North Parkmont
Butte, Montana 59701
Phone: 406-533-7600
FAX: 406-533-7660



Finding of No Significant Impact / Decision Record Butte Field Office

INTRODUCTION:

The Bureau of Land Management (BLM) has conducted an environmental analysis (EA No. MT-070-07-023), addressing right-of-way application MTM-96439. The project area is approximately 2.5 miles northwest of Clancy in Jefferson County, Montana.

The applicant owns four patented mineral surveys, which are contiguous and form a single inholding of approximately 68 acres surrounded by public land managed by the BLM Butte Field Office, and is currently in the process of subdividing the Roosevelt (MS8079), Fairbanks (MS8098), Mt. Giant (MS4658), and Bunker Hill (MS4657) into approximately 20 residential lots. He has applied to the Butte Field Office for a right-of-way grant for a term of 30 years, with the right of renewal, which would authorize improvements to portions of the Sheep Mountain and Ohio Gulch Roads, and the construction of five short segments of new road. Up to four pull outs would be constructed along the route, at locations specified by the BLM. All roads would be brought Jefferson County Road Standards, in order to obtain final plat approval for the Sheep Mountain Estates Subdivision. (See Exhibits A and B of the EA)

The proposed action is to grant three separate rights-of-way: (1) to the applicant for an access road, (2) to an electrical utility to provide electrical service to the inholding, and (3) to a telephone utility, to provide voice and data service to the inholding.

No ancillary facilities would be authorized on public lands including, but not limited to: septic tanks, sewage disposal lines, septic absorption fields, driveways, signs, mail boxes, fences, outbuildings or sheds and lighting.

If approved, each right-of-way would be issued for a term of 30 years, pursuant to Title V of the Federal Land Policy and Management Act (FLPMA) of 1976{43 U.S.C 1761}and would be subject to the terms and conditions set forth in 43 CFR 2800.

Access Road Right-of-Way (See Exhibits A and B of the EA)

The applicant is proposing to improve portions of the existing Sheep Mountain and Ohio Gulch Roads and construct five short segments of new road: (1) connecting the Sheep Mountain Road to the southwest corner of the Roosevelt Mineral Survey, (2) a small loop to avoid a rock outcropping on the edge of the Mountain Giant Mineral Survey, (3) a short road between the northeast corner of the Roosevelt Mineral Survey to the southwest corner of the Fairbanks Mineral Survey (4) a small loop to avoid a rock out cropping on the northern edge of the Fairbanks Mineral Survey, and (5) a short road connecting the southeast corner of the Mountain Giant to the Sheep Mountain Road.

It is estimated that approximately 90% of the route could be brought to Jefferson County Road Standards by following the existing foot print of the Sheep Mountain and Ohio Gulch Roads. Portions of the roads would be widened to create a 24 foot driving surface and allow for ditching and associated water control features. Blasting of rock outcroppings could be necessary on some portions of the Sheep Mountain Road to obtain appropriate grade.

Up to four pull outs would be constructed along the route, at locations specified by the BLM.

Roads West Of The Vigilante Electric Transmission Line

- Improve approximately 9,020 feet of the existing Sheep Mountain Road.
- Construct approximately 1,245 feet of new road connecting the existing Sheep Mountain Road to the southwest corner of the Roosevelt Mineral Survey.
- Construct a loop road approximately 443 feet long to avoid a rock outcropping on the edge of the Mountain Giant Mineral Survey.
- Construct a short road approximately 66 feet long to connect the northeast corner of the Roosevelt Mineral Survey to the southwest corner of the Fairbanks Mineral Survey.
- Construct a small loop road approximately 70 feet long to avoid a rock outcropping on the northern edge of the Fairbanks Mineral Survey.

