

United States Department of the Interior
Bureau of Land Management

Missoula Field Office
3255 Fort Missoula Rd
Missoula, MT 59804

Decision Record

Environmental Assessment DOI-BLM-MT- B010-2012-0003-EA
Case File Number: MTM-102764

DECISION:

It is my decision to grant a 30 year, road right-of-way over Bureau of Land Management (BLM) administrated lands to Candid Family Limited for access to private property as described in the Proposed Action of EA DOI-BLM-MT-B010-2012-0003-EA. The right-of-way will be approximately 4,800 feet long and 60 feet wide.

Authorities:

The grant is made under the authority of Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

Compliance and Monitoring:

BLM will conduct compliance and monitoring inspections during and after the construction phase of the project.

Compliance and Monitoring inspection, at a minimum, be conducted by the BLM at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. However, the right-of-way may be reviewed at any time deemed necessary by the BLM.

Terms / Conditions / Stipulations:

The grant shall be subject to the terms and conditions in 43 CFR Part 2800, BLM Manual 2801, and the stipulations attached.

A Notice to Proceed will need to be issued prior to the start of new construction. The Notice to Proceed will be issues once the following is completed:

1. A Plan of Development is submitted.
2. A final road and bridge design completed by a Montana-licensed Professional Engineer for review and approval is submitted.
3. A timber sale contract for the trees to be cut on the right-of-way is completed.



Alternatives Considered:

The EA considered a No Action and Proposed Action alternatives. The No Action alternative was considered to provide a baseline comparison of effects with the Proposed Action.

Rationale for Decision:

The decision complies with BLM policy to allow an owner of non-Federal lands a degree of access across public lands and roads which will provide for the reasonable use and enjoyment of the non-Federal land. The proposal is consistent with the purpose for which the public lands and roads are managed, is in the public interest, is consistent with Federal, State, or local laws, and the applicant is qualified and technically/financially capable of accomplishing the project. The action is in conformance with the Garnet RMP, approved on January 10, 1986, and the proposed grant contains terms and conditions to implement Bureau right-of-way guidance, Garnet RMP Best Management Practices, and Missoula Field Office standard operating procedures. This action will not have any adverse impacts on the President's Energy Policy, Executive Order 13212.

Public Involvement:

The public was notified via the Missoula Field Office NEPA log, which is available on the external office website and public meetings. On January 31, 2014 the preliminary EA was posted on the BLM Missoula Field Office website for 14-day public review period. The BLM mailed postcards to 138 recipients requesting comments on the preliminary EA. BLM received 258 responses during the public comment period.

A majority of the comments received supported the proposed action in the EA. Public concerns included increased traffic volume and safety on Rumsey Road, findings of the traffic report, trespass onto private property, impacts on elk and elk habitat, invasive weeds, granting of future rights-of-ways, a local user created swimming area, and the length of the public scoping period. The BLM reviewed the comments received and determined that the concerns brought forth were not substantive due to: concerns being out of the scope of the proposed project; the analysis considered the best available information regarding concerns; or concerns were out of BLM jurisdiction. Comments received did not result in a change to the analysis or conclusion made from the analysis.

Following the scoping period, clarifications were made to the analysis of the grizzly bear, Canada lynx, and Wolverine portions of the EA, however, the changes do not affect the analysis or the BLMs determination of no effect on these species.

Appeals Language:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this

office, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Field Solicitor, Rocky Mountain Region, 2021 4th Avenue N., Suite 112, Billings, MT 59101 (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

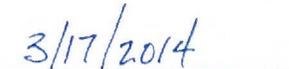
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