Roads East of the Vigilante Electric Transmission Line

- Construct approximately 438 feet of road from the southeast corner of the Mountain Giant Mineral Survey to the existing Sheep Mountain Road.
- Improve approximately 1,520 feet of the existing Sheep Mountain Road to the point where it intersects the existing Ohio Gulch Road.
- Improving approximately 5,274 feet of the existing Ohio Gulch Road from the southeast corner of the Bunker Hill Mineral Survey south to where it intersects land in private ownership.

If approved, the access road right-of-way would be 60 feet wide (30 feet each side of centerline), by approximately 18,076 feet long (3.42 miles), with the Sheep Mountain and Ohio Gulch Roads having an average driving surface of approximately 24 feet, and would encumber approximately 24.89 acres of the following public land:

Principal Meridian Montana

T. 9 N., R. 3 W., Sec. 31, Lots: 3, 6, 10 and 11, SWNE, SENW, NESW, N½ SE.

T. 9 N., R. 3 W., Sec. 32, Lots: 3, 7, 15 and 16, SWNE, NESW.

Buried Electrical and Telephone Utilities (See Exhibit C of the EA)

It is anticipated that utility companies would apply for separate rights-of-way to install buried electrical, voice and data service to the inholding. The service would be buried within the road right-of-way east of the existing Vigilante Electric transmission line.

The right-of-way for the buried electrical service would be 20 feet wide (10 feet each side of centerline) by approximately 7232 feet long (1.37 miles), encumbering approximately 3.36 acres of Federal land.

The right-of-way for the buried voice and data service would be 10 feet wide (10 feet each side of centerline) by approximately 7232 feet long (1.37 miles), encumbering approximately 1.66 acres of Federal land.

One Environmental Analysis was completed for all three actions.

PLAN CONFORMANCE AND CONSISTENCY:

The proposed action and alternatives have been reviewed and found to be in conformance with one or more of the following BLM Land Use Plans and the associated decision(s):

The proposed action and alternatives described below are in conformance with the Headwaters Resource Management Plan, approved July 1984. The proposed rights-of-way are located in

Management Unit 24, which is discussed on page 160. Each of the actions can be considered to be consistent with the objectives of the plan although there are no specific recommendations in the RMP concerning the proposals.

In addition, the action would be consistent with the Final Environmental Impact Statement (EIS) for the Clancy-Unionville Vegetation Manipulation and Travel Management Project; Record of Decision (ROD) signed November 1, 2000.

Furthermore, the action would be consistent with the Off-Highway Vehicle Environmental Impact Statement and Proposed Plan Amendment for Montana, North Dakota and Portions of South Dakota, Record of Decision (ROD) signed January 2001.

FINDING OF NO SIGNIFICANT IMPACT DETERMINATION:

Based upon a review of the EA and the supporting documents, I have determined that the project is not a major federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR 1508.27 and do not exceed those effects described in the Headwaters Resource Management Plan/FEIS. Therefore, an environmental impact statement is not needed. This finding is based on the context and intensity of the project as described:

Context: The disclosure of effects in the EA found the project limited in context. The setting of this project is localized with implications only for the immediate area. The impacts associated with this project are short-term and local, and are not likely to significantly affect regional or national resources.

The proposed action and alternatives described below are in conformance with the Headwaters Resource Management Plan, approved July 1984. The proposed rights-of-way are located in Management Unit 24, which is discussed on page 160. Each of the actions can be considered to be consistent with the objectives of the plan although there are no specific recommendations in the RMP concerning the proposals.

In addition, the action would be consistent with the Final Environmental Impact Statement (EIS) for the Clancy-Unionville Vegetation Manipulation and Travel Management Project; Record of Decision (ROD) signed November 1, 2000.

Intensity: The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27 and incorporated into BLM's Critical Elements of the Human Environment list (H-1790-1), and supplemental Instruction Memorandum, Acts, regulations and Executive Orders. The following have been considered in evaluating intensity for this proposal:

1. **Impacts may be both beneficial and adverse.** The proposed action would affect resources as described in the EA. Mitigating measures to reduce impacts to Air Quality, Non-native Invasive Species, Travel Management, and Soils were incorporated in the design of the action alternative. None of the environmental effects discussed in detail in the EA are considered significant, nor do the effects exceed those described in the Headwaters RMP or the Clancy Unionville Travel Management and Vegetation Manipulation Plan FEIS.
2. **The degree to which the selected alternative will affect public health or safety.** The proposed action is designed to have no significant or unacceptable effect on public health or safety. The EA discloses that that Air Quality could be affected by the proposed

action from fugitive dust being raised during construction activities; however the effects would be minimal, highly localized, and short-term. Use of water trucks, to wet the road during construction would greatly reduce fugitive dust. Public safety on the Sheep Mountain and Ohio Gulch Roads was discussed in the proposed action and will be addressed through implementation of a sign and safety program.

3. **Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.** The following Critical Elements of the Human Environment and Other Resource Issues are not affected because they are not present in the project area: Areas of Critical Environmental Concern, Cultural Resources, Environmental Justice, Prime or Unique Farmlands, Floodplains, Native American Religious Concerns, Hazardous Wastes, Wild and Scenic Rivers, and Wilderness. In addition, the following Critical Elements of the Human Environment and Other Resource Issues, although present, would not be affected by this proposed action for the reasons listed in Chapter 3 of the EA. Critical Elements of the Human Environment (Invasive Non-native Species, Sensitive Plants, and Wetlands/Riparian Zones) and Other Resource Issues (Wildlife, Forest Resources, Fire/Fuels Management, Recreation, Travel Management, Recreation Opportunity Spectrum, Visual Resource Management and Soils) were analyzed in detail in Chapter 3. None of these would be significantly impacted because design features incorporated into the proposed action as specified will minimize identified resource concerns.
4. **The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

Based on public comment, internal discussion and the analysis of the actions in this decision, the effects on the human environment are not likely to be highly controversial by professionals, specialists, and scientists. While some of the public comments received indicate the selected alternative may be controversial, I do not believe that there is significant controversy over the effects of this action.
5. **The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

The scoping did not identify highly uncertain, unique, or unknown risks. The BLM has experience implementing similar actions in similar areas. The possible effects on the human environment are not highly uncertain no do they involve unique or uncertain risks. The technical analyses conducted for determinations of the resources are supportable with use of accepted techniques, reliable data, and professional judgment. Impacts are within the limits that are considered thresholds of concern.
6. **The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

The implementation of this decision is not precedent setting and does not represent any future decisions. BLM has issued several road rights-of-way in the project area authorizing dependable, year round, legal access to private parcels. Any other proposals for this area will be subject to full NEPA disclosure.

7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.**

A cumulative effects analysis was conducted for this proposal. There are no known significant cumulative effects between this project and other projects implemented or planned on areas separated from the affected area of this project. Other known and reasonably foreseeable activities were considered and disclosed in the EA.

8. **The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources. A cultural inventory has been completed for the proposed action, and no historic properties or cultural resources were found. This project has been reviewed in compliance with the regulations for implementing Section 106 of the National Historic Preservation Act; there are no cultural resource concerns.

9. **The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on BLM's sensitive species list.**

While endangered, threatened or BLM sensitive species have reportedly been observed by local residents in the project area, and the area provides potential habitat, none are known to inhabit the area. Adverse effects should be minimal, since the area is used as a travel corridor. No threatened endangered or Candidate Plant species are known to inhabit the project area.

10. **Whether the action threatens a violation of a federal, state, local, or tribal law, regulation or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.** The project does not violate any known federal, state, local or tribal law or requirement imposed for the protection of the environment. State and local interests were given the opportunity to participate in the environmental analysis process. Furthermore, no Native American tribes showed interest in this project. In addition, the project is consistent with applicable land management plans, policies, and programs.