Authorized Officer



Date

Appendix A Terms and Condition

1. There is hereby reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant.
2. This grant shall be deemed a right to construct, operate, use and maintain roads, for ingress and egress to property owned by Holder over roads controlled by the United States described herein and shown on the attached Exhibit A, which is made a part of this grant. Holder shall apply for amendment of this grant at any time additional land, equipment, and/or new uses are proposed which are beyond the scope of the rights herein granted.
3. The holder shall conduct all activities associated with the construction, operation and maintenance of the right-of-way within authorized limits of the right-of-way.
4. Roads and facilities shall be constructed according to Road Construction Standards as shown in Appendix B.
5. No signs or advertising devices shall be placed on the right-of-way or adjacent public lands, except those posted by or at the direction of the BLM.
6. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior authorization of the BLM. Such authorization shall be a Notice to Proceed issued by the BLM. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
7. Standards and stipulations for road construction and maintenance.
 - a. Holder shall maintain roads in a condition satisfactory to the BLM during periods of use.
 - b. Holder shall enter into a timber sale contract with the Bureau prior to the cutting of any timber on the right-of-way.
 - c. Prior to the start of construction, all heavy equipment shall be power washed to remove noxious weed seed.
 - d. The holder shall seed all disturbed areas immediately upon completion of reclamation with the seed mixture as approved by BLM.
8. The Holder shall conduct all construction and maintenance activities in a manner that will minimize disturbance to vegetation, drainage channels or stream banks. The Holder shall take resource conservation and protection measures on the right-of-way as the Authorized Officer deems reasonably necessary.

9. BLM may at any time inspect the onsite construction, maintenance, and operation of Holder's project. Officials of State and other Federal agencies may also inspect such activities if necessary to the performance of official duties relating to the project. The right to inspect includes the right to use private roads belonging to Holder in order to reach the site.
10. The holder is responsible for noxious weed control on disturbed areas within the limits of the right-of-way or would result from the improvements authorized under this grant. The holder is responsible for consultation with the authorized officer for acceptable noxious weed control methods. Specifically, all equipment, materials, and vehicles to be used at the job site shall be cleaned. Cleaning shall consist of the removal of all dirt, grease, debris, and materials that may harbor noxious weeds and their seeds. Cleaning shall occur off public land.
11. Holder shall apply for amendment of this grant at any time additional land, equipment, and/or new uses are proposed which are beyond the scope of the rights herein granted.
12. Holder shall maintain the road authorized in this grant in a safe, usable condition as directed by the BLM. Holder's maintenance obligation shall be proportionate to the level of use Holder makes of the road. A regular maintenance program shall include, but not limited to, blading, ditching, culvert cleaning, and surface replacement as needed.
13. Holder shall abide by all reasonable traffic regulations imposed by the BLM; provided, however, such regulation shall be uniformly applicable to all users of the road, including the United States.
14. Holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under this grant.
15. Holder shall take adequate precaution to prevent and suppress forest, brush, and grass fires; will endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; but in any event will set no fire on the right-of-way that will result in damage to any natural resource or improvement.
16. Holder shall exercise the rights granted herein in such a manner that no damage is caused to facilities or improvements located on or adjacent to the right-of-way.
17. The United States will not be liable for any damage which may occur to facilities authorized by this grant, as a result of fire, wind, or other natural disasters, or as a result of its management of the public lands. If it becomes necessary to move, relocate, or replace Holder's facilities because of federal land management activities, Holder shall bear the costs incident thereto.

18. If an archaeological resource (historic or prehistoric site or object) is discovered during project operations, Holder shall immediately stop all operations in the area and notify the BLM. If the discovery includes human remains, funerary items, sacred objects, or objects of cultural patrimony, Holder must immediately notify the BLM by telephone, followed by a written confirmation (certified mail recommended). Operations shall remain suspended until a written notice to proceed is issued by the BLM. An evaluation of the resource will be made by the BLM to determine appropriate mitigation actions. Proper mitigation measures will be made by the BLM after consulting with Holder. Holder shall be responsible for evaluation and mitigation costs. All archaeological materials shall remain the property of the United States.
19. Pesticide use shall comply with 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 pesticide use, Holder shall obtain from the BLM 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 BLM. Emergency pesticide use shall be approved in writing by the BLM prior to such use.
20. The holder shall remove or dispose of all waste in a manner consistent with federal, state, and local laws. Waste means all discarded matter, including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products and equipment
21. Holder shall comply with Toxic Substances Control Act of 1976, as amended, (15 U.S.C. 2601 et seq (1982)), regarding any toxic substances that are used, generated, or stored on the right-of-way or in facilities authorized by this grant (40 CFR 702-799, especially see polychlorinated biphenyls, 40 CFR 761). Any release (leaks, spills, etc.) of toxic substances in excess of the reportable quantity established by 40 CFR 117, shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any federal or state agency as a result of a reportable release of toxic substances shall be furnished concurrently to the BLM.
22. Holder agrees to indemnify the United States against any liability arising from the release or threatened release of any hazardous substance or hazardous waste (as defined in Comprehensive Environmental Response Compensation & Liability Act of 1980, 42 U.S.C. 9601, et seq., or the Resource Conservation & 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 Holder's activity on the right-of-way). This agreement applies to releases caused by Holder, its agents or unrelated third parties