DECISION:

It is my decision to implement the Proposed Action as described in the attached EA. The Butte Field Office will issue one right-of-way grant to the applicant, for dependable, year long, legal access to his private inholding. Furthermore; it is my decision to issue two additional right-of-way grants: 1) to an electric utility company authorizing the placement of buried electrical service to the inholding, and 2) to a telephone utility company authorizing the placement of buried voice and data service to the inholding. (See Exhibits A, B and C of the EA)

Each right-of-way will be issued for a term of 30 years, pursuant to Title V of the Federal Land Policy and Management Act (FLPMA) of 1976{43 U.S.C 1761}and will be subject to the terms and conditions set forth in 43 CFR 2800.

In addition, I have made the determination as required under Executive Order 13212 that the projects as proposed will have no impact on the President's Energy Policy.

Access Road Right-of-Way (See Exhibits A and B of the EA)

The access road right-of-way will be 60 feet wide (30 feet each side of centerline) by approximately 18,076 feet in long (3.42 miles), with the Sheep Mountain and Ohio Gulch Roads having an average driving surface up to 24 feet. The width of the right-of-way and the driving surface meets the purpose and need derived from the application, and meets the road standards required by Jefferson County in order for the applicant to obtain final plat approval for the Sheep Mountain Estates Subdivision.

Roads West Of The Vigilante Electric Transmission Line

- Improve approximately 9,020 feet of the existing Sheep Mountain Road.
- Construct approximately 1.245 feet of new road connecting the existing Sheep Mountain Road to the southwest corner of the Roosevelt Mineral Survey.
- Construct a loop road approximately 443 feet long to avoid a rock outcropping on the edge of the Mountain Giant Mineral Survey.
- Construct a short road approximately 66 feet long to connect the northeast corner of the Roosevelt Mineral Survey to the southwest corner of the Fairbanks Mineral Survey.
- Construct a small loop road approximately 70 feet long to avoid a rock outcropping on the northern edge of the Fairbanks Mineral Survey.

Roads East of the Vigilante Electric Transmission Line

- Construct approximately 438 feet of road from the southeast corner of the Mountain Giant Mineral Survey to the existing Sheep Mountain Road.
- Improve approximately 1,520 feet of the existing Sheep Mountain Road to the point where it intersects the existing Ohio Gulch Road.
- Improving approximately 5,274 feet of the existing Ohio Gulch Road from the southeast corner of the Bunker Hill Mineral Survey south to where it intersects land in private ownership.

The final road right-of-way will encumber approximately 24.89 acres of federal land described as:

Principal Meridian Montana

T. 9 N., R. 3 W., Sec. 31, Lots: 3, 6, 10 and 11,
SWNE, SENW, NESW, N½ SE.

T. 9 N., R. 3 W., Sec. 32, Lots: 3, 7, 15 and 16, SWNE, NESW.

Terms / Conditions / Stipulations for Right-of-Way grant MTM-96439:

- The grant will issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as directed by the authorized officer.
- 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 granted herein may be reviewed

at any time deemed necessary by the authorized officer.

- The holder shall provide a bond in the amount of \$40,000 to be maintained until final clean-up and restoration of disturbed areas and other requirements relative to the construction phase of the project have been accepted by the authorized officer. Upon completion, or partial completion of these construction related requirements, the authorized officer may terminate or reduce the amount of the bond. Items: R, S, U, V, W, X, Y, Z, a, b, c, d, e, f, g, k, l, m, n and o.
- The holder agrees that all monies deposited with the authorized officer as security for holder's performance of the terms and conditions of this grant may, upon failure on the holder's part to fulfill any of the requirements herein set forth or made a part hereof, be retained by the United States to be applied as far as may be needed to the satisfaction of the holder's obligations assumed hereunder, without prejudice whatever to any other rights and remedies of the United States.
- Should the bond delivered under this grant become unsatisfactory to the authorized officer, the holder, shall, within 30 days of demand, furnish a new bond.
- The maps set forth in Exhibits A, B, and C dated September 05, 2007 attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension or termination thereof.
- The holder shall obtain the services of a licensed professional engineer to locate, survey, design, and oversee the construction of the proposed road. The road design shall be based on the (1) width, (2) maximum grade, and (3) design speed of the road. The stamped engineering drawings shall contain cross section drawings that include, but are not limited to, the proposed road width, ditch dimensions, cut and fill slopes, typical culvert installation, skew and elevation.
- The holder shall submit, for the authorized officer's review and approval, designs and plans approved and stamped by a licensed engineer prior to beginning construction or other surface disturbing activity.
- The holder shall submit, for the authorized officer's review and approval, proof that all Federal, state, county, and local permits have been secured from the appropriate agencies. The approved engineering drawings shall be incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- The holder shall schedule a pre-work conference prior to the start of road construction, reconditioning, relocation or improvement operations. The holder shall request the conference at least 15 days prior to beginning operations. The conference will be attended by the holder and/or his representative(s), subcontractor(s) and/or his or their representative(s), and the authorized officer and/or his representative(s). The purpose will be to review the required work, exhibits and specifications, and to establish a work schedule, implement a sign and safety program and obtain a list of the holder's representatives and subcontractor(s). A Pre-work conference shall be scheduled at the worksite to go over the on the ground operations of all work to be done.

- The authorized officer shall issue a Notice to Proceed (BLM Form 2800-15) upon approval of the design, plans, stamped engineering drawings, appropriate Federal, state, county, and local permits. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
- The authorized officer may suspend or terminate in whole, or in part, any Notice to Proceed which has been issued when, in his judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect public health and safety or to protect the environment.
- The holder shall designate a representative(s) who shall have the authority to act upon and to implement instructions from the authorized officer. The holder's representative shall be available for communication with the authorized officer within a reasonable time when construction or other surface disturbing activities are underway.
- The holder shall mark the exterior boundaries of the right-of-way with a stake and/or lath at 100 foot intervals. The intervals may be varied at the time of staking at the discretion of the authorized officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the holder. The survey station numbers will be marked on the boundary stakes and/or laths at the entry to and the exit from public land. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed and approved by the authorized officer. The stakes and/or laths will then be removed at the direction of the authorized officer.
- The holder shall place slope stakes, culvert location and grade stakes, and other construction control stakes to ensure construction is in accordance with the approved engineering design. If stakes are disturbed, they shall be replaced before proceeding with construction.
- Prior to any operations, the holder shall enter into a timber sale contract with the Bureau for timber designated for cutting on the right-of-way. The purchase price for the timber shall not be less than fair market value and shall be paid in full prior to the cutting of any timber. The holder shall comply with all terms and conditions stated in the timber sale contract.
- Prior to any surface disturbing activities, the holder shall treat the right-of-way corridor for noxious weeds with an applicable herbicide, determined by the authorized officer.
- The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and health and safety of the public.
- The construction site shall be maintained in a sanitary condition at all times; waste materials shall be disposed of promptly at an appropriate waste disposal site. "Waste" means tree branches, slash, all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and equipment.
- All heavy equipment and off-the-road vehicles shall be cleaned to remove weeds and weedseeds prior to the start of construction or using the access and support roads into public lands. Cleaned equipment and vehicles shall be inspected and approved by the authorized officer prior to moving onto public lands.