23. Ground disturbing activities, such as tree-felling and road building would not occur from June 1 to July 15 to protect the nesting season for sensitive bird species.
24. Ground disturbance would discontinue if an active bald or golden eagle, northern goshawk, or great gray owl nest is discovered. Disturbance would be evaluated and potentially resume after the nesting season.

Appendix B

Road Construction Standards

1. The holder shall submit a plan of development that describes in detail the construction, operation and maintenance of the right-of-way and its associated improvements and/or facilities. The plan shall include drawings in sufficient detail to enable a complete evaluation of all proposed structures and facilities to ensure compliance with the requirements of the grant and to ensure visual compatibility with the site. These drawings shall be construction documents and must show dimensions, materials, finishes, etc. to demonstrate compliance with all requirements. The plans will be reviewed and, if appropriate, modified and approved by the BLM. An approved plan of development shall be made a part of the right-of-way grant.
2. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior written authorization of the BLM. Such authorization shall be a written notice to proceed issued by the BLM. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
3. The BLM may suspend or terminate in whole, or in part, any notice to proceed which has been issued when unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
4. The holder shall designate a representative(s) who shall have authority to act upon and to implement instructions from the BLM. The holder's representative shall be available for communication with the BLM within a reasonable time when construction or other surface disturbing activities are underway.
5. The holder shall contact the BLM at least 10 days prior to the anticipated start of construction and/or any surface disturbing activities. The BLM may require and schedule a preconstruction conference with the holder prior to the holder's commencing construction and/or surface disturbing activities on the right-of-way. The holder and/or his representative shall attend this conference. The holder's contractor, or agents involved with construction and/or any surface disturbing

activities associated with the right-of-way, shall also attend this conference to review the stipulations of the grant including the plan(s) of development.

6. The holder shall enter into a timber sale contract with the Bureau prior to the cutting of any timber on the right-of-way.
7. The holder shall survey and clearly mark the centerline and exterior limits of cuts and fills. Right-of-way clearing shall be limited to six feet beyond cut stakes and six feet beyond fill stakes.
8. Prior to the start of construction, all heavy equipment shall be power washed to remove noxious weed seed.
9. Excavation associated with constructing the road prism is expected to balance with embankment requirements adjusted for compaction. However, if excavated quantities are generated in excess of embankment requirements, this excess material shall be wasted in areas away from stream influence zones as designated by the BLM.
10. All right-of-way clearing and grubbing debris resulting from road construction shall be completely disposed of by burning and/or removal from the site. Clearing and grubbing debris shall not be placed or permitted to remain in or under any embankment sections. Slash piles shall be located at least 30 feet from live trees prior to burning. BLM would conduct the slash pile burning.
11. The holder shall seed all disturbed areas, using an agreed upon method suitable for the location, immediately upon completion of construction with a seed mixture and in amounts as directed by the BLM. 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. Commercial seed shall be either certified or registered seed. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the BLM upon evaluation after the end of the first growing season. All seed used shall meet all requirements of the Federal Seed Act (7 U.S.C., §551-1610) and the seed laws and noxious weed laws of Montana. Evidence of the seed certification shall be furnished at the request of the BLM.