- 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.
- Earthwork areas shall be cleared of vegetation and any topsoil present shall be stockpiled for future rehabilitation. Prior to fill construction, the existing surface shall be sloped to avoid sharp banks and allow for equipment operations. No fills shall be made with water saturated soils. Materials shall be placed in uniform layers not to exceed six inches deep. Construction equipment shall be routed evenly over the entire width of the fill to obtain a thorough compaction.
- No construction or 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.
- As directed by the authorized officer, construction stakes shall be set for each culvert to show location as well as inlet and outlet elevations, diameter, and length. The holder shall furnish and install steel culverts of the gauge, material, diameter(s), and length(s) indicated by the stamped engineering drawings and approved by the authorized officer. The minimum diameter for culverts shall be 18 inches.
- Culverts shall be free of corrosion, dents, or other deleterious conditions. Culverts shall be placed on channel bottoms on firm, uniform beds which have been shaped to accept them and aligned to minimize erosion. Backfill shall be thoroughly compacted. No equipment shall be routed over a culvert until backfill depth is adequate to protect the culverts.
- Rolling dips and/or water bars shall be constructed to: (1) simulate the imaginary contour lines of the slope (ideally with a grade of one or two percent); (2) drain away from the disturbed area; and (3) begin and end in vegetation or rock whenever possible.
- The holder shall construct low-water crossings in a manner that will prevent any blockage or restriction of the existing channel. Material removed shall be stockpiled for use in rehabilitation of the crossings.
- Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer prior to use.
- Clearing and grubbing debris shall not be placed or permitted to remain in or under any embankment sections.
- The road surface shall be crowned and ditched away from the road where possible, to shed water and help avoid erosion. The road surface will be no lower than the natural ground elevation.
- The holder shall supply ¾ inch minus surfacing material which shall be applied to a minimum depth of 4 inches across the 24 foot width of the road and pullouts. Surfacing shall be applied loose and compacted using hauling equipment. Materials and/or pit run rock sources must be approved by the authorized officer.

- The holder shall meet Federal, State and local emission standards for air quality.
- The holder shall furnish and utilize water trucks to minimize fugitive dust during construction.
- The holder shall construct up to four pull outs; each area shall be capable of holding approximately two vehicles at locations determined by the authorized officer. Pull outs should be constructed to provide drainage and minimize erosion. Culverts shall be installed if necessary to maintain drainage.
- The holder shall recontour disturbed areas outside of the roadway, or designated sections of the right-of-way, by grading to restore the site to approximately the original contour of the ground as determined by the authorized officer.
- The holder shall seed all disturbed areas outside of the roadway with the seed mixture listed below. The seed mixture shall be planted in amounts specified in pounds of pure live seed (PLS/acre). There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law and within three months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law and available for inspection by the authorized officer.

Seed Mixture

Species of Seed	Variety	Pounds/acre PLS
Slender wheatgrass	Agropyron trachycaulum	5 pounds PLS/Acre
Bluebunch wheatgrass	Agropyron spicatum	4 pounds PLS/Acre
Big bluegrass	Poa ampla	2 pound PLS/Acre
Mountain brome	Bromus marginatus	2 pounds PLS/Acre
Idaho fescue	Festuca idahoensis	2 pounds PLS/Acre
Thickspike wheatgrass	Agropyron dasystachyum	3 pounds PLS/Acre
Blue flax	Linum lewisii	2 pounds PLS/Acre

- The holder is responsible for all noxious weed infestations and weed control within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods, and the timing of herbicide applications.
- The holder shall monitor disturbed areas annually for the presence of noxious weeds from June through August. Monitoring shall continue for five years post-construction.
- Maintenance items that shall be performed routinely include: (1) Grading and shaping the native and graveled roadway surfaces to maintain a distinct insloped, outsloped, or crowned shape to move water rapidly off the road surface. (2) Compacting the graded roadway surface to keep a hard driving surface and prevent the loss of fines. (3) Removing ruts through rolling dips and water bars, and reshaping the structures to function properly. (4) Cleaning ditches and reshaping them when necessary to adequate flow capacity. (5) Removing debris from the entrance of culverts to prevent plugging and overtopping. (6) Replacing / repairing roadway gravel, rock armor, or vegetation used for grade and slope protection, scour protection, or energy dissipation. (7) Trimming

roadside vegetation (brushing) adequately, but not excessively, to maintain sight distance and traffic safety.

- Snow removal equipment shall be equipped with shoes to keep the blade 3 inches off the road surface. Holder shall take special precautions where the surface of the ground is uneven and at drainage crossings to ensure the equipment blades do not destroy vegetation.
- The Secretary of the Interior, or his lawful delegate, reserves the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to this grant.
- The holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the right-of-way.
- No ancillary facilities would be authorized on public lands including, but not limited to: septic tanks, sewage disposal lines, septic absorption fields, driveways, signs, mail boxes, fences, sheds or outbuildings and lighting.
- As homesites are sold, each deed shall contain a covenant requiring the purchasers to belong to a homeowners association equally and legally responsible for holding the right-of-way grant and maintaining the road.
- As the private land to be served by the access road is subdivided and sold as homesites, this right-of-way may only be assigned to a legal, qualified homeowners association capable of holding and carrying out the responsibilities as a holder of the grant.
- During conditions of extreme fire danger, construction shall be limited or suspended in specific areas, or additional measures may be required by the authorized officer.
- Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the terminations provisions of the grant.
- 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 the authorized officer will make any decision as to proper mitigation measures after consulting with the holder.
- Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

- Holder shall protect all survey monuments. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management and Geodetic benchmarks and triangulation stations, military control monument, and recognizable civil (both public and private) survey monuments. If a survey monument is in danger of being lost or damaged, the holder shall reference the monument in a manner allowing the point to be reestablished and remonumented or rehabilitated after construction. If a monument is damaged or lost, 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 monuments or references are involved, 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 of the United States, latest edition. Holder shall record such survey in the appropriate county and send a copy to the authorized officer. Holder shall be responsible for all Federal and non-federal survey costs.
- The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated regarding toxic substances or hazardous materials. In any event, the holder 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 right-of-way or on facilities authorized under this right-of-way 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 authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
- The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these 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) 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. The agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

Buried Utilities Rights-of-Way (See Exhibit C)

The right-of-way for the buried electrical service will be 20 feet wide (10 feet each side of centerline) by approximately 7232 feet long (1.37 miles), encumbering approximately 3.36 acres of Federal land.

The right-of-way for the buried voice and data service will be 10 feet wide (10 feet each side of centerline) by approximately 7232 feet long (1.37 miles), encumbering approximately 1.66 acres of Federal land.

Principal Meridian Montana,

T. 9 N., R. 3 W., Sec. 32, Lots: 3 and 15, NESW.

The buried utility service will be placed within the access road right-of-way east of the Vigilante Electric Transmission line.

Terms / Conditions / Stipulations for the Buried Utilities:

- The 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.
- Upon termination of the grant, whether by default, abandonment, or the running of the term, the holder shall remove its personal property or improvements of any kind and restore the land to its original condition, within 90 days. Improvements not removed shall be considered abandoned and will be disposed of accordingly. Holder shall remain liable for costs of removal and / or restoration of the land. Plans for removal of the line shall be discussed with the authorized officer prior to commencement of operations.
- 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.
- 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.
- Erosion control methods and applications may be necessary and can be determined and enforced at anytime by the Authorized Officer.
- The right-of-way shall be maintained in a sanitary condition at all times; waste materials shall be disposed of promptly at an appropriate waste disposal site. "Waste" means tree branches, slash, all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and equipment.
- No construction or 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.
- 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 for acceptable weed control methods.
- The holder shall certify that hazardous or toxic substances as defined in the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.), 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.) will not be used, generated, stored or transported on the right-of-way without the authorization of the authorized officer. Holder shall notify the Bureau of Land Management in advance of any future desire to use, generate, store or transport such substances on the right-of-way, and shall provide a Plan of Development to the authorized officer for advance approval, describing the purpose and methods of use and indemnifying the Bureau of Land Management from liability.

- 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.
Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
- The holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.

Alternatives Considered:

The EA fully developed one Action Alternative and the No Action Alternative. Public comments on this proposed right-of-way did not suggest that the BLM should consider additional alternatives. The Action Alternative meets the purpose and need derived from the application, and analyzed bringing the Sheep Mountain and Ohio Gulch Roads to the standards required by Jefferson County for subdivision development. Any potential resources issues were addressed by including mitigation measures with the proposed action.

Public Involvement

The public has been involved throughout the development of this EA. Public comment helped to define issues and develop alternatives for accomplishing management goals and objectives. Following are the highlights of public involvement activities and efforts.

- Public notification of the proposed action through a posting on the Butte Field Office NEPA register in October of 2006.
- Public comment was solicited with a scoping letter distributed to approximately 240 individuals and organizations on March 19, 2007. The letter gave a brief overview of the right-of-way proposal with a public comment deadline of April 13, 2007.
- A March 22 press release titled “BLM Seeks Comment on Proposed Right-Of-Way near Clancy” was incorporated into a comprehensive story and published in the Helena Independent Record on March 25. An additional story appeared June 1 to further inform the public of the proposal.
- The comment period ended on April 13, 2007 and the Butte Field Office received 48 written comments from individuals.
- On May 31, 2007 a letter was sent to the same group of individuals and organizations informing them that the Butte Field Office would be hosting a public meeting on June 14 to hear comments on the project. Flyers were posted in the Clancy, Jefferson City and Montana City area.

- The public meeting was held in the old gym at the Clancy Montana School on June 14, 2007 with approximately 70 people attending. A follow-up story dated June 16 was published in the Helena IR after the public meeting.

A Congressional Inquiry was received from Congressman Denny Rehberg on July 5, 2007 on behalf of Donald and Terry Petersen. After coordination with the Butte FO, the Montana State Office sent a response on July 13, 2007

Issues

Key Issues for the project were identified through public and internal scoping. The following issues were determined to be key and within the scope of the project. These issues were addressed within the EA.

- Wildlife
- Non-Native Invasive Species (Noxious Weeds)
- Sensitive Plants
- Riparian Areas
- Forest Resources
- Fire and Fuels Management
- Recreation / Travel Management
- Recreation Opportunity Spectrum (ROS)
- Visual Resource Management (VRM)
- Soils

Design features were incorporated into the Proposed Action to address the identified issues.

Rationale for Decision:

The proposed action was selected as the Preferred Alternative because it best meets the Purpose and Need described in the Environmental Assessment and responds to all of the issues identified in public comments. Incorporating the terms, conditions, and stipulations into the proposed action will eliminate or minimize identified resource concerns.

The proposed action will allow the applicant, to gain dependable, year long, legal access to his private inholding which is completely surrounded by lands managed by the Butte Field Office. Utilizing the existing Sheep Mountain and Ohio Gulch Roads is the most practical and direct route to the inholding. Making improvements to the existing Sheep Mountain and Ohio Gulch roads and constructing five short segments of new road would have far less environmental impacts than constructing a new road to the inholding from another location.

The proposed action also will allow utility companies to provide buried service to the private inholding utilizing the most practical and direct route.

/s/ Richard M. Hotaling

7/20/2007

Richard M. Hotaling
Field Manager

Date

Appeals Language:

This decision shall take effect immediately upon the date it is signed by the authorized officer September 20, 2007 and shall remain in effect while any appeal is pending unless the Interior Board of Land Appeals issues a stay. Any appeal of this decision must follow the procedures set forth in 43 CFR Part 4. Within 30 days of the decision, a notice of appeal must be filed in the office of the authorized officer at 106 North Parkmont Butte, Montana 59701. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the authorized officer.

If you wish to file a petition for stay pursuant to 43 CFR Part 4.21(b), the petition for stay should accompany your notice of appeal and 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 irreparable harm to the appellant or resources if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the authorized officer.

A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, Montana 59107-1394, not later than 15 days after filing the document with the authorized officer and/or IBLA.